

# 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 8

23 AUGUST 2018

PAGES 1164 - 1405

### HELD AT

The Auditorium, 2nd Floor Lifton House, Brooklyn Bridge, 570 Fehrsen Street,  
Brooklyn, Pretoria



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1 [PROCEEDINGS ON 23 AUGUST 2018]  
 2 [09:10] MS STEINBERG: Judge, our first witness  
 3 this morning is Mr Fareed Khan. Just to give you the line-  
 4 up for this morning. Mr Khan, you will recall was supposed  
 5 to testify on the first day when we ran out of time. Then  
 6 the remainder of the day we'll be looking at the Large  
 7 Business Centre.  
 8 COMMISSIONER: Thank you. Mr Khan, good  
 9 morning.  
 10 MR KHAN: Good morning, Judge.  
 11 COMMISSIONER: Would you affirm that the  
 12 evidence you give will be the truth, the whole truth and  
 13 nothing but the truth? If so will you just say I do.  
 14 FAREED KHAN: I do.  
 15 COMMISSIONER: Thank you.  
 16 EVIDENCE OF MR KHAN  
 17 MS STEINBERG: Morning Mr Khan.  
 18 MR KHAN: Morning Carol.  
 19 MS STEINBERG: Would you tell us what  
 20 your position is in SARS and how long you've held it?  
 21 MR KHAN: Thank you very much. Good  
 22 morning to the panel and to everybody present. My name is  
 23 Fareed Khan and I am currently the executive responsible  
 24 for the compliance division within the enforcement unit.  
 25 So with your permission Judge, I'd just like to clarify my

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1 colleague who spoke last on Tuesday was also from a so  
 2 called compliance division. I just want to clarify the  
 3 difference. Dr Malovhele was in the compliance risk unit.  
 4 That was the unit that was responsible for the matrix to  
 5 measure compliance levels and to measure the tax gap and to  
 6 identify operational focus areas. So they were more into  
 7 the data analytics of the compliance space whereas the  
 8 compliance division that I head up is part of enforcement  
 9 which is the first leg of the audit environment.  
 10 MS STEINBERG: Would you tell us about, a  
 11 little bit about the history of your division? Probably  
 12 since about 2010 and the evolution of compliance in SARS?  
 13 MR KHAN: Thank you. Yes, so in trying  
 14 to explain the history of the compliance division I'm going  
 15 to try and achieve two things. Firstly to try and show  
 16 that the compliance division was established not as an  
 17 accident or in six weeks or 21 days or whatever timeframe,  
 18 it took a long time to establish the compliance division.  
 19 And the reason it took a long time was there was an  
 20 underpinning strategic vision that was driving the process  
 21 of establishing the compliance division and that, and I'm  
 22 not going to repeat all of it. My colleague Dr Carolissen  
 23 elucidated that very clearly, you know the entire I-SARS  
 24 vision, the three pronged approach to enforcement which was  
 25 educate, serve and enforce and all of those philosophies

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1 and those visions informed the establishment of the  
 2 compliance division. So before the compliance division was  
 3 established there was a lot of groundwork that needed to be  
 4 done, things such as the automated tax processing engine  
 5 that replaced the so called factory that Dr Carolissen  
 6 spoke about. Things like e-Filing, like a pre-populated  
 7 return, like the preparation of third party data for pre-  
 8 population. So all of those things had to be built and  
 9 it's very important for us to understand that there was  
 10 this vision that was informing what was going to happen.  
 11 PROF KATZ: Sorry, was that the  
 12 modernisation programme you're talking about?  
 13 MR KHAN: That was the modernisation  
 14 programme. So we often say, Judge, we often say  
 15 modernisation programme and we do not realise that that  
 16 modernisation programme was underpinned by a vision and  
 17 every little thing that happened was happening because  
 18 there was an end state in mind. And eventually when all of  
 19 these building blocks were put in place the compliance  
 20 division was established. And when the compliance division  
 21 was established personally I believe that this was probably  
 22 the most significant operational improvement SARS has ever  
 23 seen because the establishment of the compliance division  
 24 was going to address things like our audit coverage. Our  
 25 audit coverage prior to compliance division was miniscule.

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1 It was extremely low by our own standards and by  
 2 international standards. We were auditing something like,  
 3 well significantly less than 5% of our audit register. And  
 4 the compliance division was recognising or the  
 5 establishment of the compliance division was in recognition  
 6 of the fact that the vast majority of taxpayers were  
 7 willing to be compliant. They were not trying to defraud  
 8 the fiscus and therefore you needed a different approach in  
 9 auditing those individuals. You couldn't have a big stick  
 10 approach to all taxpayers, you needed a softer approach, a  
 11 medium approach and a harder approach. So eventually when  
 12 the compliance division was established the audit coverage  
 13 increased from approximately 200 000 audits a year to 1.2  
 14 million initially audits a year. And that is why I say it  
 15 was probably the most significant operational improvement  
 16 SARS has seen.  
 17 Since the establishment to now the coverage has  
 18 gone up from 1.2 million to 2.2 million a year. And some  
 19 of the criticisms that the compliance division is are valid  
 20 on the face of it that the vast majority of the audits that  
 21 we conduct are in the personal income tax space. But again  
 22 one needs to understand the vision and where the vision was  
 23 going. The vision that SARS had was to eventually reduce  
 24 personal income tax audits significantly. Had the process  
 25 not been stopped, I believe today we would have been at

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1 that point because SARS had a vision that the vast majority  
 2 of personal income taxpayers were earning a salary, they  
 3 had a car, they had a medical aid and they had a retirement  
 4 annuity. And therefore we should make life easier for  
 5 them, instead of requesting them to submit data that we  
 6 already had access to via third parties, we should be  
 7 issuing them with an assessment, and I believe that was the  
 8 vision that SARS had which was unfortunately premature to  
 9 start.

10 MS STEINBERG: Could you tell us a little  
 11 bit more about the differentiated strategy that you  
 12 developed which seems to be a central pillar of your model?

13 MR KHAN: So essentially SARS recognised  
 14 like I said earlier that the majority of taxpayers were  
 15 willing to comply and were able to comply and all we needed  
 16 to do was assist them to comply. There was a small portion  
 17 of taxpayers who were unwilling to comply and for them we  
 18 needed a different approach. So prior to the establishment  
 19 of compliance division we had a one dimensional approach to  
 20 audits. We audited everybody as if they were unwilling to  
 21 comply. So the differentiated approach was to establish a  
 22 verification or a compliance verification unit which was  
 23 going to do, conduct a desk audit, to verify the  
 24 declarations made by taxpayers against the supporting  
 25 documentation that they provided as well as third party

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1 information that we had. And that should have, the vision  
 2 was that that would form the bulk of the audits that we  
 3 conduct. Then the second leg would have been what we call  
 4 a limited scope audit which is essentially, which was  
 5 essentially aimed at those taxpayers who were willing but  
 6 probably unable to comply and they needed a little more  
 7 assistance and nudging in the right direction. And then  
 8 the last one was the investigative audits which was for  
 9 those taxpayers that were engaging in aggressive tax  
 10 structure and that should by its nature form the smallest  
 11 part of the audit environment. So that was the strategy in  
 12 terms of the differentiated approach to the audit  
 13 environment.

14 PROF KATZ: Sorry if I may, how far did  
 15 you get with this before you were stopped? How far had you  
 16 implemented it? The vision you speak about.

17 MR KHAN: So 2015 we got to the point  
 18 where we were auditing approximately 2 million taxpayers a  
 19 year, the majority of whom were in the personal income tax  
 20 space. Like I said Judge, Professor sorry, the vision was  
 21 to eventually repopulate those personal income tax returns  
 22 to a point where we told the taxpayer exactly what kind of  
 23 income and expenses they had that were verifiable and  
 24 therefore issue them with an IT34. We didn't get to that  
 25 point. We got to the point where we were repopulating a

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1 significant part of the return but not everything. So  
 2 unfortunately, like I said the journey ended before the  
 3 ultimate objective could be achieved which was to reduce  
 4 personal income tax audits significantly and then retrain  
 5 and reallocate the resources that we were using in that  
 6 space to the other more, the riskier taxes if you like.

7 PROF KATZ: Sorry Doctor, the thrust of  
 8 the question was had you already started yielding fruit by  
 9 the time you were stopped?

10 MS STEINBERG: Perhaps if I can prompt  
 11 you here, perhaps you could give us some of the relevant  
 12 figures that your submission that you have shared with me  
 13 about the revenue you've collected over the years and how  
 14 that increased?

15 MR KHAN: Thank you. Yes Professor, the  
 16 results, when I say that the compliance, the establishment  
 17 of the compliance unit was probably the most significant  
 18 operational improvement that SARS made, it is backed up by  
 19 two very critical matrix. The first one was the  
 20 improvement from a coverage ratio of less than 5% per annum  
 21 to a current coverage ratio of approximately 18% of the tax  
 22 base. That's the first one. 200 000 to 2.2 million. The  
 23 second one was the revenue. From the period, in the period  
 24 2011 until the 31st March I think 2018, this process yielded  
 25 R849 billion.

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1 PROF KATZ: Is that personal income tax  
 2 and corporate?

3 MR KHAN: All taxes, yes. The vast  
 4 majority coming from VAT and personal income tax, but that  
 5 was the yield, R849 billion, 98% of which came from the  
 6 compliance division.

7 COMMISSIONER: I just don't quite  
 8 understand, if you could explain to me again. What was the  
 9 point you hoped to reach? Do I understand you to be saying  
 10 that you hoped to reach a point at which you would have to  
 11 do fewer audits and those audits would be directed to the  
 12 higher risk? Now how many, what was you, can you give any  
 13 indication of where you hoped to be as far as numbers are  
 14 concerned?

15 MR KHAN: Thank you Judge. Unfortunately  
 16 I can't share them, I can't give you the numbers because  
 17 what I can give you was the vision. The vision that we  
 18 had, that SARS had rather was that 80% if not more of  
 19 personal income taxpayers earn a salary and have –

20 COMMISSIONER: Sorry if I may interrupt  
 21 you. So you hoped to repopulate so that you wouldn't need  
 22 to audit them?

23 MR KHAN: So that we could redirect the  
 24 resources that we were using into VAT and –

25 COMMISSIONER: Were you wanting to reduce

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1 the number of audits that you were doing?  
 2 MR KHAN: Absolutely.  
 3 COMMISSIONER: To the minimum and direct  
 4 the resources to high risk -  
 5 MR KHAN: That's correct.  
 6 MS STEINBERG: As I understand if you get  
 7 a fully pre-populated form it makes it very difficult not  
 8 to comply because the taxpayer can't hide anything. But  
 9 it's also a great service to a taxpayer who actually wants  
 10 to pay their tax because you just push a button and say yes  
 11 and here's the money. So it works both ways.  
 12 MR KHAN: That's correct.  
 13 COMMISSIONER: Advocate Steinberg, if you  
 14 just allow me to just get an answer to Professor's question  
 15 which I'm not sure I understand and that is how far did you  
 16 get with this vision? Where were you in 2015? Can you  
 17 give an indication of the progress that it made and what  
 18 would have happened had it not been stopped?  
 19 PROF KATZ: I just want to contextualise  
 20 that very thing. It's one thing to stop a failing, it's  
 21 another thing to stop something that's highly successful,  
 22 that's really the thrust of what I'm trying to find out.  
 23 MR KHAN: So Professor, I think where we  
 24 got to, was to a point where we were prepopulating I would  
 25 say 50% of the income tax return for personal income

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1 taxpayers. We were putting together the building blocks  
 2 for the pre-population of the remaining part of the return  
 3 and that was stopped.  
 4 COMMISSIONER: So in other words a 50%  
 5 pre-populated return is not helpful at all?  
 6 MR KHAN: Is not.  
 7 COMMISSIONER: You've got to get to 100%  
 8 before you, and you were sort of halfway there as it were?  
 9 MR KHAN: And I personally believe that  
 10 had the journey not been stopped we would have been there.  
 11 MS STEINBERG: But nevertheless the  
 12 amount of revenue you were collecting had increased  
 13 dramatically so why did that happen?  
 14 MR KHAN: I think obviously the numbers  
 15 speak for themselves. R849 billion as a result of the  
 16 interventions of SARS. Whether those interventions were in  
 17 the compliance verification audit process or whether they  
 18 were as a result of limited or investigative audits. The  
 19 reality is that taxpayers were now understanding that SARS  
 20 was becoming smarter at unpacking the declarations that  
 21 they were making and SARS was becoming more efficient in  
 22 the way it processed the declarations that they were  
 23 making.  
 24 MS STEINBERG: So I think Professor Katz,  
 25 that's also an answer to your question, isn't it? Revenue

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1 collection was climbing and climbing quite dramatically  
 2 from the figures. I want to take you back a step.  
 3 Yesterday morning we focused on enforcement and the Judge  
 4 was asking our witnesses questions about how the cases that  
 5 they investigated got to them. And I think if I'm not  
 6 mistaken Mr Khan, it's something you could possibly  
 7 explain. So far you've told us that you have the vast  
 8 majority of cases which never get, of returns that never  
 9 get audited. Then you have what you call limited scope  
 10 investigations which is where you think somebody's made an  
 11 innocent mistake or something like that. But then we've  
 12 got full on investigative audit and that's just a few  
 13 percent of the returns that you get and I would imagine  
 14 it's somewhere from there that a case selection process  
 15 happens that would have fed cases to Mr Engelbrecht and Mr  
 16 Hendrickse. Could you explain that more fully?  
 17 MR KHAN: Okay, so the design and the  
 18 philosophy that underpinned the enforcement strategy of  
 19 SARS as I understood it was that we needed to convert data  
 20 into information and then into intelligence so that we were  
 21 able to assess the risk attached to each declaration made.  
 22 And for that purpose a risk engine was established which is  
 23 essentially a computer system that used the various  
 24 algorithms and all of the clever stuff that the IT people  
 25 do to assess the risk and identify cases for the first

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1 compliance division as the first leg of audit. And the  
 2 compliance division would then apply its mind, human  
 3 intervention, apply its mind to the risks identified, the  
 4 declarations, the supporting documentation provided by  
 5 taxpayers, third party data available to it. And then  
 6 decide whether the risk was mitigated or not. If it was  
 7 not then it would be referred to a second IT system if you  
 8 like, called a residual risk engine and that residual risk  
 9 engine was intended – and I use the word very deliberately  
 10 – was intended to escalate cases for either a limited scope  
 11 or an investigative audit because the compliance process  
 12 was unable to mitigate all of the risk that was identified.  
 13 So why do I say intended? Because unfortunately the  
 14 residual risk engine process did not, in my opinion, was  
 15 not given an opportunity to work. Some people would argue  
 16 that it did not work and I would argue that it was not  
 17 given an opportunity to work because no system can be  
 18 developed to a point of perfection at the outset. It needs  
 19 continuous iterative improvement and changes and I think  
 20 that's what was missing.  
 21 PROF KATZ: I'm sorry, when it was  
 22 stopped, just following from what you're saying did someone  
 23 do an assessment with you or with you and your colleagues  
 24 saying show me this, we don't think it's working or was it  
 25 just stopped without any assessment of whether it was

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1 working?

2 MR KHAN: Thank you Professor. So just

3 please allow me to clarify what was stopped. The process

4 was stopped. The journey towards the end game was stopped.

5 [09:30] So the risk engine still existed, the partial

6 pre-population of returns continued but the journey was

7 halted if you like.

8 PROF KATZ: In stopping the journey did

9 anyone do an evaluation saying this is a journey I've asked

10 you, I don't think it's worth continuing?

11 MR KHAN: I think the short answer is no.

12 I've had two 15 minute or 20 minute meetings around the,

13 what we very generously call a new operating model because

14 it's not, Professor and Judge, I don't believe that this is

15 an operating model. I think this is an, this is a

16 structure with reporting lines and an organogram because

17 from what we've become used to in SARS an operating model

18 is a strategic vision that underpins a structure. So my

19 colleague, Dr Carolissen spoke about this very well. When

20 he said structure should follow strategy. But there was a

21 strategy that informed the structure. It might have been

22 imperfect but it informed the structure which informed the

23 journey that we were undertaking. We saw this new model

24 that we call an operating model as a simple reshuffling of

25 chairs with some chairs taken away and some chairs added.

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1 But there was no vision that we were made aware of that it

2 was intending to serve.

3 MS STEINBERG: Sorry, can I, we've jumped

4 the gun. We're going to get thoroughly to what happened

5 but there are certain pillars, there's certain building

6 blocks that must be laid -

7 COMMISSIONER: We'll be patient.

8 MS STEINBERG: Thank you very much,

9 Judge, and Professor Katz.

10 PROF KATZ: We'll be patient.

11 MS STEINBERG: I'm still not clear and I

12 think this is very important because of yesterday's

13 evidence. I'm still not a 100% clear in the old days

14 before the new operating model how did a case get to Mr

15 Hendrickse or Mr Engelbrecht, you know they said what

16 worked for them in the old days is that for example where

17 you had a company that was a spider web they would actually

18 get a spider web rather than this piece today and that

19 piece next year and someone else would get another piece

20 the following year. How did that happen, who made that

21 selection and who handed that over and then how did it

22 change in 2015?

23 MR KHAN: So cases that were referred to

24 what you are calling, what you were referring to was

25 criminal investigations. There was a unit called

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1 preliminary investigations and I forget the name, Judge, my

2 apologies, PI&E, Preliminary Investigation and Enquiries.

3 MS STEINBERG: Yes.

4 MR KHAN: That was responsible for

5 identifying these, these taxpayers that were involved in, I

6 think the right, the word I used earlier was aggressive tax

7 planner or fraudulent activities and to the best of my

8 knowledge that functionality disappeared in the new

9 process.

10 MS STEINBERG: It didn't exist on the

11 organogram. Okay. When I looked at the figures that you

12 gave in your submission to the commission it seemed to me

13 that while the establishment of the compliance division

14 increased revenue collection exponentially it also showed

15 in recent years the decline in the yields from

16 investigative audits, is that right?

17 MR KHAN: Yes. It was, it showed, there

18 was a decrease in the yield as well as in the number of

19 cases that they were dealing with which is probably not an

20 indication of the work that they do or try to do but an

21 indication of the way the operating model in my opinion

22 disempowered them.

23 MS STEINBERG: Yes, I raised this because

24 I think it's consistent with the evidence we heard

25 yesterday. Where the people at the coalface of criminal

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1 investigations said they weren't being fed sufficient

2 information and you see in the figures from Mr Khan that

3 while compliance in the non-investigative audits goes up

4 that little area goes down. Right.

5 MR KHAN: Correct.

6 MS STEINBERG: Okay. Finally on the

7 beforehand, as I understand your structure in your bit of

8 the organogram before the new operating model you had one

9 general executive -

10 MR KHAN: Group executive.

11 MS STEINBERG: Is it called group, group

12 executive with four executives, you had a senior manager

13 and you had 17 regional managers, is that correct?

14 MR KHAN: That's correct.

15 MS STEINBERG: This was one of the areas

16 that was, where resources were taken away and I raise that

17 now because we'll see what was left on the organogram

18 afterwards. It was a relatively well resourced unit. I

19 think commensurate with the type of revenue you were

20 bringing in.

21 MR KHAN: Yes.

22 MS STEINBERG: Okay. So going over to

23 early 2015 could you start by elaborating on the

24 consultation process that Bain and the SARS leadership

25 undertook.

<p style="text-align: right;">Page 1180</p> <p>1 MR KHAN: Advocate with your permission,  2 I'd just like to complete the point that you made earlier.  3 So prior to the new operating model as the Advocate has  4 pointed out the division, the compliance division was run  5 by a group executive, four executives, 16 senior regional  6 managers and one senior manager at head office and with, a  7 division that was conducting 2 million audits, 2 million  8 compliance verification or compliance audit, whatever you  9 choose to call it and bringing in the kind of revenue that  10 it was bringing in. This was the engine room of the  11 enforcement unit, if you like and in the new operating  12 model that was reduced to an executive and six senior  13 managers and we have tried our best to maintain the  14 operations and I think, I think the team did a sterling  15 job. But what the numbers are not talking to are the  16 things that we didn't do. The behind the scenes  17 improvements, the strategic work that needs to get done to  18 continuously improve what was not done is not reflected in  19 the numbers. Unfortunately. So the numbers will show you  20 that volumes remained the same, probably some revenue  21 continued to grow albeit at a diminishing rate but it  22 doesn't speak to the stuff that we didn't do.  23 MS STEINBERG: It's what's not there.  24 MR KHAN: It's, what's not there  25 absolutely.</p>	<p style="text-align: right;">Page 1182</p> <p>1 MR KHAN: Correct, so firstly as a  2 division my boss at the time was the group executive for  3 compliance, as a division when we realised that there was  4 this change coming we put together a document for Bain  5 where we explained in detail or in sufficient detail I  6 believe what it is the compliance division does, where it  7 does it and who does what within the division. So we gave  8 them a comprehensive document as a, in order to assist them  9 in their evaluation and we were expecting that coming out  10 of that document would be some lengthy engagement with us  11 to understand exactly what it is we do. But unfortunately  12 we had two meetings.  13 PROF KATZ: First of all who asked you to  14 compile that document?  15 MR KHAN: No, we were not asked,  16 Professor. We offered that information because consultants  17 do not, will not understand the environment until we  18 explain this to them. So it was an initiative of the  19 division of my boss at the time to compile this report for  20 them. In the hope that it would encourage consultation,  21 greater consultation with us so that they understood what  22 it is we do. But unfortunately it led to two meetings. No  23 more than 20 minutes each. The first one was with my boss  24 at the time, myself and the senior manager for  25 effectiveness in the division and the second one was</p>
<p style="text-align: right;">Page 1181</p> <p>1 MS STEINBERG: And I think perhaps you  2 should also talk a little about the conditions your staff  3 work under. I'm aware that the unions are actually  4 starting to object to what's going on in that unit because  5 it's so understaffed, I think you have more extra time,  6 overtime lodged than anyone else. Can you talk about that?  7 MR KHAN: Ja, the division unfortunately  8 has over the last four years had to rely significantly on  9 increased overtime as a result of the fact that the  10 capacity of the division was stalled if you like, or not  11 growing and even decreasing over the years. So we've had  12 to rely on more overtime. We've had to rely on  13 continuously trying to improve efficiencies and output and  14 obviously make more demands on staff and staff are largely  15 willing and they understand the importance of the work they  16 do and they have come and supported the organisation very  17 well. But at some point fatigue sets in and we've seen an  18 increasing number of disputes being lodged at the various  19 labour fora whether it be the National Bargaining forum or  20 the National Consultative forum and even the CCMA. So  21 you're correct with that.  22 MS STEINBERG: So to go back to the  23 consultation process. You mentioned earlier on that Bain  24 conducted two short meetings with you. Can you tell us  25 about that?</p>	<p style="text-align: right;">Page 1183</p> <p>1 dressed up as a consultation when in fact all it was, was  2 to put up an organogram and say this is going to be the new  3 structure.  4 MR KAHLA: That was by Bain?  5 MR KHAN: Yes, and at that meeting senior  6 person from Bain, I do not remember the names and a junior  7 person from Bain were in that meeting, the senior person  8 lasted five minutes and then he had to catch a Gautrain.  9 So we were left with this junior person to tell us what  10 this structure is and I think they considered that  11 consultation.  12 MS STEINBERG: And if I may say there's  13 an affidavit from the group executive which says exactly  14 the same thing. He was the other person at the meeting and  15 he tells the same story. I'd like to then, you obviously  16 tried to raise the problems that the new operating model  17 caused for you.  18 MR KHAN: Yes.  19 MS STEINBERG: And I'd like to actually  20 refer to a couple of the memorandums that you have provided  21 to the commission because I think it tells the story most  22 effectively. There's an internal memorandum of 5 December  23 2016, if you would turn to that and then there was an  24 updated version on the 13th of February 2016 which deal with  25 staff allocation and perhaps you can tell us what you say</p>

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1 there.

2 MR KHAN: Advocate, may I please ask your

3 indulgence. There was a question you asked about the

4 disquiet amongst staff.

5 MS STEINBERG: Yes.

6 MR KHAN: And I think there's some

7 important information that, that might just add to that

8 before we get to the -

9 MS STEINBERG: Please.

10 MR KHAN: Question that you asked. So

11 Judge, the question was about staff and how they felt about

12 this change and what impact it was having and the fact that

13 we were using so much of overtime. The EPSOS report or the

14 connection survey results indicate that in the year,

15 between the years 2016 and 17 the engagement rate within

16 the division fell from, I'm going to read the actual

17 numbers for you. From 66.5 points to 58.7 points. So that

18 is how engaged or disengaged staff were feeling in the

19 division and I think that's a very important point because

20 I've heard arguments that apparently the staff in SARS are

21 much happier with the new operating model then they were

22 with the previous one and here's a result that says 2016

23 engagement, employee engagement was sitting at 66.5 points,

24 it's not a percentage, it's points. Whereas in the 2017

25 year that dropped to 58.7 just in the enforcement division

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1 and that on five specific criteria that was measured,

2 strong personal attachment to the organisation, we showed a

3 significant drop, from 61 points to 56 points. Working

4 with the, for the organisation makes me feel proud dropped

5 from 65 to 56 points and I could go on. There are six

6 criteria that were measured and in every single one there

7 was a decline.

8 PROF KATZ: Sorry who did that?

9 MR KHAN: It was -

10 PROF KATZ: Analysis?

11 MR KHAN: It was conducted by a company

12 called IPSOS.

13 PROF KATZ: At whose instance?

14 MR KHAN: SARS requested it. I'm

15 assuming Exco requested it.

16 PROF KATZ: So they would have done it in

17 other divisions to, not only -

18 MR KHAN: They did it in the entire SARS,

19 I've got the overall view for SARS and SARS overall

20 employee engagement results have shown a decline.

21 MS STEINBERG: Professor Katz -

22 COMMISSIONER: Is that an annual

23 assessment that is made or was it specifically requested at

24 that time?

25 MR KHAN: Judge, at the time it was an

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1 annual survey but I believe now SARS has changed to I think

2 18 months or 24 months I'm not sure.

3 COMMISSIONER: Yes, but I mean that

4 report was not specifically asked at that time it was, it

5 was an ongoing -

6 MR KHAN: It was -

7 COMMISSIONER: Report that one would

8 receive every year?

9 MR KHAN: It was a legacy from the

10 previous structure.

11 MS STEINBERG: From our side Advocate

12 Hobden has actually interviewed the person whose

13 responsible for drawing up the last couple of reports and

14 she's taken the statements from her. She's not a witness

15 we're going to lead but for your, for our better

16 understanding of the significance of this connection survey

17 we have asked her to explain the methodology and the

18 significance of the declining numbers and that we'll

19 provide to the Judge and the Commissioners -

20 PROF KATZ: That's across the board in

21 SARS?

22 MS STEINBERG: Across the board in SARS.

23 MR KHAN: So Judge, with your permission

24 one line I'd like to read from this report in terms of the

25 key take outs. So there's a slide called key take outs,

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1 implications of the data and it says there is an increase

2 in negative perceptions with regard to the experiences

3 employees are having on a day to day basis. This could be

4 linked to the implementation of the SARS operating model

5 and I read that only because that is reflective of what is

6 happening in the compliance division.

7 MS STEINBERG: May I add -

8 MR KAHLA: The -

9 MS STEINBERG: Please go ahead.

10 MR KAHLA: I'm sorry Ms Steinberg, I'm

11 going to move us a little bit backwards. I'm trying to

12 understand, you've made reference to those two interactions

13 with Bain, so what is the word, I think the second one

14 moved straight into the structure. Did you raise issues

15 with what was being presented to you and what you saw as

16 deficiencies in what was being presented?

17 MR KHAN: Thank you, Sir, yes absolutely.

18 I raised the issues, in fact you know I walked out of one

19 of the meetings because I indicated in no uncertain terms

20 that I thought that structure was going to destroy the

21 immense gains that the compliance division had achieved in

22 the previous nine years.

23 MR KAHLA: And what was the response?

24 MR KHAN: That's the structure.

25 MS STEINBERG: Mr Kahla -

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1 MR KAHLA: Are you suggesting there was  
 2 no attempt to address the areas you had raised of concern  
 3 because it's not necessarily unusual that you could lower  
 4 the number of people to do a particular job without  
 5 necessarily lowering the quality and effectiveness of the  
 6 execution on that job. So, and the number of other tools  
 7 you could deploy for that purpose. So I'm just trying to  
 8 understand whether once you had raised that you think there  
 9 will be this deficiencies there was no response at all as  
 10 to how they could be cured?  
 11 MR KHAN: Absolutely, we raised the  
 12 deficiencies and I think the Advocate's question around the  
 13 memos that we subsequent wrote pointing out again the  
 14 deficiencies that we had alerted them of earlier two years  
 15 or a year or two years into the operating model those  
 16 issues were raised again and we had to address them via  
 17 memos. So I'll give you an example. The operating or the  
 18 structure, because without being emotional I don't consider  
 19 it an operating model I consider it a structure. The  
 20 structure proposed a senior manager in compliance in  
 21 Limpopo, colleagues, the compliance division did not have a  
 22 single staff member in Limpopo. They did not even consider  
 23 the realities of the division. They proposed a senior  
 24 manager in North West, we did not have a single person in  
 25 that region.

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1 MS STEINBERG: And Mr Khan, the job of a  
 2 senior manager is to manage people.  
 3 MR KHAN: The job of the senior manager  
 4 is to manage the operations of that region. They proposed  
 5 three senior managers in three regions that we did not have  
 6 a footprint in and that for me indicates just how devoid  
 7 they were or unaware they were of the realities on the  
 8 ground.  
 9 MR KAHLA: But are you suggesting that  
 10 there wasn't a plan that there would be these individuals  
 11 in the regions who would then create teams that would carry  
 12 out the work. I don't necessarily find it unusual that you  
 13 could have a leader appointed before you have the soldiers  
 14 that leader is going to be with. Are you saying that it  
 15 was always intended that there would be just this  
 16 individual but not with the team in those regions?  
 17 [09:50] MR KHAN: You are probably right. I  
 18 cannot say that you're absolutely wrong, but I did not see  
 19 any plans for those regions to be capacitated.  
 20 MR KAHLA: So the structure never  
 21 reflected that there would be teams of people in these  
 22 regions.  
 23 MR KHAN: It did not.  
 24 PROF KATZ: Sorry, just following on  
 25 this, what do you think the strategy was behind the new

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1 operating plan? Did it have any virtue, did it have any  
 2 good thinking behind it? What was it designed to achieve?  
 3 We've heard from you all the deficiencies. Was there  
 4 anything good about it?  
 5 MR KHAN: Professor, I think given enough  
 6 time we might come up with a few advantages, but right now  
 7 I can't think of any because genuinely we were trying to  
 8 fix something that was working. And I couldn't appreciate  
 9 – like I said earlier, sorry, Sir, like I said earlier for  
 10 me what was missing was what was the vision that was  
 11 driving the model that they were presenting.  
 12 PROF KATZ: That's what I'm trying to  
 13 find out from you.  
 14 MR KHAN: Just like they never shared the  
 15 diagnostics with us, I'm not aware of the vision being  
 16 shared.  
 17 MS STEINBERG: Judge, can I please  
 18 appeal? We are a quarter way through the evidence, can he  
 19 please give a little bit more evidence before these  
 20 questions come because so much of this can be answered in  
 21 the proper way which is through contemporaneous documents?  
 22 Can I just ask you to hold your horses for 10 minutes so we  
 23 can get through some of the evidence?  
 24 COMMISSIONER: Yes we stand rebuked, Ms  
 25 Steinberg.

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1 MS STEINBERG: Thank you.  
 2 MR KHAN: Thank you for the protection.  
 3 MS STEINBERG: It's like herding cats, Mr  
 4 Khan. We were going to go to your memos 10 minutes ago and  
 5 I think that's where we should go back because they do tell  
 6 a contemporaneous story. And Judge, you've always pointed  
 7 out to me what's the most reliable evidence –  
 8 COMMISSIONER: I've had the rebuke, I  
 9 understand.  
 10 MS STEINBERG: So we were starting with  
 11 your memo of 5th December 2016, that was updated on the 13th  
 12 of February 2017. And this memo is from you and it's to  
 13 the Chief Officer for Enforcement and an executive HR, I  
 14 presume human resources. So this does concern the  
 15 allocation of staff, the subject is Operating Model Fine  
 16 Tuning Operation Critical Improvements. And we're talking  
 17 at the end of 2016 when the new operating model had started  
 18 to kick in.  
 19 MR KHAN: Thank you, Advocate, so this  
 20 speaks to the Advocate's earlier question about or comment  
 21 that it is possible that there was a vision to capacitate  
 22 the regions where these senior managers were proposed such  
 23 as Limpopo. So this memo speaks to that. This memo was  
 24 written to the Chief Officer to say we have four senior  
 25 manager positions in areas where there is nothing for them

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1 manage. And we have existing regions that were - where the  
 2 management structure was, the best word I can think of and  
 3 the kindest word I can think of was decimated. Therefore I  
 4 requested permission to delimit those four senior manager  
 5 positions and convert them into a manager position, seven  
 6 manager positions, if my memory serves me correctly, so  
 7 that I could deploy the seven managers into the currently  
 8 capacitated regions in order to support the senior managers  
 9 in those areas. And that was the essence of this memo.  
 10 And I did not get any comeback from that to say no we have  
 11 plans to capacitate those regions therefore you will keep  
 12 them alive, they agreed. And we converted those four  
 13 senior manager positions into seven manager positions so  
 14 that we could bolster the management capacity in the  
 15 existing regions.  
 16 MS STEINBERG: So at that stage you did  
 17 get a response and there was some corrective action taken.  
 18 MR KHAN: Correct.  
 19 MS STEINBERG: The next document I'd like  
 20 to take you to is an email, email of the 1st of June 2016.  
 21 We actually should have done that one first. It's an  
 22 important email because you say there, "I want to appraise  
 23 you of the risks," and I'd like you to just talk to that  
 24 because many of the risks that did eventuate you raised in  
 25 the middle of 2016. If you would just talk to that.

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1 MR KHAN: Yes thank you. So this was an  
 2 email that I had written to the Chief Officer for BAIT as  
 3 opposed to Bain because the chief officer of BAIT and we  
 4 must remember that the chief officer for BAIT at the time  
 5 was the sponsor for the new operating model.  
 6 COMMISSIONER: That was Mr Makwakwa.  
 7 MR KHAN: Mr Makwakwa yes. He had raised  
 8 a few questions around the way in which compliance was  
 9 operating. We had introduced a few strategies. Like I  
 10 said, to try and keep the compliance ship afloat despite  
 11 the reduced management structure that was provided. So we  
 12 took a few decisions, operational decisions to keep, to  
 13 ensure that the efficiencies persisted. He raised a whole  
 14 series of questions in the regional structures and I then  
 15 wrote this email to him to appraise of why we took those  
 16 decisions, what were the deficiencies in the operating  
 17 model that necessitated these decisions to be taken at an  
 18 operational level. And I raised I think seven or eight  
 19 points, seven points with him and I'm not going to take up  
 20 the time of the Commission to read all of the seven points,  
 21 but I'm going to read the response that I got back from the  
 22 chief operations BAIT.  
 23 He says "Thanks for the information provided.  
 24 The operating model is not meant to frustrate business and  
 25 from what you say below it is. Although I was sponsor of

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1 the project my involvement did not go too deep as I  
 2 believed that we had the right people including business  
 3 which I believe must have a full voice in the process. No  
 4 operating model is perfect, however, we are the ones who  
 5 can make it perfect." And then "My year's absence I guess  
 6 made the problem worse. These issues have to be fixed in  
 7 the new year and we must have a session to unpack all of  
 8 the issues." And that was the response that we received.  
 9 So in my opinion that was an acknowledgement that there  
 10 were these deficiencies that were pointed out in the past.  
 11 And there was a need for us to revisit this and fine tune  
 12 or tweak or whatever word we want to use, but unfortunately  
 13 that didn't happen. That engagement that he spoke of  
 14 didn't happen for various reasons, not for a lack of  
 15 trying.  
 16 MS STEINBERG: And just to put a flag  
 17 here, yesterday I said I'm struggling to find a person who  
 18 stands up and takes responsibility for this model and so  
 19 far we've heard that the people on the team who did the  
 20 diagnostic are not responsible. And we've also heard that  
 21 the sponsor of the whole project said well I wasn't  
 22 particularly deeply involved. And I raise this because  
 23 part of the journey of this two weeks is to understand who  
 24 is responsible because nobody seems to be so far. But  
 25 please carry on in your story. I'd like to then take you

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1 to your internal memorandum of the 2nd of November 2016.  
 2 This is a very important memorandum because you will recall  
 3 from Dr Carolissen's evidence that the way in which the  
 4 Bain process worked was there was an initial diagnostic and  
 5 then there were a set of design principles. And those  
 6 design principles were supposed to be manifested in the  
 7 final structure whatever it was. And quite central to  
 8 those design principle was matching like functions with  
 9 like functions and moving non-core functions out of one  
 10 unit to another one where they better belonged. And this  
 11 internal memo of 2 Novembers speaks directly to those  
 12 issues and I'd like you to pick up there if you don't mind,  
 13 Mr Khan.  
 14 MR KHAN: Thank you very much –  
 15 PROF KATZ: Sorry, from whom to whom is  
 16 this memo?  
 17 MS STEINBERG: So this memo is from Mr  
 18 Khan and it's to Kashini Michael and Keklego Moralo and you  
 19 must perhaps tell us who those people are.  
 20 MR KHAN: Just a correction, the memo was  
 21 directed at the acting chief officer for Enforcement at the  
 22 time.  
 23 MS STEINBERG: Oh I see that, yes.  
 24 MR KHAN: As well as the acting chief  
 25 officer for BAIT at the time. So ja it was directed at

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1 them.

2 MS STEINBERG: So it's-

3 MR KAHLA: These two individuals are

4 those acting officers?

5 MR KHAN: Correct.

6 MS STEINBERG: Correct.

7 MR KHAN: Thank you, Advocate. So the

8 context is that we went back to the principles of the

9 operating model, please read "operating model" in inverted

10 commas whenever I say it. To go back to the principles and

11 say how does the structure that was provided to us speak

12 those principles? And one of the principles, one of the

13 critical principles of that model was that non-core

14 functions would be removed and units would be established

15 with core functions that were related to that core purpose.

16 The compliance division was involved, like I said earlier,

17 as a first step in the audit process. And the new

18 structure moved into the compliance division or retained in

19 the compliance division certain non-core functions such as

20 the assessments of tax clearance certificates, rejected

21 returns, telephonic engagement, a whole lot of non-

22 enforcement functions. And we wrote this memo to say these

23 were the principles, these are the functions we are

24 currently managing with the diminished management

25 capability, can we please have these functions moved in

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1 accordance with the principles that were shared with us.

2 To the best of my knowledge both of the acting chief

3 officers approved it. But it went nowhere, so these

4 functions are still within the compliance division today as

5 we speak.

6 MS STEINBERG: So you have less staff and

7 you have to do the work you're supposed to do –

8 MR KHAN: As well as –

9 MS STEINBERG: As well as the non-core

10 functions.

11 MR KHAN: Correct.

12 MS STEINBERG: This memo clearly

13 identifies the non-core functions and asks for them to be

14 moved.

15 MR KHAN: Correct. There were seven non-

16 core functions that were identified and they still form

17 part of the compliance division even though they are not

18 enforcement activities per se.

19 MS STEINBERG: Because this restructuring

20 process was an opportunity to fine tune those kind of

21 things and clean up, but it didn't do that, it did other

22 things.

23 MR KHAN: Correct.

24 MS STEINBERG: The final email I'd like

25 you to go to is the one of 7 March 2018 which is your email

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1 to Mr Makwakwa. This appears this was a very difficult

2 email for you to write, so we're now talking this year,

3 March of this year and Mr Khan writes to Mr Makwakwa and

4 says "I am writing this mail after much trepidation. I

5 don't want to step on people's toes." You must have felt

6 that there was some sort of crisis brewing if you took the

7 step to write this email. Is that right?

8 MR KHAN: Absolutely.

9 MS STEINBERG: And you say "It seems as

10 if you have not been fully appraised of the impact and

11 consequences of the new operating model on the ways of

12 working. Perhaps you're not fully aware of the impact that

13 the new operating model has on compliance itself." And

14 then you list seven points and I think it's worth touching

15 on each of those seven, because they're absolutely

16 critical.

17 MR KHAN: Thank you, Advocate. So a

18 little bit of context, what gave rise to this was it

19 appeared to us from the questions and the comments that

20 were being made by the chief officer at the time that he

21 didn't fully appreciate that that was the result of the

22 design, the structure that was provided to us. For

23 instance, he questioned why the compliance division which

24 was meant to be the first leg of the audit process and it

25 was meant to deal with the high volume low value cases. It

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1 was meant to deal with taxpayers who were willing to comply

2 but were potentially unable to comply. Why that division

3 was dealing with large business refunds. And we then had

4 to point out to him that that is the model or the structure

5 that they provided to us, that the structure that was

6 provided to us moved the large business refunds into the

7 compliance space which was ill equipped to manage complex

8 corporate structures and the refunds that they were

9 entitled to. That was the one issue. The second issue was

10 he was questioning why we had and Judge, you know, I'm

11 going to try not to go into the detail because it could get

12 very boring, but –

13 COMMISSIONER: Nothing is boring that we

14 are hearing here let me tell you.

15 MR KHAN: But we had taken an operational

16 decision to do what we call centralising audits and this

17 was a decision that we had taken very consciously in the

18 division because it was not possible with the management

19 structure that was given to us, for the senior managers to

20 manage everything that they were expected to manage. So we

21 therefore centralised certain functions. We created

22 certain regions that would deal with only personal income

23 tax and other regions that would deal with only VAT for

24 example. So we had this operating strategy that mitigated

25 some of the risks that were created by the structure and

<p style="text-align: right;">Page 1200</p> <p>1 he, the chief officer at the time was unhappy with that, 2 rightfully by the way. Because I also believe that each 3 region should deal with its own tax base because regional 4 realities must be considered in dealing with tax affairs. 5 But I had to explain to him why we had to take that 6 decision if we were not to fail. If we were to ensure that 7 the compliance division did not slip we had to take these 8 mitigating decisions. And there were several of them, so 9 the one was the large business refunds, the other one was 10 the centralisation. The third one was again the issue of 11 non-core functions that resided within our division and why 12 we were doing these non-core functions. The fourth one was 13 the inadequate management capacity that we had. He was 14 raising the issue of managers didn't, regions didn't have 15 enough capacity to manage all of the functions. So I'm not 16 sure if that sounds as ridiculous as it is intended to, but 17 here's a person saying you have inadequate management. 18 MS STEINBERG: In other words you had a 19 new operating model which took away your managers, you had 20 to then say well how am I going to stop this from 21 collapsing, I'll centralise and then the person for the new 22 – who was responsible for the new operating model 23 criticises the lack of managers. 24 MR KHAN: Correct. And one of the last 25 things that he raises was why we had taken people who were</p>	<p style="text-align: right;">Page 1202</p> <p>1 MR KHAN: They were both after he 2 returned from – 3 MR KAHLA: Yes, but it follows that the 4 last one, he had expressed an appreciation for the 5 difficulties that you were identifying in the first email 6 and clearly seems to have gotten to an experience of those 7 difficulties as articulated in the second email. 8 MR KHAN: Correct. 9 MR KAHLA: But what had happened in the 10 interim, between these two emails, you said there were 11 meetings that were supposed to happen never happened. Were 12 there any directions as to what needed to be done to 13 address the deficiencies? 14 MR KHAN: No, unfortunately post these 15 emails there were no further engagements, for various 16 reasons, because they happened very soon after these 17 emails, there were other, Mr Makwakwa essentially resigned. 18 MR KAHLA: But were there other people? 19 I'm trying to figure out was there somebody else in the 20 absence of Mr Makwakwa who could have addressed the issues 21 because clearly the issues had already been pretty much 22 defined. What stopped process or what halted the process 23 of dealing with this, finding a solution to them? 24 MR KHAN: Mr Kahla, I can't answer that 25 unfortunately.</p>
<p style="text-align: right;">Page 1201</p> <p>1 previously doing an audit role to do other non-audit 2 functions specifically related to the request for reasons 3 and the request for condonation. So again, without boring 4 you too much, essentially a taxpayer in terms of the Tax 5 Administration Act is entitled to ask for reasons for an 6 assessment. So we implemented an electronic channel for 7 taxpayers to request these reasons. And that function was 8 placed in the compliance division and we had to take people 9 who did other work to fulfil that function because we 10 weren't given the capacity to do it. It's the same thing 11 with the request for condonation. A taxpayer who has 30 12 days in terms of the Tax Administration Act to object 13 objects after that due date is allowed to request for 14 condonation for late submission. So these were new 15 functions that were added to the division with no capacity. 16 So we obviously had to take auditors to perform these 17 functions. 18 MR KAHLA: I just want to go back to 19 these two emails, the two email exchanges with Mr Makwakwa. 20 [10:10] He dealt with it I think from the contents of the 21 first email seemingly after it returned from a period of 22 absence from work on suspension or so. 23 MR KHAN: Yes. 24 MR KAHLA: The one we're just dealing 25 with is a second one.</p>	<p style="text-align: right;">Page 1203</p> <p>1 MR KAHLA: Is there anyone who would have 2 made a call to have these issues addressed within SARS? 3 MR KHAN: I assume the chief officer that 4 took over from him. 5 MR KAHLA: And he was alive to them? He 6 or she was alive to them? 7 MR KHAN: Not as a result of me raising 8 it with them, no. So I'm not sure, that's the answer 9 unfortunately. 10 MS STEINBERG: Let's just finish this 11 email and talk about Mr Makwakwa's response because it's 12 quite an extraordinary response in my view. Mr Khan's 13 given you a flavour of this email but the language is very, 14 very direct. At this point as I understand you were 15 feeling very protective of your staff because your division 16 had been fragmented and it had been estimated of resources 17 and now your staff were being blamed for the impact that 18 they'd had on your division when they were working overtime 19 trying to hold it all together, somebody very senior came 20 along and said, but you're doing things wrong, when you 21 were doing the best you can. So you write this letter in 22 that context, I think to protect your staff more than 23 anything else. 24 COMMISSIONER: That's correct, is it? 25 MR KHAN: That's correct, yes.</p>

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1 MS STEINBERG: And the language is very  
 2 direct. It says, number 4, you further raised concerns  
 3 about the move of telephonic engagement functions to the  
 4 contact centre. Again this was the design proposed by the  
 5 new operating model. No consultation was held with any of  
 6 us on the impact of the decisions. The implication being  
 7 now you're moaning about the impact but you never asked us,  
 8 we would have told you not to do this. And there are seven  
 9 points like that. Some of the decisions around the  
 10 facility structures also impact on our operations and we  
 11 have had very little opportunity to push back without  
 12 appearing to be opposing change. Compliance resources were  
 13 moved to Rissik Street. NWP staff were moved to Alberton.  
 14 All these decisions have impacts on the management. They  
 15 now need to manage more offices and spread themselves even  
 16 thinner. On and on and on it goes. It says you changed  
 17 the model, you didn't ask us how to do it, this is the  
 18 impact and now you come and blame us for the impact, right.  
 19 So won't you go through the response from Mr Makwakwa?  
 20 MR KHAN: Yes, so thank you very much  
 21 Advocate. The team in compliance division was feeling the  
 22 strain. They were also getting a sense that they were  
 23 being blamed for any inefficiencies that might have arisen  
 24 out of the operating model. And they were trying to do the  
 25 right thing by SARS. They understood the importance of

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1 this division and they were trying to do the right thing.  
 2 And then all of the criticisms that they were hearing in  
 3 the passages and in the regional structures were  
 4 demotivating, to say the very least. And it was on the  
 5 urging of the management team that I was leading that after  
 6 lots of thinking and lots of reflecting on this I decided  
 7 to write this email. So yes, it was in response to the  
 8 pain that the people in my division were feeling that I  
 9 wrote this. And as the Advocate points out the  
 10 acknowledgement by the chief officer at the time was that  
 11 he did not envisage this impact on the division and he was  
 12 not aware of this kind of impact. He suggests that he  
 13 wasn't even aware that business was not adequately  
 14 consulted in the process. He didn't make a commitment to  
 15 try and address it, but as I said, he resigned soon after,  
 16 so –  
 17 MS STEINBERG: But before your –  
 18 COMMISSIONER: I'd like to ask a  
 19 question. Thank you. But Mr Makwakwa was the head of the  
 20 steering committee that had worked with Bain to introduce  
 21 this model.  
 22 MR KHAN: That's correct.  
 23 COMMISSIONER: And he says there, "But I  
 24 wasn't aware of the impact", is that correct?  
 25 MR KHAN: That's correct.

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1 MS STEINBERG: Judge, I want to read you  
 2 a sentence.  
 3 COMMISSIONER: Thank you. But I think we  
 4 must reach a compromise in some way, Ms Steinberg. Thank  
 5 you.  
 6 MS STEINBERG: No I'm answering your  
 7 question directly. There's no compromises here. He says,  
 8 "My criticism is not on individuals but on the operational  
 9 setup which I can see is hampering smooth operation of the  
 10 business."  
 11 MR KAHLA: That's Mr Makwakwa?  
 12 MS STEINBERG: That's Mr Makwakwa. Now  
 13 Mr Makwakwa was the leader of the new operating model  
 14 process and he says to Mr Khan, it's quite a gracious  
 15 email. It says, "Please don't misunderstand me, I'm not  
 16 criticising you and your people. It's the operating model  
 17 that doesn't work."  
 18 COMMISSIONER: My operating model doesn't  
 19 work.  
 20 MS STEINBERG: Well he could have said  
 21 that, yes.  
 22 MR KHAN: But at the time, Judge, it was  
 23 very heartening to get this because it pointed to the fact  
 24 that once there's an acknowledgement there will be  
 25 corrective action taken.

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1 MR KAHLA: But of course there wasn't an  
 2 opportunity because as you said he later -  
 3 MR KHAN: That's correct.  
 4 PROF KATZ: One nuance if I could put,  
 5 it's varying between two things, these seven complaints.  
 6 Is it that the model's defective or you've given me a model  
 7 but you're not capacitating us to implement it. Which is  
 8 the criticism there? That the model is defective – as I  
 9 read you here on these you've given us a model but you're  
 10 not capacitating us to implement. What was the thrust of  
 11 your criticism? Bad model or not giving us capacity to  
 12 implement?  
 13 MR KHAN: Professor, it was a combination  
 14 of the two. So bad model because it was contrary to the  
 15 principles that you elucidated right at the outset. And of  
 16 course insufficient capacity. Both at the lowest level and  
 17 at the higher levels, at the management levels.  
 18 MS STEINBERG: Any questions from the  
 19 Judge and his assistants?  
 20 MS MASILO: Ms Steinberg, I have a  
 21 question, may I?  
 22 MS STEINBERG: Please go ahead.  
 23 MS MASILO: I think just taking you back  
 24 to the report that you prepared when you heard that Bain  
 25 was around and there was going to be a new model, in what

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1 transpired subsequently and also you know in the  
 2 engagement, in the two short meetings that you refer to,  
 3 did you get a sense that Bain understood your division and  
 4 what it stood for and what it did and that they even  
 5 considered the report?  
 6 MR KHAN: I think the answer has to be no  
 7 because we got this clear sense, there were two documents  
 8 that were prepared. The first one was compliance division  
 9 overview and we even headed it "SARS review project". So  
 10 we provided this information so that it could inform the  
 11 review process. And the second document that was prepared  
 12 by a colleague of mine at the time an executive with me in  
 13 the compliance division related to compliance centre  
 14 operations giving the details of the operations. There's  
 15 nothing in the two meetings that I referred to earlier as  
 16 well as in the structure that was finally provided to us,  
 17 there is nothing to suggest that any of these complexities  
 18 or realities were taken into consideration. The fact that  
 19 Bain or anybody else in SARS did not call a meeting to  
 20 discuss the contents of this with us, I think suggests that  
 21 they might not even have read it. I can't say that for  
 22 certain, but suggest that they might not even have read it  
 23 because if you did then there are some significant points  
 24 in this that were ignored in the model in the structure  
 25 that was provided to us.

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1 MS STEINBERG: I think I can perhaps  
 2 again refer to the affidavit of Mr Marks. Were you  
 3 reporting to Mr Marks?  
 4 MR KHAN: That's correct.  
 5 MS STEINBERG: He says, "I was informed  
 6 of the new operating model for the first time at the SARS  
 7 national executive forum held on 18 August 2015. During  
 8 the session there was no mention made of how my limited  
 9 inputs were considered or discounted in the final version  
 10 of the new operating model. As a matter of fact the  
 11 announcement was in the format of a presentation and no  
 12 discussions afterwards. As the then group executive  
 13 compliance I was required to present the new operating  
 14 model to my management team two days after it was announced  
 15 at a SARS national executive forum held on the 18th August.  
 16 Each group executive received a pack of documents at the  
 17 national forum that were used for the 90 minute sessions  
 18 with their management teams scheduled for the 19th and 20th  
 19 August. I briefed my managers on the 20th August from 13h00  
 20 till 14h30. During this session I had to present the new  
 21 operating model to them notwithstanding the fact that I was  
 22 not meaningly involved in the design and had no time to  
 23 study and understand it as I only got a view of it for the  
 24 time two days before on the 18th August."  
 25 MR KHAN: That's correct.

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1 MS STEINBERG: Mr Khan, is there anything  
 2 else from your side that you'd like to tell us?  
 3 MR KHAN: I think I'd like to just  
 4 reiterate the point that I tried to make earlier and that  
 5 is I'm one of the people that believes there is no such  
 6 thing as a perfect structure. There is a structure that  
 7 needs to be responsive to the needs of the day and the need  
 8 of the hour. And I think that for me was the strength of  
 9 the previous model. Firstly because it was underpinned by  
 10 a vision, a strategic vision. Secondly because like the  
 11 previous speakers, the speakers before me or the colleagues  
 12 that gave evidence before me, like they indicated these  
 13 were this vision and this model was put in place then  
 14 tweaked by the next Commissioner and tweaked by the acting  
 15 Commissioner because that is responsiveness. So I do not  
 16 suggest that the previous model was perfect but I think it  
 17 was responsive. The weakness of the current structure is  
 18 firstly that it was not underpinned by a strategic vision  
 19 that I'm aware of. And there was a reluctance to  
 20 acknowledge its weaknesses and to fix it, and to fix those  
 21 weaknesses. And for me that is the failing of this  
 22 structure.  
 23 COMMISSIONER: You know Mr Khan, you  
 24 raise a very important point and you know when I started  
 25 out in this commission, days after it was appointed, I

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1 heard about an operating model and I said what is an  
 2 operating model? If I don't understand what is an  
 3 operating model I'm not going to get off the ground here.  
 4 So what I did is I went to see the architect of this  
 5 operating model who was Mr Gordhan and I spent half an hour  
 6 or so with him – by the way some people seem to have seen  
 7 that as sinister that I should go and ask the question, but  
 8 there it is. I went to spend half an hour with him and I  
 9 said what is an operating model? And he came with two  
 10 things which struck me more and more. He told me about  
 11 this philosophy, this triangle, this philosophy, the  
 12 philosophy. I said but that's not a model, that's a  
 13 philosophy. But as it turned out the impression I was left  
 14 with after some time is that there were two legs to this  
 15 operating model. One is as you say the philosophy, this is  
 16 what we want to achieve. And then Mr Barry Hall gets drawn  
 17 in and others no doubt as well, but he seems to be very  
 18 strong in, to put into effect a system that will meet that  
 19 philosophy.  
 20 Now what I'm hearing from you, and I think I've  
 21 heard it from you but I just want to get this, when I've  
 22 looked at the Bain thing I have not seen anything about a  
 23 philosophy there. I have seen as you say a restructuring.  
 24 We must split this from there, but I have no indication in  
 25 any of the documents – and they may well come and tell me

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1 about that – nothing about a philosophy, nothing about  
 2 understanding what the philosophy was. And are we changing  
 3 our philosophy? And on the other hand does this meet the  
 4 philosophy? What one finds is we looked at best practice  
 5 in Australia and New Zealand and I don't know, Britain or  
 6 whatever and we said that's how they do it there and we'll  
 7 do it the same here. But the philosophy that was  
 8 underpinning this was a philosophy based on our past. Now  
 9 how do you take New Zealand, a law-abiding country by and  
 10 large, you take how they structure things and you just put  
 11 it in here with no vision of where we have come from and  
 12 what you are trying to correct. And one of the major  
 13 things as I understand it you wanted to correct was to  
 14 bring people into the net as it were, who because of  
 15 apartheid had said positively I'm not going into that net.  
 16 Is that, am I summarising correctly what you are saying?  
 17 MR KHAN: Absolutely correct, Judge, and  
 18 I indicated to the Advocate in my earlier submissions to  
 19 her and I think Dr Carolissen touched on this as well, the  
 20 diagnostics that unfortunately they didn't share with us  
 21 previously are not necessarily incorrect, they are perfect.  
 22 However there's nothing in these diagnostics that they  
 23 present that didn't exist in the diagnostics conducted by  
 24 SARS in 2008. The problem with the document is it does not  
 25 speak in any way at all to the structure that they proposed

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1 because, just to give you a simple example – and for me  
 2 this is what's missing – the philosophy that informs the  
 3 structure was missing. So for instance they argue that the  
 4 current or the previous model was overly focused on  
 5 personal income tax, and they are right. But if they had  
 6 taken the time to read the philosophy and the strategic  
 7 vision they would have realised that the end game was to  
 8 prepopulate to a point where we assess people and therefore  
 9 reduce. But they had stopped that journey therefore what  
 10 their diagnostic was identifying was unachievable to fix.  
 11 COMMISSIONER: Sorry, you see the one  
 12 thing that strikes me as I say, when I came in here, I said  
 13 I need to understand an operating model and I should go to  
 14 the architect to tell me. And that's what I came away with  
 15 it, this model is, there is a philosophy side and an  
 16 organisational side. And I would have thought as well that  
 17 a consultant who comes in would have also gone to that  
 18 architect and asked him what is this model? What is it  
 19 designed for? And that would have been Mr Gordhan, quite  
 20 apart from people inside.  
 21 PROF KATZ: Can I ask one question?  
 22 COMMISSIONER: And as I understand it  
 23 they didn't do, they didn't look at any philosophy at all.  
 24 They certainly didn't mention it to you.  
 25 PROF KATZ: Can I ask one question?

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1 Things do follow from all of this, listening to the Judge,  
 2 listening to you. So it seems as though the Bain didn't  
 3 have a strategy or philosophy. What do you think it was  
 4 designed to achieve?  
 5 [10:30] COMMISSIONER: You know if I may say so,  
 6 Mr Khan I spoke to you briefly before you gave evidence and  
 7 you told me certain things. And if you feel you would  
 8 rather not answer that please feel free not to. If the  
 9 Professor wouldn't mind. If you would like to answer it,  
 10 go ahead.  
 11 MR KHAN: Professor, I think that's very  
 12 difficult to answer first of all. So I'm going to avoid  
 13 answering it because it means that I must give you my  
 14 opinion and I have tried as far as possible to speak to  
 15 things that I was able to, evidence.  
 16 PROF KATZ: I withdraw it, it's not a  
 17 fair question. What I'm trying to, if it's so clear what  
 18 the Judge has said that what an operating model is for,  
 19 what you've been saying and that this doesn't have a  
 20 strategy or a philosophy then the question does arise well  
 21 what was it designed to do or why was the, but I withdraw  
 22 the question.  
 23 MR KHAN: But I think Judge, and  
 24 Professor, one can, you know why did we have a structure  
 25 that did not speak to a strategy, why did we ignore inputs

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1 of the business units that were given to you and I suppose  
 2 that, different people could draw different conclusions out  
 3 of that. But certainly I don't want to give my opinion on  
 4 that at this point.  
 5 COMMISSIONER: You see I think that's  
 6 saying in engineering terms form follows function.  
 7 MR KHAN: Absolutely.  
 8 COMMISSIONER: Before you can build the  
 9 building you must know exactly what you are, why you want  
 10 to build it.  
 11 MR KHAN: Ja.  
 12 MS STEINBERG: And then get the right  
 13 cranes. Professor Katz, there's a -  
 14 MR KAHLA: We need a few of those now.  
 15 MS STEINBERG: Professor Katz, there's  
 16 one more piece to add to what you've said. People like Mr  
 17 Khan have shown me SARS' annual performance, what's that  
 18 forward looking document?  
 19 MR KHAN: The annual performance plan.  
 20 MS STEINBERG: Annual performance plan  
 21 because not only had SARS internally identified the  
 22 weaknesses that you see in the diagnostic they had made  
 23 very careful forward looking plans to address them. They  
 24 understood better than anyone where they were in an  
 25 evolving process. So they had their philosophy. They knew

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1 where they were. They knew where they had to get to. It's  
 2 laid out in black and white, you know over emphasis on  
 3 audits of personal income tax. How do you get to the other  
 4 side of that? Under emphasis on high net worth  
 5 individuals, what are we going to do in the years, it's all  
 6 there. So the question that emerges that we must put to  
 7 Bain and the people who worked with Bain is why didn't you  
 8 take that into account.

9 COMMISSIONER: Well I think on that if I  
 10 may say so Ms Steinberg, I'm not, is anyone from Bain here  
 11 by the way? No. But I think, I know that you've been  
 12 assisting them by say this is the kind of thing and so that  
 13 they can prepare properly and they're coming next week and  
 14 I think obviously they must be given a fair opportunity to  
 15 respond.

16 MS STEINBERG: Yes.

17 COMMISSIONER: There may be very good  
 18 responses -

19 MS STEINBERG: Yes.

20 COMMISSIONER: To this. But I would like  
 21 if you would take the trouble to ensure they get the  
 22 transcript of this evidence and secondly to deal with two  
 23 specific questions that have emerged. The one really  
 24 emerged yesterday which was there, four were produced, four  
 25 models were produced and then there was the fifth one that

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1 was put into place which was radically different to those.  
 2 What was it, is it correct what we heard yesterday that  
 3 there were four models and that what was introduced was  
 4 essentially a fifth one that differed materially. If they  
 5 agree with that, we'd like to know why it changed. So if  
 6 you'd alert them to that as being a very important question  
 7 that the commission is, wishes to ask. I would like you to  
 8 also alert them to the fact that at least I, and I suspect  
 9 perhaps my colleagues want an answer to the question of  
 10 what did they do to understand what underpinned the model  
 11 that existed. Did they make enquiry into the philosophy  
 12 that underlay it and from whom did they ask for that  
 13 philosophy. Mr Pillay by then, don't forget was on  
 14 suspension. Sorry, yes he was on suspension already. So  
 15 the man who had been at the top of the place, but there is  
 16 the architect and I would like to ask why they didn't, did  
 17 they speak to the architect and if not why.

18 PROF KATZ: And Judge, forgive me I think  
 19 there's the third question to Advocate Steinberg is the one  
 20 I posed. What was their model designed to achieve.

21 MS STEINBERG: From a philosophy strategy  
 22 point of view.

23 PROF KATZ: Yes. Did it have a  
 24 philosophy strategy, if not, what was it designed to  
 25 achieve.

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1 COMMISSIONER: So if you could just alert  
 2 them to those so that they have, they know that they're  
 3 going to be asked those questions in particular, quite  
 4 apart from the things you've alerted them to. I think that  
 5 it's a fair thing to do for them.

6 MR KAHLA: And I'd add if they could also  
 7 just help us with an understanding of the distinction that  
 8 they at least made between the operating model and the  
 9 structure that would follow that operating model because in  
 10 the presentations we've heard there's quite a confused  
 11 presentation of different structural formations with the  
 12 operating model. So if they could help us to understand  
 13 the operating model and it could have been supported by all  
 14 kinds of structures and then the structural designs they  
 15 submitted in order to fulfil the objectives of the  
 16 operating model that they had suggested.

17 MS STEINBERG: Of the principles you're  
 18 talking about?

19 MR KAHLA: Ja.

20 PROF KATZ: And so sorry Judge, on the  
 21 Judge's question, second question. They gave the four and  
 22 then the fifth, were they involved at all -

23 MS STEINBERG: Yes.

24 PROF KATZ: In the transition from the  
 25 four to the fifth. What interactions did they have with

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1 anyone who then produced the fifth?

2 COMMISSIONER: Thank you, because I think  
 3 one must just be careful of just adopting what we've heard  
 4 without hearing what they have to say but those I think are  
 5 very critical questions that I think they need to deal  
 6 with.

7 MS STEINBERG: And may I put on the  
 8 record Judge that we have endeavoured to be fair to Bain.  
 9 They have already, they are in receipt of a good, I think  
 10 20 questions that we had asked them beforehand. They've  
 11 furnished us with the answers. I've also met with them, as  
 12 I meet with most of my witnesses to give them a sense of  
 13 this evidence and I try, I have tried my best to alert  
 14 them. I will follow up with these specific questions.

15 COMMISSIONER: Thank you.

16 MS STEINBERG: The aim is not to ambush  
 17 anybody here.

18 COMMISSIONER: Yes.

19 MS STEINBERG: It's for everybody to  
 20 prepare thoroughly and give their evidence and their  
 21 points.

22 COMMISSIONER: Well of course for us  
 23 that's exactly what we want. I mean we want to hear  
 24 everything that we can. It's why I keep inviting people to  
 25 come and tell us but they don't seem to want to.

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1 MS STEINBERG: Mr Khan, before you go,  
 2 you've painted a picture of this critical engine within  
 3 SARS, barely hanging on by its fingernails. How urgent is  
 4 it that some redress is taken?  
 5 MR KHAN: Thank you Advocate, look  
 6 obviously I'm going to, the compliance division like I said  
 7 earlier is the engine room of the enforcement strategy of  
 8 SARS and if we do not capacitate this division correctly  
 9 going forward I think we are going to slip and slip very  
 10 fast. I just want to illustrate the point about a lack of  
 11 vision and why the compliance division is in the position  
 12 that it is in today. Since 2015 the compliance division  
 13 like I said before and I run the risk of repeating myself  
 14 was the single most important operational improvement that  
 15 we made to SARS. It took SARS enforcement into the 21st  
 16 century. Since 2015 there hasn't been a single improvement  
 17 to the systems that support compliance. We've had one  
 18 which was the modernisation or the digitisation of the  
 19 objections process but it was not something that was done  
 20 from 2015 onwards. It was a legacy that was completed post  
 21 2015. It was, the journey started around 2013 or 14 I  
 22 think to modernise the objections process and that was the  
 23 only systems improvement made to our business area in the  
 24 last three years.  
 25 COMMISSIONER: So you're really saying

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1 you're running at the moment on an incomplete system that  
 2 has not yet reached its fulfilment.  
 3 MR KHAN: Absolutely. The tyres are  
 4 wearing off, Judge and we're going to be on the rim soon.  
 5 COMMISSIONER: Thank you very much. Is  
 6 that all?  
 7 MS STEINBERG: Thank you very much, Mr  
 8 Khan. That was -  
 9 COMMISSIONER: Thank you very much  
 10 indeed. I understand you know the disquiet you felt at,  
 11 it's been very valuable to us and we appreciate it very  
 12 much.  
 13 MR KHAN: Thank you.  
 14 COMMISSIONER: You can tell your wife  
 15 that as well.  
 16 MR KHAN: Thank you.  
 17 [NO FURTHER QUESTIONS – WITNESS EXCUSED]  
 18 MS STEINBERG: Can I suggest we break for  
 19 five or ten minutes before we -  
 20 [INQUIRY ADJOURNS INQUIRY RESUMES]  
 21 [11:05] MS STEINBERG: We're ready, Judge.  
 22 COMMISSIONER: You know, Ms Steinberg,  
 23 can I before you call your next witness, I just want to say  
 24 something. Have you and your team had any sleep in the  
 25 last two months?

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1 MS STEINBERG: Not so much.  
 2 COMMISSIONER: Thank you. Yes.  
 3 MS STEINBERG: Judge, we're now looking  
 4 at the large business units. I had tried to get, we have  
 5 four witnesses. I had tried to get them all today. Two of  
 6 them can only come tomorrow, so today we're calling first  
 7 Mr Vincent Sibande and then Ms Nishana Gosai. Tomorrow  
 8 we'll hear from Mr Narcizio Makwakwa and Mr Anthony Cohen.  
 9 This afternoon we're going to be hearing from people  
 10 outside of SARS, representatives of various organisations  
 11 who have interacted with the Large Business Centre and SARS  
 12 subsequent to the new operating model to take testimony on  
 13 their experience.  
 14 COMMISSIONER: Thank you. Incidentally  
 15 this is not the Mr Makwakwa that we've been hearing about  
 16 yesterday?  
 17 MS STEINBERG: No, it is the other Mr  
 18 Makwakwa.  
 19 COMMISSIONER: Yes, let's go ahead.  
 20 MS STEINBERG: So our first witness is Mr  
 21 Vincent Sibande and while he is settling in may I remind  
 22 the judge and the panel that we had heard from the previous  
 23 heads of the Large Business Centre in the first hearings  
 24 and we're going to try not to repeat what she said but pick  
 25 up from there.

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1 COMMISSIONER: Mr Sibande, thank you very  
 2 much for coming. We think it is a very important  
 3 commission and so we appreciate your assistance. Will you  
 4 affirm that the evidence you give will be the truth, the  
 5 whole truth and nothing but the truth? If so will you say,  
 6 I do?  
 7 VINCENT SIBANDE: I do.  
 8 COMMISSIONER: Thank you.  
 9 EVIDENCE OF MR SIBANDE  
 10 MS STEINBERG: Hi?  
 11 MR SIBANDE: Hi.  
 12 MS STEINBERG: Mr Sibande, we've called  
 13 you and we've called you first because we heard about you  
 14 as you know in the last testimony. You, after Ms Manik,  
 15 well, Ms Manik was still there, with the advent of the new  
 16 operating model you were put into Ms Manik's position  
 17 basically and you had worked in the LBC before then.  
 18 You're still here, so your testimony can actually take us  
 19 from the beginning of the LBC practically through the  
 20 change and to the current position and we're really looking  
 21 for you, from you to give us an overview of the before, the  
 22 during, the Bain process and thereafter.  
 23 MR SIBANDE: Okay.  
 24 MS STEINBERG: Your current position?  
 25 MR SIBANDE: My official position, I am

<p style="text-align: right;">Page 1224</p> <p>1 the executive for Stakeholder Management, Private Sector 2 and Civil Society, so they're two sub-units within the 3 Stakeholder Management. One is Government and Public 4 Sector and I'm in charge of the Private Sector and Civil 5 Society. 6 MS STEINBERG: So just so that I 7 understand is your acting boss at the moment Mr Narcizio 8 Makwakwa? 9 MR SIBANDE: No, he is not, me in a 10 different unit altogether now. 11 MS STEINBERG: Ja? 12 MR SIBANDE: Narcizio is acting in the 13 leadership management space within Business &amp; Individual 14 Taxes. I'm doing that to not confuse Bain and BAIT and my 15 current boss is Mr Nglengani Mathebula, the chief officer 16 for Governance International Relation Strategy &amp; 17 Communications. 18 MS STEINBERG: Thanks. 19 MR SIBANDE: May I add as well that I'm, 20 well, not that important but I'm also currently acting as 21 the group executive for Partnership Development and 22 Communications. 23 MS STEINBERG: Thank you. 24 MR SIBANDE: Which houses basically my 25 previous unit which is Stakeholder or my official unit</p>	<p style="text-align: right;">Page 1226</p> <p>1 referring within the Large Business Centre? 2 MS STEINBERG: Within the Large Business 3 Centre. 4 MR SIBANDE: Ja, yes. 5 MS STEINBERG: Won't you tell us about 6 that? 7 MR SIBANDE: Yes, so in essence the 8 Siyandisa operating model, I just don't remember the exact 9 dates, but I think somewhere around 2011/12, it should have 10 been around that particular time, we moved. The LBC was 11 originally structured in a sector model. The sector model, 12 I think Sunita would have spoken to that as well, is that 13 you had about nine sectors or so, your Financial Services, 14 Mining, you know Construction and all of those in line with 15 the standard international classification codes, but with 16 more focus in terms of the JSE listing and that. So that's 17 what the model looked like, so within the Large Business 18 Centre in each sector you actually had, what can I call it, 19 similar setups within one unit within the centre. 20 So in the Financial Services you will have people 21 who would have only about five functions, I would say. 22 There would be an assurance function with an audit 23 function. There would be service people that covers your 24 relationship management, your consultants and all of those. 25 You will have account maintenance in that very same space.</p>
<p style="text-align: right;">Page 1225</p> <p>1 which is Stakeholder Engagement. 2 MS STEINBERG: When did you join SARS and 3 the LBC? 4 MR SIBANDE: I joined SARS on the 1st of 5 October 2000. It was at the time that SIACA 1 was 6 enforced. 7 MS STEINBERG: SIACA 1 – 8 MR SIBANDE: SIACA 1. 9 MS STEINBERG: Explain what that was? 10 MR SIBANDE: SIACA 1 is the original I 11 believe that Minister Gordhan spoke to extensively when he 12 gave his testimony, the entire SARS operating model that 13 was being reviewed in the attempt to professionalise the 14 organisation and that we are amongst a few graduates who 15 were recruited to join the organisation as tax auditors at 16 that particular point in time. And then as far as the 17 Large Business is concerned I joined the Large Business in 18 2007, February, the 1st as an auditor, specialising in 19 indirect taxes, specifically personal income tax, - sorry, 20 not personal income tax, PAYE. 21 MS STEINBERG: So you were there during 22 that first period of change and then there was a second 23 period of change, wasn't there? I think that was called 24 the Siyandisa model, am I right? 25 MR SIBANDE: The Siyandisa model, you're</p>	<p style="text-align: right;">Page 1227</p> <p>1 You will have an element of people who were doing risk 2 profiling within that very particular space, a certain 3 degree of people who would be offering your legal guidance 4 and advice and that within one particular sector, so that 5 setup was replicated across all sectors within the Large 6 Business Centre. 7 So that was during the sector model which was 8 problematic really and so on because we had a lot of 9 duplication and you know it was not properly set up in a 10 sense that you had people having to - taxpayers have to 11 inter write with the same unit but going through different 12 functions because of other sectors. Because what was 13 happening is that each sector had its own head within the 14 large business with the overall general manager as a person 15 in charge. That model didn't work quite well. I remember 16 specifically I was in the Financial Services sector. We 17 were under resourced and yet we were by far the group that 18 received from the service point of view a large volume of 19 queries, so service requests and, ja, it was difficult. 20 MS STEINBERG: So you moved from the 21 sectoral model – 22 MR SIBANDE: Yes – 23 MS STEINBERG: - to what's called the 24 functional model? 25 MR SIBANDE: A functional model.</p>

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1 MS STEINBERG: Won't you just briefly  
 2 explain that?  
 3 MR SIBANDE: This is similar to what in  
 4 my view is what the current SARS new operating models sort  
 5 of like sought to do, is to put together. The functional  
 6 model sort of put together like functions and then what  
 7 they would do, your service people across all sectors would  
 8 come under one sort of unit that will be called taxpayer  
 9 interface, simply put Relationship Management or Service  
 10 Team. So you'll take them out across all the other sectors  
 11 and the assurance people or audit team were now housed  
 12 under what, the function that was called Assurance. The  
 13 same happens with your Account Maintenance and all of  
 14 those. They were also grouped together. So that's what  
 15 actually happened in essence which is why we did away with  
 16 the silos in terms of the individual sectors. So that's  
 17 what in a sense the functional models sought to do.  
 18 MS STEINBERG: And I think there was a  
 19 big change in philosophy and tell me if I'm wrong, that  
 20 beforehand you waited for the taxpayer to come to you with  
 21 a query.  
 22 MR SIBANDE: Absolutely.  
 23 MS STEINBERG: But with the introduction  
 24 of the functioning model you became proactive.  
 25 MR SIBANDE: Absolutely.

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1 MS STEINBERG: And as I understand, one  
 2 can capture the philosophy in saying you used service to  
 3 drive voluntary compliance.  
 4 MR SIBANDE: You must have got that  
 5 somewhere, Advocate, because you're so spot on. That's  
 6 exactly what we did.  
 7 MS STEINBERG: Tell us about that?  
 8 MR SIBANDE: So in essence in the new  
 9 model, if I can just go back, the sector model, it was the  
 10 wait and see type of an approach where you will be  
 11 approached by a client or a taxpayer, a large business  
 12 saying, you know I need you to do A, B, C and D, I liken  
 13 that to a waitress at a restaurant where you're constantly  
 14 serving the people who are dining and that. That's what we  
 15 were doing, but this time around we changed it in the  
 16 functioning model where we would proactively engage with  
 17 the taxpayers to understand their needs. You would recall  
 18 that this was driven by the value proposition that said, we  
 19 would like to offer differentiated service offerings to the  
 20 large businesses, which is underpaid by the fact that we  
 21 recognised that they are an important segment that  
 22 contributes a great deal of revenue to the fiscus.  
 23 So to come back to that particular issue, we  
 24 then, the proactive approach that we've adopted, the  
 25 strategy is to say not only how we're existing to serve the

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1 large businesses as it used to be, this time around we want  
 2 to understand your needs better. We want to understand  
 3 your compliance needs and all of that. So we're  
 4 proactively engaged. We'll have your quarterly meetings,  
 5 your monthly meetings with taxpayers, bi-monthly, weekly,  
 6 depending on what type of a value proposition we would have  
 7 had for that particular segment of taxpayers within the  
 8 large business. Let me not confuse it by segments. Within  
 9 the LBC, when we adopted the Siyandisa model, rather the  
 10 Siyandisa – during the Siyandisa project or the functioning  
 11 model, during the functional model we decided that we will  
 12 further segment the large business taxpayers. That was  
 13 informed by the fact that we didn't have enough resources.  
 14 You all know by now that as of the 1st of April, around 2016  
 15 we were moving around 500 people and servicing based on the  
 16 registered tax type, about 31 000 registered or active tax  
 17 products. So that was a very large number of taxpayers  
 18 that we actually had.  
 19 So we then segmented it into four, adopting, you  
 20 would argue and say probably looking at the precious  
 21 matters or sticking to the idea of your private banking  
 22 where we said if you have a particular turnover you'll meet  
 23 a particular criteria in terms of the turnover, whether it  
 24 is 5 billion and that, you will be classified as a platinum  
 25 taxpayer. There was platinum, gold, silver and bronze. So

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1 based on where you were in terms of that segment then the  
 2 service that we were offering was tailored for that  
 3 particular client base. So the most important shift in  
 4 terms of the offering was that we tried to balance now  
 5 service and compliance. We had more compliance  
 6 conversations than just existing to service, which is  
 7 really, really contrary to what I've read in terms of what  
 8 were some of the diagnostics that led to the undoing of the  
 9 LBC –  
 10 PROF KATZ: Sorry, can I just ask  
 11 clarification, when was that introduced time wise?  
 12 MR SIBANDE: The functional model?  
 13 PROF KATZ: Yes.  
 14 MR SIBANDE: It was around 2011/2012, I  
 15 just don't remember the exact date but 2011, 2012.  
 16 PROF KATZ: And then this four, this last  
 17 point you said?  
 18 MR SIBANDE: No, around the very same  
 19 time.  
 20 PROF KATZ: The same time?  
 21 MR SIBANDE: Around the same time, yes.  
 22 MS STEINBERG: So you moved to the  
 23 functional model?  
 24 MR SIBANDE: Yes.  
 25 MS STEINBERG: You have these four

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1 segments depending on turnover and I think risk?  
 2 MR SIBANDE: Turnover and inherent risk.  
 3 That's spot on, thank you, Advocate, for reminding me, yes.  
 4 MS STEINBERG: Ja.  
 5 MR SIBANDE: Ja.  
 6 MS STEINBERG: And then as I understand  
 7 you had your 500 people and they were then allocated  
 8 according to the level of turnover and risk, so you could  
 9 put more people in the more important areas.  
 10 MR SIBANDE: No, absolutely, that was the  
 11 case but primarily the allocation of resources was mainly  
 12 informed by the functional structure that existed. So your  
 13 traditional auditors and that will be there but within the  
 14 assurance space. As a matter of fact I think my colleague,  
 15 ex-colleague Nishana will speak to that. We further broke  
 16 that particular unit to say you would have people that will  
 17 focus on transfer pricing based on their skills and  
 18 general, sort of like general type of auditors and all of  
 19 that, some will focus on Mining, Financial Services and  
 20 that, ja. That's what we actually did.  
 21 MS STEINBERG: And I'm correct that at  
 22 that stage you also introduced relationship managers?  
 23 MR SIBANDE: Absolutely, in fact  
 24 relationship managers existed all along.  
 25 MS STEINBERG: All along?

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1 MR SIBANDE: Even in the sectoral model,  
 2 yes. They were housed under what you call the service  
 3 units within the sectors, ja.  
 4 MS STEINBERG: And the relationship  
 5 manager, the job was to be the conduit between the taxpayer  
 6 and SARS?  
 7 MR SIBANDE: 100%, we actually called it,  
 8 we call them the face of the LBC. I was one of those  
 9 relationship managers at some point.  
 10 PROF KATZ: Just again a clarification?  
 11 MS STEINBERG: Yes.  
 12 PROF KATZ: So was this the system that  
 13 prevailed under Sunita until she retired?  
 14 MS STEINBERG: Correct.  
 15 MR SIBANDE: Yes.  
 16 MS STEINBERG: Correct?  
 17 MR SIBANDE: Yes.  
 18 MS STEINBERG: And we'll hear from a  
 19 relationship manager and an acting head of Relationship  
 20 Management tomorrow because I think it is very important,  
 21 because as I understand what it meant for the taxpayer was  
 22 that you had one point of entry into SARS with any problem  
 23 you had, however small or big and it was that relationship  
 24 manager's job to solve the problem and if I may add and  
 25 then please correct me if I'm wrong, that it was possible

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1 for the relationship manager to solve a host of complex  
 2 problems because you sat under one roof as the Large  
 3 Business unit. You would call a team together, you could  
 4 solve the problems. You all had the same priorities and  
 5 strategies and that's how the system worked. Is that  
 6 largely correct?  
 7 MR SIBANDE: Absolutely, you are correct.  
 8 So if I can just explain, as I mentioned that basically the  
 9 functional model or the LBC itself was modelled around the  
 10 Financial Services, your banking type, your private banking  
 11 concept. Just like if you are platinum or you are in the  
 12 private world space and that, you don't have to run around,  
 13 speaking to all, everybody in the bank and that, that's  
 14 exactly what the relationship managers did. We would do  
 15 the running for you. We will see to it that all your  
 16 concerns and your issues, the queries you may have are  
 17 being dealt with. So that was the responsibility of the  
 18 relationship manager, but of course assisted by the  
 19 consultants and administrator within that particular space.  
 20 So what you've just mentioned is correct, ja.  
 21 MS STEINBERG: And from the many people  
 22 I've spoken to in this space most people say it was working  
 23 well, certainly room for improvements and in particular you  
 24 had identified further segments that you needed more  
 25 resources -

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1 MR SIBANDE: Yes -  
 2 MS STEINBERG: - in order to get to, for  
 3 example you were aware that our net worth individuals was a  
 4 segment you haven't properly tackled yet, but I think in  
 5 the annual performance plan that has actually been  
 6 highlighted as one of the next areas to develop.  
 7 MR SIBANDE: Absolutely and in fact at  
 8 some point, if I remember Sunita and them had put a  
 9 request, even to the suspended Commissioner to say we  
 10 require these resources. At some point that had been  
 11 approved by Exco to say, go ahead, get these resources and  
 12 also, not only for high net worth but also for the transfer  
 13 pricing team because we realised that we needed to cover  
 14 some you know non-compliance areas in that space. So you  
 15 are spot on that indeed there were plans to actually grow  
 16 and if it is recruitment of some highly skilled people, you  
 17 know it had already taken place and there were people who  
 18 were already on-boarded in that particular space.  
 19 MS STEINBERG: And you had identified  
 20 that transfer pricing and trade missed pricing with the  
 21 issues of the day actually and you needed to up skill in  
 22 those areas.  
 23 MR SIBANDE: I would even venture to say  
 24 that our colleagues at the time, you know they were leading  
 25 the pack in terms of their understanding and the research

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1 and all of stuff. Of course the Large Business,  
 2 particularly that area, the transfer pricing team, they  
 3 represented SARS at OECD and all of those and various  
 4 parties and that.  
 5 [11:25] Ja so we had already identified that that that  
 6 was a topical issue and we needed to deal with this  
 7 phenomenon of BEBS or that is base erosion and profit  
 8 shifting.  
 9 MS STEINBERG: But if I may remind you  
 10 Judge and the panel, we saw a witness very briefly in the  
 11 July hearings –  
 12 COMMISSIONER: Mr Loots.  
 13 MS STEINBERG: Mr Loots who has a  
 14 doctorate in transfer pricing who's now a –  
 15 COMMISSIONER: Domain specialist.  
 16 MS STEINBERG: Domain specialist but  
 17 there were skills like that that were, you were building  
 18 up.  
 19 MR SIBANDA: No absolutely, absolutely.  
 20 PROF KATZ: They were very highly  
 21 regarded internationally.  
 22 MS STEINBERG: The LBC yes.  
 23 MR SIBANDA: No most definitely.  
 24 PROF KATZ: At that stage.  
 25 MS STEINBERG: Yes.

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1 MR SIBANDA: Most definitely. In fact I  
 2 would even venture to say that the LBC environment itself  
 3 was so conducive for most professionals who sought to serve  
 4 a higher purpose that they wouldn't mind giving up their  
 5 own careers to join us. So we had partners who had left  
 6 accounting firms that joined us in that particular space  
 7 because they realise and they could, they felt that they  
 8 could make a contribution to the country.  
 9 MS STEINBERG: I'd like to move now to  
 10 Bain's intervention. Bain's diagnostic of the Large  
 11 Business Centre, which I know you're well aware of, as you  
 12 hinted at earlier there were really two major criticisms I  
 13 think that the LBC was prioritising service over two  
 14 things. The one was enforcement and the other was good  
 15 governance. And the major fact used to substantiate that  
 16 criticism was that 85% of debt had been suspended and that  
 17 debt book was too large. And the diagnostic goes on to say  
 18 we must aim now to optimise pre-existing LBC structure with  
 19 a view to getting the balance between service on the one  
 20 hand and enforcement and good governance on the other hand  
 21 right. It also says in terms of governance, there's an  
 22 insufficient separation between case selection and audit  
 23 function which undermines checks and balances. It says  
 24 there was a fragmented accountability of the tax register  
 25 and an under-capacitated strategy and development

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1 functions. A lack of a consolidated relationship  
 2 management, key segments like VIPs and high net worth  
 3 individuals missing, a lack of capacity to deal with base  
 4 erosion, profit sharing, etcetera. Can you comment on that  
 5 diagnostic?  
 6 MR SIBANDA: Quite loaded. I'll try,  
 7 I'll try and unpack that. I think it's very problematic  
 8 that diagnostic itself. Let me touch governance first. It  
 9 is not entirely true because the diagnostic presupposes  
 10 that there was lack of governance in terms of ensuring that  
 11 the separation between case selection and execution. I  
 12 remember very well. We took a conscious decision to have a  
 13 committee within the Large Business Centre to specifically  
 14 look after that. And my colleagues will probably klap me  
 15 for this but the truth of the matter is this, the very  
 16 nature of an auditor particularly historically in the Large  
 17 Business Centre people felt that they are so technically  
 18 astute that they can risk profile their own cases and they  
 19 know that if they risk profile their own cases there will  
 20 be a hit. The likelihood of them getting results is high.  
 21 We had to force them to actually abandon that attitude to  
 22 change the culture. And that shift did not come easy and  
 23 they ended up realising that it was important in the  
 24 interests of case selection and execution governance, but  
 25 that separation was crucial. So we had checks and

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1 balances. So that is not entirely true. I don't know what  
 2 informed that statement. Even today I don't have an answer  
 3 in terms of what is it. Could there have been possible  
 4 cases whereby people may have flaunted the rules?  
 5 MS STEINBERG: Possible.  
 6 MR SIBANDA: Possible. I can't say that  
 7 the machinery was completely clean, that those were not  
 8 there but the truth of the matter is we had put governance  
 9 structures in place to deal with that particular aspect.  
 10 MS STEINBERG: Something I've heard about  
 11 that and I'd like your view on it. A couple of people  
 12 involved in the automation, the IT side of things, said  
 13 that with modernisation came better governance because you  
 14 have a system where it's across SARS but focusing on the  
 15 LBC, that a particular person has a user profile, so they  
 16 can look into the system and change something within the  
 17 system, only in accordance with their user profile. And  
 18 that necessarily through the structure, through the IT  
 19 structure makes for good governance because it's literally  
 20 impossible to interfere elsewhere, plus you leave an  
 21 electronic footprint every time you enter the system. Is  
 22 that right?  
 23 MR SIBANDA: No it is correct. The word  
 24 that we use is that first and foremost that was informed by  
 25 the fact that the entire LBC tax base was ring-fenced. So

<p style="text-align: right;">Page 1240</p> <p>1 anybody outside, if you are not the employee, if you are  2 not the employee of the large business you couldn't access  3 information pertaining to the Large Business Centre. But  4 for a few individuals outside of the LBC with authority who  5 had to sign off on things like refunds that get escalated  6 to a particular level and that. So you're right. The  7 profiles were specifically for the LBC and there was audit  8 trail in terms of which case have you accessed? If I  9 decided to be naughty and say I wanted to enquire on  10 Advocate Steinberg, definitely it will show on the system  11 that indeed there was once an inquiry of that sort so  12 definitely, that on its own is a check and balance. But  13 when it comes to potentially the thing that you mention,  14 the risk aspect of it, the people spoke about the risk  15 engine extensively. I'm sure my colleagues also who will  16 come after me will speak to this. It is my understanding  17 in the insurance space that it never worked because you  18 know you could come with rules to try and say let me risk  19 profile a large corporate using whatever rules, empirical  20 rules that you might have put in in the risk engine, but  21 recognise from very early days that it's not going to work.  22 You need a person to sit down, profile this organisation  23 because even their organogram is really complex and you  24 didn't understand exactly what it is. For example, how do  25 you even begin to profile a structured finance via a risk</p>	<p style="text-align: right;">Page 1242</p> <p>1 discussion is quite an interesting one because people who  2 have got, they get bogged down with the number and that but  3 context is important here. Around the period that I was in  4 the large business the debt book was sitting at around 27  5 billion. The argument that 85% was suspended is wrong.  6 It's wrong, 100% wrong. 85% to 90% was under dispute  7 meaning that there was an appeal against those or an  8 objection against those. Of course some could have been  9 suspended and that. Why do I say that? At that time, I  10 don't know if Mr Khan spoke to that or colleagues who deal  11 with debt management have touched on that, there was no way  12 that you could tell, I think even currently unless they  13 have already implemented that – you couldn't tell that a  14 debt relating to company X has been suspended or not  15 because that process wasn't automatic, it was done outside  16 the system. So how could have whomsoever did the  17 diagnostic or came up with the diagnostic would have  18 actually gotten those facts, where would they have gotten  19 them? I'm not aware of that.  20 So I'm simply saying that it isn't correct. 85  21 to 90% of the LBC debt book was actually under dispute.  22 That is a fact. And again that should have not been a  23 concern whatsoever. And I say this because you are dealing  24 with corporates here with a financial muscle with who have  25 in-house experts who would challenge your view at any given</p>
<p style="text-align: right;">Page 1241</p> <p>1 engine? Would you be able to do that? That's a question.  2 But I have no doubt in my mind that through the journey of  3 modernisation we could have reached the point whereby that  4 some of those things would have been possible. There's no  5 doubt in my mind.  6 MS STEINBERG: But at that moment in time  7 what was critical, I hear you saying, is that you were not  8 part of the SARS factory.  9 MR SIBANDA: No.  10 MS STEINBERG: You were not the business  11 as usual where that risk engine could deal with people like  12 me and Joe Soap.  13 MR SIBANDA: No.  14 MS STEINBERG: You understood that you  15 were one of those specialised segments that was not  16 business as usual and where you needed special skills and  17 systems to analyse those taxpayers.  18 MR SIBANDA: Absolutely, and that people  19 who were entrusted with that responsibility was the, was Dr  20 Loots who was in charge of also risk amongst many other  21 things within this portfolio, ja.  22 MS STEINBERG: Right. What do you say  23 about the fact that 85% of debt was disputed at the time  24 this was taken?  25 MR SIBANDA: Now you see the debt</p>	<p style="text-align: right;">Page 1243</p> <p>1 point in time. So it's not an unusual phenomena. You can  2 check worldwide that is the case. They will question  3 whatever assertions you're making as a tax authority. So  4 it's not an unusual thing. So I don't understand where  5 that came from. And by the way may I say that of that 27  6 billion about three to four large assessments, thanks to my  7 colleague Nishana, actually resulted to that particular  8 debt book. So you'd find that the, about what 80% of the  9 27 billion was made up of about four cases or so because of  10 the value of the assessments that we would have put in  11 there. So I think that discussion at some point we need to  12 have. We've been calling for a debt indaba in SARS. I  13 hope it will happen at some point.  14 MS STEINBERG: I have quite a lot of  15 other testimony about the debt, and to add what you're  16 saying – you can tell me if you agree – the legal people in  17 this space say that it's not only that large businesses are  18 litigious and have the capacity but that you're in fact  19 dealing with new aspects of legislation and new tax types  20 and there are no precedents in the court or how you work  21 out what somebody owes and what refund might be applicable.  22 So the LBC was in fact quite deliberately working with the  23 High Court litigation unit to bring test cases to court  24 arising out of these disputes in order to have precedents  25 to use in the future. Is that right?</p>

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1 MR SIBANDA: It is right. Unfortunately  
 2 most of them never reach the court before they even go to  
 3 the court they get settled and all of that stuff because  
 4 people weigh up to the options to say do I go to court or  
 5 do I just settle this dispute?  
 6 PROF KATZ: I would just, if I may, it  
 7 could be helpful. Where the flaw is in looking at a high  
 8 book at a snapshot in time isn't really a good indication.  
 9 MR SIBANDA: Yes.  
 10 PROF KATZ: If you look at history of it  
 11 -  
 12 MR SIBANDA: Absolutely.  
 13 PROF KATZ: It's always coming in,  
 14 collected and if you took that snapshot and went forward a  
 15 few years, you'll see quite a lot of it was collected. So  
 16 it's a misleading statistic I think just to take the debt  
 17 as a snapshot in time.  
 18 MR SIBANDA: Prof, you're spot on because  
 19 barely a year before that we had we had reduced the debt  
 20 book but it's a given. Towards year-end it always, we  
 21 would pump in audits, there's more assessments that gets  
 22 pumped in and you will find this thing happening. The  
 23 important thing is that what do you then do with the  
 24 assessments that you actually raise? Do you then pursue  
 25 them to ensure that you collect as much as you can out of

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1 those, understanding that of course there would be disputes  
 2 and that. But we did our best in terms of ensuring that we  
 3 collect as much as we can.  
 4 MS STEINBERG: And of course corporates  
 5 don't pay provisional tax so that also would affect the  
 6 debt book. You can't simply compare it to the other debt  
 7 book.  
 8 PROF KATZ: As I say I don't want to  
 9 waste your time but it's a misleading statistic in relation  
 10 to a unit like theirs to take a snapshot in time. There's  
 11 movement before that year and movement on that after that  
 12 year.  
 13 MR SIBANDA: Yes. Advocate, I heard you  
 14 saying something about corporate not paying?  
 15 MS STEINBERG: Provisional tax, is that  
 16 right?  
 17 MR SIBANDA: They do.  
 18 MS STEINBERG: They do?  
 19 MR SIBANDA: They do, yes, they do.  
 20 MS STEINBERG: Okay. The Bain process,  
 21 we've just looked at the diagnostic, you have your  
 22 criticisms of it.  
 23 MR SIBANDA: Yes.  
 24 MS STEINBERG: You were actually  
 25 intimately involved in that process weren't you?

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1 MR SIBANDA: Intimately I'm not sure.  
 2 Being part of it, I agree.  
 3 MS STEINBERG: Tell us your involvement?  
 4 MR SIBANDA: You see I was appointed as  
 5 to be part of the service stream within the project. We  
 6 looked after service aspect because historically within the  
 7 large business, at that particular point in time I had a  
 8 relationship management in that space, it was called  
 9 taxpayer interface, simply put, service. So it was thought  
 10 that I would give input into the process of coming up with  
 11 this new operating model based on my experience and that.  
 12 So basically that's what I was there for. And pretty much  
 13 everything that I did had to do with me being consulted or  
 14 being asked how would this work, how would that work and I  
 15 would give my input. Whether things got done or not, mine  
 16 was to give my input in that process within the work  
 17 stream.  
 18 MS STEINBERG: So you were part of that  
 19 project team.  
 20 MR SIBANDA: Yes, ja.  
 21 MS STEINBERG: Where Mr Makwakwa was the  
 22 sponsor and Ronald Mabuma was the -  
 23 MR SIBANDA: Ronald Makomba.  
 24 MS STEINBERG: Makomba?  
 25 MR SIBANDA: Yes.

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1 MS STEINBERG: Was the kind of driver,  
 2 that's the team we're talking about?  
 3 MR SIBANDA: Absolutely, yes.  
 4 MS STEINBERG: And that's your input?  
 5 MR KAHLA: Is that what we refer to as  
 6 the steering committee?  
 7 MR SIBANDA: No it's not.  
 8 MR KAHLA: - work like that?  
 9 MR SIBANDA: It's not the steering  
 10 committee. The steering committee was, happens to be other  
 11 people -  
 12 MR KAHLA: Above that one?  
 13 MR SIBANDA: Above that, yes, ja.  
 14 MS STEINBERG: Did you recommend that the  
 15 LBC be dismantled?  
 16 MR SIBANDA: Did that conversation take  
 17 place, that's the question. It never happened at that  
 18 particular meeting. In fact I dare say, and I haven't  
 19 heard anybody saying this, Sifiso would have mentioned at  
 20 some point that the only time we sort of like got  
 21 indication that the LBC was being dismantled is when we, at  
 22 the meeting of the 18th August at the Birchwood Hotel when  
 23 the structure was revealed to all managers and that. And  
 24 even at that point like she mentioned, she asked on our  
 25 behalf what is happening to the LBC because we're not

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1 seeing anywhere or anything about it? We were told no,  
 2 it's intact. So we had no, I personally had no reasons to  
 3 doubt what the leadership had said because I believed that  
 4 basically it was not being undone at that point in time.  
 5 So I can respond and say within my stream that conversation  
 6 never happened. In fact I'll go as far as saying to you,  
 7 and I looked for the newsflash and also correspondence that  
 8 were sent to the stakeholders – I don't know if you are in  
 9 possession of those?  
 10 MS STEINBERG: I -  
 11 MR SIBANDA: We've sent letters to say,  
 12 to calm the nerves to say the stakeholders do not be  
 13 worried. The LBC is not really being done away with.  
 14 Letters were sent. It will exist in a different form. You  
 15 still have direct contact with your relationship managers  
 16 and all of that stuff. There was never ever a point  
 17 whereby people said we are undoing the LBC. It became  
 18 apparent as the operating model was being rolled out that  
 19 indeed this is being done away, in fact which also was part  
 20 one of my mandate when I was seconded to the LBC as the  
 21 acting GE that I needed to oversee the transition of the  
 22 LBC into the operating model.  
 23 MS STEINBERG: And let's turn to that  
 24 now. So just for absolute clarity. You were on the  
 25 project team.

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1 MR SIBANDA: Yes.  
 2 MS STEINBERG: And the issue of  
 3 dismantling the LBC never came up?  
 4 MR SIBANDA: Never.  
 5 MS STEINBERG: This was as much a  
 6 surprise to you as it was to Sunita Manik.  
 7 MR SIBANDA: No absolutely, it was a  
 8 surprise to me because at, that was never discussed at all.  
 9 MS STEINBERG: So –  
 10 COMMISSIONER: May I just ask –  
 11 MS STEINBERG: Yes.  
 12 COMMISSIONER: Did the project team  
 13 interact with Bain?  
 14 MR SIBANDA: Yes, yes. In fact a member  
 15 of that project team happened to be one of the Bain  
 16 consultants, ja. We were interacting with daily.  
 17 MS STEINBERG: Now you were then  
 18 appointed to Ms Manik's position in 2015.  
 19 MR SIBANDA: Yes.  
 20 MS STEINBERG: She testified she just  
 21 arrived one day to find that she was no longer in charge  
 22 and you were in charge, is that correct?  
 23 MR SIBANDA: Well based on the meeting  
 24 that I had with her, it turned out that what actually  
 25 happened, if I may just explain. So I received a call on

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1 Sunday the 8th November at my brother-in-law's wedding.  
 2 MS STEINBERG: 2014?  
 3 MR SIBANDA: Sorry 2015.  
 4 MS STEINBERG: 2015.  
 5 MR SIBANDA: November 8, 2015. It was on  
 6 a Sunday late in the afternoon. I received a phone call.  
 7 I get asked, in fact I get told first that we had a  
 8 discussion, there is a risk that the Large Business Centre  
 9 revenue may not be secured. We need you to go there as the  
 10 acting GE, see to it that you secure the revenue, and also  
 11 you will have the responsibility to oversee the transition  
 12 of the large business into the operating model. Then I was  
 13 asked, are you up to the challenge? I said before I go  
 14 there have you had this discussion with my boss, referring  
 15 to Sunita. The answer I got was don't worry about that,  
 16 that will be taken care of. Are you up to the challenge?  
 17 Mine was I will do anything for this particular  
 18 organisation for South Africa. Definitely, I am up to the  
 19 challenge. I know I've got your backing, I've got your  
 20 support. And I was even assured that this particular  
 21 decision was also approved by the Commissioner.  
 22 MR KAHLA: Who made the call?  
 23 MR SIBANDA: It was Mr Makwakwa, Jonas  
 24 Makwakwa.  
 25 [11:45] And so then thereafter on a newsflash or a

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1 communiqué To staff was then issued informing them, I think  
 2 it was on a Tuesday, saying that you know, I think Tuesday  
 3 the 11th that the new GE, in fact it was a list of all  
 4 acting group executive, myself included and a number of  
 5 other colleagues for various divisions and that and I met  
 6 with Sunita that particular afternoon and I learnt there  
 7 and there when I met with her in her office that she  
 8 didn't, she knew nothing about me coming in there to act  
 9 and that and the question would be Vincent when you  
 10 received that phone call from Mr Makwakwa why you never  
 11 phoned your boss and verified all of this. I didn't think  
 12 it was necessary at that time because I was assured it  
 13 would be taken care of. That is the case.  
 14 MS STEINBERG: And then perhaps you can  
 15 just describe the period that followed as the Large  
 16 Business Centre was dismantled and you were unexpectedly  
 17 given the responsibility to oversee that.  
 18 MR SIBANDE: Look, as unexpected as it  
 19 was, Advocate, I was thrilled by the opportunity because  
 20 for me if you're telling me that you come and serve the  
 21 people in a particular position or whatever, I'm, I'll go  
 22 for it, I will never hesitate, given an opportunity to do  
 23 it again I will do it. Even I were to be asked to be the  
 24 Commissioner of SARS as serious a responsibility as it is I  
 25 will do it because for me it's about the higher purpose

<p style="text-align: right;">Page 1252</p> <p>1 that's what it is.</p> <p>2 So what actually happened thereafter it was a</p> <p>3 case of we needed to have a conversation with staff and try</p> <p>4 and explain things and I'm sure some of my colleagues will</p> <p>5 accuse me that basically I publically defended the carve</p> <p>6 out of the LBC and I would say partly they are correct</p> <p>7 because all I ever said at the staff meeting that Sunita</p> <p>8 made reference to was that colleagues there is, and I use</p> <p>9 exactly these words, there's currently one commander in</p> <p>10 chief at SARS and that is Commissioner Moyane and if he</p> <p>11 says this the direction that we take, we take that</p> <p>12 direction and personally I don't tend to ask to many</p> <p>13 questions when I get told what to do and particularly when</p> <p>14 you have already assessed the situation that actually this</p> <p>15 is a direction that has been taken because there were</p> <p>16 instances of people or there were a number of people that,</p> <p>17 who had come to me and said we had said this, I mean I know</p> <p>18 for a fact Sunita had questioned the change and I've seen</p> <p>19 how people justified the undoing of the LBC and there was</p> <p>20 no point. I was simply saying to the colleagues there is a</p> <p>21 bigger thing that we need to be chasing here and exactly my</p> <p>22 mandate for going to the LBC to say let's secure the</p> <p>23 revenue. That is important that we do. So that's exactly</p> <p>24 what I had said.</p> <p>25 PROF KATZ: Sorry can I just ask one</p>	<p style="text-align: right;">Page 1254</p> <p>1 spot on, that's exactly what happened at that time.</p> <p>2 PROF KATZ: Sorry I'm just missing a</p> <p>3 sequence. Was Sunita replaced because she had voiced</p> <p>4 opposition or what was the sequence, why was she replaced,</p> <p>5 had she voiced, I'm just not following that?</p> <p>6 MR SIBANDE: It is not what I'm saying</p> <p>7 here, Prof, if I may just clarify. I do not know why she</p> <p>8 was replaced, save to say that her position as a group</p> <p>9 executive of the Large Business Centre was done away with.</p> <p>10 That I think will be the only logical explanation. So if</p> <p>11 you, you're no longer occupying her particular position</p> <p>12 there's no longer a need based on the new operating model</p> <p>13 for a group executive Large Business Centre, the word that</p> <p>14 we used affected, you were affected. They felt that you</p> <p>15 know maybe a new person need to come, I can't tell what led</p> <p>16 to that.</p> <p>17 PROF KATZ: Then the follow up question,</p> <p>18 when you were offered her position -</p> <p>19 MR SIBANDE: Yes.</p> <p>20 PROF KATZ: Offered, were you told, not</p> <p>21 only that you're replacing her but this is the position</p> <p>22 you're going to occupy?</p> <p>23 MR SIBANDE: On a temporary basis, yes.</p> <p>24 Yes.</p> <p>25 PROF KATZ: So you knew that there was a</p>
<p style="text-align: right;">Page 1253</p> <p>1 question.</p> <p>2 MS STEINBERG: Yes, and I think Mr Kahla</p> <p>3 also -</p> <p>4 PROF KATZ: Oh sorry, go on.</p> <p>5 MR KAHLA: I just wanted to understand</p> <p>6 there were the issues raised for example by Ms -</p> <p>7 MR SIBANDE: Manik.</p> <p>8 PROF KATZ: Manik in relation to the</p> <p>9 changes relevant to the LBC. Am I correct that you equally</p> <p>10 shared those concerns or didn't you?</p> <p>11 MR SIBANDE: No, I did. But the point</p> <p>12 I'm saying is that I wasn't as vocal as she was, if I may</p> <p>13 say that. I did absolutely.</p> <p>14 MR KAHLA: But did you find yourself in a</p> <p>15 space where you could reconcile the difficulties you had</p> <p>16 with the proposed transitioning and felt that even with</p> <p>17 that you could still find a way of making it a success?</p> <p>18 MR SIBANDE: No, absolutely and may I add</p> <p>19 and say I was one of those employees who were affected and</p> <p>20 people think that I might have possibly had an easy ride.</p> <p>21 My position was done away with. I'm going through this,</p> <p>22 I'm part of the project team, I don't have a position, an</p> <p>23 official position. I was the executive taxpayer interface,</p> <p>24 that position was upgraded to a group executive in our</p> <p>25 relationship management. I had no position so I, you're</p>	<p style="text-align: right;">Page 1255</p> <p>1 new operating model?</p> <p>2 MR SIBANDE: No of course that we were</p> <p>3 aware of the operating model and I was told that I'm going</p> <p>4 to be acting, remember I was there, the LBC was being done</p> <p>5 away at that time. So it was being, the words that were</p> <p>6 correctly were used it was transitioned into the operating</p> <p>7 model. So for me it was to occupy that position temporary</p> <p>8 whilst we are actually transitioning the LBC into the new</p> <p>9 operating model. So it was never, there was never a degree</p> <p>10 of permanency in that position at all.</p> <p>11 COMMISSIONER: But still it made you the</p> <p>12 head of the LBC albeit for a short time.</p> <p>13 MR SIBANDE: Absolutely, that's correct.</p> <p>14 COMMISSIONER: And Sunita Manik was taken</p> <p>15 out?</p> <p>16 MR SIBANDE: NO, yes, yes. That's true.</p> <p>17 COMMISSIONER: And then as you've gone</p> <p>18 through the transition the positions changed and you</p> <p>19 applied for the particular, the group executive position</p> <p>20 which is not head of the LBC because the LBC had</p> <p>21 disappeared, is that right?</p> <p>22 MR SIBANDE: Well I applied for other</p> <p>23 group executive position.</p> <p>24 COMMISSIONER: Yes.</p> <p>25 MR SIBANDE: And also the executive, the</p>

<p style="text-align: right;">Page 1256</p> <p>1 one that is currently my official position, that's what I 2 did. I ended up - 3 COMMISSIONER: But by the end of the 4 transition the LBC didn't exist anymore? 5 MR SIBANDE: NO it didn't absolutely, it 6 didn't exist. 7 COMMISSIONER: I'd just like to ask one 8 other thing if I may. Do you think there was place in the 9 organisation for Ms Manik to make a contribution to the 10 organisation? 11 MR SIBANDE: No doubt, without a doubt, 12 in fact, ja. 13 COMMISSIONER: Because what I have been 14 told is well because of this new operating model and the 15 new organisation there were fewer posts so people had to 16 either be made redundant or put into these specialist 17 things, you know, I just ask whether SARS had so much skill 18 available that you could take someone like Ms Manik out and 19 not use her somewhere else. 20 MR SIBANDE: Judge, if I may say this I 21 think that's the part that for me over time didn't make 22 sense about the changes that were happening, particularly 23 the fact that certain positions were done away with and 24 people were affected and put in those strange positions and 25 that because these were skilled people with years of</p>	<p style="text-align: right;">Page 1258</p> <p>1 together we will definitely get the revenue. At that point 2 in time I am told that indications were such that the 3 collections really were dwindling, particularly in as far 4 as the initiatives are concerned. You know your 5 provisional, your para 93 interventions in terms of the 6 full schedule of the income tax to the income tax act. 7 Those kind of things which has got to do with your 8 provisional payments really, you know by large corporates 9 and that, that they were really not hitting the mark. Your 10 debt collections, it wasn't doing very well. But when we 11 got there not credit to me but all of my colleagues we 12 turned that thing around. I, we did very well. We did 13 very well and in fact we did achieve our initiative targets 14 for that particular year. 15 MS STEINBERG: So when did revenue then 16 start falling? Revenue collection. 17 MR SIBANDE: There was always 18 indications, Advocate Steinberg, if I can just maybe, just 19 grab a piece of the paper here that I got, I understand 20 that Sunita needed to come and share this with you. So 21 from 2015 my records show that the LBC had a target of 343 22 billion against the SARS nationwide target of 986 billion. 23 So the contribution of the LBC was 34.8% now you'd see what 24 I'm leading to. In 2016 the contribution dropped to 32.1% 25 from 34.8 the previous year. 2017 32.2% so almost, it was</p>
<p style="text-align: right;">Page 1257</p> <p>1 experience. I mean I'm 18 years at SARS, we're talking 2 about people here with 25, you know 30 years in this 3 organisation, who were occupying strategic positions. So I 4 mean anybody with the skill sets of Sunita and some of our 5 colleagues who have subsequently left it's baffles the 6 mind. Why would you even say those people are affected? 7 COMMISSIONER: And even if you didn't 8 have a position of head of LBC, do you think you could 9 still use those skills somewhere else in another managerial 10 position? 11 MR SIBANDE: NO, absolutely. Absolutely. 12 Ja, I'm not here to sing Sonita's praise or any of my 13 colleagues but truth be told that these were highly skilled 14 people that we looked up to and the little that is known of 15 us today is because of them. They've made that 16 contribution. They developed us as to who we are today and 17 we owe it to them. 18 MS MASILO: Mr Sibande, when you were 19 appointed to act in the position did you at any stage feel 20 that the LBC revenue could be at risk? 21 MR SIBANDE: Not at all. No, no, no I'm 22 sorry. I may come across as arrogant but I understood 23 exactly the art of collecting revenue in that space, we've 24 been well taught, we've been doing this thing for years. 25 We felt that you know what we just, if we put our heads</p>	<p style="text-align: right;">Page 1259</p> <p>1 flat and again this is exactly for me, I would say it was 2 an indication that there was a slight drop in terms of that 3 and I don't know exactly what the figures look like for 4 this past financial year. But there was definitely a 5 decline. 6 MS STEINBERG: Where are those figures 7 from, Mr Sibande? 8 MR SIBANDE: Well I got these figures 9 from my colleagues who deal with revenue analysis. I could 10 easily ask them to make them available to you. 11 MS STEINBERG: Please, because it sounds 12 like they conflict with other figures we have. So I think 13 we need to look at them and try and reconcile it. 14 MS STEINBERG: Ja, I think we can do 15 that. I can ask them basically to actually make that 16 indication, ja. 17 COMMISSIONER: Ms Steinberg, and if 18 you're looking at that I'm not sure that I entirely 19 understand. The LBC was done away with. 20 MS STEINBERG: Yes. 21 COMMISSIONER: So what are you 22 attributing these figures to? 23 MS STEINBERG: To large business. 24 MR SIBANDE: Large business, ja. 25 COMMISSIONER: To large business.</p>

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1 MS STEINBERG: To those taxpayers.  
 2 COMMISSIONER: Yes, to those particular  
 3 taxpayers -  
 4 MS STEINBERG: Yes.  
 5 COMMISSIONER: That were previously being  
 6 serviced.  
 7 MS STEINBERG: Exactly.  
 8 COMMISSIONER: Professor Katz -  
 9 MS STEINBERG: Then you must be right.  
 10 MR SIBANDE: And maybe to assist as well,  
 11 Advocate and the reason why it's easy to do that is because  
 12 every LBC client has a special code or a separate code,  
 13 there's about three codes which talks to the regions where  
 14 they are originally registered. So it's easy to identify a  
 15 large business taxpayer on those basis, ja.  
 16 MS STEINBERG: You'll see I'll tell you  
 17 why I'm a bit confused. I have an affidavit, firstly we  
 18 saw declining figures from Dr Carolissen and he said that  
 19 from collecting, you know a third of the revenue, it went  
 20 right down and in fact what saved SARS in recent years was  
 21 the small business revenue. I then, I have an affidavit  
 22 from Mr Carrera whose in the innovation hub and he gives me  
 23 the data, as our witnesses has said SARS is a data rich  
 24 organisation.  
 25 MR SIBANDE: Ja.

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1 MS STEINBERG: And it's driven by its  
 2 data and he gives me the relevant data here and for example  
 3 he said between 2015 and 2017 large business revenue grew  
 4 significantly less than the small, medium and micro  
 5 enterprises. So large business grew at 2.8% whereas SSMEs  
 6 grew at 10.2% and nominal GDP at 6.7%. So the growth that  
 7 large business revenue was well below nominal GDP. He says  
 8 the percentage of outstanding large business income tax  
 9 returns increased 48% during the period 1 January 2015 to 1  
 10 January 2017. 35% of large business income tax returns  
 11 were outstanding at the end of 2016/2017 financial year  
 12 etcetera, etcetera, etcetera. So you know this I think  
 13 comes from data analytics and it's showing a very steep  
 14 decline which is why I asked to please see what, where your  
 15 figures come from and the sources.  
 16 MR SIBANDE: Ja, look I wouldn't like to  
 17 say I would, I appreciate that this, what you have, the  
 18 information there or what I have contradicts what you have.  
 19 MS STEINBERG: Ja.  
 20 MR SIBANDE: Whether you place reliance  
 21 on what I have here or that but ideally those are experts.  
 22 They know exactly how they, but it could be that there is  
 23 some missing problem numbers here that I'm not aware of.  
 24 For example you find that these numbers probably do not  
 25 include customs that relate to the large business.

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1 MS STEINBERG: Okay.  
 2 MR SIBANDE: And those ones do include  
 3 customs. So if you ask me personally I would say you can  
 4 place reliance on that. What I was trying to demonstrate  
 5 here was that the percentage contribution of the LBC really  
 6 was in that particular vicinity. Not necessarily that I'm  
 7 saying these are 100% correct numbers. I can only -  
 8 COMMISSIONER: Is there any value in you  
 9 meeting with these people and seeing if you can reconcile  
 10 your figures?  
 11 MR SIBANDE: I have no problem, I can ask  
 12 the colleagues who gave me the figures that we sit down and  
 13 reconcile them. I know they have caveat these numbers  
 14 before, they place a caveat on these numbers and I can  
 15 just, ja discuss those with you, it's not a problem.  
 16 PROF KATZ: While you do meet firstly you  
 17 must just look that the base is the same. That you're not  
 18 putting other things in the base, customs, etcetera because  
 19 the taxpayer is constant to both. Secondly I would suggest  
 20 you extrapolate the trend, you'll find that as the date  
 21 goes on your statistics will be even further aggravated on  
 22 the decline.  
 23 MS STEINBERG: You mean over the time not  
 24 yet measured?  
 25 PROF KATZ: Going forward because of the

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1 problems that -  
 2 MR SIBANDE: Advocate, if I may just  
 3 comment to what Prof Katz is saying and this is an issue  
 4 that probably is controversial. That I had raised a number  
 5 of times. Even at the time that, before I even acted as a  
 6 GE. During the time leading up to the new operating model  
 7 what we've picked up as a trend, your large business  
 8 taxpayers were being moved out or new companies that were  
 9 being registered, certain companies within the large  
 10 business who were restructuring they were getting  
 11 registered, auto registered within the operations  
 12 environment. Now I wouldn't be surprised that because  
 13 that's something that we picked up with a number of cases,  
 14 I mean at some point we quantified the number to around 12  
 15 billion plus of revenue that was intended to be in the  
 16 large business but was reported under the SSMEs and that  
 17 and I hope I'm not complicating the whole thing but I'm  
 18 saying that we knew of cases where we couldn't make sense  
 19 of some of the numbers. So when you're saying that SSMEs  
 20 were growing like this and the LBC was hovering, you know  
 21 it was a bit concerning but it's a concern that we had  
 22 raised previously but I'm not saying it's a main issue, I'm  
 23 just saying that I know that you know those numbers  
 24 sometimes they were suspect.  
 25 PROF KATZ: You're right with respect and

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1 Advocate Steinberg would look at it, on corporate  
 2 restructures unbundling.  
 3 MR SIBANDE: Yes, they're unbundling.  
 4 PROF KATZ: All of that, you're right.  
 5 MR SIBANDE: Spot on.  
 6 PROF KATZ: Needs to be looked at.  
 7 MR SIBANDE: Yes.  
 8 COMMISSIONER: And what causative, you  
 9 know (inaudible) that that was a time in which the economy  
 10 was shrinking. So how do you, how do you show any  
 11 causative link between the companies being, paying less tax  
 12 because they're not being serviced by the LBC or paying  
 13 less tax because they're earning less and the economy is  
 14 down.  
 15 MR SIBANDE: The economy might have  
 16 played some role, in fact most definitely it would have  
 17 played some role but I think the inefficiencies in terms of  
 18 also you know collecting on our part was a bit of a  
 19 problem. You had no person now who was having a 360 view  
 20 of what was happening in terms of revenue within the large  
 21 business and invariably and I'm not saying that all large  
 22 corporates are like that, but you'll find those now who  
 23 would say I can save some few millions here and there  
 24 because there's nobody whose watching.  
 25 COMMISSIONER: Yes.

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1 MR SIBANDE: Over me and that, that's the  
 2 thing.  
 3 MS STEINBERG: Yes, we have quite a lot  
 4 of testimony about that.  
 5 COMMISSIONER: About what?  
 6 MS STEINBERG: About the fact that  
 7 there's now, because of fragmentation that no one has what  
 8 Mr Sibande says is the 360.  
 9 COMMISSIONER: Yes.  
 10 MS STEINBERG: And we'll hear about that  
 11 partly from the relationship managers and I think the next  
 12 witness, I do have an affidavit from somebody who used to  
 13 be involved particularly in managing the accounts and the  
 14 debt book.  
 15 MR SIBANDE: Yes.  
 16 MS STEINBERG: And she says well firstly  
 17 in the transition process there was some breakdown because  
 18 there wasn't clarity in the operating model as to who was  
 19 going where. So there was a period of about a year, she  
 20 says of uncertainty of where employees belonged, where they  
 21 should be housed and actually what their jobs were and  
 22 their key performance indicators. I raise the question of  
 23 the transition not as anything accusatory, I'm looking very  
 24 much at the model and the way in which a new model was  
 25 brought in because according to this affidavit there was a

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1 lengthy break in operational processes because there was  
 2 lack of clarity as to what the new model actually looked  
 3 like for the new business centre and where people belonged.  
 4 Is that right?  
 5 [12:05] MR SIBANDE: No, spot on, that is spot  
 6 on. And then I can explain what was the cause for that.  
 7 And again I don't understand, Judge what would have led to  
 8 that confusion. I mentioned that I happened to be the  
 9 liaison dealing with the LBC and the what you call, you  
 10 know between the LBC, the then LBC and the project team.  
 11 We had explained what each function is doing and what sort  
 12 of skills reside within each function. So where the  
 13 confusion came from I do not know. You would have thought  
 14 people who have taken that input and then correctly  
 15 allocated people to the relevant areas. But remember the  
 16 LBC because it was somehow structured differently to the  
 17 rest of SARS we had roles that you couldn't easily merge  
 18 with what was in the rest of SARS. So those were cases  
 19 that we thought would be problematic, but it appears that  
 20 even people who we thought they're supposed to be clear,  
 21 they're supposed to be clear in terms of where you move  
 22 them. People got confused and that degree of uncertainty  
 23 and you know discomfort and that existed an anxiety and all  
 24 of that -  
 25 MS STEINBERG: Well in the words of this

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1 deponent when you say why is there confusion, this is her  
 2 answer. She says "In the engagements with Bain I did not  
 3 get the sense that they were listening to what was  
 4 submitted from an LBC point of view. In some instances  
 5 they would even incorrectly record what had been said in  
 6 subsequent presentations and they would not try to correct  
 7 this. From my perspective it appeared that there were a  
 8 few people who had been chosen to lead the process and that  
 9 our input was not required or welcome. The general feeling  
 10 amongst my colleagues was that the process was going in a  
 11 certain direction and there was absolutely nothing we could  
 12 do to change it."  
 13 MR SIBANDE: I can't respond to that, I  
 14 think Bain will have to do that save to say that in my  
 15 involvement and all my interventions I ensured that  
 16 basically everybody within the Large Business Centre during  
 17 the transition actually found a home in this new operating  
 18 model, not that by the time that I had left that space  
 19 everybody was, you know, moved to various areas. There  
 20 were still some people that were left behind. So for that  
 21 I think Bain will have to explain because I wasn't party -  
 22 MS STEINBERG: I agree.  
 23 MR SIBANDE: - to those -  
 24 MR KAHLA: Sorry I mean clearly I might  
 25 not suggest that we had an intimate relationship with Bain

<p style="text-align: right;">Page 1268</p> <p>1 in your interactions, but I get the sense that you at least 2 were quite close and you understood what the expectations 3 were of the team that you had had – 4 MR SIBANDE: Absolutely. 5 MR KAHLA: And so I would expect from you 6 that you at least had a better opportunity to communicate 7 the issues that were of concern to you and your team and to 8 also have a response from Bain as to why they either accept 9 it or not accept it. Did that happen? 10 MR SIBANDE: Ja I did that, I engaged 11 people to an extent that matters were escalated to me, in 12 turn I had conversations with the Bain people on a number 13 of areas. I mean I remember in one of the units that we 14 call the tax and reportable arrangements, TARA, the TARA 15 team they were – you know people were okay, you know, in 16 terms whether they will be placed in meaningful roles and 17 that. And I had to facilitate discussions, you know, with 18 those people. I mean at some point people had to provide 19 their Bios you know, three times within that particular 20 space. You know and as to what would have happened to the 21 previous two that were submitted it made no sense, so I did 22 intervene as to – and some of some cases we were 23 successful. Some I think they fell on deaf ears. 24 COMMISSIONER: Well I think that's what 25 the deponent is saying here that things that were put to</p>	<p style="text-align: right;">Page 1270</p> <p>1 cooperative when I dealt with them, in fact I was assured – 2 there were a number of people, if I remember, who were, for 3 the lack of a better word, were sort of like forgotten by 4 virtue of the complicated roles that they occupied. But 5 eventually they were able to actually locate a division 6 where they could actually be placed. 7 MR KAHLA: So your experience is where 8 you raised issues you received a response on them. 9 MR SIBANDE: Yes I did, yes I did. 10 MS STEINBERG: Her particular concern was 11 debt because she worked in that space. Now I trust you 12 didn't recommend that debt be split in two. 13 MR SIBANDE: Is that a question? 14 MS STEINBERG: I think it's rhetorical. 15 You didn't recommend that the LBC be carved out and 16 fragmented and you didn't recommend that debt be split in 17 two. Am I right? 18 MR SIBANDE: I didn't and I don't know 19 where that came from, it's – ja. 20 MS STEINBERG: Because the debt book we 21 know has ballooned since the new operating model kicked in 22 both in the LBC and in the other spaces in SARS. This 23 deponent who works in the debt space attributes one of the 24 major reasons for the debt ballooning is the split between 25 pre and post final demand. She says that she kept raising</p>
<p style="text-align: right;">Page 1269</p> <p>1 them fell on deaf ears. That person man or a woman I don't 2 know. 3 MS STEINBERG: A woman. 4 COMMISSIONER: A woman – was saying we 5 got the impression that they asked us as a matter of 6 formality as it were only, but nothing much happened. 7 Would that be fair – 8 MR SIBANDE: No it is. 9 COMMISSIONER: And I think that is the 10 import of my colleague's question as well. 11 MR SIBANDE: It that impression. 12 COMMISSIONER: What was their response? 13 MR SIBANDE: You see what exactly my 14 colleague is saying is something that I wasn't aware of, 15 but what I'm saying to an extent that people had raised 16 concerns about the process. I took it upon myself to deal 17 with those matters. I may not know all the specifics of 18 what people were going through, but I know for a fact that 19 those that were brought to my attention I had dealt with 20 them. 21 COMMISSIONER: I don't think anyone's 22 pointing a finger at you, I think it's just we want to know 23 how were they were responded to, your interventions? What 24 kind of response from Bain? 25 MR SIBANDE: Well they were very</p>	<p style="text-align: right;">Page 1271</p> <p>1 this and I'm sure you're aware that – she says "The new 2 operating model seems to have been designed without insight 3 into the practical operational difficulties that might 4 arise. For example, the rationale for the new operating 5 model was to impose single accountability for functions as 6 communicated on the 18th of August 2015. However, in 7 respect of debt the functions were split between two areas. 8 There was a box in BAIT for pre-final demand and a box in 9 enforcement for post final demand." And she says "Our 10 Legacy course systems don't have a mechanism to split pre 11 and post final demand debts. And I was concerned with the 12 single accountability and how that would be achieved when a 13 portion of the debt is under BAIT and a portion is under 14 enforcement. I was concerned that record keeping would be 15 compromised through the system and thought there should 16 rather be a single point of accountability as there was in 17 the past. I was also concerned that the LBC debt book does 18 not fit into the definition of pre and post final demand as 19 75 to 80% of the debt book is subject to disputes and 20 suspension of payment has been applied to most debt in line 21 with the relevant legislation. So at the very least more 22 work was required to find a suitable model for the LBC 23 debt. The rest of the debt book was debt for companies in 24 business rescue, liquidations, account maintenance, 25 etcetera. We established the debt book decomposition every</p>

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1 month by going through the status of every single case. It  
 2 was possible to proceed with this level of detail because  
 3 of the limited volumes of cases we dealt with in comparison  
 4 to non-LBC debt cases." And she goes on to say it's that  
 5 oversight that they had, single points of accountability, a  
 6 team on each case, that's what was fragmented. She warned  
 7 everybody that the debt book would balloon if this happened  
 8 and so it came to pass. What are your comments on that?  
 9 MR SIBANDE: So the issue around this  
 10 splitting of that pre and post final demand and I speak  
 11 under correction, when I enquired on that and I do recall  
 12 at one of the meetings that I had attended when I was still  
 13 acting as the group executive, I raised that question  
 14 because I was given what I thought was an impossible  
 15 target, revenue target to collect on the outstanding debt.  
 16 And what my colleague is referring to there in terms of -  
 17 that deponent rather in terms of the affidavit that book  
 18 decomposition, I think that's what he's using, the term  
 19 that he's using, so when you try and stratify your debt  
 20 book you have a line of sight in terms of exactly what is  
 21 happening. And bearing in mind there was end to end  
 22 process, you will clean the account and be able to collect  
 23 from it and all that stuff. So the pre and post issue, I  
 24 understand when a discussion happened where we mentioned  
 25 and I think Ms [inaudible] spoke to that, to those as well

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1 to say when the issue was raised people realised that this  
 2 will not work. It makes absolutely no sense. So it is my  
 3 understanding that it was never implemented subsequently.  
 4 So I don't know to what extent we attribute the growth in  
 5 the debt book to that particular alleged split which was  
 6 never implemented. So that is my understanding save to say  
 7 the fact that there was no end to end protest in terms of  
 8 account maintenance. By the way the owner of or rather the  
 9 person in charge of account maintenance within the large  
 10 business had the responsibility to deal with the entire  
 11 value chain in as far as the account, what we used to say  
 12 was that he owned the account, all the taxpayer account.  
 13 And contrary to the diagnostics that I had she owned the  
 14 taxpayer account, I owned the relationship with the  
 15 taxpayer. So it was in my interests that there would not  
 16 be too many queries, that she cleaned those accounts and  
 17 let's collect money. So I'm just saying that I don't know  
 18 and I will not say what she's saying is not true, but as  
 19 far as the pre and post is concerned my understanding that  
 20 the decision makers decided not to go ahead with that  
 21 particular implementation because that's what I know.  
 22 MS STEINBERG: But they were in different  
 23 places in the organisation because you had half in BAIT and  
 24 half in enforcement.  
 25 MR SIBANDE: That was a proposal in terms

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1 of the structure, whether that got to be implemented is a  
 2 different story. I think that's what I'm actually alluding  
 3 to, so I do not recall that indeed we went ahead with that.  
 4 It was practically impossible to do that, particularly as  
 5 she's saying for the large business client how do you do  
 6 that? There were no ways.  
 7 MS STEINBERG: But you would agree  
 8 because I think if I understand you, that what was lost was  
 9 that end to end 360 degree understanding of a business and  
 10 the whole debt chain.  
 11 MR SIBANDE: Spot on and I would -  
 12 PROF KATZ: - question slightly different  
 13 -  
 14 MS STEINBERG: Yes.  
 15 PROF KATZ: If you were asked today, just  
 16 following what Advocate Steinberg's putting, would you  
 17 revive the old LBC model? Asking the same question from a  
 18 different way, assume that we asked you as a commission one  
 19 of our terms of reference is remedying, would you say that  
 20 SARS would be well advised, following everything that  
 21 Advocate Steinberg's just drawn attention to, would you say  
 22 SARS would be well advised to revive the old LBC model?  
 23 MR SIBANDE: Without a doubt, without a  
 24 doubt. In fact it's urgently required. That action should  
 25 happen as in like yesterday. We cannot afford any second

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1 to be wasted with not putting together the LBC, not  
 2 necessarily the way it was, but it needs to be put  
 3 together.  
 4 COMMISSIONER: Just going back to your  
 5 debt question, Ms Steinberg, you'll recall the head of debt  
 6 came on the last occasion and he said yes they created  
 7 these two new posts. But it wasn't going to work so the  
 8 chaps in the two posts got together and they did what they  
 9 have been doing before anyway. So I think that the witness  
 10 is saying that you can't necessarily attribute the  
 11 ballooning to the split because in fact the split didn't  
 12 occur. It just operated in a different way.  
 13 MS STEINBERG: Yes.  
 14 COMMISSIONER: I think that's the point  
 15 you're making, is that right?  
 16 MR SIBANDE: 100% Judge.  
 17 MS STEINBERG: But what did change was  
 18 that complete view -  
 19 COMMISSIONER: That's it.  
 20 MS STEINBERG: - of a taxpayer including  
 21 the debt journey.  
 22 COMMISSIONER: No I understand. In  
 23 totality -  
 24 MS STEINBERG: Yes.  
 25 COMMISSIONER: - the holistic approach.

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1 MS STEINBERG: Yes.

2 PROF KATZ: That's why you say you would

3 go back to it.

4 MR SIBANDE: Yes. May I ask the

5 Commission as well, Advocate, if you may Judge, what my

6 colleague is speaking to there is he was spot on, is that

7 360 view and the end to end process value chain. And I

8 think we need to, I need to emphasise this, when the LBC

9 was done away with every individual who was actually

10 occupying a role in the accountant maintenance space which

11 included debt management, not collection only, but the

12 entire debt management process, we start from the account

13 and all of that, they had a responsibility. If you are

14 assigned a portfolio of clients in account maintenance that

15 you clean those accounts and by clean ensure that there is

16 no debt there is also no credit due to people. If so

17 [inaudible] it properly get paid out and all of that stuff.

18 That's exactly, so we lost that. There were no people now

19 who were religiously on a day to day basis cleaning those

20 accounts as the word that we use, maintaining them because

21 we believe the cleaner the account the easier it is for us

22 to collect the debt because there's clarity in terms of

23 there's no doubt in terms of whether the amount is under

24 dispute or what. What is under dispute is under dispute

25 and that. I think that is a crucial point that I think I

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1 need to make.

2 MS STEINBERG: I think the good news and

3 we need some, is that there are processes in SARS to re-

4 establish a Large Business Centre. And I have an affidavit

5 that says that for the last 18 months in fact there's been

6 talk about this. In fact this was kicked off in January

7 2017 under the acting chief executive of BAIT, Ms Firdous

8 Sallie and she requested the innovation hub to conduct an

9 operational diagnosis, the current status of assessment to

10 put before Exco to start re-establishing a business centre.

11 COMMISSIONER: The acting CO of BAIT, is

12 that after Mr Makwakwa?

13 MS STEINBERG: Was suspended.

14 COMMISSIONER: Was suspended.

15 MS STEINBERG: Then unfortunately when he

16 returned he cancelled those recommendations according to

17 this affidavit. That was in December 2017, at the end of

18 that year. But the newly appointed acting Commissioner, Mr

19 Kingon, has now revived it again and there have already

20 been, as I understand from this affidavit, recommendations

21 put before Exco. And it's based on this data that I

22 mentioned, it comes from data analytics in SARS. And from

23 a lot of self-assessment that the large business segment is

24 no longer effectively co-ordinated, it's that end to end

25 that you're talking about. And that there is now a

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1 critical shortage of large business specialists aggravated

2 by resignations, transition movements and a general

3 shortage of these skills in the South African market. And

4 that crucially it's the relationship management function

5 that can't operate while the fragmented structure remains.

6 And the recommendations then flow out of that and it's

7 basically, as you say it doesn't have to be identical to

8 what was. But those features of an end to end service with

9 the relationship manager that's a one stop for business and

10 a team of people who have that 360 view of every client.

11 That's basically what I see is being recommended.

12 MR SIBANDE: So if I can just add, so,

13 Advocate, the comment that I made earlier on about a

14 communiqué that was sent to the large business stakeholders

15 and that, which is centred around the fact that you know

16 you still have dedicated people to speak to in the form of

17 relationship managers reporting, you know, to the group and

18 relationship manager and that. And you look at the design

19 as well because in actual fact the view was that if you

20 have relationship managers, if you keep that team together

21 effectively that is your large business.

22 MS STEINBERG: Mm.

23 MR SIBANDE: And that was wrong because –

24 COMMISSIONER: Sorry just say that again,

25 I didn't quite get that.

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1 MR SIBANDE: So I'm saying the view it

2 would appear that was held by the design team when coming

3 up with the operating model that if you keep the

4 relationship management team together and intact and do

5 away with the executive role which was my role and have a

6 GE, a group executive in charge of that unit in fact you

7 still have the LBC. But the LBC was not relationship

8 management only, in fact them being there without all the

9 other units they were powerless.

10 COMMISSIONER: It was pointless having

11 one –

12 MR SIBANDE: Exactly, essentially

13 pointless to having one.

14 MS STEINBERG: And that's the testimony

15 we'll hear tomorrow is the frustration of the relationship

16 managers who don't have the team anymore. I don't have any

17 more questions for you, but perhaps the panel or something

18 you'd like to say.

19 MR SIBANDE: No I think I've said

20 everything that I needed to say, in the main as I had

21 asked, I needed to answer questions and I think I've done

22 that save to say that a final parting shot at my side I

23 think we're doing the right thing. And as far as the LBC

24 is concerned, so now we put it together, the better for

25 South Africa because we desperately need that revenue.

<p style="text-align: right;">Page 1280</p> <p>1 PROF KATZ: Can I ask one question if I 2 may? In fact that last word, we desperately need it, why 3 do you think it was closed down? 4 MR SIBANDE: I've heard of one too many, 5 Prof, theories that people wanted to have their hands on 6 the, allow me to call it, on the large corporate where 7 there is big monies and that. 8 [12:25] I can't support that. I don't have evidence you 9 know to say, I can't really agree or disagree with that 10 view but for now I think I don't know why people do that 11 but I can say without any fear of contradiction it makes 12 absolutely no business sense. 13 PROF KATZ: Sorry, there is one other 14 thing, we haven't, I don't think so, forgive me if I've 15 missed it, one of the other good features in the old 16 structure was the governance features of that with the 17 checks and balances on settlements and all of that. 18 MR SIBANDE: Mm-mm. 19 PROF KATZ: Does that exist anywhere 20 today? 21 MR SIBANDE: I have no clue. I'm no 22 longer close to that but if – certainly within the LBC 23 because there were thresholds, certain matters could be 24 settled within the LBC and the others would require above a 25 particular threshold you know, first tier, second tier,</p>	<p style="text-align: right;">Page 1282</p> <p>1 revenue, why would you discontinue it? A unit that is a 2 division that is delivering such revenue, generating so 3 much revenue for you why would you do away with it? I 4 don't know, somebody help me. 5 COMMISSIONER: But you know – 6 MR SIBANDE: Particularly if, sorry 7 Judge. 8 PROF KATZ: That's okay. 9 MR SIBANDE: If one of your design 10 principles spoke about increasing revenue and all of that I 11 – 12 PROF KATZ: You don't see it? 13 MR SIBANDE: I don't know. 14 COMMISSIONER: You know we're hearing 15 over and over again about fragmentation, customs, LBC, 16 fragmentation all of the place and it seems to me and I 17 would like to, if you can comment on this it would be 18 helpful, that you could get two consequences of that. One 19 is it could lead to inefficiencies and that we've heard a 20 lot about, but picking up on the professor's question, it 21 can also lead to governance problems in that there is no 22 one with a 360 degree view of what's happening and it could 23 create governance problems. It could create holes in the 24 system that could be exploited. What do you say about 25 that?</p>
<p style="text-align: right;">Page 1281</p> <p>1 third tier and fourth tier I think in terms of committees 2 to approve – 3 PROF KATZ: But one of the strengths, Adv 4 Steinberg has given you a lot of the strengths of the LBC, 5 this 360 and that, but one of the other strengths was that 6 good governance model. Is that absent now? Does it exist 7 anywhere? 8 MR SIBANDE: With the LBC not being there 9 I can say that it doesn't. I'm not aware of it being in 10 existence. If it does it exists in other areas within the 11 – 12 PROF KATZ: With test settlements – 13 MR SIBANDE: - new operating model – 14 PROF KATZ: - and all of those then? 15 MR SIBANDE: It should, they have to be 16 there because you know, I would like to believe that they 17 still exist but what I'm saying is that you no longer have 18 the anchor of that particular unit that has got a 360 view 19 on this group of taxpayers or this particular segment. So 20 as to how effective it is now I do not know whether it is 21 happening and I just wanted to conclude by saying that, 22 Judge, it never made business sense when it became apparent 23 that LBC was done away with. Anyone who is leading a 24 business, a large corporate out there, a product line or a 25 product that is giving you 30 plus or a third of your</p>	<p style="text-align: right;">Page 1283</p> <p>1 MR SIBANDE: The governance aspect saying 2 this is not in production of anybody in my space, I mean in 3 that particular unit, I think efforts are in place to 4 ensure that governance in the organisation is really, 5 really attended to, governance matters and that and you're 6 right, it could either be either of those two, because for 7 me as I mentioned that anchor is very important. You know 8 you need somebody who will have that 360 view and be able 9 to look after all those things and ensure that – 10 COMMISSIONER: But have you got someone 11 in, you know people that see the end to end? 12 MR SIBANDE: Ja. 13 COMMISSIONER: They can see things that 14 are happening in between. 15 MR SIBANDE: And attend to them. 16 COMMISSIONER: Ja and they can make sure 17 things aren't fiddled in between for that matter. 18 MR SIBANDE: That's what used to happen 19 and the strength of any functional model which actually 20 this tried to be, to look like, the current operate model, 21 actually lies in terms of your service level agreements or 22 the well-functioning interdependences. If you don't take 23 it off the interdependences you're going to have silos and 24 you'll be in trouble. We're going back to the sector model 25 that we have.</p>

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1 PROF KATZ: But this governance feature  
 2 is really, really fundamental in the LBC and also the  
 3 question of settlement of disputes. The governance model  
 4 required for that was quite established in the old LBC.  
 5 MR SIBANDE: You could call the head of  
 6 that particular unit and ask why a particular figure was  
 7 settled or a particular debt was settled. They will be  
 8 able to account.  
 9 PROF KATZ: Sure.  
 10 MR SIBANDE: So that's testament to the  
 11 fact that people understood the importance of governance in  
 12 that space in terms of all the decisions that you're making  
 13 in that process.  
 14 MS STEINBERG: And there were committees,  
 15 there were committees making the decisions.  
 16 MR SIBANDE: It was not a one man show,  
 17 yes –  
 18 COMMISSIONER: I think they still are.  
 19 MS STEINBERG: All committees.  
 20 MR SIBANDE: There are still committees  
 21 of course, yes.  
 22 MS STEINBERG: Ja.  
 23 COMMISSIONER: But just take it, tell me  
 24 if I'm wrong, take your debt for example and you split it  
 25 in two, the person at the beginning who starts the process

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1 gets to a point, it goes somewhere else, that person at the  
 2 beginning never knows whether that debt is actually  
 3 collected or not. Would that be correct?  
 4 MR SIBANDE: I would like to believe that  
 5 is the case. In fact –  
 6 COMMISSIONER: It can't be stopped in the  
 7 middle for example and the person, no one would know.  
 8 MR SIBANDE: Ja, I think it is correct.  
 9 In the LBC space when you were the auditor who actually  
 10 raised the assessment, you have to ensure that the debt  
 11 that you're putting in the debt book you know, the  
 12 assessment you're putting in the debt book is actually  
 13 collectable or the prospects thereof, of collection are  
 14 looking good. So –  
 15 COMMISSIONER: But I mean you raise the  
 16 assessment, start the process –  
 17 MR SIBANDE: Exactly –  
 18 COMMISSIONER: - and no one knows whether  
 19 it actually ended up with –  
 20 MR SIBANDE: This time around nobody  
 21 knows whether it gets collected or not, ja –  
 22 PROF KATZ: And the other corollary of  
 23 that, Judge, is that, I think the one you just mentioned,  
 24 if you have an assessment, you raise it, you've got to  
 25 believe it is collectable.

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1 MR SIBANDE: Yes.  
 2 PROF KATZ: So if you do it and then it  
 3 goes elsewhere you would never got responsibility. It is  
 4 like a salesman who over sells.  
 5 MR SIBANDE: Ja –  
 6 PROF KATZ: So you can't collect the  
 7 debt. You can't divorce the responsibility for incurring  
 8 the debt with the responsibility in collecting it.  
 9 MR SIBANDE: But at the same time I can't  
 10 falter the people who are responsible for your audits and  
 11 all of that stuff currently and I do not know –  
 12 COMMISSIONER: Yes –  
 13 MR SIBANDE: - and it will be unfair of  
 14 me to say –  
 15 COMMISSIONER: No, I'm not suggesting it  
 16 is happening –  
 17 MR SIBANDE: - those things are not  
 18 happening, so probably there are systems and places,  
 19 systems and processes in place to ensure that people raise  
 20 valid assessments and we should like to believe that it is  
 21 part of governance and that those assessments are  
 22 collectable. They should definitely, in fact they are  
 23 checks and balances –  
 24 COMMISSIONER: No, I'm not suggesting  
 25 that it is occurring.

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1 MR SIBANDE: Yes.  
 2 COMMISSIONER: I'm just saying  
 3 potentially from a governance point of view –  
 4 MR SIBANDE: Yes, it could be –  
 5 COMMISSIONER: - those are potential  
 6 problems you could end up with –  
 7 MR SIBANDE: No, absolutely –  
 8 COMMISSIONER: - when you start  
 9 fragmenting things and no one is seeing the end to end  
 10 anymore.  
 11 MR SIBANDE: No, most definitely and not  
 12 only to this particular –  
 13 COMMISSIONER: Yes –  
 14 MR SIBANDE: - segment, it could happen  
 15 across but –  
 16 COMMISSIONER: And the vulnerability is  
 17 all along the way then, vulnerabilities that could be  
 18 exploited.  
 19 MR SIBANDE: No –  
 20 COMMISSIONER: I don't say they are being  
 21 exploited.  
 22 MR SIBANDE: Ja.  
 23 COMMISSIONER: I'm just saying that  
 24 potentially, would you agree with that?  
 25 MR SIBANDE: Ja, of course. There is a

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1 possibility of that, Judge, I can't overrule that  
 2 possibility.  
 3 MS STEINBERG: I think Adv Masilo has a  
 4 question.  
 5 MS MASILO: Just one last question from  
 6 me, I spoke to someone who said there is nothing wrong with  
 7 what has happened at the LBC. LB exists. Big Corporates  
 8 are still being serviced as they were, all that happened  
 9 was that the new operating model just put likes with likes  
 10 you know in separating or in stopping the end to end  
 11 process at the LBC. You've answered the question a  
 12 thousand times. What would be your comment to that?  
 13 MR SIBANDE: I don't know through what  
 14 lenses these people are saying what they're saying. They  
 15 will have to come and demonstrate to me that in fact. In  
 16 fact the true test of what they are saying is when you can,  
 17 if you were to interview, in fact you are going to be  
 18 interviewing some of the stakeholders and let us hear if  
 19 they share the same sentiment, because I can tell you now  
 20 as things stand this is what I've learned and I've heard  
 21 and you would hear that they are frustrated. So they don't  
 22 know who to speak to when they knew exactly that I'm now,  
 23 I've reached the dead end, who do I speak to? They knew  
 24 exactly previously who to speak to and that. So currently  
 25 I don't know. So if people have that view they're entitled

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1 to that view but as far as I am concerned, I don't know how  
 2 they would support it because the stakeholders concerned  
 3 that are affected, I think their voices need to be heard  
 4 and let's hear if they share the same view.  
 5 MS MASILO: Thank you.  
 6 MS STEINBERG: Thank you very much.  
 7 COMMISSIONER: Thank you very much.  
 8 That's been very, very helpful to us and we really  
 9 appreciate you coming along. As I say we think this is a  
 10 very important commission. It is, we're dealing with the  
 11 institution without which government can't run and we  
 12 really need to look at things very carefully. So thank you  
 13 very much for your insight.  
 14 MR SIBANDE: As you say, Judge, at  
 15 yourselves.  
 16 [NO FURTHER QUESTIONS - WITNESS EXCUSED]  
 17 MS STEINBERG: There is one more witness  
 18 before lunch and that's Ms Gosai.  
 19 MR SIUO: Judge, we have Ms Nishana  
 20 Gosai.  
 21 COMMISSIONER: Good morning.  
 22 MS GOSAI: Good morning.  
 23 COMMISSIONER: Thank you very much for  
 24 giving us your time.  
 25 MS GOSAI: Thank you.

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1 COMMISSIONER: Will you affirm that the  
 2 evidence you give will be the truth, the whole truth and  
 3 nothing but the truth? If so will you say I do?  
 4 NISHANA GOSAI: I do.  
 5 COMMISSIONER: Thank you.  
 6 EVIDENCE OF MS GOSAI  
 7 MR SIUO: Ma'am, when did you join SARS  
 8 and when did you leave?  
 9 MS GOSAI: I joined on the 1st of November  
 10 2007 and I left on the 30th of June 2016.  
 11 MR SIUO: And at the point of your  
 12 departure what position did you occupy?  
 13 MS GOSAI: I was the manager of the  
 14 Transfer Pricing Unit at the LBC.  
 15 MR SIUO: And how was the unit structured  
 16 before the implementation of the operating model?  
 17 MS GOSAI: I think we had about 25 staff  
 18 members ranging from graduates to auditors to senior  
 19 auditors, specialists, manager and a senior specialist. We  
 20 reported into the executive for Assurance who reported into  
 21 the GE for LBC.  
 22 MR SIUO: And what was the methodology  
 23 used in your units in respect of its work?  
 24 MS GOSAI: Sorry, just to give you a bit  
 25 of context, so I took over as manager of the unit in 2010.

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1 From 2009 to 2010 until my formal appointment I was acting  
 2 in the position and as part of the Siyandisa process we  
 3 moved from being in Special Support to moving into the  
 4 audit space of the Large Business Centre. When we got  
 5 there, there was no real methodology. Transfer Pricing  
 6 audits were virtually not really, you know it hadn't really  
 7 taken off. There were, you know we were employed in the  
 8 Specialist Support Unit as advisers into the Assurance, the  
 9 audit space and we were not the primary caretakers of any  
 10 audit for Transfer Pricing and when we moved in to the  
 11 Assurance space I think following the Siyandisa  
 12 restructure, that's when audits became our primary  
 13 responsibility and we, through trial and error we developed  
 14 are risk assessment process. We realised that we had  
 15 limited resources which we had to deploy in the best and  
 16 most effective way, so we wanted the most, you know we  
 17 wanted bang for buck. We wanted the best cases, so we  
 18 developed a risk assessment methodology.  
 19 We tried, we visited a lot of different  
 20 countries. We leveraged from their best practice around  
 21 transfer pricing, how to set up a unit, how to define KPIs,  
 22 how to structure an audit and how to bill capacity for a TP  
 23 audit. Do you just send a junior auditor into, you know  
 24 the biggest multi-national as listed on the JSE? No, so we  
 25 put together very well structured teams to lead transfer

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1 pricing audits. Our methodology therefore was always one  
 2 senior person that was well versed with transfer pricing, a  
 3 midterm skilled person, that was at an intermediate level  
 4 together with a junior people and that was the minimum of a  
 5 transfer pricing audit team.  
 6 MR SIUO: And case selection, how was  
 7 this determined?  
 8 MS GOSAI: Originally prior to the Risk  
 9 Assessment division being set up at the LBC the Transfer  
 10 Pricing unit risk profiled its own cases based on a  
 11 methodology that was developed and that's how case  
 12 selection happened. Subsequently Risk Assessment passed on  
 13 cases to the unit.  
 14 MR SIUO: And what other functions were  
 15 housed in your unit?  
 16 MS GOSAI: There wasn't – maybe the word  
 17 functions is not correct, but what we did was not only lead  
 18 the audits. We also gave inputs into legislation and  
 19 policy design. We gave inputs into key international fora  
 20 that SARS was participant to, so I represented SARS at the  
 21 OECD's WP6 which is the working party for Transfer Pricing.  
 22 I sat on the African Tax Administration Forums, Tax  
 23 Technical Committee, thinking about whether international  
 24 best practice and in the space of Transfer Pricing was it  
 25 fit for purpose for Africa and African countries or

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1 developing countries. We sat on the United Nations Panel  
 2 developing a Transfer Pricing manual for developing  
 3 countries. We did work around training other, and up  
 4 skilling other tax administrations in their Transfer  
 5 Pricing journeys by sharing best practice, our internal  
 6 knowledge about developing an administration and how to  
 7 effectively audit. So, ja, we were quite multi-skilled and  
 8 we did many things, but our primary function was that of  
 9 audit.  
 10 MR SIUO: Yes and to ask the obvious what  
 11 is Transfer Pricing?  
 12 MS GOSAI: Well, Transfer Pricing  
 13 essentially monitors the prices between multi-nationals.  
 14 So whenever you have a cross border transaction that is  
 15 with a connected person, so you'll have multi-nationals and  
 16 they have subsidiaries all around the world and whenever  
 17 they have this intercompany trade, what we do is, make sure  
 18 that the price at which they trade is, and it is based on  
 19 this principle called arm's length, because arm's length  
 20 meaning I should trade with my related party the way I  
 21 would trade with somebody who is not related to me, because  
 22 if I don't trade at arm's length I can manipulate profits,  
 23 I can understate profits in South Africa and overstate them  
 24 in some other jurisdiction and that affects the taxable  
 25 income that is declared here which means we have less

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1 revenue to tax.  
 2 MR SIUO: Yes and this means you would  
 3 have signed numerous agreements with other tax governance  
 4 authorities and foreign jurisdictions. Is that correct?  
 5 MS GOSAI: Not so simplistic. We have  
 6 double taxation agreements, you know in South Africa as a  
 7 whole the SARS. We have these double taxation agreements  
 8 which mean that whenever there are fights about taxing  
 9 rights that that's a jurisdiction based, then your double  
 10 tax treaty will kick in to allocate taxing rights. However  
 11 Transfer Pricing is one of those anomalies because it  
 12 doesn't give rise necessarily to juridical double tax but  
 13 more economic double tax.  
 14 MR SIUO: Yes.  
 15 COMMISSIONER: Will you move the profits  
 16 to the best tax haven, as it were?  
 17 MS GOSAI: Exactly, ja.  
 18 COMMISSIONER: So you lose the profits  
 19 here?  
 20 MS GOSAI: You lose the profits here.  
 21 COMMISSIONER: Yes.  
 22 MR SIUO: And in respect of case  
 23 settlement how did you determine this?  
 24 MS GOSAI: For Transfer Pricing SARS had  
 25 a policy and it still does to this day, that SARS would

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1 never initiate settlement discussions with the taxpayer.  
 2 It was also going to be that a taxpayer would tick the box  
 3 to say, or approach SARS to say we would like to consider  
 4 settling this amicably. On that basis I would liaise with  
 5 then LAPD. At the time the head of LAPD was Mr Kosie Louw  
 6 and we would then engage as a combined unit between the  
 7 Transfer Pricing Unit and LAPD as to how to enter the  
 8 settlement discussions and negotiations.  
 9 MR SIUO: And coming to the structure  
 10 that you just mentioned what in your opinion were the  
 11 benefits of having Transfer Pricing structured in the  
 12 manner?  
 13 MS GOSAI: Oh, it led to, it ensured  
 14 quality because you always had one very skilled person  
 15 leading the audit. It ensured skills transfer because when  
 16 we started with less experienced people with different role  
 17 responsibilities you were ensuring that they were learning.  
 18 A key part of understanding Transfer Pricing is by "on the  
 19 job" learning. You can sit and learn the theory and it  
 20 will take you nowhere when you are sitting at the coalface  
 21 and you actually have to execute. So the "on the job"  
 22 training was very important to skill transfer and building  
 23 the units.  
 24 MR SIUO: And how much revenue did the  
 25 unit collect during your time?

<p style="text-align: right;">Page 1296</p> <p>1 [12:45] MS GOSAI: Over a three year period from  2 2013, or I think it is 2012 maybe 2013 to the time I left  3 Cash in the bank was 5.8 billion and we had made  4 assessments to the value of over 20 billion. We had  5 pipeline for the 2016 year, 2016/2017 year of about another  6 3 billion which was in fact realised. 2.5 billion was, of  7 that was already realised at the end of the 2017 financial  8 year.</p> <p>9 PROF KATZ: Advocate, sorry, can I just  10 make one suggestion. One refinement for your question,  11 what was the benefit of having the transfer pricing unit in  12 the LBC? In other words you could have a transfer pricing  13 unit out of it. The real thrust, what's the benefit of  14 having it in an LBC.</p> <p>15 MS GOSAI: Well given the nature of who  16 the audit targets were, which was always the large multi-  17 nationals, you are not going to go for anybody who has a  18 sole proprietary business in South Africa. That was your  19 target base. It was housed in the LBC. The other thing we  20 did was we made sure that all transfer pricing audits  21 nationally was also housed and directed out of this unit.  22 And the reason we did that was because it ensured  23 consistency of approach, consistency of application and  24 consistency of the policy. So you didn't have this  25 disjointed, before we centralised transfer pricing audits</p>	<p style="text-align: right;">Page 1298</p> <p>1 machine.</p> <p>2 MR SIUO: Yes. And then at some point  3 there was a review of the operating model. Were you ever  4 consulted?</p> <p>5 MS GOSAI: No.</p> <p>6 MR SIUO: And when were you informed  7 about the new operating model?</p> <p>8 MS GOSAI: There was a, it's interesting  9 because I've been listening to the testimony of the  10 morning. I think I made a note of a particular date. On  11 the 23rd January 2015 we used to get these internal messages  12 from the office of the Commissioner. And the Commissioner  13 announced that the review of the operating model structure  14 and he announced the project team and he said it was going  15 to be in phase 1 and phase 2. And phase 1 was to develop a  16 new operating model business architecture and structure and  17 craft a framework for how SARS would proceed with its  18 modernisation strategy. This phase was to be completed by  19 31 March 2015.</p> <p>20 Now I remember thinking, because I wasn't really  21 at the executive level, but thinking well we're at the end  22 of January and within two months we are going to get to  23 develop this new operating model and that we're going to  24 have it done by the 31st March, so the first thing that  25 struck me was that that's a bit ambitious, even as a lay</p>
<p style="text-align: right;">Page 1297</p> <p>1 you had some maybe auditor who was picking up a subsidiary  2 company of a multi-national somewhere in Alberton and was  3 trying to audit this company. So we realised that that was  4 not good.</p> <p>5 MR SIUO: And at some point transfer  6 pricing also gained some sort of international acclaim?</p> <p>7 MS GOSAI: Transfer pricing has always  8 been a controversial, the most controversial tax issue, not  9 only for tax administrations but also for large multi-  10 nationals. But what happened was that for a number of  11 years, I think from about 2010/2011 onwards it became a  12 strategic objective for SARS. It was always listed on the  13 SARS strategic plan. And there was a lot of focus on it.  14 It was heightened by the Thabo Mbeki panel on illicit  15 financial flows out of Africa and furthermore the base  16 erosion profit shifting project of the OECD.</p> <p>17 MR SIUO: Yes. And at some point were  18 voted most sophisticated transfer pricing regime within  19 BRICS, is that correct?</p> <p>20 MS GOSAI: Yes, at the end of, I think  21 around February 2016 Transfer Pricing Week which is this  22 international magazine does a reader poll kind of survey.  23 And for prior years South Africa always came last but in  24 2016 we ranked, the readers voted South Africa as the most  25 developed, as having the most developed transfer pricing</p>	<p style="text-align: right;">Page 1299</p> <p>1 person not knowing much about new development or new  2 structure design. That seemed like a tight deadline. The  3 second thing was that he announced the composition of the  4 project team in another email or probably in the same email  5 and I noticed that no one from LBC was on that project  6 team. So when you're on the floor and you're talking to  7 everybody, everybody thought like well why isn't there an  8 LBC. So I don't know if Vincent was added subsequently as  9 part of LBC but at that point I didn't see any LBC people.</p> <p>10 MR SIUO: As I understand Mr Sibanda's  11 evidence is that he formed part of a sub-structure of the  12 steering committee.</p> <p>13 MS GOSAI: The, all, there was a whole,  14 I'm trying to think, I can tell you the name, the date of  15 the communication with the composition of the whole team.</p> <p>16 MR SIUO: Alright.</p> <p>17 MS GOSAI: Ja.</p> <p>18 MR SIUO: And how, what type of impact  19 has the, during your time because you would have left at  20 the end of 2015, is that correct?</p> <p>21 MS GOSAI: No, June 2016.</p> <p>22 MR SIUO: June 2016, alright. And what  23 was the impact of, you would have been housed thereafter in  24 a different unit and so on.</p> <p>25 MS GOSAI: Ja. So the impact of living</p>

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1 out the transition phase of this new structure was that we  
 2 experienced almost a paralysis in decision-making. I was  
 3 like at my wits end. I had one particular case. We always  
 4 drafted significant case memos. Whenever we were auditing  
 5 a very large multi-national or the issue was very complex  
 6 or the amount at stake were highly significant, because  
 7 remember some of the amounts that we were looking at could  
 8 have affected the share price of certain companies, it  
 9 could have wiped out the entire profits for a particular  
 10 year. We always kept the Commissioner and the Exco  
 11 apprised of where we were, what the issues were and why we  
 12 were auditing them.

13 But after the operating model we were like, no  
 14 one wanted to make a decision. We had one particular case  
 15 that we were up against in prescription meaning that if we  
 16 didn't raise the assessment or issue the letter of findings  
 17 within a certain time we were going to lose the assessment.  
 18 And I had to go to Pretoria, they had to have a specially  
 19 constituted technical panel that I had to present to, to  
 20 explain why we needed to raise this assessment. Now  
 21 previously that would have sat at LBC and we would have  
 22 done it, we would have done it on the turn and it would  
 23 have happened. We got an email that evening, my boss sent  
 24 an email to the Commissioner saying we've worked through  
 25 the night, we're going to get this done. And the Com's

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1 response was well it's not really about the deadline but  
 2 it's more about the quality. And I do agree with him about  
 3 the quality, the deadline was equally important because if  
 4 you are up against prescription, you miss that, you can't  
 5 raise the assessment. So this sort of paralysis in the  
 6 decision-making really made it hard to execute. We were  
 7 writing memos upon memos and explaining things left, right  
 8 and centre.

9 MR SIUO: And risk, what happened to your  
 10 risk function?

11 MS GOSAI: The risk function was still  
 12 intact. You know I, there's always been a little bit of a  
 13 tug of war between risk and the audit section because risk  
 14 will adhere to their KPIs to say we need to refer X amount  
 15 of cases to audit, audit will always say you're not sending  
 16 me quality risk profiles, I need more. This is not  
 17 substantive enough for me to take to audit and the  
 18 quantification of the audit, of the cash that you think is  
 19 going to be collected is inaccurate. So you're setting an  
 20 expectation that is not there.

21 MR KAHLA: Just clarity for me. On that  
 22 matter where you had to come before this panel, technical  
 23 panel and there was, and you were faced with the risk of  
 24 prescription, did you finally get to get a decision on that  
 25 with time for you to avoid prescription?

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1 MS GOSAI: We pushed, ja we got it  
 2 through.

3 PROF KATZ: With your permission can I  
 4 ask a related question? This paralysis in decision-making,  
 5 particularly on prescription, did it vary with the identity  
 6 of taxpayer? In other words was it slower in the case of  
 7 some taxpayers than others?

8 MS GOSAI: No, because essentially with  
 9 this fragmentation of the LBC and everybody now split in  
 10 terms of reporting lines, nobody wanted to make a decision.  
 11 So everybody was passing it up the chain and finally it was  
 12 moving more into the Pretoria space and less into the audit  
 13 space.

14 PROF KATZ: But it didn't differentiate?

15 MS GOSAI: No.

16 PROF KATZ: Between the identity of  
 17 taxpayers?

18 MR SIUO: And also case selection, what  
 19 type of impact did it have on case selection?

20 MS GOSAI: I wouldn't know because risk  
 21 assessment was a separate division. I can say that when  
 22 there were things out there in the media, when there were  
 23 obvious things that were happening and reported in the  
 24 media then we would act upon that and say to risk  
 25 assessment you need to risk assess this particular

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1 taxpayer.

2 MR SIUO: I have here an affidavit from  
 3 the group executive of investigative audit and there are a  
 4 few paragraphs that I want to read to you and to get your  
 5 comment on, alright. So let me start on, I want to go to  
 6 the question of revenue and I'll start in the period  
 7 2015/2016 and I'm reading from page 11 – this is just for  
 8 the record – from page 11 of the affidavit and I'll start  
 9 on paragraph 36. And it says that "In 2015/2016 the  
 10 transfer pricing team completed ten cases of which eight  
 11 cases had assessments. The total value of assessments  
 12 raised was 1.4 billion and revenue yield for the year was  
 13 700 million. Could you comment on that because you've  
 14 given evidence that between what was it 2012/2013 to about  
 15 2015 there was about 5.8 billion that had been raised and  
 16 we see, to me it appears to be a decline, a significant one  
 17 at that." What could have been the cause of that?

18 MS GOSAI: Transfer pricing does work in  
 19 peaks and troughs so what we did was over, when you talked  
 20 about the methodology it was always important to have a  
 21 pipeline. And in that particular year for 2016 that 2.5  
 22 billion that I referred to which was only realised end of  
 23 2017 was hampered by the settlement process. So one of the  
 24 things we also did when we took over, when I took over the  
 25 transfer pricing unit was I refused to have settlements in

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1 March because a lot of taxpayers thought if you come in  
 2 March you'd get a discount. So we wanted to drive a  
 3 principle, encourage compliance, not necessarily get money  
 4 in the bank, just to make a collection target. So, after  
 5 you had your big hits in the 2013/14/15 year you would  
 6 expect a decline in 2016 and that was specifically because  
 7 of one particular case where that really new yield only  
 8 came in at the end of 2017.

9 MR SIUO: And then something happens, so  
 10 I'm reading from paragraph 37 and it says, "In 2016/2017  
 11 the transfer pricing team completed 30 cases of which 9  
 12 cases had assessments. The total value of assessments  
 13 raised was 5.7 billion and the revenue yield for the year  
 14 was 2.57 billion." So does that – okay. And then there's  
 15 more. There's a dip in 2017 so it says, this is paragraph  
 16 38, it says, "In 2017/2018 the transfer pricing team had  
 17 completed 22 cases of which 6 cases had had assessments.  
 18 The total value of assessments raised was 11.3 billion and  
 19 the revenue yield for the year was 1.87 billion." What  
 20 explains the dip?

21 MS GOSAI: I can only attribute it to the  
 22 lack of pipeline, the lack of flow through. I do know  
 23 this, the audits that have yielded results are Legacy ones  
 24 mainly, so it takes us about, when we say we have cashed  
 25 revenue those audits have sometimes been five, six, eight

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1 years in the making. You don't just raise an assessment  
 2 and collect money in transfer pricing. So that is why that  
 3 having that structured flow through and pipeline is  
 4 important because you're not only looking for today, you're  
 5 forward looking for three years and four years ahead. The  
 6 dip also might be attributed to, so I'm a bit, it would be  
 7 interesting to know what cases are in that 2017 record and,  
 8 but furthermore what does it mean when cases are completed?  
 9 Is it just the assessment raised or is it cash in the bank?

10 MR SIUO: So I'm working on cash in the  
 11 bank, right?

12 MS GOSAI: Right.

13 MR SIUO: So I start at 2015, 2016 it  
 14 was, this was the revenue yield, does that mean cash in the  
 15 bank, revenue yield?

16 MS GOSAI: Revenue yield, yes.

17 MR SIUO: Alright, so it's 700 million,  
 18 then it goes to 2016/2017 it's 2.57 billion and then  
 19 2017/2018 it's 1.87 billion.

20 MS GOSAI: That means there's no credible  
 21 cases coming through now.

22 MR SIUO: Now?

23 MS GOSAI: Ja.

24 MR SIUO: So what's the reason? I'm  
 25 going to get to that. There are other paragraphs that deal

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1 with that but is it because of the change in operating  
 2 model that would affect the so called pipeline that you  
 3 referred to?

4 MS GOSAI: If you ask me I would think  
 5 it's that plus a change in KPIs. People drive and push  
 6 what they are measured against.

7 MR SIUO: Talk to us a bit on that, on  
 8 the KPIs? There must have been a change at some point?

9 MS GOSAI: Ja. So when I had, took over  
 10 the unit we were transfer pricing was like a square peg  
 11 being fitted into a round hole. It just didn't fit. The  
 12 KPIs didn't suit us so we had a long battle with management  
 13 but eventually we got them to change the KPIs. And we  
 14 specifically chose KPIs for different levels. So  
 15 previously auditors were assessed on or their KPIs were  
 16 measured on cases raised, cases assessed. That drove the  
 17 wrong behaviour because it meant an auditor could just  
 18 raise a frivolous assessment and then let it go into the  
 19 process that he's made with KPI, he can do ten a year.  
 20 That's not what we wanted to do, so we change it to  
 21 quality, turnaround, revenue was the least bit of the KPI  
 22 and we did skills transfer and then there was a manager  
 23 discretion to say like 5%, for those who would go the extra  
 24 mile. What did you do over and above your key KPIs that  
 25 you should be recognised for? Quality and turnaround went

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1 hand in hand because if you had good audits that, if you  
 2 put the quality effort and you turned your case around in  
 3 time it's easy, you get information from a taxpayer,  
 4 somebody can sit on it for six months, not do anything. So  
 5 you put that, you overlay those two KPIs together and then  
 6 you knew you would get an assessment. It would drive the  
 7 right behaviour. And then you put the skills development  
 8 and transfer and you'd go in the extra mile and that was  
 9 it. I understand now that the KPIs reverted back to  
 10 assessments raised.

11 COMMISSIONER: Sorry, I've heard that  
 12 time and time again is that your bonus depends on how many  
 13 audits are done, for example. Do you know about that? And  
 14 so people tend to do the easy audits. The more you get the  
 15 bigger the bonus and the difficult audits remains at the  
 16 bottom of the file.

17 MS GOSAI: Well I think I put in my  
 18 submission I never really knew how bonuses were allocated  
 19 at SARS because there was never any stated policy that you  
 20 know you had a performance management system and a rating  
 21 system that okay if you were a 4 rater or a hitter, a 5 or  
 22 an exceeds that you would get 15% of your yearly  
 23 remuneration, I never knew that.

24 COMMISSIONER: Okay, anyway we'll leave  
 25 that one.

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1 MS GOSAI: Ja.

2 MR SIUO: Alright. And then I want to

3 talk about the cases currently. So I'm reading from

4 paragraph 39, still on page 11. It says, "The 2018/2019

5 case number target for transfer pricing is 36 cases.

6 Thusfar the team has 41 cases as a work in progress.

7 However, several have already deemed to have no risk." On

8 paragraph 40 she says that, "Completing the 36 cases is at

9 risk due to the following, 40.1, insufficient work in

10 progress at the relevant stages of execution to ensure case

11 completion early in the year." Does this speak to what you

12 had said about a pipeline?

13 MS GOSAI: That first comment about

14 closing a case with no risk, that for me is shocking

15 because when I was there we had 100% hit rate. You didn't

16 even take a case into audit, it didn't even pass go if it

17 wasn't credible. So closing a case with no risk is quite

18 an indicator.

19 COMMISSIONER: Indicator of? Indicator

20 of?

21 MS GOSAI: That what's being passed

22 through is not substantive, the quality is lacking or that,

23 it could be that the auditors are not actually sufficiently

24 applying their minds and they are taking the easy way out

25 to say close the case.

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1 [13:05] MR SIUO: And is this because there is an

2 ingredient missing from the process. If it was during your

3 time, 100% head rate, now you know there are risks of cases

4 not being completed. What causes that in your -

5 MS GOSAI: You know when I was there, as

6 I said, we had significant staff, well not really

7 significant, I mean 25 odd people is not significant, but

8 literally there were about five of us that were really well

9 versed with transfer pricing. And we carried the quality

10 and you know, the burden of ensuring that the credibility

11 was there. So even if the case was referred to by risk I

12 would still re-risk profile it in my division before

13 accepting it. And if there were shortcomings highlight

14 them, go sit with the risk profilers, talk through it, they

15 would either understand or fight back with us, but we would

16 have that very solid engagement. And by the time you

17 trigger the button and notified a taxpayer of an audit that

18 audit was going to yield results.

19 PROF KATZ: Sorry if I may, Lunga -

20 MR SIUO: Yes.

21 PROF KATZ: You said it's quite shocking,

22 one of the things that could have happened is that the

23 auditor could have closed it without risk.

24 MS GOSAI: You can -

25 PROF KATZ: I thought that they can't, I

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1 thought it means a governance process before you can settle

2 or withdraw a case.

3 MS GOSAI: I mean no disrespect, but the

4 skills, the transfer pricing unit and the skills that we

5 had were really just there. What we did was, you know, the

6 governance committees that we went to, I don't think any of

7 them had TP knowledge. We presented to committees in a way

8 that explained the issue. So they were very dependent on

9 how we led the explanation and then would ask us okay well,

10 you know, did you ask enough evidence, can you show us how

11 much evidence did you ask from the taxpayer. So they were

12 more about did you follow due audit process rather than

13 getting into the substantive technical issue because they

14 didn't understand that. They would be fairly reliant upon,

15 you know, the TP people to lead the technical side of it.

16 And you can spin it however you want to, I mean I can tell

17 you there's no risk and if you don't know any better you're

18 going to rely on my judgement.

19 MR SIUO: Yes.

20 PROF KATZ: And sorry was it as

21 subjective as that?

22 MS GOSAI: What do you mean?

23 PROF KATZ: That they would rely on the

24 individual person's judgement.

25 MS GOSAI: If I can give some context,

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1 before raising a letter of findings at the LBC during my

2 time I would have to send my letter of findings to

3 specialist support and we worked with a single gentleman

4 there. And over time got him, you know, up to speed and

5 you know, well versed with transfer pricing so that he

6 could review our letters. And that was a governance

7 procedure to say that you weren't just, you know, making

8 the decision to do this on your own, it had in and

9 independent review. After that specialist support division

10 reviewed the letter of findings we would then present it to

11 a general assurance committee. That assurance committee

12 was made up of senior managers in the general audit space.

13 So they were not deep level, you know, TP technicians, so

14 when they read the letters and the letters were quite

15 detailed, they would understand, you know, the tax side of

16 it, they would see the motivation. But if you asked them

17 to interrogate and question it technically they wouldn't be

18 able to do that.

19 Their mandate was to ensure that we acted

20 responsibly, that we gave the taxpayer enough time to

21 respond, we done a sufficient enough job, we didn't just

22 audit today, you know, prematurely apply our mind and raise

23 an assessment within a week that enough correspondence and

24 due audit process has been followed. So that's really what

25 the interrogated us and on the technical side of it they

<p style="text-align: right;">Page 1312</p> <p>1 were comforted by the fact that there was this specialist 2 support review as well.</p> <p>3 PROF KATZ: The thrust of my question, 4 sorry, one of our terms of reference is that there must be 5 equal treatment of all taxpayers. I'm not so concerned 6 about raising assessments through lack of skill, I'm more 7 worried about settling or withdrawing to favour a 8 particular taxpayer. Could that occur there?</p> <p>9 MS GOSAI: Settlements you're just not 10 able to do them by yourself. You can enter into the 11 negotiations, so even at an audit stage the rule was that 12 no single auditor could attend a taxpayer meeting, it 13 always had to be at least two people. So there was 14 somebody in the room as a witness. Settlements you just 15 could not do by yourself.</p> <p>16 PROF KATZ: Well that was in your day 17 we're talking about.</p> <p>18 MS GOSAI: Ja.</p> <p>19 PROF KATZ: Do you know what the current 20 position is, if you don't –</p> <p>21 MS GOSAI: I do, I actually had to – now 22 that I'm an adviser in the private sector I've had one or 23 two settlement meetings and I have seen that there's a 24 panel of people.</p> <p>25 MR SIUO: Right I want us to touch on</p>	<p style="text-align: right;">Page 1314</p> <p>1 certain sense of sluggishness when it comes to the question 2 of case selection. I know you'd sort of indicated to that 3 that's it not something you're involved in, but I'll put 4 this to you anyway and this is in paragraph 41. It says 5 civil case selection supplies to the investigative audit 6 transfer pricing team. Continuous engagement is had to 7 ensure that cases are supplied timeously and in line with 8 the case number target set for each year. Now this to me, 9 I mean it touches on other paragraphs wherein there's been 10 an indication that there's a problem when it comes to the 11 pipeline, right. Was this the case during the old 12 operating model, when you were at SARS?</p> <p>13 MS GOSAI: No and the reason is because 14 if the pipeline was not forthcoming we would have the 15 engagements sooner and we had, you know, a strategy. So 16 for example every year SARS and it was published, or 17 presented to Parliament, would decide on key industries 18 that SARS was going to go after in terms of transfer 19 pricing. In one year it was manufacturing, in another year 20 it was mining, it was pharmaceuticals. So if you had that 21 strategy you would have developed all your – or 22 contextualised all your manufacturing clients, all your 23 pharmaceutical taxpayers, all your mining taxpayers. You 24 will systematically worked them through a risk engine.</p> <p>25 MR SIUO: Okay and I'm going to also put</p>
<p style="text-align: right;">Page 1313</p> <p>1 case selection.</p> <p>2 COMMISSIONER: Just one minute. And what 3 about closing cases? Do you know what the position is 4 there, is there any governance that prevents cases being 5 closed for improper reasons?</p> <p>6 MS GOSAI: In my time if you had to 7 suspend a case and I can't even think of a case that was 8 suspended, but if you do there is a standard operating 9 procedure. So you would have to give a memo setting out 10 the reasons why you do not see any risk here, it had to be 11 signed off by the manager, so myself, agreeing that there's 12 no risk. But obviously you have to be well versed with the 13 issues to understand if there is no risk and then you take 14 it again I think there's a committee that existed and they 15 would sign it off.</p> <p>16 COMMISSIONER: But the position today, do 17 you know what the position is today, no.</p> <p>18 MR SIUO: And when you say in my time is 19 that as of June 2016?</p> <p>20 MS GOSAI: Ja up to June 2016.</p> <p>21 MR SIUO: Up to June 2016.</p> <p>22 MS GOSAI: Ja but as I said I don't have 23 knowledge of – we never really suspended cases.</p> <p>24 MR SIUO: Yes all right. And so I want 25 to go to another paragraph. This paragraph indicates a</p>	<p style="text-align: right;">Page 1315</p> <p>1 a question to you that I'd also put to the group executive 2 is that in your view is the current structure an 3 improvement to the LBC?</p> <p>4 MS GOSAI: No not by a long shot.</p> <p>5 MR SIUO: And the reason?</p> <p>6 MS GOSAI: The reason is I remembered 7 there was a presentation that was done around while LBC was 8 disbanded and I think it was the Exco that had come to LBC 9 at one of the year ends and somebody had a question. And 10 they said well, you know, there was a lot of criticism that 11 the LBC had faced and that the new model was there to iron 12 out those criticisms. LBC was being perceived as being too 13 aggressive and furthermore they said that this new 14 operating model would create a more seamless delivery to 15 taxpayers, that a large corporate need not now be forced to 16 only come to the Large Business Centre if he wanted to be 17 serviced. An auditor in Limpopo could act as, you know, a 18 large corporate and he could be, if he had a query he could 19 go there. And I remember thinking in the space that we are 20 in where we sit with very, very confidential information of 21 large businesses that we are duty bound to keep 22 confidential, I'm not so sure that I would even want an 23 auditor or that information being accessible nationwide or 24 to other offices simply because of the sensitivity of the 25 information. So I remember thinking at that point, I was</p>

<p style="text-align: right;">Page 1316</p> <p>1 like sjoe I don't know if this is the right that we want to 2 achieve.</p> <p>3 MR SIUO: So I mean there seem to be 4 different views on this aspect. As I've said to you I've 5 put this question also to the group executive and I'm 6 reading from page 17, that's paragraph B and her answer was 7 as follows. It says "Structure on its own is insufficient 8 to determine effectiveness. Of greater importance is how 9 the structure operates. The current structure allows for 10 silos and (separate products/units) and this creates gaps 11 in efficiency. The previous structure allowed for 12 operations of various products/units as a group. However, 13 these were not always in line with similar products/units 14 in other parts of the organisation." Do you have a comment 15 on that?</p> <p>16 MS GOSAI: I do. So when I said, you 17 know, we would always structure an audit, a transfer 18 pricing audit in a certain way there were instances where 19 we needed greater capacity. And when we worked as the LBC 20 I could just go and pull auditors from other divisions to 21 do legwork for me. And it wasn't an issue and I think, you 22 know, that the large corporates out there will tell you 23 that some of the audits that we, you know, we did in our 24 time we would have like 15 auditors sitting there. And 25 they like would be pulled from different parts of the LBC.</p>	<p style="text-align: right;">Page 1318</p> <p>1 Sometimes they would say, Nishana, you're being too hard. 2 You know step back a bit. So there was always that 3 balance. The same goes with legal, over time we realised 4 that, you know, a lot of taxpayers were putting up 5 procedural defences to a transfer pricing audit. And we 6 realised we needed a lawyer that was outside of the unit as 7 part of the audit, that made it very accessible. I mean 8 Danie Kruger worked with me very closely and he was head of 9 specialist support, the legal side of it. And I always had 10 access to his lawyers, so that very seamless, you know, 11 interaction and integration was always there.</p> <p>12 MR SIUO: But what about duplication and 13 unequal treatment of functions, what do you make of that 14 statement?</p> <p>15 MS GOSAI: I'm not sure, so read that 16 part again for me.</p> <p>17 MR SIUO: Okay so it's the last sentence 18 on paragraph 52, it says "However, it can allow for 19 duplication and unequal treatment of functions and people 20 across the organisation." This is the end to end function.</p> <p>21 MS GOSAI: So if you don't have an LBC, 22 if you don't have a one structure model.</p> <p>23 MR SIUO: Yes.</p> <p>24 MS GOSAI: Yes and that actually did 25 happen.</p>
<p style="text-align: right;">Page 1317</p> <p>1 And I think when you create the silo effect now nobody 2 wants to help you to do that because they've now got a 3 different KPI, we're not working towards the same thing.</p> <p>4 MR SIUO: Yes. And so I'm referring now 5 to page 14 and this is paragraph 52. And these are the 6 views of the group executive on the current operating 7 model. And it says that the disbanding of the Large 8 Business Centre has caused much debate regarding its 9 effectiveness as an end to end structure versus a product 10 based structure. An end to end structure can work well in 11 that it limits silos and therefore possible tension between 12 such silos. However, it can allow for duplication and 13 unequal treatment of functions and people across the 14 organisation. Do you have a comment for that?</p> <p>15 MS GOSAI: The previous person, Vincent, 16 he spoke about the 360 view, so when I ran a transfer 17 pricing audit my mandate was to keep everybody informed. 18 The taxpayer relationship manager being critical because 19 invariably my audit attracted complaints from the 20 taxpayers, we made life very uncomfortable for many people. 21 So they would go complain to the TRM. If the TRM was 22 sitting in the meetings and seeing how it was conducted 23 then he had first-hand knowledge of whether the taxpayer's 24 grievance was justified or not. And I can tell you that 25 many times, you know, the TRMs didn't always side with me.</p>	<p style="text-align: right;">Page 1319</p> <p>1 MR SIUO: Ja so she says "No this one 2 structure, this end to end model it creates duplication and 3 it creates unequal treatment of functions" –</p> <p>4 MS GOSAI: No but it can't.</p> <p>5 MR SIUO: - "across the organisation."</p> <p>6 MS GOSAI: No it can't.</p> <p>7 MR SIUO: Why can't it?</p> <p>8 MS GOSAI: Because if everybody is in the 9 loop, you know what we did was, as I said, we centralised 10 transfer pricing audits nationally in Johannesburg which 11 meant that even if a taxpayer had operations down in Cape 12 Town and you know a single taxpayer can be, you know, be 13 registered in Cape Town, but we could be dealing with the 14 head office in Johannesburg. There wouldn't be this 15 duplication because we'd all know, in fact on the work in 16 process which was circulated nationally within LBC, all the 17 audits that are in progress is listed and so the LBC office 18 in Cape Town and the LBC office in Durban was fully 19 appraised that X taxpayer is being audited for this tax 20 type.</p> <p>21 MR KAHLA: Isn't really the true import 22 of that question really around those who were in functional 23 areas outside that end to end space of the LBC perceived 24 themselves to be secondary citizens relative to those in 25 the LBC? Is that a fair comment that the people who would</p>

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1 have seen themselves as being treated or accorded lesser  
 2 status than those who would have been in the LBC?  
 3 MS GOSAI: I think that's –  
 4 MR KAHLA: That end to end value chain.  
 5 MS GOSAI: Ja that was a perception that  
 6 existed, there were people and there it was – you can  
 7 understand it because, you know, LBC dealt with the biggest  
 8 and largest. In fact there were people within LBC that  
 9 resented the transfer pricing unit because they perceived  
 10 us as doing the sexy work. So –  
 11 MR SIUO: And then I'm going to refer to  
 12 the last paragraph and that's also found on page 14, it's  
 13 paragraph 53. And it says "Most operating models are  
 14 successful by virtue of the effort made to implement them.  
 15 When implementation is not successful unintended gaps occur  
 16 and drifting to past operational practises becomes easy and  
 17 comfortable. Investigative audit works well in the current  
 18 model due to its continuous interaction with other internal  
 19 stakeholders." Do you have a comment about that?  
 20 MS GOSAI: The one thing about the first  
 21 part of that sentence is that when the operating model took  
 22 full effect and fell into the enforcement space again those  
 23 enforcement KPIs were not set for purpose for LBC clients.  
 24 You couldn't just treat them the same.  
 25 MR SIUO: All right and my last question

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1 to you is do you have any recommendations that may be of  
 2 assistance to the Commission?  
 3 MS GOSAI: Well I made some in my  
 4 submission and I say this not only as a former employee of  
 5 SARS, but just as an ordinary citizen. I think what has  
 6 happened to SARS should just never be allowed to happen  
 7 again. I think a lot of people have suffered, it's left  
 8 the organisation and I'm using the words of people that I  
 9 speak to that are still within the organisation today, it's  
 10 left them broken. It's broken people and it's broken the  
 11 organisation and people need healing, that's the word I've  
 12 been told. That people need to heal from this.  
 13 People who were technicians, who were just  
 14 interested in working for the higher purpose and delivering  
 15 and just enjoying their jobs and I was one of those people,  
 16 we got caught up in a political narrative that we shouldn't  
 17 have been part of in the first place. And I think it's a  
 18 lesson for us that we should never be here again because  
 19 the only people who have suffered is the country, the  
 20 people of South Africa. So my recommendation is that we  
 21 need – this is an opportunity for us to do better, to  
 22 improve, not necessarily to go back to any previous way or  
 23 – but to make it better. And re-engineer this organisation  
 24 so that it can be great again. I'd like to see the  
 25 Commissioner appointment being an A political one, I don't

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1 think that it should be aligned to a particular president  
 2 or ruling party of the day because this organisation serves  
 3 the people of South Africa regardless of their political  
 4 affiliation. So I don't think appointments should be –  
 5 maybe I'm naive, maybe I'm too simplistic, I speak from the  
 6 heart.  
 7 Secondly I think there should be a direct line of  
 8 reporting to Parliament similar to the Public Protector and  
 9 that there should be structure, transparency and regulatory  
 10 of the reporting. Obviously it would mean some sort of  
 11 reporting to the Finance Minister because it is under his  
 12 portfolio so I don't discard that. I also think Exco  
 13 should be rotated because whenever you put a band of people  
 14 in the room and they get too familiar they start siding  
 15 with each other over time.  
 16 [13:25] And they will agree positions or they will have  
 17 divided positions depending which camp you belong to. So I  
 18 think that an Exco should have been, should either be  
 19 rotated or it should have also independent oversight with  
 20 people of good business standing who can be sworn in and  
 21 have the same secrecy provisions attached to them, to have  
 22 this independent oversight of Exco and I think that SARS  
 23 needs to really think about putting together you know  
 24 robust performance management plans and relook at  
 25 governance. Governance, and you know I've heard it being

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1 mentioned a lot. Governance is great but governance can  
 2 also, too much governance can lead to paralysis and then  
 3 you don't know if it's just governance for the sake of  
 4 having governance. Sometimes I thought governance was a  
 5 way of people absolving themselves of responsibility. So I  
 6 think those are my, my key recommendations.  
 7 COMMISSIONER: May I know what your  
 8 qualifications are, your formal qualifications?  
 9 MS GOSAI: Sure, so I am a BCom  
 10 (inaudible) Masters in Tax person and I am registered with  
 11 SAICA and I have 18 years' worth of experience in TP, it's  
 12 in my blood.  
 13 COMMISSIONER: And why did you leave?  
 14 MS GOSAI: I left because I was, and I'm  
 15 going to be honest. I was put through a very vexatious  
 16 process for which SARS paid R400 000 on, a waste of money  
 17 and I saw, that process opened my eyes that nobody is safe.  
 18 I was bullied, I was intimidated, I had to lodge a police  
 19 complaint, go so far as to lodge a police complaint and I  
 20 thought I couldn't put my family at risk. I didn't know  
 21 what was coming and I didn't understand why I was targeted  
 22 in that way.  
 23 COMMISSIONER: I don't want to pry, so  
 24 don't answer me if you don't want to. You say you were put  
 25 through a vexatious process? What was the nature of that

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1 process? If you don't want to answer it you don't have to.  
 2 MS GOSAI: No, ja.  
 3 COMMISSIONER: Okay.  
 4 MR SIUO: I have no further questions.  
 5 COMMISSIONER: No it was invaluable.  
 6 Thank you very, very much.  
 7 MS GOSAI: Thank you.  
 8 COMMISSIONER: We really do appreciate  
 9 it.  
 10 [NO FURTHER QUESTIONS – WITNESS EXCUSED]  
 11 PROF KATZ: It's a good morning.  
 12 COMMISSIONER: Ja. Are we going to have  
 13 a, sorry just a moment. No, no, sorry thank you very much.  
 14 MS STEINBERG: We're going to adjourn for  
 15 lunch. It's half past 1, should we come back at half past  
 16 2?  
 17 COMMISSIONER: That will be fine, thank  
 18 you.  
 19 [INQUIRY ADJOURNS INQUIRY RESUMES]  
 20 [14:35] MS STEINBERG: The afternoon is with  
 21 Advocate Hobden. I'll hand over to her.  
 22 COMMISSIONER: Thank you, Ms Hobden.  
 23 Carry on.  
 24 MS HOBDEN: Judge and the panel, we're  
 25 hearing this afternoon from five organisations who

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1 represent taxpayers and people who interface with SARS on a  
 2 regular basis. We refer to these organisations as external  
 3 stakeholders. The team of evidence leaders invited a range  
 4 of external stakeholders to give submissions to the  
 5 commission and to come and testify in public on the  
 6 experience of SARS over the last five years. Some of the  
 7 parties that we invited were parties that Bain had said  
 8 that they consulted prior to the developments of the new  
 9 operating model. Other of those associations were invited  
 10 through our investigations as parties who interact with  
 11 SARS regularly.  
 12 These, a number of organisations have indicated  
 13 that they would prefer to give written submissions and not  
 14 testify in public. Those will be made available. We are  
 15 expecting submissions from BASA who is a Banking  
 16 Association of South Africa and from the tobacco industry  
 17 of Southern Africa. They'll be coming in by the end of the  
 18 month. But today we have representatives from the South  
 19 African Professional Accountants Association, the South  
 20 African Institute of Tax Practitioners, the South African  
 21 Institute of Chartered Accountants, the FITA, who is the  
 22 Fair Trade Independent Tobacco Association and the South  
 23 African Association of Freight Forwarders who will be  
 24 talking about customs issues.  
 25 COMMISSIONER: Is the nature of what

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1 they're going to tell us such that they need to be sworn  
 2 in? In other words are they just making submissions or are  
 3 they factual allegations they make?  
 4 MS HOBDEN: There are factual allegations  
 5 and I would think it would be appropriate unless they have  
 6 an objection.  
 7 COMMISSIONER: Yes. Good afternoon.  
 8 MR RETIEF: Afternoon.  
 9 COMMISSIONER: So as far as you give any  
 10 evidence before us, apart from any submissions do you  
 11 affirm that the evidence you give will be the truth, the  
 12 whole truth and nothing but the truth. If so say I do.  
 13 MR RETIEF: I do.  
 14 COMMISSIONER: Thank you. Could you just  
 15 put your name on record please.  
 16 MR RETIEF: It's Etienne Retief.  
 17 EVIDENCE OF MR RETIEF  
 18 MS HOBDEN: Thank you Mr Retief. Can you  
 19 explain your position and the organisation for which you  
 20 represent?  
 21 MR RETIEF: So first and foremost I am a  
 22 tax practitioner in practice. But I also represent as the  
 23 chair of the National Tax Committee for SAIPA which is the  
 24 South African Institute of Professional Accountants.  
 25 MS HOBDEN: And can you explain the

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1 mandate of your organisation and the members who you  
 2 represent?  
 3 MR RETIEF: So there's professional  
 4 bodies within South Africa for various things, such as  
 5 SAIPA is for professional accountants. We have just over  
 6 10 000 members. Most of those are in either commerce and  
 7 industry or in practice itself with the small part of those  
 8 in the public sector as well or in academia and it is also  
 9 as that professional body where it's one of the RCBs which  
 10 is the regulatory body for practitioner registered tax  
 11 practitioners. So my representation and the National Tax  
 12 Committee is making submissions on, not only draft  
 13 legislations and things but also to represent our members  
 14 and the clients of our members in tax administration and  
 15 engagement with SARS and SARS systems.  
 16 MS HOBDEN: And your members what is  
 17 their ordinary interaction with SARS on a day to day basis?  
 18 MR RETIEF: So we have a variety of our  
 19 member base. So you'd have some of those who deal with  
 20 individual tax returns where they would collate and compile  
 21 tax returns dealing with queries, objections, those kinds  
 22 of matters and more likely, a lot of our members would deal  
 23 with businesses from small to large business in the day to  
 24 day compliance and submission requirements. So everything  
 25 from registering for VAT to filing monthly or bi-monthly

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1 VAT returns. Dealing with objections, audits, those kind  
 2 of processes.  
 3 MS HOBDEN: Mr Retief, we have an article  
 4 from you that was written in July this year and I'd just  
 5 like to refer to it and ask for your comment and some  
 6 elaboration on some of the points you make in the article.  
 7 It's entitled turnaround time at SARS and it was published  
 8 I think in July, if that's right. Now, may I just ask, is  
 9 that correct? Is that the article you wrote?  
 10 MR RETIEF: Yes, it is.  
 11 MS HOBDEN: And in this article you  
 12 describe some of the challenges that arise in SARS and for  
 13 your members that arise, that arose from the disbanding of  
 14 the LBC and can you perhaps first tell us what you explain  
 15 in your article why an LBC was an important part of the  
 16 SARS structure?  
 17 MR RETIEF: Okay. I think for  
 18 background, probably the most important reason for that  
 19 distinction is that not all taxpayers are equal because the  
 20 complexities of the taxpayer range. So when you're dealing  
 21 with a large multi-national company that have a variety of  
 22 branches and complex type tax transactions the need of an  
 23 engagement and the complexity of its matters is very  
 24 different and also the quantum of the issues are very  
 25 different and for that matter even the way in which you

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1 audit engage and everything right down to your account and  
 2 maintenance is very different within a large organisation  
 3 versus a small business or an individual for that matter.  
 4 So the need for a company, so you take an example  
 5 of a large listed company that has let's say 10, 15  
 6 divisions or subsidiaries plus an international arm to that  
 7 and in its day to day dealings it has to have a permanent  
 8 tax compliant status. It has to file multiple returns. It  
 9 also has international transactions. It's, the level of  
 10 engagement needed is very different and historically when  
 11 LBC was formed the structure was that you had a contact  
 12 point, a key person who you engage with, you build the  
 13 relationship with and via phone, via email whichever  
 14 channel was necessary that person for lack of a better word  
 15 took a bit of ownership of that and they helped you to  
 16 address the matter and efficiently and effectively. When  
 17 LBC was disbanded in that format that contact person became  
 18 just a person, another person you could send to who would  
 19 just refer it on to someone else and it became very  
 20 inefficient, very ineffective in addressing the issues that  
 21 you would have. So if I for instance have an issue with an  
 22 account allocation or your tax clearances is at jeopardy  
 23 and there's a need for a tax, to deal with the matter,  
 24 sending it on to a SARS branch and getting a reply that  
 25 this will take 21 business days to get back to you and in

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1 the meantime business has to continue and government isn't  
 2 paying you on your project and it's a huge cash flow  
 3 impacts and you've got shareholders to respond to, that's a  
 4 problem and it's not to diminish the plight of the small  
 5 business that didn't have that kind of engagement but when  
 6 we talk about the quantum and the complexity of these  
 7 things they really did require that kind of engagement.  
 8 Another example I can give is where you have the financial  
 9 director who on three or four occasions has to spend four  
 10 hours at SARS doing verifications under the revised model.  
 11 You're talking about a key person in the business who  
 12 doesn't have four hours three times in that month to go  
 13 there to, within the organisation to do verifications where  
 14 before because of the relationship that could have been  
 15 done without him having to go there three times.  
 16 MS HOBDEN: And Mr Retief you mentioned  
 17 in your article you say any large business will tell you  
 18 how frustrating the process has become when dealing with  
 19 complex matters with officials who do not have the  
 20 experience to deal with it properly. Now we've also heard  
 21 and we will hear testimony from other organisations who  
 22 also talk about a skills deficit in SARS when dealing with  
 23 matters from, not only in large business but particularly  
 24 in large business, can you expand on that?  
 25 MR RETIEF: Definitely, I think again

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1 back to the context of that the nature of these are a lot  
 2 more complex. The, so when you're dealing with a complex  
 3 matter whether just a normal engagement and the person on  
 4 the other side is not well versed in that legislation or is  
 5 not well versed in the application of that or when you  
 6 engage with them and their answer is well I don't know, I  
 7 can't answer it or the answer you get doesn't make a lot of  
 8 sense it's problematic and it was very evidenced and yes it  
 9 might be a causal circumstance. It's, but it's very  
 10 evident from multiple engagements that the, that the skill  
 11 level just isn't there. In fact I would say the quality of  
 12 even the writing isn't there. Where, I had to show you  
 13 comparative of how you'd engage before, the formal way of  
 14 how you receive things and the communications versus some  
 15 of the communication you get now. It's, I wouldn't say now  
 16 but a few months ago it would be, it would be very  
 17 different and everything from spelling errors to incorrect  
 18 references to single line, like one little line answers to  
 19 a complex question.  
 20 MS HOBDEN: Mr Retief, how does that  
 21 impact your members and practitioners and also the  
 22 taxpayer?  
 23 MR RETIEF: Well I would say that the  
 24 taxpayer is to a certain extent in the dark. So when the  
 25 practitioner goes and says I'm still waiting for SARS to

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1 respond or I can't answer your question because I haven't  
 2 had a decent answer from SARS it makes the practitioner  
 3 look stupid and it puts, it makes it very difficult for you  
 4 to justify doing the job and getting answers and the  
 5 taxpayer feels frustrated and then when the taxpayer feels  
 6 well that when something goes wrong that SARS is quite  
 7 happy to take your money but when there's a problem they're  
 8 not so quick in helping to resolve the problem. It does  
 9 bode poorly for it and normally if a practitioner is in  
 10 there the practitioner is getting most times the brunt for  
 11 it.

12 MS HOBDEN: And linked to the issues of  
 13 skills and experience of SARS officials, Mr Retief, is the  
 14 comment you make in your article about auditing  
 15 capabilities of SARS and some of the issues arising from  
 16 audit that your members have been experiencing.

17 MR RETIEF: Ja. I'll give you one  
 18 example to illustrate and there are many examples like this  
 19 but one specific one, to illustrate what I mean by that.  
 20 Is like one of my clients they had multiple divisions  
 21 registered for VAT. SARS says we'd like to do an audit on  
 22 a specific item. The information needs to be made  
 23 available. The company without delay provides information  
 24 by the time that is asked of them, together with the  
 25 supporting, met with the SARS auditors to explain the data.

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1 Two, three months go by nothing, all of a sudden you get an  
 2 answer I need more, I need more and you go through it, it  
 3 takes a year and a half, on this example, from the time  
 4 that the audit started to the point of when the letter of  
 5 findings is issue. The letter of finding is fraught with  
 6 errors in understanding of how periods are allocated,  
 7 confusing things like tax and financial periods. It's  
 8 addressed, assessment still comes out wrong. Now it goes  
 9 into a disputed process, it's a year later, it now ends up  
 10 having to go to tax court because, and most of that could  
 11 have been avoided at that starting point. But most of all  
 12 to take a year and a half and if I can reference here, this  
 13 is on a simple input tax VAT issue. Not complex, not at  
 14 all complex. In fact with the limited resource that audit  
 15 should not have taken longer than maximum a month. A year  
 16 and a half later to only get a letter of finding, that, you  
 17 know those kind of things and in the meantime the taxpayer,  
 18 being in this example a listed company now gets to the  
 19 auditors come for the year-end audit, what do you say oh no  
 20 here's this outstanding audit, don't know when the  
 21 assessment is going to be raised, we don't know what the  
 22 findings are going to be, we have no idea.

23 MS HOBDEN: Mr Retief you speak in the  
 24 article and you say that there has been a disastrous impact  
 25 of the operating model on revenue collection and taxpayer

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1 morale. Now you've mentioned a couple of things in your  
 2 testimony today about skills shortage, delays in audit,  
 3 difficulties communicating with SARS.

4 MR RETIEF: ja.

5 MS HOBDEN: And of course disbanding the  
 6 LBC which did away with that direct line of communication.

7 MR RETIEF: Ja.

8 MS HOBDEN: Now how do you attribute  
 9 those issues arising now to the change of structure in SARS  
 10 and the new operating model, how do, how and why do you  
 11 make that link?

12 MR RETIEF: Well I think first of all the  
 13 LBC structure from our perspective at least did work. It  
 14 made an operation of a large business a lot easier to  
 15 engage and dealing with these issues then it is today, with  
 16 it being disbanded and I think evidence to that is many  
 17 other countries have not only adopted or business adopting  
 18 the same approach. So if it was so wrong why would those  
 19 countries adopt it, why was the perception of how you  
 20 engage with SARS so much better at that point. So I think  
 21 the, just from that point the evidence will speak for  
 22 itself. That the model worked and the revised model didn't  
 23 work and it has to have an impact considering that, I  
 24 believe the, it's about 30% of tax revenue were collected  
 25 from just through LBC. Now if there is an issue happening

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1 at LBC the efficiency of how quickly I can resolve a query  
 2 or how I can deal with that base of taxpayer, considering  
 3 that 30% of your tax revenue collections comes from there  
 4 it's got to have an impact.

5 Another point to make on how these changes have  
 6 been impacted is just the general way in which SARS  
 7 addressed some of the issues. So I'll use an example of  
 8 where a company, a large company, SARS raises an  
 9 assessment, the matter is under dispute. It's about 6  
 10 million, company says, and it's one of those sectors where  
 11 at the moment they are to in a fantastic place  
 12 economically. Cash flow is a critical issue. Raises a  
 13 request for suspension of payment. Not dealt with in the  
 14 time line. By the time you get an answer it's oh no but  
 15 you're a big company surely this is not really as big an  
 16 issue as you make it out to be, it doesn't really  
 17 jeopardise the company. It's cash flow, 6 million short of  
 18 cash flow waiting for the outcome from a dispute which now  
 19 a year later we still in dispute is a serious issue.

20 MS HOBDEN: And linked to this, Mr  
 21 Retief, is another comment you make and we hear it over  
 22 again is what you refer to as taxpayer morale and it would  
 23 link as well to the perception of your members as well in  
 24 dealing with SARS. What you say in your article is here  
 25 must be a change in the ethos of the business of SARS. Tax

<p style="text-align: right;">Page 1336</p> <p>1 payers who are compliant should be respected. However  2 painting everyone with the same non-compliant brush serves  3 nobody and we've heard this perception that SARS treats  4 everyone as if they're non-compliant and any burden on  5 trying to find non-compliant taxpayers gets pushed on to  6 most often the tax practitioners by over-auditing these  7 repeated requests for documents. What is your comment on  8 that?  9 MR RETIEF: I would say that has become  10 or that became an issue in the last few years, more so and  11 you would also ironically find that pressure a little bit  12 more at certain times during the year and it was quite  13 incidental that perhaps the timing of it also aligned with  14 the reporting periods. So the general feeling is, as a  15 taxpayer if you had an issue and you go to SARS with it  16 that you're not being necessarily heard with sympathetic  17 ear. No one's really taking ownership of wanting to  18 address that issue. Everyone's in a, this is not my job  19 I've got my little part and I've done it and that's someone  20 else's issue where prior to that you're engaging with SARS,  21 you would have had someone who says let me see how I can  22 escalate this for you, let me see how I can address the  23 matter for you. The, and the nice thing is that when you  24 make contact with a person you could follow up with that  25 person, you could say I've got someone to contact not just</p>	<p style="text-align: right;">Page 1338</p> <p>1 is a general feeling is that you find it difficult to  2 address issues because you don't have a clear line, this is  3 how I can refer the matter to and I know that that person  4 is addressing it. It's that person is more, it's got to be  5 passed onto someone else.  6 MS HOBDEN: And you did mention some of  7 the timelines that SARS, you say SARS often doesn't comply  8 with. The new service charter has been published a few  9 months ago, a month or so ago. Do you have a comment on  10 that or what your view is?  11 MR RETIEF: I'm very happy that it is  12 published. Perhaps this is a, as comment to that is you've  13 been asking for that for a very long time and for years  14 that was promised and wasn't delivered and with the change  15 and I think that was recently under marking, bringing it  16 out, driving it, trying to say that we must be held  17 accountable to those is a critical part.  18 [14:55] Because when you're wanting to escalate, whether  19 it be for purposes of your client or whether it is just,  20 whether I should refer a matter to the Ombud is there has  21 to be a clear understanding of what expectation is of  22 service delivery and then if it doesn't meet that then I  23 can escalate, but not having that makes it very difficult  24 to know what the expectation of service delivery should be.  25 MS HOBDEN: Of course, and lastly Bain</p>
<p style="text-align: right;">Page 1337</p> <p>1 a call centre and they don't any better about it where it  2 changed to where it became faceless. It's, everything is  3 if you want to follow it up you phone the call centre. No  4 one really wanted to take ownership of many of these issues  5 and it makes a frustrating and from a morality point if you  6 start having doubts about the organisation that collects  7 your money or you feel that you're being treated the same  8 way whether you're compliant or not compliant and added to  9 that at the time the economic, the political issues that  10 also go into where my tax money is being spent it's going  11 to have an impact on tax morality which means that it makes  12 the job of a tax authority even harder to collect because  13 now you're going to go collect where the person already is  14 not so eager to pay his taxes anymore.  15 MS HOBDEN: And Mr Retief you've spoken a  16 bit about SARS officials not taking ownership of issues  17 that taxpayers raise or tax practitioners and I understand  18 how that arises in the context of the disillusion of the  19 LBC, but is that an issue that seems to be occurring across  20 the board with taxpayers who are small businesses or  21 individuals, is it a global issue?  22 MR RETIEF: It's something that I had  23 experienced and my engagement with a variety of members  24 within the organisation in preparation before we have  25 stakeholder engagement and that, when I talk to them that</p>	<p style="text-align: right;">Page 1339</p> <p>1 Consulting mentions your organisation as a party – oh  2 sorry, no that's not true. Maybe I should ask the question  3 like this, were you consulted at all or contacted by Bain  4 Consulting during the period running up to the imposition  5 of the new operating model, or by anyone from SARS?  6 MR RETIEF: I have not been, or I was  7 never consulted or requested to provide any input in that  8 change. The first time we or myself at least heard of this  9 was when it was announced.  10 MS HOBDEN: And your views are quite  11 clear from your article that the LBC should not have been  12 disbanded, is that correct? Would you, in your view was  13 that decision in the operating model one that was wrong?  14 MR RETIEF: I believe that for whatever  15 reason it got to that it was the wrong decision and that  16 the LBC had a critical function and it worked comparative  17 to today it clearly worked far better than what we have at  18 the moment. And I again emphasise that if that model was  19 so wrong why is that a model that many other countries  20 aimed to have or already have implemented?  21 MS HOBDEN: Of course. Thank you Mr  22 Retief. Those are all my questions. If the panel –  23 PROF KATZ: Counsel might just ask the  24 witness about being consulted on the change of operating  25 model.</p>

<p style="text-align: right;">Page 1340</p> <p>1 COMMISSIONER: May I just ask you about 2 that? You said they had no contact with me. What about 3 the organisation, do you know if they had contact with the 4 organisation? 5 MR RETIEF: I'm not aware that the 6 organisation was contacted. Generally what would happen is 7 because I'm the chair of the national tax committee, if 8 something like this would come forward they would refer it 9 for me to address. But I can't talk for every single 10 person in the organisation because I don't know that for a 11 fact but I'm not aware of anyone in our organisation that 12 was communicated with. I certainly did not engage with 13 them on that. 14 COMMISSIONER: 2015, what was your 15 position in the organisation? 16 MR RETIEF: Still the same. Since 2006 I 17 was the chair of the national tax committee so that's been 18 consistent right through. 19 MS HOBDEN: Thank you. 20 COMMISSIONER: Thank you very much for 21 coming, Mr Retief. We appreciate it very much. 22 MR RETIEF: Thank you. 23 [NO FURTHER QUESTIONS – WITNESS EXCUSED] 24 MR RETIEF: Our next witness is Professor 25 Nel.</p>	<p style="text-align: right;">Page 1342</p> <p>1 the institute is primarily, well it's only a tax 2 professional body. It's one of the recognised controlling 3 bodies for tax practitioners in the new model with SARS and 4 it requires all tax professionals, all persons doing tax- 5 related work to be registered with SARS but then also to 6 belong to a professional body that maintains certain 7 standards. So the body interacts at a level to try and 8 sort out common problems that are referred, interactions 9 with SARS, communications, things that we have heard so 10 fact, we interact with SARS, we lobby, we're also involved 11 in the draft legislation, commenting on legislation and 12 things like that. And then generally represent the members 13 in tax issues. 14 MS HOBDEN: And we have an affidavit from 15 the chief executive officer of the organisation, Mr Keith 16 Engel, which I will refer to in addition to the informal 17 submissions that you've given to me and I will use those 18 two as a basis to ask you some questions and elaborate on 19 some of the issues you've described have arisen or been 20 exacerbated over the last couple of years. And perhaps to 21 mention that Mr Engel states quite clearly that SARS was 22 not a perfect organisation prior to 2014 and he made quite 23 clear that there were issues and difficulties experienced 24 by tax practitioners. His comment was however that certain 25 issues have become exacerbated over the last five years.</p>
<p style="text-align: right;">Page 1341</p> <p>1 COMMISSIONER: Professor? 2 MR RETIEF: Professor Nel from the South 3 African Institute of Tax Practitioners. 4 COMMISSIONER: Good afternoon Professor. 5 Thank you very much for coming to talk to us. Would you 6 affirm that whatever evidence you give will be the truth, 7 the whole truth and nothing but the truth? If so will you 8 say I do? 9 PROF NEL: I do. 10 EVIDENCE OF PROFESSOR NEL 11 MS HOBDEN: Thank you Professor Nel. 12 Could you explain your position in the organisation and how 13 long you've held it? 14 PROF NEL: Okay, I'm basically by 15 qualification a Chartered Accountant that specialises in 16 tax. I've previously been the project director at SAICA so 17 from, until about 2014/15, but at the South African 18 Institute of Tax Professionals I am the head of the 19 technical assistance to members. Ja, so and responsible 20 for training, CBD the members, but ja, the body represents 21 tax professionals at large. 22 MS HOBDEN: And can you explain the 23 mandate of the organisation, how it interacts with SAR, and 24 then how your members interact with SARS on a day to day – 25 PROF NEL: Okay ja. The mandate of the,</p>	<p style="text-align: right;">Page 1343</p> <p>1 Is that also your experience? 2 PROF NEL: That is exactly my experience. 3 If I take it back maybe to the turn of the century one 4 could, and it goes to – I was born before them – one could 5 as a tax practitioner walk in and speak to a competent SARS 6 person and address issues with that. Then that changed, a 7 new model came in, we understand why that came. And we 8 then experienced that there were those difficulties. It 9 certainly, but then over the last five years it's 10 definitely an increase in that and some of that was 11 attributed to the system but some of that was attributed to 12 other things, ja. 13 MS HOBDEN: When you refer to the new 14 model are you talking to the modernisation of the SARS 15 systems? 16 PROF NEL: Modernisation ja, yes, ja. 17 MS HOBDEN: So some of the issues that 18 you've raised, many of them and perhaps just to say that 19 your submissions relate to operational issues in SARS so 20 there are others that we will deal with at another time. 21 But some of the operational issues that your members 22 experience, a lot of them relate to the day to day 23 submissions of returns by your members and the issue of 24 assessments by SAR, and then the interaction between your 25 members and SARS where disputes arise. And I have four</p>

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1 that I have pulled from what Mr Engel has told me and what  
 2 you have told me and I wondered if we could just go through  
 3 them, if you could just provide comment?  
 4 PROF NEL: Ja.  
 5 PROF KATZ: Sorry counsel, can I just  
 6 ask, I'm a bit confused. The modernisation is different  
 7 from the new operating model.  
 8 MS HOBDEN: Yes.  
 9 PROF KATZ: Which one –  
 10 PROF NEL: Modernisation happened I think  
 11 from 2006 onwards, ja.  
 12 PROF KATZ: But you were happy with?  
 13 PROF NEL: Yes, ja.  
 14 PROF KATZ: So you're not, what you're  
 15 now talking about is concerns post the new operating model?  
 16 PROF NEL: No, but there were also  
 17 concerns with that modernisation model as well.  
 18 PROF KATZ: But what you're addressing  
 19 now.  
 20 PROF NEL: That is the current, the last,  
 21 ja the current –  
 22 PROF KATZ: Is the new operating model.  
 23 PROF NEL: 100% right, ja.  
 24 MS HOBDEN: Sorry, the evidence was that  
 25 the modernisation process had its own issues for tax

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1 practitioners because now everything was different. There  
 2 was no longer paper manual filing and that was a process  
 3 that had its own challenges but that had settled down and  
 4 we're now looking at 2014 onwards.  
 5 PROF KATZ: Professor Nel is talking  
 6 about 2014 onwards?  
 7 PROF NEL: Yes, yes, ja, well put.  
 8 MS HOBDEN: The first issue that you've  
 9 highlighted is the, and Mr Engel has highlighted is the  
 10 increase in the number of returns that have been triggered  
 11 for audit and Mr Engel refers to that as over-auditing,  
 12 but, and that secondly that there's also an increase in the  
 13 request for documents and that it's often very generalised.  
 14 Can you comment on that?  
 15 PROF NEL: Ja, so maybe just to  
 16 contextualise that. If you're an individual submitting  
 17 your return you generally receive a request what they call  
 18 to review and verify your return. And SARS see that as not  
 19 an audit but it essentially is an audit because they're  
 20 calling for the supporting documents. That often  
 21 identifies risk that then lead into an audit but mainly  
 22 your bigger or your other taxpayers, other than natural  
 23 persons would get an audit. They would get a letter to do  
 24 that.  
 25 The perception of members reported from the

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1 bodies, and we've just, did some surveys both at SAICA and  
 2 at SAID over that period were that people were feeling that  
 3 in their practice they were getting, where the SARS  
 4 official statement is that this is 10%, the general feeling  
 5 is that it's more than 50% of the returns that you submit,  
 6 at least prompted a request for supporting documents and we  
 7 don't know what drove that. They say that in terms of the  
 8 risk, engine it was identified. Often it was, there were  
 9 no perceived risk, and so, ja, the general feeling was that  
 10 that went to more than 50% of the returns that  
 11 practitioners handled. And maybe the numbers came down  
 12 when you look at the whole population but certainly for tax  
 13 practitioners that had increased.  
 14 COMMISSIONER: But that would be the risk  
 15 engine that is generating - I get cross myself, by the way.  
 16 PROF NEL: Yes. No, no, we all have our  
 17 own –  
 18 COMMISSIONER: But then that's a risk  
 19 engine issue.  
 20 PROF NEL: Ja.  
 21 COMMISSIONER: And that would have come  
 22 through the modernisation process, wouldn't it?  
 23 PROF NEL: Correct, but I think maybe I  
 24 can give an example of why I don't, because the typical  
 25 answer was when we queried this at meetings, when we

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1 interacted on behalf of our members with SARS, that yes,  
 2 it's a risk engine and the risk engine is secret to us and  
 3 we accept that. We can't understand that. But if you,  
 4 just like it happened to my mother, person that's retired,  
 5 she's 88, 89 years of age, medical expenses, I get a  
 6 request for supporting documents for medical expenses. Now  
 7 if they disallow her medical rebates, she still will not  
 8 pay tax, so the risk engine, and our perception was that  
 9 the moment there is, you're entitled to something that it  
 10 reduces overall tax assessment, that is the risk engine and  
 11 that, if that was the driving factor then you're over-  
 12 auditing, because it's –  
 13 COMMISSIONER: But my interest is this  
 14 that why should that have increased in the last few years  
 15 if the risk engine hasn't changed? I haven't heard any  
 16 evidence of the risk engine changed.  
 17 PROF NEL: I was told at the meetings,  
 18 particularly in the VAT because we were raising that where  
 19 a particular vendor was repeatedly audited. There was a  
 20 specific instance where the member's client had a rental  
 21 business that was submitting monthly returns, over the 30  
 22 million mark and the numbers varied by less than 5% from  
 23 month to month. He had been audited 18 times and they then  
 24 said well they often hear things in the industry and then  
 25 they build that into the risk engine. So the risk engine –

<p style="text-align: right;">Page 1348</p> <p>1 COMMISSIONER: Is changing.</p> <p>2 PROF NEL: Is changing over time, ja, ja.</p> <p>3 MS HOBDEN: And Professor Nel, some</p> <p>4 stakeholders have said to us that there's also a capacity</p> <p>5 issue on SARS' side when these audits or verifications get</p> <p>6 triggered when there's objection or in dealing with them</p> <p>7 and taking receipt of the documents and then engaging with</p> <p>8 the tax practitioner about what the reasons are. There's</p> <p>9 also some, there's often delays and often inadequate</p> <p>10 communication and an explanation of those reasons.</p> <p>11 PROF NEL: Ja. Remind me if I don't,</p> <p>12 because I think you've addressed, you've raised about four</p> <p>13 different issues there. I would like to start with the</p> <p>14 capacity because I think they're worthy of individual</p> <p>15 mention. There certainly is a capacity problem. I've just</p> <p>16 been recently involved in an alternative dispute</p> <p>17 resolution, then going to the Tax Board. They said to us</p> <p>18 they don't have any person to facilitate the ADR. At the</p> <p>19 audit, your audit experience I have had one specific</p> <p>20 example and I've had many of the members report that to us</p> <p>21 on the operational side. Where SARS would commence an</p> <p>22 audit, would then say oh we suddenly have to go write an</p> <p>23 exam, we've got to do something else, come back, but it's</p> <p>24 capacity problems, and this thing drags on for months and</p> <p>25 months before the thing comes to an end. The timelines is</p>	<p style="text-align: right;">Page 1350</p> <p>1 resolved." Now that comment also if you look on the SARS</p> <p>2 website there is actually two pages worth of information</p> <p>3 about where to go if you want to get a dispute resolved,</p> <p>4 but what happens in practice in your experience?</p> <p>5 PROF NEL: That is absolutely, and I</p> <p>6 think that is what the Large Business Centre to a great</p> <p>7 extent had addressed, because there you had a relationship</p> <p>8 management, you had a manager that you could, the first</p> <p>9 point of contact. For the taxpayer at large and the tax</p> <p>10 practitioner it is impossible to get to the right person.</p> <p>11 If you've got some issues to resolve, if you get to speak</p> <p>12 to somebody because now you've got a, just trying to phone</p> <p>13 into the call centre and then being told that they can't</p> <p>14 assist you, then go and make an appointment. It just was</p> <p>15 impossible to do that, ja.</p> <p>16 MS HOBDEN: And you have mentioned</p> <p>17 timelines as a serious issue for you. Do you have a view</p> <p>18 on the new service charter?</p> <p>19 PROF NEL: Yes I have and I was</p> <p>20 instrumental in when the tax Ombud was appointed with</p> <p>21 Professor Doctor Barry Krum. We went the day and said that</p> <p>22 that's what the one thing that through SAICA, I think in</p> <p>23 2006/7 we have – I'm also part of the SAICA tax committee –</p> <p>24 and we as members have said you need to know what to</p> <p>25 expect. How long does it take SARS? Will they still do</p>
<p style="text-align: right;">Page 1349</p> <p>1 a major – maybe before I get to that, the communication.</p> <p>2 So once you've started in this process, you just cannot</p> <p>3 speak to people and that's also, I think talk to capacity</p> <p>4 and also the skills that you know you can't try and sort</p> <p>5 the problem out before we get to a dispute process. The</p> <p>6 timelines is one of the biggest problems that we've seen.</p> <p>7 That was under the old model also there but it wasn't as</p> <p>8 acute as now. We are generally have to resort to the</p> <p>9 courts, rule 56 to try and get SARS to just answer, give us</p> <p>10 the reasons within the 30 days when you ask for reasons for</p> <p>11 assessments because the grounds that are given are</p> <p>12 absolutely useless. You can, I'll also some examples, you</p> <p>13 just cannot determine what they've done, then you ask for</p> <p>14 reasons, you wait and wait and wait, you don't get that.</p> <p>15 And finally because you want to resolve this thing you</p> <p>16 start resorting to putting in your objection and things</p> <p>17 like that, so definitely there's a problem with that, ja.</p> <p>18 MS HOBDEN: Mr Engels says, and I'll read</p> <p>19 it to you so you can –</p> <p>20 PROF NEL: Okay, I've got his thing here,</p> <p>21 so –</p> <p>22 MS HOBDEN: He says "state members have</p> <p>23 experienced increased difficulties in locating the relevant</p> <p>24 person or department within SARS to resolve taxpayer</p> <p>25 issues. No one knows where to go to get a taxpayer dispute</p>	<p style="text-align: right;">Page 1351</p> <p>1 the refund this century type of thing? And you need to</p> <p>2 know what your reasonable expectation is, when they will</p> <p>3 deal with things. So that time we asked the tax Ombud to</p> <p>4 request that because he's now, we want to report things and</p> <p>5 for him it's important to know that and for, he originally</p> <p>6 raised that with Ivan Pillay and then every year, I'm</p> <p>7 absolutely aware of that, it was raised with the</p> <p>8 Commissioner's office and it was only when Mark released</p> <p>9 it, as you said a couple of months ago that that came out.</p> <p>10 So we are looking at some of those numbers and saying</p> <p>11 that's a bit long but we can live with that. At least we</p> <p>12 now have something and we now have something so I was at</p> <p>13 the tax Ombud this morning, at least now we can go to the</p> <p>14 tax Ombud and say hang on, SARS promised that they would do</p> <p>15 my refund within 21 days, it's not happening. So ja.</p> <p>16 MS HOBDEN: And Mr Engel says, provides</p> <p>17 some submissions on his views on LBC and you have touched</p> <p>18 on it, and I'd like to just mention and just get your</p> <p>19 comment and if you agree. He says that "the dissolution of</p> <p>20 the LBCs seems contrary to dominant tax administrative</p> <p>21 theory. Most countries agree that one needs an LBC. The</p> <p>22 dissolution of the LBC meant that SARS lost its connection</p> <p>23 with large business taxpayers. As I've described above,</p> <p>24 our members and taxpayers struggle to get disputes</p> <p>25 resolved. In the past the LBC would cater for this in</p>

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1 respect of large businesses. I believe that there is now a  
 2 trend by large businesses to proceed to court rather than  
 3 attempt to try and engage with SARS to resolve their  
 4 disputes. This is primarily because they feel SARS treats  
 5 them as non-compliant, as a default and that negotiations  
 6 where they happen simply bear no fruit.”  
 7 PROF NEL: I absolutely agree with that,  
 8 so ja. It was, that’s why I said, that was, in fact if you  
 9 had clients, you know there was a measure of they must have  
 10 a turnover of I think of more than R250 million, the moment  
 11 you see that your clients came close to that you said let’s  
 12 try and move them to the Large Business Centre. So ja,  
 13 definitely worldwide, you’ve got to treat these – and the  
 14 experience from the large business, the guys that were in  
 15 the Large Business Centre was that at least we have, you’ve  
 16 got different issues. As a general tax practitioner or  
 17 taxpayer you’ve got to go to the employer, if you’ve got  
 18 employee’s tax, you’ve got to locate that person. Now  
 19 you’ve one central point of contact. So you’re looking at  
 20 people where the biggest money comes from, treating, you’re  
 21 sort of segmenting your clients - Keith makes that point as  
 22 well – and I absolutely agree that the dissolution of that  
 23 has certainly had a big impact on that and large business  
 24 centres definitely had to now go to court to try and sort  
 25 things out. You see the court reports come out, ja.

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1 MS HOBDEN: And indeed from your members’  
 2 perspective it was desirable to have a client or a taxpayer  
 3 that fell into the large business bracket because it meant  
 4 that the administrative function resolving disputes and  
 5 performing their services was just so much easier.  
 6 PROF NEL: Ja, the dispute process of  
 7 course still went through a normal process but to generally  
 8 in the audit and those things, those interactions, common  
 9 interactions with SARS, and just to be able to register  
 10 your Large Business Centre, a new taxpayer, and you’ve got  
 11 this, you’ve got international people coming in here  
 12 wanting to do a VAT registration, then having been referred  
 13 to the local SARS office, ending up with a nightmare of  
 14 nine months to get a company VAT registered whereas if you  
 15 had the Large Business Centre assisting you that then it  
 16 would have been easier.  
 17 MS HOBDEN: Now just last question in  
 18 2015 when the change in the operating model took place in  
 19 SARS was there any consultation by Bain Consulting with you  
 20 or with your organisation? Mr Engels says that he was not  
 21 consulted and knows of none.  
 22 PROF NEL: No, at 2015 I was at SAICA  
 23 party and but also moved over to SAID at the time. I’m not  
 24 aware. And we have as we regularly do. So I’ve been lucky  
 25 or unlucky that probably from the 2006, the SARS people

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1 because they sort of knew me in Pretoria, involved us in  
 2 return design and we’ve offered, so for this to talk to  
 3 them and to be, you know I said, here, talk to us, and  
 4 we’re able to do that. And I’m not aware that any,  
 5 certainly not to me at, and as Keith says, he was, he also  
 6 joined site at about that time. He is not aware of any of  
 7 those, any reaching out to us with regard to that.  
 8 [15:15] MS HOBDEN: I have no more questions, if  
 9 the panel –  
 10 COMMISSIONER: You know, Professor, let  
 11 me just say, maybe it will make your mother feel better,  
 12 she has to prove her deductions. Do you know what they  
 13 want me to prove, the income.  
 14 PROF NEL: You know we as tax  
 15 practitioners, when you do your families’ tax returns you  
 16 gamble with your inheritance, so you’ve got to get – but I  
 17 have often wondered why SARS doesn’t actually audit on the  
 18 income side, particularly on the VAT side. They  
 19 concentrate on the deductions and so –  
 20 COMMISSIONER: But I mean – do you think  
 21 I’m going to declare income if I haven’t earned it?  
 22 PROF NEL: Ja, no, I don’t think so.  
 23 COMMISSIONER: Exactly what should I –  
 24 PROF NEL: There is one person that –  
 25 COMMISSIONER: - I prove to them that I

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1 earn the income?  
 2 PROF NEL: Ja.  
 3 PROF KATZ: Can I ask you two questions,  
 4 please?  
 5 PROF NEL: Yes, please ja.  
 6 PROF KATZ: The impact of all of these  
 7 things that you’ve been saying there, problems with SARS,  
 8 speaking from the taxpayers’ point of view are you able to  
 9 say that there is factual evidence that you’ve experienced  
 10 that the taxpayer morality has been reduced as a result of  
 11 which taxpayers are saying we’re going to pay less tax,  
 12 we’re going to be less cooperative to SARS, is that fact  
 13 that’s happening in the taxpayer community?  
 14 PROF NEL: Yes, I will definitely say so.  
 15 I do not know what the extent of that is and I think I’ll  
 16 give two examples of that. So I hear that first-hand from  
 17 taxpayers or I did hear that from taxpayers, but then  
 18 secondly through the tax practitioner where there is  
 19 increased pressure on the tax practitioners to leave out  
 20 income, to claim expenses that are risqué. And then people  
 21 are saying, because of this, you know this dispute that I  
 22 have, if you don’t get a refund, you start up a new  
 23 business, you purchase property, you do a property  
 24 development and your VAT refunds are delayed by months and  
 25 months and months, you got to resort to the court to try

<p style="text-align: right;">Page 1356</p> <p>1 and get that, or a refund is withheld. I was with those  2 involved in one that exports gold, a R80 million refund,  3 they closed their businesses by the time they got to court  4 because they couldn't pay their staff. That person who set  5 up a new business and he is off the radar because of that  6 problem that he has had, not being able to sort that out  7 and that loss in trust and saying but, gee, if I have  8 something, you know I'm not going to get it sorted out, so  9 ja.</p> <p>10 PROF KATZ: The second question,  11 obviously we're looking at what's going on at SARS, how it  12 impacts on revenue collection, is there any evidence that  13 taxpayers are saying, well, SARS doesn't have the capacity  14 to pick this up and that we're going to do things and we'll  15 get away with it?</p> <p>16 PROF NEL: I would have, if that question  17 came a couple of years ago I think I would have said, yes.  18 For us as tax, provisional tax practitioners and this whole  19 regulatory model that you got a risk for losing your  20 professional license if you assist with that, you've got no  21 reporting of contraventions of laws and regulations and  22 things and the risk of the taxpayer losing his/her tax  23 clearance or his tax clearance if there is a dispute with  24 SARS and you've done something wrong like that and a  25 reputation risk, certainly the people that I am with and</p>	<p style="text-align: right;">Page 1358</p> <p>1 COMMISSIONER: Thank you very much,  2 Professor.</p> <p>3 PROF NEL: Pleasure.</p> <p>4 [NO FURTHER QUESTIONS - WITNESS EXCUSED]</p> <p>5 MS HOBDEN: Our next witness is Peter  6 Farber from the South African Institute of Chartered  7 Accountants.</p> <p>8 COMMISSIONER: Good afternoon, Mr Farber.</p> <p>9 MR FARBER: Good afternoon, Sir.</p> <p>10 COMMISSIONER: Thank you very much for  11 coming. Do you affirm that any evidence you give will be  12 the truth, the whole truth and nothing but the truth? If  13 so will you say, I do?</p> <p>14 MR FARBER: I do.</p> <p>15 EVIDENCE BY MR FARBER</p> <p>16 MS HOBDEN: Thank you, Mr Farber. Could  17 you please state for record your name and your position at  18 the organisation where you work?</p> <p>19 MR FARBER: My name is Peter Farber and  20 I'm the senior executive for tax at SAICA.</p> <p>21 MS HOBDEN: And can you explain the  22 mandate of your organisation and the members it represents?</p> <p>23 MR FARBER: Well, the mandate of our  24 organisation, we represent the chartered accountancy  25 profession. We have more than 44 000 members of which</p>
<p style="text-align: right;">Page 1357</p> <p>1 the most of the members that I spoke to were reluctant to  2 engage you know and do things like that.</p> <p>3 PROF KATZ: Sorry, I see you phrase it,  4 has compliance reduced because of a conviction that the  5 capacity of SARS –</p> <p>6 PROF NEL: I think –</p> <p>7 PROF KATZ: - to –</p> <p>8 PROF NEL: I think it has, I think it  9 has.</p> <p>10 PROF KATZ: I mean that's really the  11 question.</p> <p>12 PROF NEL: Okay, yes, no, that I would  13 agree with, ja, so ja.</p> <p>14 MS HOBDEN: And perhaps just to add to  15 that Prof Katz, the affidavits of Keith Engel who is the  16 CEO, he has said and although there is no firm evidence, he  17 says that in his experience there is a ceiling in  18 perception that SARS no longer has the teeth it once has to  19 enforce compliance. So that's –</p> <p>20 PROF KATZ: That's the question I've  21 posed.</p> <p>22 PROF NEL: Ja en that comes to, I think  23 mainly to the Large Business Centre, ja, so ja. I think it  24 is, - ja, no, no, I think, ja, I want to leave it there,  25 ja.</p>	<p style="text-align: right;">Page 1359</p> <p>1 about 9 000 are international, 4 000 are registered  2 auditors and another 4 and a half thousand are registered  3 tax practitioners, of that about 50% of what we term  4 members in business and these are people like business  5 owners, financial managers, financial directors and the  6 sort.</p> <p>7 MS HOBDEN: SAICA has provided a very  8 detailed submission to the Commission and we thank you for  9 it. I would like to go to certain portions of that  10 submission that are relevant to what we're talking today  11 which is really systemic operational issues arising at SARS  12 and any changes and I would like to start by looking at a  13 survey that SAICA did amongst its members. We chatted  14 about it earlier today and there was a survey looking at  15 the complainants that are going to the Ombud and I  16 understand it was conducted in around March, April this  17 year. Could you just give some SARS context to that survey and  18 just explain what you were looking for?</p> <p>19 MR FARBER: So the context of the survey  20 was a request from the office of the tax Ombud to try and  21 identify systemic matters which we then assisted by trying  22 to survey our own members in identifying statistically what  23 these matters would be and then it obviously included  24 various matters to be identified in that respect.</p> <p>25 MS HOBDEN: And one of the findings that</p>

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1 the survey looks at is what were the issues that most of  
 2 your members identified as systemic issues in the  
 3 engagement with SARS and I would like us to look at the top  
 4 four of those. The first is delays in paying out refunds.  
 5 The second is the failure to adhere to dispute timelines.  
 6 The third is non-response to taxpayer queries and the  
 7 fourth is revised tax assessments without notice, and I  
 8 would just like us to have a look at each of those, maybe  
 9 in some detail and perhaps get your comments on them. The  
 10 first is the issue of the delay in refund. I understand  
 11 the Ombud has dealt with that and we will be dealing with  
 12 his office on that issue, so perhaps we can move on to the  
 13 issue of the dispute resolution. We have heard evidence  
 14 that there is difficulties for tax practitioners in  
 15 engaging with SARS where there are objections or disputes,  
 16 particularly since the dissolution of the Large Business  
 17 Centre. Is that something you can comment on?  
 18 MR FARBER: Well, I can't comment on  
 19 whether it is directly related to the LBC's closure. This  
 20 was not directed specifically at that question. It is  
 21 however from the survey that we've done from the evidence  
 22 that it is, the top four issue which is not something that  
 23 was necessarily, so in any previous correspondence in the  
 24 last four years, even though it is noted as a problem I  
 25 actually referred it to agenda operational issues back in

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1 2012 and this has been an ongoing concern. So I cannot  
 2 comment as to whether it has as it escalated being in the  
 3 top four now.  
 4 MS HOBDEN: Sure, of course. Well, one  
 5 of the factors that is mentioned in the survey is that  
 6 there is an issue with the reasons provided to taxpayers  
 7 when they receive either an audit or an objection is  
 8 disallowed and what the survey finding says is that the  
 9 reasons provided, particularly with respect to individual  
 10 taxpayers are often felt to be insufficient, both from a  
 11 factual and a legal interpretative perspective to enable  
 12 the taxpayer to properly formulate grounds of objection.  
 13 Now this has apparently being acknowledged by SARS and I  
 14 believe it is something that has been raised in the  
 15 consultation meetings with SARS. Is that something you can  
 16 comment on?  
 17 MR FARBER: It has been a long  
 18 outstanding matter that was documented and raised with our  
 19 national SARS operational meetings which is documented in  
 20 those and obviously both the reasons but also the  
 21 procedures and the systems to actually use this. I think  
 22 the one thing that did come up in the latest was rather  
 23 more systemic errors in the E-filing system relating to  
 24 disputes that was noted in various of those meetings and I  
 25 think that has probably been more troublesome and more

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1 recurring from a systemic point of view is the system  
 2 itself as well.  
 3 MS HOBDEN: And the third issue raised by  
 4 your members which is something we have heard already this  
 5 afternoon is, difficulties in responsiveness of SARS  
 6 officials and communication and it relates also to the  
 7 extent and explanations of reasons for decisions. Is that  
 8 something that has been raised? How does that seem to  
 9 affect your members?  
 10 MR FARBER: Well, obviously within a tax  
 11 system communication and there is a lot of grey, so a lot  
 12 of communication in dealing with anomalies is required to  
 13 such extent that, if we look at the two levels, one at  
 14 member levels, one at RCB level, historically back in  
 15 2012/2013 in fact SARS, SAICA together in collaboration  
 16 with SARS commission what we call the operation query  
 17 system, which was a purpose built software system whereby  
 18 we would then take operational queries and redirect it to  
 19 specific persons within SARS to make, to increase the  
 20 efficiency and it has been clear that over the last few  
 21 years there has not been much collaborating in updating the  
 22 recipients on SARS' side for that system and its  
 23 effectiveness has definitely been affected on that side, as  
 24 well as you said the communication. A lot of it has been  
 25 centralised, be it through a call centre and I think when

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1 anomalies, etcetera, happened or exceptions happened that  
 2 has been the experience of our members that they are  
 3 struggling to access specific persons to resolve. From an  
 4 RCB side I think exactly that in that we were quite used to  
 5 collaborating especially with the executive management at  
 6 SARS and I think that definitely declined in the last few  
 7 years in having direct access to the decision makers within  
 8 SARS in specific matters.  
 9 MS HOBDEN: Thank you and that's really  
 10 where I am leading to because the survey says that what,  
 11 the survey results reflect a feeling of your members that  
 12 mirrors the issues raised by SAICA in the RCB meetings and  
 13 in the consultations with SARS and I would like you to just  
 14 maybe explain to the panel some of what there registered  
 15 controlling body meeting consist of and how they have  
 16 operated. You say that engagement has decreased but can  
 17 you just explain your experience? I know you attend those  
 18 meetings and what happens there?  
 19 MR FARBER: Well, to start off with I  
 20 think it is probably one of the longest standing engagement  
 21 platforms with SARS and it is also probably one of the most  
 22 efficient or effective systems in actually identifying  
 23 challenges. Now as to the extent of the problems, I refer  
 24 again to the agenda that I looked at this morning for 2012  
 25 and just looking statistically at the volumes, the agenda

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1 items were about, there was about just over 20 agenda items  
 2 from the May 2017 agenda items that I supplied, May 2018  
 3 rather that I supplied, there were nearly 45 items just on  
 4 the agenda. So it was clear statistically that  
 5 operationally something had escalated considerably and a  
 6 lot of them were systems related as well.

7 MS HOBDEN: And over the last couple of  
 8 years do those meetings, I mean the agenda, the increase in  
 9 the agenda items tells us that more, there are more and  
 10 more different issues arising but does it also tell us that  
 11 issues have not been resolved over time?

12 MR FARBER: Well, I think that is  
 13 correct, if we refer to both those items and agenda items,  
 14 the one in May 2018, I think what is glaringly obvious was  
 15 the brought forward matters, some of them dating back to  
 16 2015, that have not been resolved and I think that was  
 17 absent five years plus ago.

18 MS HOBDEN: And your view now of the  
 19 engagement, I know the last meeting was in May, what's your  
 20 experience of it and forward looking, is that consultation  
 21 process an engagement with the stakeholders, is it going  
 22 from strength to strength?

23 MR FARBER: Well, the next one is  
 24 hopefully due soon. I think that has been erratic in the  
 25 last two years. We consistently had it every quarter, but

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1 I believe that it would go back to once a quarter as well.  
 2 SARS have in the last few months as well acceded to have an  
 3 additional engagement platform for legal and policy matters  
 4 which is something we first raised in May 2015 and we  
 5 welcome that they've now in the last month acceded to the  
 6 request to actually have an ongoing engagement platform in  
 7 that respect as well.

8 MS HOBDEN: Thank you, Mr Farber. I  
 9 don't know if the panel has any questions?

10 COMMISSIONER: Thank you very much  
 11 indeed, Mr Farber.

12 [NO FURTHER QUESTIONS - WITNESS EXCUSED]

13 MS HOBDEN: Our next witness is Sinen  
 14 Mguni from FITA.

15 COMMISSIONER: Good afternoon.

16 MR MGUNI: Good afternoon, Judge.

17 COMMISSIONER: Are you both speaking to  
 18 us?

19 MR MGUNI: Indeed, this is the chief  
 20 operating officer of FITA, Naran Ramden.

21 COMMISSIONER: And your position is?

22 MR MGUNI: I'm the chairperson.

23 COMMISSIONER: Okay. Well, do you want  
 24 both to take the oath together?

25 MR MGUNI: I suppose we have to, yes.

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1 COMMISSIONER: Will you both confirm that  
 2 the evidence you give will be the truth, the whole truth  
 3 and nothing but the truth? If you will say, I do?

4 SINENHLANHLA MGUNI: I do.

5 DURAN RAMDEM: I do.

6 COMMISSIONER: Thank you, I've never had  
 7 this but –

8 EVIDENCE OF MR MGUNI AND MR RAMDEN  
 9 EXAMINATION BY MS HOBDEN: Thank you,  
 10 gentlemen. Could you explain to the panel each of your  
 11 positions in the organisation and what your organisation  
 12 does and who they represent?

13 MR MGUNI: So I'm the FITA chairperson.  
 14 I oversee things from an administrative point of view on  
 15 behalf of FITA. I engage with government organisations and  
 16 institutions such as the South African Revenue Service, and  
 17 I don't know if Naran perhaps would just like to give his  
 18 input as to what he does and then I'll go into what FITA  
 19 does in the organisation.

20 MR RAMDEN: I'm the chief operating  
 21 officer of FITA, directly involved in the day to day  
 22 operations of the organisation. Of course I mirror the  
 23 chairperson's functions as well and give him support on the  
 24 objectives of the organisation.

25 MR MGUNI: Indeed and FITA is the Fair

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1 Trade Independent Tobacco Association. We're an  
 2 association of solely locally owned manufacturers. We have  
 3 six tobacco manufacturers in our membership currently and  
 4 they are Afroberg, Amalgamated Tobacco Manufacturers,  
 5 Carney Links, Gold Leaf Tobacco, Protobac and Home of Cut  
 6 Rag. The goals and objectives of the Fair Trade  
 7 Independent Tobacco Association ought to necessary  
 8 transform the local tobacco industry which is four decades  
 9 being dominated by the foreigner multi-nationals. We are  
 10 trying to as the name suggests create a fair trading  
 11 environment and a level playing field for all role-players  
 12 within the industry.

13 MS HOBDEN: And perhaps Mr Ramden can  
 14 answer this question and we will talk later about how FITA  
 15 engages with SARS on a high level on policy and legal  
 16 issues, but day to day for your members what is their  
 17 interaction with SARS?

18 MR RAMDEN: It is a difficult question to  
 19 answer. Their membership is based on us providing  
 20 collective engagement with government departments,  
 21 obviously for purposes of creating a fair trading platform  
 22 in the industry. As FITA we do not get directly involved  
 23 in our members' operations, so the engagement from a day to  
 24 day point of view I wouldn't be able to give you that  
 25 answer. If there are matters that are relevant

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1 collectively to the industry, if SARS, for example they're  
 2 busy with the process of looking into the fiscal marker  
 3 that affects the tobacco or the cigarettes that's something  
 4 that we would discuss and we would actually take it back to  
 5 SARS and to government and find out what the updates are  
 6 and stuff like that and then take it back to our members.  
 7 So that's basically the relationship at the moment.  
 8 MS HOBDEN: The physical interaction of  
 9 your members with SARS officials, for many people that just  
 10 involves pressing, submits on E-filing or going to a tax  
 11 practitioner and giving them some documents, but for your  
 12 members that's slightly different and I'm just wondering if  
 13 you can expand on what that actual interaction is?  
 14 MR RAMDEN: All of our members are  
 15 currently a registered customs and excise warehouse with  
 16 the South African Revenue Services. Of course, because it  
 17 is the excise industry there is a whole lot of legislation  
 18 and that they have to adhere to or confirm to in terms of  
 19 producing cigarettes or dealing with the tobacco industry.  
 20 [15:35] So on a monthly and quarterly basis they would  
 21 submit customs and excise accounts where they would declare  
 22 certain movements in terms of cigarettes or certain  
 23 movements in terms of Leaf and they would also be subjected  
 24 to interventions. I know they previously used to call it  
 25 visible policing inspections where SARS would just rock up

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1 unannounced to the premises and do a spot count on the  
 2 stock on the floor and further than that it's post related  
 3 audit activities that SARS would conduct on the  
 4 declarations that our members have submitted.  
 5 MS HOBDEN: And has, have your members  
 6 reported any change in how those operations occur over the  
 7 last five years? Is it something that has been consistent,  
 8 have those kinds of checks increased, decreased, has the  
 9 nature of them change, has the relationship between your  
 10 members and SARS officials changed in any way?  
 11 MR RAMDEN: Specifically around 2013 the  
 12 previous group executive Johan Van Loggerenberg he sent out  
 13 a communication to the entire tobacco industry addressing  
 14 the issues in the tobacco industry and advising everybody  
 15 that they were going to increase compliance activities in  
 16 tobacco industry. Stemming from that or born from that  
 17 project, it was actually called Project Honey Badger an  
 18 integrated audit team was formed and this integrated audit  
 19 team looked at the tobacco members of tobacco industry  
 20 holistically throughout the different tax types. So it  
 21 wasn't only specific to excise, it was income tax, skills  
 22 development levy and so on. So this integrated audit  
 23 function is currently still in place. It's still  
 24 continuing as we speak to my knowledge.  
 25 MS HOBDEN: And what was the

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1 communication with SARS like during that period and the  
 2 resolution of difficult, well of disputes or legal issues  
 3 or kind of on the ground issues with audits or these  
 4 inspections?  
 5 MR RAMDEN: I think initially given the  
 6 background of the tobacco industry and given the way it's  
 7 always been emphasised in the media and given that there's  
 8 an entire illicit component said to be attached to the  
 9 cigarette industry. The members, I can speak specifically  
 10 for the FITA members, they were very cautious in the way  
 11 they actually approached SARS. They're very cautious and  
 12 very hesitant because they felt that the bigger players in  
 13 the industry were given a better platform and a better  
 14 hearing to voice their opinions and better engagement in  
 15 terms of policy changes and stuff like that and round about  
 16 2016 the tobacco industry forum was actually launched again  
 17 and we found that now there's been a slight shift in this,  
 18 in terms of the relationship. You have one other  
 19 organisation which is TISA which represents the multi-  
 20 nationals, three multi-nationals and you have FITA which  
 21 represents the six local cigarette manufacturers. So we  
 22 had a common ground at the moment and SARS has given us the  
 23 same platform currently to engage with them.  
 24 MS HOBDEN: Perhaps we can talk a little  
 25 bit more about the tobacco industry forum and how that

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1 works for FITA and what your engagement and your experience  
 2 of engagement and consultation with SARS has been and the,  
 3 what fruits it has or has not born.  
 4 MR MNGUNI: Look the tobacco industry  
 5 forum was only recently revived. But what tends to get  
 6 dealt with here are industry, obviously industry specific  
 7 related problems. Currently the elephant in the room is  
 8 the illicit tobacco trade but industry role-players are  
 9 encouraged to put forward any sort of issues that are  
 10 industry specific that they feel SARS should be alerted to  
 11 and should be dealing with. As an organisation we've put  
 12 forward the idea that SARS should deal with industry  
 13 related issues holistically, in a similar nature to how  
 14 Project Honey Badger did where they looked at the industry  
 15 holistically and looked at the entire value chain and  
 16 didn't limit compliance in terms of its cigarette industry  
 17 to the illicit trade which is a small component of the  
 18 entire value chain. I mean cigarettes, the tobacco  
 19 industry doesn't start when you have a fully manufactured  
 20 cigarette, it starts in the agricultural sector. So you  
 21 have to look at instances where, whether, as to whether the  
 22 farmers are being, the PAYE on behalf of farmers is being  
 23 paid, you know diesel refunds in terms of farmers, the  
 24 skills development levies and so forth and look at it, look  
 25 at the compliance risk along the value chain and not

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1 limited to the illicit trade.

2 MS HOBDEN: You said that that was

3 something that happened during Project Honey Badger.

4 MR MNGUNI: Honey Badger.

5 MS HOBDEN: Are you saying that's

6 something you hope happen now, so are you saying that there

7 was a drop off from that holistic view in the period

8 between?

9 MR MNGUNI: Indeed, indeed I still think

10 that is the case now and that in engagements we've had with

11 SARS recently the noise has been predominantly about the

12 illicit trade and one gets the impression that currently

13 there isn't capacity to deal with, you would appreciate

14 that local manufacturers as opposed to multi-nationals have

15 different sets of compliance risks. I mean you have people

16 that import versus people that manufacture locally and vice

17 versa. So it's sort of, we sort of held the impression

18 that currently in comparison to Honey Badger you don't have

19 people with the requisite skills to deal with the various

20 compliance risks within the industry and they're focusing

21 on the, in essence the lower hanging fruit and the easy,

22 the elephant in the room that sticks out, you know.

23 MS HOBDEN: So you're saying there's a,

24 both a capacity issue and a skills issue to engage with the

25 tobacco industry both locally and multi-nationally because

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1 of the specific and specialised compliance requirement?

2 MR MNGUNI: Yes, I think if you look at

3 Honey Badger I think the skills that were developed and

4 which the members of that unit possessed were developed

5 over a period of time and the tobacco industry is quite a

6 complex industry and it's not an industry that one can

7 simply understand overnight and I think if SARS allocated

8 some form of a budget towards training and equipping it's

9 personnel to dealing with the industry more holistically

10 and understanding the various compliance risks I think you

11 would find that you would recoup a significantly larger

12 amount in forms of various tax. You've, I think I was

13 following this commission of inquiry previously when Cecil

14 Morden gave evidence and he state that I think there's been

15 a 25% drop in terms of excise collection.

16 A professor from the school of economics at the

17 University of Cape Town in his comments stated, in respect

18 of Morden's commented stated that it cannot simply be

19 attributed to the illicit trade and one has to look at the

20 industry holistically and you would have found that during

21 Honey Badger there was also a 25% spike which is similar to

22 what Morden says has dropped. So I think you can't limit

23 it purely to the illicit trade. You have to look at it

24 more holistically.

25 MS HOBDEN: Can you comment on the

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1 statement by Mr Engel where he says that there is a

2 perception amongst his members who are tax practitioners

3 sitting in their office that SARS no longer has the teeth

4 it once had. Is that a perception that you have heard from

5 your members or that you experienced, in your area?

6 MR MNGUNI: Look I think, I think the

7 impression is certainly created that that is the case when

8 you find that, I mean certain parties, for instance there's

9 a multi-national which was assessed for 2 billion at the

10 time that Honey Badger was active and you don't find those

11 kinds of, sort of assessments no longer and it certainly

12 creates that impression that SARS is purely focusing now on

13 the lower hanging fruit and not looking at the industry

14 holistically.

15 MS HOBDEN: And from your organisation's

16 point of view are you happy with the engagement now with

17 SARS with the tobacco industry forum, are there any

18 recommendations or suggestions you have?

19 MR MNGUNI: Look at this point we're

20 happy because we've been given a platform that we never

21 used to enjoy previously. Our organisation's relationship

22 with SARS has been improving gradually as we've moved

23 across the years. We're happy that we're being given the

24 similar platform to the bigger role-players in the

25 industry, the multi-nationals to engage SARS on matters of

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1 policy. Our only concern is that they still seem to

2 dictate the conversation in terms of what's discussed in

3 these forums. I mean they're able because of the massive

4 funds they accumulate though having operations worldwide to

5 fund reports such as the EPSOS report on the tobacco

6 industry which having read other research papers seems to

7 be a common sort of a trait between the multi-nationals

8 worldwide where they find these research papers that

9 overemphasise the illicit trade and move focus away from

10 other compliance risks within the industry and I think SARS

11 needs to, if they do intend relying on any form of reports

12 in terms of industry conduct independent reports themselves

13 and not rely on reports that were commissioned by industry.

14 MS HOBDEN: And to do that they would

15 need specialised skills and capacity?

16 MR MNGUNI: Of course, of course.

17 MS HOBDEN: I have no more questions, I

18 don't know if the panel would like to -

19 COMMISSIONER: Let me just get clarity.

20 Honey Badger when did that start?

21 MR MNGUNI: It was in 2012.

22 COMMISSIONER: And the unit from SARS

23 that was involved in that was that Mr Van Loggerenberg?

24 MR MNGUNI: Van Loggerenberg indeed.

25 COMMISSIONER: And so once his unit got

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1 disbanded quite apart from what effect on the illicit trade  
 2 as far as the legitimate trade is concerned you feel  
 3 prejudiced by that as well?  
 4 MR MNGUNI: I think post Honey Badger  
 5 SARS sort of dropped the ball in that they didn't look at  
 6 compliance more holistically whereas I mean Honey Badger  
 7 they realised that the compliance risks of the local  
 8 manufacturers are completely different to the compliance  
 9 risks of the multi-nationals and you can't look, treat the  
 10 various manufacturers using a similar sort of model to  
 11 assess the risk that they possessed.  
 12 COMMISSIONER: No I understand but I  
 13 think I actually saw that letter that you're talking about.  
 14 A very long letter that -  
 15 MR MNGUNI: Indeed.  
 16 COMMISSIONER: That Mr Van Loggerenberg  
 17 wrote to the industry.  
 18 MR MNGUNI: It was the 14th of November  
 19 2013.  
 20 COMMISSIONER: Were you happy with Honey  
 21 Badger, is that what you are saying?  
 22 MR MNGUNI: I think we were, because it  
 23 treated the industry equally and it looked at compliance  
 24 risks holistically instead of what's happening now where  
 25 there's an over emphasis on the illicit tobacco trade which

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1 we're not denying is a problem but you have to look at the  
 2 industry more holistically and you'll find that you will  
 3 then recoup a significantly larger amount of money.  
 4 COMMISSIONER: But I mean I'm just  
 5 thinking the disbanding of that unit put an end to Honey  
 6 Badger as well then?  
 7 MR MNGUNI: The disbanding of?  
 8 COMMISSIONER: Van Loggerenberg's unit.  
 9 MR MNGUNI: Ja.  
 10 COMMISSIONER: That brought an end to  
 11 Honey Badger.  
 12 MR MNGUNI: Indeed.  
 13 COMMISSIONER: Which was doing you say  
 14 good work by communicating with you?  
 15 MR MNGUNI: No it was doing good work by  
 16 communicating but also in understanding the industry.  
 17 COMMISSIONER: What's what I mean.  
 18 MR MNGUNI: A lot better, ja, indeed.  
 19 COMMISSIONER: Vuyo?  
 20 MR KAHLA: Nothing my side, thanks.  
 21 MS STEINBERG: Judge, I'm just recalling  
 22 something that Mr Ravele said. Mr Van Loggerenberg would  
 23 have reported ultimately to Mr Ravele and he said when in  
 24 October 2014 Mr Moyane closed down the tobacco enforcement.  
 25 COMMISSIONER: Well he closed down the

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1 enforcement unit.  
 2 MS STEINBERG: Enforcement but he said  
 3 the impact on tobacco was that they used to as the witness  
 4 said do for example spot inspections in legitimate local  
 5 companies and they were not allowed to do that anymore and  
 6 as a result he says it's now much easier to under declare  
 7 the number of sticks that you're producing. So that kind  
 8 of capacity was closed down with the end of Honey Badger,  
 9 is that right, is that the type of thing you're referring  
 10 to?  
 11 MR MNGUNI: Look I'm not referring to,  
 12 that would be one component I mean Honey Badger was wide in  
 13 the activities that it engaged in. So that would be one of  
 14 them but like I said Honey Badger understood that for each  
 15 manufacturer there were different compliance risk and they  
 16 sort of understood how to sort of police the industry  
 17 holistically.  
 18 COMMISSIONER: Yes.  
 19 MR MNGUNI: But that would be one of them  
 20 but there are many, there are many.  
 21 PROF KATZ: Sorry following from that.  
 22 Leave aside what the Judge said the consequence of closing  
 23 down of the enforcement, are we saying that, what the  
 24 thrust of Advocate Steinberg's comment that as a result of  
 25 the closing down of the enforcement there's a reduction in

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1 compliance in your companies?  
 2 MR MNGUNI: No, no, no that's not what  
 3 we're saying.  
 4 MR RAMDEN: When I gave the opening  
 5 statement I basically said that there's still an integrated  
 6 audit component that's still functioning in SARS that's  
 7 looking at the different tax types but obviously it's not  
 8 on the magnitude that Project Honey Badger did it. So I  
 9 think it's just taken a step back in terms of the magnitude  
 10 of it. But it's still continuing on a smaller scale.  
 11 COMMISSIONER: But I think your concern  
 12 is that you don't have people skilled in the trade to talk  
 13 to at the moment. Is that correct? People who understand  
 14 the tobacco trade holistically?  
 15 MR RAMDEN: One of, you're very right,  
 16 Judge, one of the burning points that we are faced with  
 17 always is that obviously there's always the emphasise on  
 18 the illicit trade.  
 19 COMMISSIONER: Yes.  
 20 MR RAMDEN: But in order to call a  
 21 cigarette packet illicit, just seeing that it's sold below  
 22 the MCT of R18.95 does not constitute an illicit. There's  
 23 a, in terms of the customs and excise act there's different  
 24 requirements that goes into producing the cigarette,  
 25 declaring the cigarette and the excise amount and then

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1 paying the duties of the SARS within a 60 day period. So  
 2 for example if a manufacturer wanted to sell a particular  
 3 brand at lower than the MCT but he's declared the tax and  
 4 he's paid it over to SARS it does not say, mean that the  
 5 actual cigarette packet is illicit.  
 6 COMMISSIONER: Ja, no but all I'm saying,  
 7 I don't want to get into details of that, but as I  
 8 understand you're saying that Honey Badger was actually a  
 9 valuable unit in the sense that they understood the tobacco  
 10 industry.  
 11 MR RAMDEN: Ja.  
 12 COMMISSIONER: Small and big.  
 13 MR MNGUNI: Indeed -  
 14 COMMISSIONER: Not just -  
 15 MR MNGUNI: I think to summarise that is  
 16 the point that we're getting across.  
 17 COMMISSIONER: Both illicit and the  
 18 legitimate industry and you can talk to that, would that be  
 19 about right?  
 20 MR MNGUNI: Yes.  
 21 COMMISSIONER: And that you lost after  
 22 the Honey Badger came to an end? Is that right?  
 23 MR MNGUNI: That's what we're saying.  
 24 COMMISSIONER: Thank you. Thanks very  
 25 much for coming along. That's very useful. Thank you so

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1 much.  
 2 MR MNGUNI: Thank you for having us.  
 3 [NO FURTHER QUESTIONS – WITNESSES EXCUSED]  
 4 MS HOBDEN: Our last two witnesses for  
 5 today are Johan Marias -  
 6 COMMISSIONER: Not a double act though?  
 7 MS HOBDEN: It's another double act and  
 8 Mr David Logan from the South African Association of  
 9 Freight Forwarders.  
 10 COMMISSIONER: Gentlemen thank you very  
 11 much. I'm not used to double acts. But it's quite  
 12 interesting. Will you both affirm that the evidence you  
 13 give will be the truth, the whole truth and nothing but the  
 14 truth. If so say I do.  
 15 DAVID LOGAN: I do.  
 16 JOHAN MARIAS: I do.  
 17 COMMISSIONER: Thank you very much.  
 18 Thanks for coming and giving us your time.  
 19 MR LOGAN: Pleasure.  
 20 EVIDENCE OF MR LOGAN AND MR MARAIS  
 21 MS HOBDEN: Good afternoon gentleman.  
 22 Could you please give us your names and your positions at  
 23 the South African Association of Freight Forwarders.  
 24 MR LOGAN: I'm David Logan, I'm the CEO  
 25 of the South African Association of Freight Forwarders and

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1 I've been in the position for nearly 8 years.  
 2 MR MARIAS: Johan Marias and I am the  
 3 executive on customs and regulatory for our association.  
 4 MS HOBDEN: Can you explain the mandate  
 5 of your organisation and who your members are?  
 6 MR LOGAN: Our mandate is to make  
 7 submissions and comment on legislation affecting the  
 8 industry. Specifically, recently the new customs act and  
 9 duty act and the relevant rules and our members are  
 10 international freight forwarders but they're also licensed  
 11 custom brokers and they, we have approximately 300 members  
 12 and they collect on behalf of the South African Revenue  
 13 Services Customs import duties and import VAT to the amount  
 14 of approximately 300 billion per annum.  
 15 MS HOBDEN: Am I correct in understanding  
 16 that your members are the interface between SARS customs  
 17 and importers and exporters in and out of South Africa?  
 18 MR LOGAN: That's absolutely right and  
 19 yes we estimate that, as, our members include or many South  
 20 African based SSMEs but they also, all the global  
 21 international forwarders are our members and we estimate  
 22 that they handle containerised traffic and break bulk  
 23 excluding bulk mineral exports and imports of about 80% of  
 24 the freight that comes into and out of South Africa through  
 25 their land borders, through our land borders, sea freight,

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1 sea ports and airports.  
 2 MS HOBDEN: And can you explain how your  
 3 members engage and deal with SARS on a day to day basis?  
 4 What is their interaction with SARS, what is their, what is  
 5 the interface they provide?  
 6 MR LOGAN: Basically they submit custom  
 7 declarations via EDI to SARS Customs.  
 8 MS HOBDEN: Now you've provided the  
 9 commission with an affidavit and we have consulted and  
 10 discussed some of these issues so I'd just like to go  
 11 through some of them that arise in relation to the  
 12 operational efficiency of SARS particularly in the customs  
 13 area which is where your members area. Firstly I'd like  
 14 you to talk, briefly describe your experience and  
 15 relationship with SARS in the years 2007 to about 2013/14  
 16 which is what we refer to as the period where the SARS  
 17 modernisation took place and we have heard evidence that's  
 18 one of the key areas was in customs. So can you explain  
 19 what your members experienced and what your interactions  
 20 with SARS were over that time?  
 21 [15:55] MR MARAIS: We experienced tremendous  
 22 progress. I think to express it for everyone to understand  
 23 is the best thing since sliced bread because it enjoyed  
 24 unconditional support, not only our members who are  
 25 responsible for submitting those declarations, making the

<p style="text-align: right;">Page 1384</p> <p>1 assessments and paying the duties and taxes but also in 2 terms of their clients. There is a large reliance on a 3 customs broker to serve not only the customs declarations 4 but also to advise their clients in terms of international 5 trade. So we thoroughly enjoyed that experience of 6 collaboration and co-creation within SARS over that time. 7 MS HOBDEN: And your engagements with 8 SARS where you had disagreements about interpretations or 9 practical issues, how they would work, how did those play 10 out? 11 MR MARAIS: There were, in terms of if 12 there is a legal principle we would do that through the 13 normal channels of either appealing the decision and 14 putting forward your case because unlike the tax 15 environment we don't have the benefit of a tax court for 16 customs at this time. So it was a regulated, highly 17 regulated and you either were capable of representing the 18 interests of your client, importer or exporter or 19 manufacturer including the tobacco manufacturers, to a 20 degree where your interface decided the fate of your 21 client. And we've heard some issues with that particular, 22 but I will answer that as we go through. 23 MS HOBDEN: Some of what we spoke about 24 when we consulted was about – and you mentioned to me that 25 you felt the leadership at that time was excellent, as you</p>	<p style="text-align: right;">Page 1386</p> <p>1 of engagement, we then move to a period 2014/15/16 where we 2 have the new operating model gets envisaged and it gets 3 implemented. Can you tell us about any consultation that 4 happened with SARS or with Bain Consulting, with your 5 organisation over that period about what a new operating 6 model may or may not look like? 7 MR LOGAN: There was no consultation with 8 SARS at all, not from Bain or from SARS. 9 COMMISSIONER: Was there any contact at 10 all? 11 MR LOGAN: None at all, Judge, none at 12 all. 13 MS HOBDEN: After the implementation of 14 the new operating model which we know happened during 2016, 15 you told me about a moment in time in August 2017 that 16 changed everything about how customs had been working and 17 how your members had been experiencing it. Can you 18 describe that and explain it to the panel? 19 MR MARAIS: Yes, the critical transaction 20 between trade and the taxpayer and SARS customs is 21 presenting a declaration for assessment. That declaration 22 also guides as to the release of that particular 23 consignment into trade. Now we all know for instance the 24 automotive industry, that the techniques employed there are 25 just in time because of the enormous costs of moving goods</p>
<p style="text-align: right;">Page 1385</p> <p>1 call it and you spoke about a real commitment and 2 enthusiasm on the side of SARS and with the external 3 stakeholders about the modernisation process. Could you 4 just confirm and elaborate that? 5 MR MARAIS: If one takes it to the 6 extreme is that the chief operating officer of SARS could 7 give you a call 5 o'clock on a Friday afternoon to be in 8 Pretoria at 8 o'clock to decide on certain issues that were 9 for instance within the modernisation programme would be 10 launched over that time, there was enthusiasm to be there, 11 to be part of that development. 12 MS HOBDEN: And I noted this down when we 13 spoke because I, and it's not included in your affidavit 14 but I thought it was a great summary of what you had 15 explained to me. You said at that time we were 16 mechanising, we were systematising and we were on the road 17 to maintaining a world class customs regime and we had 18 achieved it. Is that right. 19 MR MARAIS: We did. We did. Through 20 that the association representing both importers, exporters 21 and the customs brokers were recognised by the World 22 Customs Organisation as having made a contribution to the 23 customs organisation in South Africa. 24 MS HOBDEN: So from this period where you 25 had goals, objectives, enthusiasm, leadership, high levels</p>	<p style="text-align: right;">Page 1387</p> <p>1 to a point where it could be situated in the supply chain. 2 What happened in August of 2017 I would describe it as an 3 event that probably caused more harm to the economy than we 4 could have realised at the time. Had we been consulted we 5 would have been in a position to explain what supply chain 6 is about. The negative effect of that, apart from the 7 extraneous costs of diverting a consignment – to give you 8 an example 140 foot containers, to interrupt the movement 9 to its destination to be diverted to a customs controlled 10 environment where it could be inspected. That decision, as 11 the Judge rightly commented, was made through a risk 12 engine, so there was no human interface at that time 13 because the intelligence and the intellect lies in the 14 particular customs officer who must make a call on that 15 particular intervention. 16 MS HOBDEN: So what you described to me 17 at that point what happened was the implementation of a 18 national processing pool, a sudden and dramatic increase in 19 the number of inspections after those declarations came in 20 and then serious delays in, after those inspections getting 21 the goods finalised and released. Can you just talk to 22 those practical issues on the ground? 23 MR MARAIS: We will. Organising the so 24 called national processing pool of each and every customs 25 transaction we, when we heard about this, we were quite</p>

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1 excited because now we thought, well now there would be  
 2 capacity and there would be the necessary intellect and the  
 3 necessary skill and experience to put these things through  
 4 without unnecessary delay. However, the delays were going  
 5 into 14 days. Without a release but rather because of the  
 6 indecision in terms of either letting the goods go and  
 7 arranging a post audit, it was now a decision that had to  
 8 be made by an officer who probably through no fault of  
 9 their own were told you are now a document inspector and  
 10 you had to now make an assessment as a customs officer  
 11 where it was risk engine. So if you did not have the  
 12 necessary skill and experience to make a decision you would  
 13 out of – and that is our experience – make the decision and  
 14 stick to that decision because it favours SARS, not  
 15 necessarily the commodity or the importer. And out of  
 16 frustration because of the delays that particular importer  
 17 or exporter would say pay. We cannot afford the delay.  
 18 Pay the money.  
 19 MS HOBDEN: Can we just stop and we'll  
 20 look at the effects of those delays and what it meant for  
 21 the importers and your clients, but I just would like the  
 22 panel to understand in the process where the delays  
 23 actually arose. The declaration would be made, the risk  
 24 engine would have a look at it and would trigger that an  
 25 inspection was required or not. Someone would then make a

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1 decision about whether it needed to go to inspection and  
 2 from that point as I understand it is where the delays  
 3 arose. Is that right?  
 4 MR MARAIS: Ja. Then the process happens  
 5 that you now have to make a booking for a physical  
 6 container to be delivered to a particular container depot,  
 7 a controlled area for SARS, you make the appointment with  
 8 the customs official, that customs official must have the  
 9 unpack of that container to examine the goods for whatever  
 10 reason it was stopped. That customs officer must then put  
 11 a report back to a next level of possibly a quality  
 12 assurance and a technical reviewer could be involved. Now  
 13 the technical reviewers were far and few between so there  
 14 would be an extraordinary burden but we must also  
 15 understand that this is an 8 o'clock to 4:30 but the goods  
 16 have to move. So there were limited hours in which to do  
 17 this with limited capacity, with limited skill. And the  
 18 effect was disastrous, it really was. There were issues  
 19 where our members' clients had to throw in the towel. They  
 20 could not take the delays anymore. Orders were being lost,  
 21 serious investors looking at this, why is it so difficult  
 22 to do business? At the same time we were also involved in  
 23 the World Bank group doing, ease of doing business in South  
 24 Africa. And out of this arose the perception that SARS was  
 25 raising non-tariff barriers. It had a very, very serious

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1 impact.  
 2 MS HOBDEN: One of the other practical  
 3 issues that you've mentioned to me is the disconnect  
 4 between the person who initially triggered the inspection,  
 5 and the person who actually conducted the inspection at the  
 6 yard and then the person who would ultimately approve as  
 7 some kind of assurance and you, can you comment on that?  
 8 MR MARAIS: It is. That is the process.  
 9 That is the process, so whoever initiated the inspection  
 10 never gets to know what the outcome was.  
 11 MS HOBDEN: And can you explain, you have  
 12 explained a bit about the cost for your members and the  
 13 importers and exporters, for the delays that arise when  
 14 that container or that cargo is sitting waiting to be  
 15 inspected and then released. Perhaps, can I ask two  
 16 questions flowing from that? What ordinarily would be a  
 17 reasonable time for those kinds of inspections to take  
 18 place and for the cargo to move on? And then secondly,  
 19 what is the cost and impact once it exceeds that time  
 20 period?  
 21 MR LOGAN: Average acceptable time is two  
 22 days, two working days. The costs of delays, we estimated  
 23 or we did a calculation that was at least R30 000 per  
 24 container. I visited one of our members just the other day  
 25 and he said that one of his clients were looking to invest

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1 more in South Africa but they had experienced costs of R2  
 2 million in recent shipments and delays in terms of the  
 3 national processing pool.  
 4 MS HOBDEN: And those delays relate to  
 5 primarily demurrage, lift on, lift off, and also then the  
 6 knock on supply chain manufacturing, is that right?  
 7 MR LOGAN: Ja, and as I think Johan said  
 8 some of those orders were cancelled because it just took  
 9 too long.  
 10 PROF KATZ: I would think, also counsel  
 11 there would be just the holding costs. You're financing  
 12 and you're not getting paid.  
 13 MR LOGAN: Indeed, indeed, ja.  
 14 MS HOBDEN: So during that time when  
 15 these increased number of inspections and delays arose, you  
 16 have told me that it was a time of great concern for you  
 17 and your members. And what engagement did you have with  
 18 SARS? Did you speak to them? What happened?  
 19 MR LOGAN: Ja, we called a meeting with  
 20 SARS customs. I don't recall who was there but certainly  
 21 Johan and myself were at the meeting, representing our  
 22 members. And in fact we do have a memorandum of co-  
 23 operation in place between SAAFF and SARS customs. And I  
 24 took it to that meeting and I said this piece of paper's a  
 25 waste of time because you've implemented this national

<p style="text-align: right;">Page 1392</p> <p>1 processing pool without consultation at all and it's caused 2 absolute chaos. So we were under pressure from our members 3 and they were under pressure from their clients being 4 importers and exporters to say what on earth is going on? 5 This is just chaotic. And it was. 6 MS HOBDEN: And what was SARS' response? 7 MR LOGAN: They apologised and they did 8 take head of what we'd said and they implemented a separate 9 team in SARS to expedite the backlog and they created an 10 escalation portal that our members could post onto so that 11 they could get the backlog. 12 MS HOBDEN: And has that helped from the 13 initial – 14 MR LOGAN: Yes, no it certainly helped to 15 get the backlog cleared and since then things are a lot 16 better. 17 MS HOBDEN: Thank you. One of the other 18 issues you raised was about tariff classifications, 19 valuations and origins. Could you just briefly describe 20 what issues arise there? 21 MR MARAIS: In international trade 22 there's a trinity that is tariff classification, value and 23 origin that determines whether you would be interested in 24 investing in a particular country. These are the 25 international trade agreements and they are based on either</p>	<p style="text-align: right;">Page 1394</p> <p>1 but that determines the level at which any customs duties 2 are either paid or not paid and it classifies commodities 3 within a specific range and that also is for instance for 4 statistical purposes, probably the most important issue – 5 COMMISSIONER: We understand. Take out a 6 case in court once whether it was gouda cheese or cheddar 7 cheese, because they say the two are different. 8 MR MARAIS: But either was acceptable to 9 me. 10 COMMISSIONER: I think we understand 11 tariff classification. 12 MR KAHLA: The little, the one point of 13 clarification I wanted to understand, you've made this 14 reference for example of a year's wait for this 15 classification. What would have been, in terms of best 16 practice customs authorities what would be the normal, the 17 average wait? 18 MR MARAIS: Now since August 2017 up 19 until March we have, like the previous witness said, the 20 SARS service charter. We had a great deal to do in the 21 construct of that service charter, but it was turned down 22 by our industry because when it was published we had not 23 yet experienced August 2017. That experience taught us to 24 send it back and we renegotiated with SARS, specifically on 25 the customs side in terms of time frames, because like the</p>
<p style="text-align: right;">Page 1393</p> <p>1 a preferential rate of duty or a particular rebate facility 2 to encourage local production. Out of that when you apply 3 for a tariff determination, there is only one entity within 4 SARS who can make that a binding determination and that is 5 the Commissioner through delegation to an entity within 6 SARS customs head office. 7 Our experience has been that probably from about 8 2015 it started that we could wait for a year or more for a 9 tariff classification to be issued. The impact again is 10 who wants to invest within any geographic area if there is 11 no certainty? And that is the reason why we call for 12 binding determinations, to give certainty to any investor. 13 And we must acknowledge that when there are such barriers 14 to entry into the industry, specifically where there are 15 huge amounts in tax and duties involved, it has to be a 16 very well thought through. However, we were not at all 17 convinced that SARS had the necessary skill to issue those 18 tariff determinations. 19 MS HOBDEN: Just to clarify what a tariff 20 determination actually is for those of us not in the 21 industry. Maybe you can do it? I was going to try and 22 summarise but you might do it better than me. 23 MR MARAIS: It is because it's that 24 trinity, it is the normal language, and please excuse me if 25 I exceeded the expectation of the panel in terms of this,</p>	<p style="text-align: right;">Page 1395</p> <p>1 others we had no measurement of performance in terms of 2 time and output in terms of SARS customs in particular. 3 MS HOBDEN: From the version of the 4 service charter I have it says that where SARS needs to 5 provide a determination of a tariff, valuation or origin, 6 it will endeavour to finalise and communicate the outcome 7 of the determination, tariff, valuation or origin within 90 8 days of receipt of all required information or 9 documentation. 10 MR MARAIS: Compare that to a year and 11 you will see. 12 [16:15] And in that interim what is, because we are 13 dutifully bound as taxpayers to provide surety to SARS in 14 the case of uncertainty. That means that you would put 15 forward cash deposits. 16 MR KAHLA: And the 90 days, would it be 17 within acceptable international benchmarks? 18 MR MARAIS: For us the 90 days would look 19 better if it was 60 and we have commented accordingly to 20 SARS. 21 MR KAHLA: So a better class is about 60? 22 MR MARAIS: Because we are a world class 23 customs organisation. 24 MR KAHLA: Okay. 25 MS HOBDEN: One last question, what do</p>

<p style="text-align: right;">Page 1396</p> <p>1 you think the impact on compliance has been from some of 2 the issues you've raised from about August 2017? 3 MR MARAIS: Our industry is duty bound by 4 law and regulation to pay what is due. If there are rogues 5 within the industry there always will be and they will be 6 the exception rather than the rule. For compliant 7 taxpayers we will ensure through our advocacy knowledge 8 sharing and collaboration within SARS customs, with 9 workshops that we drive the ethical conduct of our members. 10 MS HOBDEN: We have heard from other 11 witnesses in other areas of other tax types that because 12 there is now a perception or a belief that SARS does not 13 have the skill or capacity to properly enforce compliance 14 that there are some taxpayers and people, rogues, as you 15 call them, who think that this may be an opportunity to 16 push the boundaries or not comply. I understand that that 17 may not be your members but within the industry do you 18 think that's something, have you seen that at all? 19 MR MARAIS: I think it always existed. 20 Okay and I think the opportunity has been created because 21 SARS not only through the electronic submissions, then 22 through the risk engine decide what interventions are 23 necessary. I'm sure that the intelligence that is thread 24 into that must be comprehensive. There are also other SARS 25 units, so called Tactical Intervention Unit, Customs Border</p>	<p style="text-align: right;">Page 1398</p> <p>1 customs? 2 MR MARAIS: We're back on the road of 3 modernisation. 4 COMMISSIONER: Like when? Our terms of 5 reference take us to the 31st of March of this year. It is 6 now August. 7 MR MARAIS: Our response on that – 8 COMMISSIONER: Can you answer that 9 question with reference to the 31st of March? 10 MR MARAIS: Okay, post 31st of March. 11 COMMISSIONER: Are you finished? Okay, 12 there is just two things that I would like to raise with 13 you. 14 MR MARAIS: Okay. 15 COMMISSIONER: And the first is this, 16 look, I mean you're always going to have, there is always 17 going to be problems between the industry and the revenue 18 collector in one way or another. What I'm more interested 19 in is, what has been your engagement with SARS and the 20 level of engagement and the acceptability of your 21 engagement with SARS on all these issues? 22 MR MARAIS: Prior to March it was weak, 23 extremely weak. We had a so called National Stakeholder 24 Forum which included industry in its totality but if you'll 25 forgive me, Judge, that was a grip and grin.</p>
<p style="text-align: right;">Page 1397</p> <p>1 Control Unit, Custom K9 or Dog Unit over and above the 2 other South African border police and for instance the 3 National Regulator of Compulsory Specifications. Now put 4 that together and think how easy it is to do business in 5 South Africa, because it is now so many levels of 6 interventions and with SARS having to drive those 7 documented and auditable interventions you have the other 8 probably best to refer them to manual interventions, gut 9 feel interventions which can lead to sometimes one 10 particular consignment being viewed three times. So we've 11 this seen and whilst we encourage that there should be a 12 collective effort like there was, as I believe through the 13 tobacco, etcetera, where they had all of this you know, we 14 are hesitant to promote that because we have other issues 15 as well facing the administration of tax and that is not 16 only the new Customs Act which we were attending to through 17 all of this period of time over and above doing our day 18 jobs, there is also the spectre of a border management 19 agency that derailed certain defined objectives. It was 20 not an easy time for the tax administration in its 21 totality. 22 MS HOBDEN: And looking forward, the 23 situation today, your relationship with SARS, you've 24 mentioned to me the Operational Stakeholders Forum that you 25 are a part of, can you just tell us where you are now in</p>	<p style="text-align: right;">Page 1399</p> <p>1 COMMISSIONER: A what? 2 MR MARAIS: A grip and grin and how is 3 your family. Post 31st of March we have the service 4 charter. 5 COMMISSIONER: Okay, I'm just talking, 6 let's – I just want to know during that period, we're at 7 the four year period up to the 31st of March, what was – 8 MR MARAIS: It was not good. We had 9 stakeholder forums that were destroyed where we had 10 opportunity – 11 COMMISSIONER: What do you mean 12 destroyed? 13 MR MARAIS: It is no longer existent. 14 COMMISSIONER: Do you know Ms Vivier? 15 MR MARAIS: Mrs? 16 COMMISSIONER: Rae, ja, Rae. 17 MR MARAIS: Oh. 18 COMMISSIONER: Ja, Rae? 19 MR MARAIS: Yes, how is it, Rae? 20 COMMISSIONER: Did you engage with her in 21 your time? 22 MR MARAIS: Yes, we did. 23 COMMISSIONER: Did you have stakeholder 24 forums and things at that time? 25 MR MARAIS: We did.</p>

<p style="text-align: right;">Page 1400</p> <p>1 COMMISSIONER: So what happened to them?  2 MR MARAIS: They disappeared. It  3 disappeared. What we did have was technical meetings.  4 COMMISSIONER: Cruickshank, wasn't it?  5 MR MARAIS: Rae Cruickshank, yes.  6 COMMISSIONER: Sorry, Ms Cruickshank.  7 Anyway, carry on?  8 MR MARAIS: Ja, that was, it was  9 destroyed both in its substance and in effect. It resulted  10 in discussions where no notes, no minutes, but we were  11 fortunate in that time that there were dedicated,  12 professional customs officers that would share some of the  13 developments with us and we stated it without reservation,  14 had it not been for the intervention, Judge, of a customs  15 officer, we were on the point as in an industry to approach  16 the courts because the tax Ombud would not have served the  17 purpose of remedying the situation that we were prepared to  18 go to court for relief in terms of the damage being done to  19 the economy at that time.  20 COMMISSIONER: May I just ask you another  21 question? I've heard it is said that you were engaged in  22 the modernisation process that was taking place in relation  23 to customs. We've heard it is said that that, the  24 development of that programme in relation to customs was  25 far from complete. It started on the journey but it was</p>	<p style="text-align: right;">Page 1402</p> <p>1 PROF KATZ: Sorry, just one thing, the  2 judge has asked two questions that I wanted to. To remedy  3 where we are now what would your recommendations be?  4 MR MARAIS: The remedial actions have  5 been taken.  6 COMMISSIONER: They have been?  7 MR MARAIS: They have been.  8 COMMISSIONER: That's since Mr Kingon  9 became the acting Commissioner?  10 MR MARAIS: Yes, from the day.  11 COMMISSIONER: Have you already engaged  12 with him or not?  13 MR MARAIS: Yes, we had.  14 COMMISSIONER: And is he on the right  15 path?  16 MR MARAIS: I believe he is. He is a  17 little bit strict here and there but I'm sure that, I'm  18 sure we will. In the effect of the phase we are in,  19 although it both be acting positions at this time there is  20 direction.  21 PROF KATZ: And is that direction, sorry,  22 in the direction of international best practice?  23 MR MARAIS: Yes.  24 MR LOGAN: I think the key is that the  25 National Operation Stakeholder Forum has been established</p>
<p style="text-align: right;">Page 1401</p> <p>1 not yet complete and then it was stopped. Is that your  2 experience?  3 MR MARAIS: Yes.  4 COMMISSIONER: And did you have any  5 engagement in where that programme was still to go?  6 MR MARAIS: We had minimal, minimal –  7 COMMISSIONER: No, no, I'm talking about  8 when it was first started, when you were very happy and it  9 was –  10 MR MARAIS: Yes, absolutely –  11 COMMISSIONER: - did you know where it  12 was going?  13 MR MARAIS: Absolutely.  14 COMMISSIONER: Was that from Mr Hore that  15 is talking to you?  16 MR MARAIS: Absolutely.  17 COMMISSIONER: And Ms Cruickshank was she  18 involved as well?  19 MR MARAIS: As part of that I'm sure.  20 COMMISSIONER: Okay, but you had an idea  21 where it was going and was it going in the right direction?  22 MR MARAIS: Absolutely.  23 COMMISSIONER: And then when it was  24 stopped that was the end of any conversation?  25 MR MARAIS: Yes, it was.</p>	<p style="text-align: right;">Page 1403</p> <p>1 and –  2 COMMISSIONER: You engage again on  3 things.  4 MR LOGAN: And we're engaging and all the  5 representatives from the regions, SARS and SAAFF are there  6 and the chair is extremely strict and he runs a tight ship  7 and the problems are addressed and that's the best thing we  8 could ask for.  9 COMMISSIONER: So grips and grins up,  10 hey?  11 MR LOGAN: No, it is over.  12 MS HOBDEN: May I ask one last question  13 just to follow on about looking forward? You mentioned, Mr  14 Marais, that border management agency bill and you  15 mentioned that it defied objectives. Can you just clarify  16 what you mean by that and your comments on that bill that's  17 looking to come into force?  18 MR MARAIS: I can quote what others have  19 said who are, I'm a mere mortal, they are far beyond me.  20 The worst piece of legislation ever introduced is the so  21 called BEMA bill at the time. How could you in a sovereign  22 estate with statues delegate the principal acts to some  23 other authority who takes no accountability for, how could  24 you? We were astounded that this could even reach that  25 stage and the negotiation although as we understand it, it</p>

1 was a cabinet committee that went ahead with this, we to  
 2 this day are uncomfortable with the approach to that. You  
 3 cannot take a tax entity and put it into people management.  
 4 It cannot happen.  
 5 COMMISSIONER: What do you mean into  
 6 people management?  
 7 MR MARAIS: That's Home Affairs and the  
 8 Home Affairs who would be the lead agency –  
 9 COMMISSIONER: Do you mean they want to  
 10 take customs into Home Affairs and you say that that's –  
 11 MR MARAIS: How can it be, Judge, that  
 12 you could take the principle acts and delegate that?  
 13 COMMISSIONER: Ja.  
 14 PROF KATZ: But it is only a bill.  
 15 MR MARAIS: We hope so at this stage.  
 16 COMMISSIONER: Well, it is at this stage.  
 17 You just hope it remains a bill.  
 18 MR MARAIS: Indeed.  
 19 MS HOBDEN: Judge, the Treasury will be  
 20 addressing that bill in due course.  
 21 COMMISSIONER: Thank you very much,  
 22 gentlemen. It has been very interesting to us.  
 23 MR MARAIS: Thank you.  
 24 MR LOGAN: Thanks.  
 25 COMMISSIONER: Thank you for the

1 opportunity.  
 2 MR MARAIS: Pleasure.  
 3 [NO FURTHER QUESTIONS - WITNESSES EXCUSED]  
 4 COMMISSIONER: Is that it for the day?  
 5 MS HOBDEN: That's it for the day.  
 6 COMMISSIONER: Thank you very much.  
 7 [INQUIRY ADJOURNED]  
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