

# 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 19

17 OCTOBER 2018

PAGES 3215 - 3482

### HELD AT

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<p style="text-align: right;">Page 3215</p> <p>1 [PROCEEDINGS ON 17 OCTOBER 2018]  2 [09:05] COMMISSIONER: As far as I am aware leaks  3 do not come from my office at all. I'm confident of that.  4 If anyone's got any idea, thought that leaks come from my  5 office let me know. But I have no doubt they don't.  6 Right.  7 MR SIYO: I'd like to call the first  8 witness Mr David Wickens.  9 COMMISSIONER: Morning.  10 MR WICKENS: Good morning.  11 COMMISSIONER: Thank you for coming.  12 MR WICKENS: Pleasure.  13 COMMISSIONER: Will you affirm that the  14 evidence you give will be the truth, the whole truth and  15 nothing but the truth. If so will you say I do.  16 MR WICKENS: I do.  17 EVIDENCE OF MR WICKENS  18 COMMISSIONER: Thank you.  19 MR SIYO: Morning. Please give me your  20 academic qualifications?  21 MR WICKENS: I have a Bachelors and  22 Honours degree in Mathematics and Computer Science, LLB and  23 a Doctorate in Law.  24 MR SIYO: And what is your employment  25 background?</p>	<p style="text-align: right;">Page 3217</p> <p>1 end of that 2008 awarding of the tender and the transition  2 I think it became apparent to all that for modernisation to  3 succeed and to develop at the pace it had to, that  4 procurement would have to be embedded into the  5 modernisation division in order to create the efficiencies  6 and the agile procurement that was required to achieve the  7 modernisation objectives.  8 MR SIYO: Yes, and how did your unit  9 operate?  10 MR WICKENS: The unit was constructed as  11 a small team of multifunctional or multidisciplinary  12 skills. However the operation of the unit was going to  13 always be cross functional in nature. So pulling in the  14 Finance division procurement division the corporate legal  15 and business wings, the technology wings etcetera to form a  16 team which could make the relevant, the right decisions  17 around the procurement. Now I should indicate at this  18 point that the procurement cycle, the most or one of the  19 most important parts of the procurement cycle is  20 establishing the business need and establishing and  21 validating the business need and then articulating that  22 into a procurement specification and that genesis of the  23 procurement lifecycle is really what this team focused on  24 in making it ready for a, whatever process followed. A  25 competitive process, a tender process, RFQ process,</p>
<p style="text-align: right;">Page 3216</p> <p>1 MR WICKENS: My employment background  2 until 2004 was in the IT industry both public sector and  3 private sector. In 2004 I was engaged by SARS to implement  4 service management in the IT department and during that  5 period some important tenders related to the modernisation  6 programme were initiated and given my background both in  7 the private sector procurement and the IT industry I was  8 asked to act as a transaction advisor and in 2008 those  9 tenders were awarded. I was then asked to stay on by SARS  10 also in another short term, short term contract to see the  11 implementation of those through the transformation and  12 transition and beyond that the section was formed to look  13 at the procurement, especially on the business side called  14 IT sourcing enablement and that lasted till about 2015 and  15 then I was, a short contract in 2016 with the procurement  16 division at SARS.  17 MR SIYO: And how was the procurement  18 division within the IT structure when you initially joined?  19 MR WICKENS: The, prior to the  20 modernisation division being formed the procurement was  21 conducted from the central procurement arm and during that  22 period of the 2006 tenders the, it became very apparent I  23 think to all that the involvement of business, the  24 involvement of Finance, involvement of the technology  25 division was crucial in compiling such tenders and at the</p>	<p style="text-align: right;">Page 3218</p> <p>1 etcetera.  2 MR SIYO: Yes and what were your sort of  3 responsibilities?  4 MR WICKENS: Okay the team was a small  5 team, so we had four people making up that team. It was  6 headed by Alton Wannenberg who is the executive in charge  7 of the team and her skills, she's a very experienced IT  8 technologist and in the management field. So she could  9 pick up many of these cross or cross disciplinary  10 functions. From my own perspective likewise, I think the  11 colour of my hair and what's left of it is an indicator,  12 very seasoned IT and very, very focused on the legal  13 aspects of it. That was where I commenced the research  14 into public procurement regulation and the interest in  15 development of public procurement regulation. So it was a  16 natural mix of skills for this kind of function.  17 MR SIYO: But does knowledge in  18 procurement necessarily qualify one to be a member of the  19 team or to operate in the IT procurement as it was then  20 structured?  21 MR WICKENS: It was an essential part of,  22 part of the skill set or part of the knowledge base that  23 one was required to have. Public sector procurement is a  24 complex matter and there are many constraints, many rules  25 which one has to observe and adhere to and so it's</p>

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1 absolutely essential that those are complied with. So yes  
 2 procurement knowledge would be, particular a public sector  
 3 procurement knowledge would be essential.  
 4 MR SIYO: And additional knowledge would  
 5 also be required?  
 6 MR WICKENS: Procurement knowledge on its  
 7 own is not going to be of much value if you don't have  
 8 subject matter expertise. You can construct the formal  
 9 aspects of a tender but the substantive aspect are  
 10 obviously about what you are procuring and it's essential  
 11 to procure the right things and the right things in terms  
 12 of the lifecycle of being the right things. So it's got to  
 13 be the right goods, the right services through the lifetime  
 14 of that solution which could be five to ten years.  
 15 MR SIYO: In December of 2014 there was a  
 16 moratorium on modernisation what effect did this have on  
 17 your team?  
 18 MR WICKENS: Well immediately there was  
 19 an indirect effect. In that the pipeline of requests for  
 20 new procurements was going to dry up. The structural  
 21 impact on the team didn't have any effect at that point.  
 22 It was a moratorium not a restructure. So the team  
 23 continued operating but with far less of a workload, given  
 24 that the procurements were then starting to dry up.  
 25 MR SIYO: And were there any change in

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1 functions even at a slower pace at that stage?  
 2 MR WICKENS: Most definitely and the, the  
 3 entire pace of the organisation particular in the MNT  
 4 department which was a, I reported into, the whole function  
 5 reported into the EPMO which was, was fed by modernisation  
 6 initiatives. It's only the essential initiatives continued  
 7 and new ones didn't. So the pace of work was, well  
 8 noticeably slower.  
 9 MR SIYO: Then how do you discover the  
 10 moratorium?  
 11 MR WICKENS: I actually can't remember  
 12 the exact way of discovering, whether it was an official  
 13 notice or not. It was certainly communicated fairly  
 14 instantly and obviously received with a bit of disbelief  
 15 and shock as to what the reasons for this would have been.  
 16 MR SIYO: I want just now to move on to  
 17 the next topic which relates to the new structure. Were  
 18 you consulted by either Bain or Gartner at any stage?  
 19 MR WICKENS: Although I was a contractor  
 20 at the time I was consulted by Gartner and that was due to  
 21 Mrs Wannenberg being overseas. But being an integral  
 22 member of the team I attended the interview with Gartner.  
 23 The interview concentrated quite heavily on the technology  
 24 aspects of the 2006 tender and there was some, a small part  
 25 of the interview which focused on what the value of the

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1 unit that I belonged to, how did it contribute, how did it  
 2 operate, how did the cross functional aspects contribute to  
 3 the effectiveness of procurement. That was a minor part of  
 4 the interview.  
 5 MR SIYO: Were there any follow-up  
 6 interviews thereafter?  
 7 MR WICKENS: No, this, this surprised me  
 8 as a, having been in the consulting world for some time  
 9 before that, that the interview was conducted and I heard  
 10 no further news of it, no confirmatory communications nor  
 11 of any of the conclusions drawn from it which struck me as  
 12 being unusual.  
 13 MR SIYO: And when were you informed of  
 14 the new structure?  
 15 MR WICKENS: Okay bearing in mind that I  
 16 was not a SARS employee, so I was not directly impacted by  
 17 the structure as far as employment positions were concerned  
 18 but I was informed that the Gartner, the Gartner structure  
 19 was sort of released in episodes or in series. So we would  
 20 discover high levels and then there was speculation as to  
 21 what was missing or what was not going to be there but  
 22 would remain to be seen in the entirety to know that a  
 23 certain function has been excluded from the structure.  
 24 MR SIYO: What do you mean by you weren't  
 25 a SARS employee?

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1 MR WICKENS: I was not, I was a SARS  
 2 contracted employee, a fixed term contractor.  
 3 MR SIYO: What was the effect of the new  
 4 structure on your division?  
 5 MR WICKENS: Once the new operating model  
 6 had been completely published it was written out  
 7 completely, in fact dissolved and the, one would assume  
 8 that that function would then be subsumed by the central  
 9 procurement capability.  
 10 MR SIYO: So in practical terms from an  
 11 operational perspective how did this effect your  
 12 functioning?  
 13 MR WICKENS: It ceased to exist. So we,  
 14 I was reassigned at that point to do other work, if you  
 15 like non-procurement work. I would still assist in the  
 16 procurements that were underway, still assist but on an ad  
 17 hoc basis. It was no longer a responsibility to look after  
 18 the business cases that arrived through to procurement.  
 19 MR SIYO: So as I understand it, formally  
 20 one of the important features of the unit was the  
 21 integrated multidisciplinary approach?  
 22 MR WICKENS: Yes.  
 23 MR SIYO: That you had towards  
 24 procurement within IT. So what was the rationale of  
 25 dissolving that in its entirety?

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1 MR WICKENS: Okay I can, if I can explain  
 2 this with a bit of background context. Is that the  
 3 modernisation technology structure employed an embedded  
 4 view of functions, for example Finance and procurement.  
 5 Where these functions were actually embedded within the, a  
 6 wing of the Finance department within MNT and likewise our  
 7 team was an extension of procurement with both an extension  
 8 of business as well. The rationale for that is that one is  
 9 always going to remain aligned with business objectives  
 10 because of the embedded nature of those functions. So that  
 11 in contrast to a centralised more siloed structured means  
 12 that the silos are going to rely on interfacing processes  
 13 to achieve alignment and that is not always the most  
 14 effective way of doing things. It certainly increases and  
 15 establishes control over each of the functions but not  
 16 necessarily its agility or its effectiveness. So sorry  
 17 your question was about how did it effect, what was the  
 18 rationale?  
 19 MR SIYO: Ja, ja.  
 20 MR WICKENS: So the rationale can  
 21 probably be summarised if one contrasts those two models  
 22 can be summarised by effectiveness versus control and to  
 23 establish control over, to introduce more constraints and  
 24 will necessarily lose effectiveness.  
 25 MR SIYO: And so the scales were tilted

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1 towards control?  
 2 MR WICKENS: The scales would most  
 3 definitely tilted towards that, every progression of the  
 4 implementation it became more apparent that this is more  
 5 control oriented then agility and effectiveness oriented.  
 6 MR SIYO: So how's procurement  
 7 facilitated within IT given the new development?  
 8 MR WICKENS: It was, it would rely on  
 9 communication between, and I'd like to point out at this  
 10 stage it's not, it's a lowering of effectiveness as opposed  
 11 to not making it not functional. It did mean that that the  
 12 procurement functions would rely on communications across  
 13 from business and that those would have to be reacted on  
 14 appropriately. As opposed to if the function within  
 15 business that the priorities could easily be assessed and  
 16 the procurements be assigned the right priority with  
 17 procurement being drawn in at the right time.  
 18 MR KAHLA: Just a quick clarification.  
 19 Are you suggesting that the strengthening of the governance  
 20 on its own would result in lack of effectiveness or you're  
 21 saying that in this particular instance the governance  
 22 measures that were put in place had an impact, an adverse  
 23 impact on effectiveness. I'm trying to figure out whether  
 24 you're seeing a correlation that where there's effective  
 25 governance there has to be it, a lack of effectiveness in

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1 respect of outputs?  
 2 MR WICKENS: No, no let me clarify that.  
 3 I don't think that's the impression I wanted to create.  
 4 There was no lack of governance in the modernisation  
 5 structure. The committees which sat, the procurement  
 6 committees and it's a very structured environment. Just  
 7 for information there's a BSC, which is a bid specification  
 8 committee, a bid evaluation committee and a bid  
 9 adjudication committee. Those are three regulatory bodies  
 10 which have to be created and that is the governance around  
 11 each particular procurement initiative. There's also  
 12 within the SARS' structure at that point there was a  
 13 subcommittee of the Exco. It's acronym is EXCOPS which  
 14 acted as the BAC and oversaw all major procurements and if  
 15 major enough that would go to Exco. So the governance  
 16 around procurements was no less rigid in a decentralised  
 17 model, I think all I was trying to point out is that the  
 18 creation of tenders, the creation of the documentation,  
 19 getting things moving, getting them aligned with the  
 20 business is different in the two different structures. The  
 21 governance and the various committees remain the same.  
 22 COMMISSIONER: Were you ever given a  
 23 rationale for this move from effectiveness to control?  
 24 MR WICKENS: Not officially. The  
 25 rationale for and the reason why I brought up the increase

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1 or the establishing more control over the function was a,  
 2 it would see that there was some reticence or fear that  
 3 decentralised model would not have sufficient control.  
 4 Governance is possibly a separate matter, that's what I was  
 5 getting to.  
 6 COMMISSIONER: Under whose control was  
 7 the, was this programme, in other words who, was on Exco  
 8 was responsible for it?  
 9 MR WICKENS: The?  
 10 COMMISSIONER: Which position?  
 11 MR WICKENS: The Chief Officer Finance.  
 12 MR KAHLA: That's procurement.  
 13 MR WICKENS: Talking about EXCOPS, the  
 14 procurement subcommittee, ja.  
 15 MR SIYO: What happened to the rest of  
 16 the members of your former team?  
 17 MR WICKENS: They were left to apply for  
 18 positions that had been created in the restructure.  
 19 MR SIYO: And no one was moved formally  
 20 into procurement?  
 21 MR WICKENS: No. I was as a contractor  
 22 that particular contract came to an end at the end of 2015.  
 23 In 2016 I was asked to take up and 11 month short term  
 24 contract in the procurement division specifically to  
 25 oversee two critical tenders that, the acronym is DVIS and

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1 NSE tenders. The one being a telecommunications carrier  
 2 tender and the other one being network server and end user  
 3 equipment tender to construct those and to see those  
 4 through into the award stage or to the issue stage and  
 5 thereafter into the award stage.  
 6 MR SIYO: Do you have any examples of the  
 7 consequences of the new restructuring from an IT  
 8 procurement perspective?  
 9 MR WICKENS: Well okay I can answer this  
 10 from sitting in the procurement viewpoint as well.  
 11 [09:25] So it was for those 11 months, particularly in  
 12 the first few months I had first-hand experience of the  
 13 divisions between business, let's say broadly business,  
 14 include IT and that and the procurement function. And this  
 15 is why it's not speculation as to how difficult it is to  
 16 work between silos. The silos had been created with some  
 17 walls that were being built between them as opposed to  
 18 bridges. And it was extremely difficult to get the two  
 19 functions to actually work together.  
 20 MR SIYO: For instance how long, in the  
 21 old model, how long would it take for IT to procure any  
 22 particular, you know, service or equipment or whatever the  
 23 case may be? So I want to juxtapose the old model and the  
 24 new model. How long it would take between the two.  
 25 MR WICKENS: Okay that's a very difficult

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1 question, sort of how long is a piece of string. You do  
 2 get procurement initiatives which would run for 12 months  
 3 from initiation to award or even in excess of that. And  
 4 some which would only run for a month let's say or weeks.  
 5 So it is a little bit difficult to benchmark a particular  
 6 one against the two models. I think I can answer that more  
 7 from how were things prioritised, how were things driven  
 8 and maybe from a theoretical perspective business, the  
 9 objective of business is to get goods and services as  
 10 quickly as possible into whatever they have to deliver.  
 11 Procurements objectives are to make sure that the rules are  
 12 followed, that – and in addition to achieving business's  
 13 objectives. But procurement doesn't exist in and of  
 14 itself, its relevance is only in the context of the  
 15 business need. Business is, in effect, a customer of  
 16 procurement and those values are espoused in the  
 17 procurement area without a doubt. However, if one is too  
 18 far removed then every iteration of communication is going  
 19 to take a long time, every incongruence in the priorities  
 20 that business has and the way procurement sees it will  
 21 result in an efficiency.  
 22 MR SIYO: When did you leave SARS?  
 23 MR WICKENS: I left SARS at the end of  
 24 2016.  
 25 MR SIYO: And so at the point of your

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1 departure the new structure had already started kicking in,  
 2 is that correct?  
 3 MR WICKENS: Yes.  
 4 MR SIYO: Did you have any insight into  
 5 its functioning at that stage?  
 6 MR WICKENS: The insights that I had were  
 7 that there was still a great deal of confusion about the  
 8 roles, the extent of individual responsibilities. And  
 9 things had to bedded down and from what I understand is  
 10 that there are still some areas of responsibility which  
 11 have yet to be clarified. So obviously the majority of  
 12 them must have been cleared out the way, but the effort at  
 13 that point, when I left, it was in trying to understand  
 14 what the structure meant and the implications of the  
 15 restructure for how these different departments would work.  
 16 MR SIYO: What do you currently do?  
 17 MR WICKENS: Currently back in the  
 18 technology field with a small amount of sourcing with  
 19 Discovery Bank.  
 20 MR SIYO: Do you have a relationship with  
 21 Gartner?  
 22 MR WICKENS: I do have a relationship  
 23 with Gartner in, when I resigned in 2016 I was obviously  
 24 looking for another appointment or another engagement, I  
 25 signed what was I would loosely term a freelancing

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1 agreement with Gartner under which they would – if they  
 2 found work for me in terms of that agreement they would be  
 3 able to assign work for me. They have found two offers  
 4 which I declined on both those, those were very early in  
 5 2017. So I've never taken them up on their freelancing  
 6 opportunities as I've been fully engaged since that time in  
 7 any event.  
 8 MR SIYO: And does the arrangement still  
 9 exist?  
 10 MR WICKENS: It's a perpetual agreement.  
 11 I've just never bothered cancelling, there's no advantage  
 12 or disadvantage to me keeping it open.  
 13 MR SIYO: Are there any recommendations  
 14 you'd like to make?  
 15 MR WICKENS: Only in as far as the  
 16 structure is concerned.  
 17 MR SIYO: Yes.  
 18 MR WICKENS: There is and this is simply  
 19 – or a simple observation based recommendation is that in a  
 20 phase of modernisation one would expect to have an agile  
 21 structure or an appropriate structure which would enable  
 22 the agile working. Cross disciplinary working or  
 23 multifunctional teams are perhaps an unconventional model.  
 24 They are possibly more difficult to manage, but if the  
 25 observations about the their effectiveness versus a siloed

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1 structure are anything to go by it's like night and day,  
 2 that the effectiveness of the multifunctional teams, in the  
 3 right circumstances, are significantly more effective. So  
 4 in a recommendation, if that were to be a recommendation is  
 5 that where multifunctional teams can operate and can be  
 6 managed and that they would be, would be an appropriate way  
 7 of adjusting a siloed approach which seems to be the one  
 8 that's entrenched in the new operating model.  
 9 MR SIYO: Thank you, I have no further  
 10 questions, Judge.  
 11 COMMISSIONER: May I just ask you, you  
 12 were here during the whole of 2016, well when Gartner was  
 13 here.  
 14 MR WICKENS: Yes.  
 15 COMMISSIONER: Can you explain to a  
 16 layman exactly what was Gartner doing for that year?  
 17 MR WICKENS: I can only give my  
 18 observations of their activities. So this may not be the  
 19 extent of their activities. As Gartner had obviously  
 20 investigated various areas of business and I certainly had  
 21 first-hand knowledge of their recommendations to the  
 22 program management office where they had very specific  
 23 findings and actions that needed to take place. A project  
 24 team was put together, together with Gartner Consultants in  
 25 order to implement these findings or to remediate, maybe is

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1 a different word. But I think more commonly this was seen  
 2 as being an implementation of their recommendations. And  
 3 so their assistance was, from my involvement, was more in  
 4 clarifying what those recommendations entailed and rather  
 5 than doing them that was left up to the SARS' people. So  
 6 it was still in an advisory capacity, but maybe just in a  
 7 nice way saying checking that you are, you are going to  
 8 meet the recommendations that would be properly  
 9 implemented.  
 10 COMMISSIONER: So it was an advisory role  
 11 essentially.  
 12 MR WICKENS: Advisory role ja.  
 13 PROF KATZ: Sorry, during the  
 14 modernisation, they heyday of modernisation would Gartner  
 15 have added any value?  
 16 MR WICKENS: We have a or had during that  
 17 time a great deal on reliance on Gartner advice in terms of  
 18 a separate, which is a package deal advisory service where  
 19 one receives literature and recommendations. SARS would  
 20 often use those Gartner publications to guide technology  
 21 choices, product choices, etcetera or ja at the high level  
 22 standards that would be guided by Gartner publications. So  
 23 Gartner was in the picture, but Gartner Consultants were,  
 24 from time to time were invited in for a specific  
 25 assignment, but that was less and less frequent in the

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1 modernisation in the heydays if you like. It was more  
 2 frequent in the run to modernisation. I don't know if that  
 3 answers your question. You weren't suggesting whether that  
 4 Gartner engagement, the full assessment and recommendations  
 5 whether that would have been appropriate during the  
 6 modernisation heyday. No it would not. We were given  
 7 sufficient advice through, let's say their offline advisory  
 8 service.  
 9 PROF KATZ: Thanks that's the question.  
 10 Thank you very much. COMMISSIONER: Thank you  
 11 very much for assisting us.  
 12 MR WICKENS: Thank you.  
 13 MS STEINBERG: Judge, our next witness is  
 14 the chief officer of DIST. I don't think she's here, there  
 15 was someone from her office here, I'm not sure. But I  
 16 think someone's going to call her. Is the chief officer  
 17 available?  
 18 SPEAKER: No not yet, in fact she is  
 19 scheduled for 10 o'clock.  
 20 MS STEINBERG: So will she be here at  
 21 10:00?  
 22 SPEAKER: Yes, yes.  
 23 MS STEINBERG: Okay can we break until  
 24 10:00?  
 25 COMMISSIONER: Thank you.

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1 MS STEINBERG: Thank you, Judge.  
 2 [INQUIRY ADJOURNS INQUIRY RESUMES]  
 3 [10:02] COMMISSIONER: Yes, are we ready?  
 4 MS HOBDEN: Yes, Judge.  
 5 COMMISSIONER: Good morning. Thank you  
 6 for coming to talk to us. Will you affirm that the  
 7 evidence you give will be the truth, the whole truth and  
 8 nothing but the truth? If so will you say I do?  
 9 MS MAKHEKHE-MOKHUANE: I solemnly do.  
 10 EVIDENCE BY MS MAKHEKHE-MOKHUANE  
 11 MS HOBDEN: Thank you, Judge. Ms  
 12 Makhekhe-Mokhuane, you have provided the commission with  
 13 two submissions. The first was received last month and the  
 14 second was received this morning, written submissions and  
 15 you've asked to come to the commission to testify today, is  
 16 that right?  
 17 MS MAKHEKHE-MOKHUANE: That's correct,  
 18 Ma'am.  
 19 MS HOBDEN: Can you tell us your current  
 20 position at SARS?  
 21 MS MAKHEKHE-MOKHUANE: I'm a chief  
 22 officer, detail information services and technology.  
 23 MS HOBDEN: And when were you appointed?  
 24 MS MAKHEKHE-MOKHUANE: I was appointed in  
 25 May 2017.

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1 MS HOBDEN: So can you explain to the  
 2 commission and the panel what your responsibilities are as  
 3 chief officer in the DIST space?  
 4 MS MAKHEKHE-MOKHUANE: My  
 5 responsibilities are to make sure that information  
 6 technology supports the organisation, its objectives. It's  
 7 also to make sure or strive to use ICTs which is  
 8 information communications technologies, to make sure that  
 9 we support tax revenue collection and compliance.  
 10 MS HOBDEN: And how many people do you  
 11 manage at the moment?  
 12 MS MAKHEKHE-MOKHUANE: 680 something at  
 13 the moment.  
 14 MS HOBDEN: And do you attend the Exco  
 15 meetings?  
 16 MS MAKHEKHE-MOKHUANE: Yes, Ma'am.  
 17 MS HOBDEN: What decisions within DIST  
 18 need to be approved by you?  
 19 MS MAKHEKHE-MOKHUANE: The current setup  
 20 is about procurement, it's about people and it's about  
 21 technology decisions.  
 22 MS HOBDEN: What kind of technology  
 23 decisions, at what level?  
 24 MS MAKHEKHE-MOKHUANE: Okay. Maybe I  
 25 should say, taking a step back, SARS has got a current

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1 landscape it has to keep the business going. So there are  
 2 business cases at least within DIST that comes there  
 3 whether it's about renewal of licences, whether it's about  
 4 releases, whether it's about improvements and so on and so  
 5 forth. So those are the things that come into DIST.  
 6 MS HOBDEN: So it's anything that  
 7 involves changing anything in information technology  
 8 systems of SARS.  
 9 MS MAKHEKHE-MOKHUANE: Yes.  
 10 MS HOBDEN: And with you – you've said  
 11 that part of DIST's function is to assist the business. In  
 12 ways does, do you imagine or envisage that DIST is going to  
 13 be doing that or should be doing that?  
 14 MS MAKHEKHE-MOKHUANE: Okay, let me just  
 15 say first of all, as you know, that I made a submission and  
 16 I also had questions from the commission about certain  
 17 issues and with your permission I'd like to go there. In  
 18 answering your question, so the issues insofar as strategy  
 19 is concerned, okay. So what decisions do you want to make,  
 20 how do you want to make those, how do we support business  
 21 but how do we also keep the lights on? Okay. Now insofar  
 22 as the matters or the letter that I received from that  
 23 commission, it spoke about strategy, it spoke about  
 24 leadership, it spoke about IT procurement, HR resources and  
 25 risks. And if you allow me I'd like to speak about those

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1 and then have a discussion because in my view I think that  
 2 will give you perspective.  
 3 MS HOBDEN: I would like to start with  
 4 the background for the benefit of the panel as to the role  
 5 of the chief officer in DIST and how you see that role and  
 6 how you see it functioning and how it should be functioning  
 7 and the, there's been a lot of evidence we've received over  
 8 the last two days about the change in which, about the role  
 9 of IT at SARS has changed and I would like to ask you about  
 10 that in terms of what you know now and how you see the role  
 11 of DIST for SARS and to achieve its mandates.  
 12 MS MAKHEKHE-MOKHUANE: Okay. The mandate  
 13 of the South African Revenue Service is to collect revenue,  
 14 is to educate and is to ensure compliance. The role of  
 15 information technology or ICTs is to support that mandate.  
 16 So my job is to say what is it that the organisation wants  
 17 to do, how does it want to do it and how do I enable that.  
 18 So you look at issues of tax, you look at issues of  
 19 enforcement, you look at issues of customs and then you say  
 20 how do I then make sure that there's efficiency, there's  
 21 compliance, there's improvements and so on and so forth.  
 22 So I think in a nutshell the role of IT is to enable the  
 23 organisation to realise its mandate.  
 24 MS HOBDEN: So in your position as chief  
 25 officer what information do you regularly receive about the

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1 way in which SARS is achieving its mandate?  
 2 MS MAKHEKHE-MOKHUANE: What information?  
 3 MS HOBDEN: Do you receive information  
 4 about how SARS is achieving its mandate?  
 5 MS MAKHEKHE-MOKHUANE: That's a difficult  
 6 question but let me attempt. I'm a member of Exco. I'm  
 7 not only a chief officer for digital information systems,  
 8 I'm also responsible for North West as an example. I've  
 9 got a target of 11 billion over and above my job. So how I  
 10 receive information is through submissions, is through  
 11 sitting in different governance structures to say these are  
 12 the problems, this is what we're doing to solve the  
 13 problems and these are the action plans.  
 14 MS HOBDEN: And do you think at the  
 15 moment in your view SARS is achieving its mandate in the  
 16 most efficient and effective way?  
 17 MS MAKHEKHE-MOKHUANE: I'm not in a  
 18 position to answer that question.  
 19 COMMISSIONER: Well as far as your  
 20 division is concerned?  
 21 MS MAKHEKHE-MOKHUANE: Yes, Sir, I'll  
 22 speak insofar as DIST is concerned. As far as I'm  
 23 concerned with what I know I think we can do better. We  
 24 have a strategy. When I joined SARS there had been  
 25 modernisation that had been going on since 2007. As you

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1 know I joined in 2017 and when I joined there was a  
 2 document on the table that I had to implement and so there  
 3 were a number of issues on the table. Amongst others,  
 4 within my teams there were discussions of whether Gartner  
 5 should've come in and so on and so forth.  
 6 So with my experience organisations evolve from  
 7 time to time. Sometimes we look at issues of insourcing,  
 8 outsourcing. Sometimes we look at issues of  
 9 centralisation, vis-à-vis decentralisation. So there are  
 10 quite a number of things that happens in a number of  
 11 organisations. So DIST can do better but the IT strategy  
 12 that I found on the table didn't have a strategy that  
 13 supports it. Okay. Within DIST we have what we call a  
 14 plan, build and run and if you look at what is happening on  
 15 the ground what you call build does not have the capacity  
 16 to build. It only has the capacity to maintain what is on  
 17 the ground. So you can't call it build when you have a  
 18 strategy to build new solutions but you have only kept  
 19 people there who must just maintain.  
 20 PROF KATZ: Sorry, Counsel, can I just  
 21 ask one question? What ICT strategy did you find when you  
 22 joined? When you got this position.  
 23 MS MAKHEKHE-MOKHUANE: When I joined,  
 24 Sir, there was an IT strategy for SARS that was developed  
 25 by Gartner and ja, that's what I found on the table.

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1 PROF KATZ: And is that the one you saw  
 2 as your role to implement?  
 3 MS MAKHEKHE-MOKHUANE: As far as I'm  
 4 concerned that was what the executive council had approved  
 5 and that's what I knew.  
 6 MS HOBDEN: Thank you. I would just like  
 7 to go back to the question I was asking which was about the  
 8 way in which your view on SARS fulfilling its mandate. You  
 9 said that the role of DIST is to enable business. If  
 10 that's so then surely the functioning of business and how  
 11 business is working should be a key concern.  
 12 MS MAKHEKHE-MOKHUANE: And the question  
 13 is?  
 14 MS HOBDEN: The question is do you still  
 15 have no comment on how SARS is fulfilling its function  
 16 which as we know is revenue collection?  
 17 MS MAKHEKHE-MOKHUANE: Okay. Then I'll  
 18 be specific to some issues. I've already told you that I'm  
 19 responsible for North West, for the revenue. My target  
 20 last year was 10.6. I picked up 10.3. One of the reasons  
 21 why I could not achieve 10.6 is because, if I may, because  
 22 I think the commission permits me, the municipalities don't  
 23 pay, pay as you earn over to SARS but they give their  
 24 employees IRP5s and they come to SARS to pick up that  
 25 money. Ja. So it's a double drainage as far as I'm

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1 concerned. So SARS is capable currently and into the  
 2 future to fulfil its mandate.  
 3 MS HOBDEN: But at present there is a  
 4 shortfall in one area that you know about?  
 5 MS MAKHEKHE-MOKHUANE: That is why I was  
 6 giving a reason to say in the area where I know figures to  
 7 the point 10 million is owed to, from municipalities only  
 8 because if you're responsible for North West there's  
 9 nothing much you can do except pay as you earn and so on  
 10 and so forth. And if municipalities don't pay, if you  
 11 can't attach the assets because there will be implications,  
 12 my boss is here sitting somewhere. I've raised that  
 13 concern with him to say if municipalities don't pay over  
 14 the money that they've collected from employees yet the  
 15 employees come and get a refund reduce my target so that it  
 16 becomes realistic. So from a SARS perspective there are a  
 17 number of issues why SARS cannot achieve a target.  
 18 But also from where I'm sitting as a chief  
 19 officer responsible for ICTs, I'm of the view that there  
 20 are a number of things that we can do in terms of  
 21 collecting revenue through different means, through the  
 22 usage of ICTs. I've already been accused of saying you can  
 23 use methods of ICTs to make sure that what you declare is  
 24 what you get from a customs perspective. There are a  
 25 number of online purchases, if you look at the mail that

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1 come through, you don't, you pay VAT, your VAT is sitting  
 2 at Amazon or somewhere else. We should be deploying those  
 3 technologies, some technologies to track that VAT that is  
 4 payable to South African Revenue Services to be in our  
 5 coffers. But at the moment we don't do that.  
 6 MS HOBDEN: So you are, from what, it  
 7 sounds like you're describing is the tax, what is known as  
 8 the tax gap. There is money that SARS could collect that  
 9 it's not collecting at present.  
 10 MS MAKHEKHE-MOKHUANE: Yes, Ma'am.  
 11 MS HOBDEN: And you're saying that there  
 12 are ICT solutions to these issues arising to solving the  
 13 tax gap.  
 14 MS MAKHEKHE-MOKHUANE: In my view, yes,  
 15 Ma'am.  
 16 MS HOBDEN: So what, apart from the North  
 17 West province which we understand you're responsible, what  
 18 other information comes across your desk or are you exposed  
 19 to with regards to how SARS is functioning and revenue  
 20 targets, areas that need work?  
 21 MS MAKHEKHE-MOKHUANE: I could give in an  
 22 example insofar as that is concerned. If you owe Edgars,  
 23 Edgars will call you and say you haven't paid us but we saw  
 24 that you swiped your card at a restaurant last night but as  
 25 far as we are concerned in my view we are not using what

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1 they call big data effectively for us to have a single view  
 2 of you of what you're doing, where and how. So that when  
 3 we say you owe us then we know that you owe us and you are  
 4 able to pay us. We should be able my in view to have  
 5 proactive and predictive data that tells us that this  
 6 person is already owing everybody else, is being chased by  
 7 100 people. Let's not waste our efforts chasing this  
 8 person but we should rather be chasing people who have a  
 9 potential of paying us.

10 MS HOBDEN: I'm not sure you've answered  
 11 the question. The question I'm asking is in terms of SARS  
 12 revenue collection, what information about that on a month  
 13 to month or bi-weekly basis do you receive?

14 MS MAKHEKHE-MOKHUANE: Okay. We have, I  
 15 thought that issue of that was part of revenue collection  
 16 but obviously maybe I'm not answering it properly. But we  
 17 discuss from time to time what our target is, the tax type,  
 18 how we are performing. So whether it's VAT, whether it's  
 19 pay as you earn, whether it's IT and so on an so forth and  
 20 what the issues are. And we then sit and say this month,  
 21 for instance we're expecting this amount of money on this  
 22 particular tax type. We've not received it. Already it's  
 23 a warning sign so what are we doing about it over and above  
 24 issues that could be surrounding the environment at that  
 25 time. One of the things that we do discuss is how the

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1 economy is performing and what could be the issues, whether  
 2 there's potential job losses which could affect pay as you  
 3 earn or whether construction is doing well and so on and so  
 4 forth. So those are the things that come across my desk as  
 5 I sit in Exco and as I sit in my own revenue meeting.

6 MS HOBDEN: So you are aware of SARS'  
 7 performance in terms of its revenue collection and your  
 8 evidence has been that it is this role to where there are  
 9 gaps to do what is possible to enable the closing of those  
 10 tax gaps?

11 MS MAKHEKHE-MOKHUANE: That sounds  
 12 correct.

13 MS HOBDEN: And who do you report to?

14 MS MAKHEKHE-MOKHUANE: I report to the  
 15 Commissioner.

16 MS HOBDEN: Do you report to the Minister  
 17 at all?

18 MS MAKHEKHE-MOKHUANE: I report to the  
 19 Commissioner.

20 MS HOBDEN: If we can just move to your  
 21 arrival at SARS May 2017. After your appointment did you  
 22 meet with anyone at SARS for a briefing about the position  
 23 or what was required?

24 MS MAKHEKHE-MOKHUANE: Okay. The 1st of  
 25 May was a holiday of course so on the 2nd of May when you're

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1 appointed you go there whether it's a holiday or not. You  
 2 show up, there's nobody. So I went back on the 2nd, there's  
 3 orientation and after that I think I met, there was an Exco  
 4 meeting and they were taking me through, they have an  
 5 agenda, ja. So you sit there, you listen and then after  
 6 that then you have probably a one on one with the  
 7 Commissioner just to welcome you to show you around what  
 8 the issues are.

9 MS HOBDEN: Did you have that one on one  
 10 with the Commissioner?

11 MS MAKHEKHE-MOKHUANE: I think I did,  
 12 yes.

13 MS HOBDEN: And what did he tell you  
 14 about what was happening in the technology space at SARS?

15 MS MAKHEKHE-MOKHUANE: The Commissioner  
 16 told me that SARS had been going through an assessment. He  
 17 told me that there was an IT strategy that was being  
 18 crafted and that he would require my assistance to make  
 19 sure that SARS continue to be an ICT leader in the usage of  
 20 ICTs.

21 MR KAHLA: Did he tell you that there was  
 22 a strategy that was being crafted or that had been crafted?

23 MS MAKHEKHE-MOKHUANE: That was being  
 24 crafted.

25 MR KAHLA: So at the time you got to SARS

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1 the strategy had not been finalised.

2 MS MAKHEKHE-MOKHUANE: I think it had  
 3 been finalised but I think there were still discussions in  
 4 terms of its finality. But Exco had already approved it  
 5 but there was discussions about how you implement it, at  
 6 what point and so on and so forth.

7 MR KAHLA: So the strategy was ready you  
 8 were just dealing with the implementation of the strategy?

9 MS MAKHEKHE-MOKHUANE: Yes, Sir.

10 [10:22] MS MASILO: Did you raise with the  
 11 Commissioner the issue of strategy with no structure  
 12 because that's what you mentioned earlier and how you deal  
 13 with that.

14 MS MAKHEKHE-MOKHUANE: Yes, ma'am, not  
 15 only with the Commissioner but with Exco on a number of  
 16 times. So you have an organisational strategy. You have  
 17 an IT strategy that is supported by a structure. Okay.

18 And I can and my colleagues and the Commissioner can attest  
 19 to the fact that the structure was not aligned to the  
 20 strategy in the first place so yes it is a known fact.

21 MS MASILO: So what has happened to that  
 22 discussion? What was the outcome?

23 MS MAKHEKHE-MOKHUANE: Okay, while we  
 24 were in the midst of this journey then we experienced huge  
 25 budget cuts and we had to go back to the drawing board. So

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1 part of what I prepared was to say this is what the  
 2 strategy wanted to implement. In March 2018 we went back  
 3 to Exco and said that this is what we're going to need to  
 4 keep the lights on, these are the projects. At the minimum  
 5 we require at least 377 million and we were given 88  
 6 million, you know. And when the budgets are cut you have  
 7 to live with what you have. So one of the things that we  
 8 also did as part of the submission to Treasury via the  
 9 Commissioner was the quantum leap document. We have also  
 10 submitted what we called a risk memo. So the risk memo  
 11 highlighted all the issues that are at risk if we don't  
 12 have capacity to deliver on our mandate.

13 MR KAHLA: Just another clarity for me,  
 14 are you suggesting that the Commissioner informed you that  
 15 the structure that - let me first understand, is that the  
 16 structure that was done during the Bain process that was  
 17 now seen as being misaligned to the IT structure that, to  
 18 the IT strategy that you have?

19 MS MAKHEKHE-MOKHUANE: I'm not going to  
 20 comment about the Bain process because I don't know about  
 21 it but what I know for sure is that at the time when the  
 22 strategy was approved we were subsequently supposed to have  
 23 a structure that we'll be able to implement on the  
 24 strategy.

25 MR KAHLA: I'm just trying to understand

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1 whether you know the structure you found in place was it a  
 2 structure that was post the restructuring under Bain or  
 3 your area, the ICT area, the DIST and technology area was  
 4 never affected by the Bain process in terms of what you  
 5 knew.

6 MS MAKHEKHE-MOKHUANE: That I don't know,  
 7 sir. The structure that I found is the structure that is  
 8 there now. So I've heard of course from my colleagues that  
 9 - okay, let me give you an example of what Artwell said  
 10 yesterday as an example. In my world where I come from you  
 11 have what you call business analysis. They sit with  
 12 business every day. They make sure that they understand  
 13 business requirements. That should be part of my offering  
 14 to business. And that is not there in DIST so it's sitting  
 15 somewhere whether with business itself or whether with the  
 16 innovation hub. So the structure that I found was a  
 17 structure that was supposed to deliver IT services.

18 MR KAHLA: And the Commissioner said that  
 19 structure that you found was not aligned to the strategy  
 20 that you had to implement.

21 MS MAKHEKHE-MOKHUANE: He didn't say  
 22 that. I know for a fact that is not aligned.

23 MR KAHLA: Okay, so that was not part of  
 24 the discussion that of had with the Commissioner in  
 25 relation to the structure and strategy.

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1 MS MAKHEKHE-MOKHUANE: It's part of what  
 2 I said to him, sir.

3 MR KAHLA: So when you first met the  
 4 Commissioner you said to him the structure that's your  
 5 finding is misaligned to the strategy that you had to  
 6 implement.

7 MS MAKHEKHE-MOKHUANE: Not when I first -  
 8 so in my world when you go into an office you have 100 days  
 9 to do an assessment across different areas, what the  
 10 problems are and so on and so forth. So you have a  
 11 strategy. You are told what to do. You look at what the  
 12 environment needs and you go back to your supervisor and  
 13 say I found this, this, this, that and that but I think  
 14 these are the gaps. And indeed it is documented that the  
 15 structure itself was not supportive of the strategy.

16 MR KAHLA: And what was his reaction to  
 17 that?

18 MS MAKHEKHE-MOKHUANE: That we shall make  
 19 sure that we make provision for the structure to be put in  
 20 place.

21 COMMISSIONER: And has it been put in  
 22 place?

23 MS MAKHEKHE-MOKHUANE: No, sir.

24 COMMISSIONER: Why not?

25 MS MAKHEKHE-MOKHUANE: I think that's a

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1 very good question. I've already indicated that while we  
 2 were trying to set ourselves up we subsequently then  
 3 experienced huge cuts. That's part 1. Part 2 is that for  
 4 you to put together a structure of a digital organisation  
 5 you have to have people who are seasoned enough to say how  
 6 do you take this Titanic forward. We have to keep the  
 7 lights on but we also have to take it into the future. So  
 8 you can't just go onto a boardroom and put boxes. And we  
 9 have asked our colleagues within the H&D space, it is part  
 10 of our Exco resolutions, for them to assist us. They've  
 11 not been able to assist us.

12 MR KAHLA: Can you see the structure has  
 13 been misaligned to the build portion of the strategy or to  
 14 the maintained portion of the strategy or both?

15 MS MAKHEKHE-MOKHUANE: Please say that  
 16 again, sir?

17 MR KAHLA: Did you see the structure that  
 18 you indicated to the Commissioner was misaligned to the  
 19 strategy? Was it misaligned in relation to the build  
 20 portion that you made reference to earlier of the strategy  
 21 or the maintenance portion or both?

22 MS MAKHEKHE-MOKHUANE: Let me give an  
 23 example if I may. The organisation has decided to leverage  
 24 on the usage of SAP. So the GRAP project is one of those.  
 25 Okay. I'm quite certain that we have documentation to that

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1 effect. Business cases were put in place. So when you  
 2 have a house that you live in and you are building a new  
 3 house you put new resources altogether for a new  
 4 trajectory. So what happened is that we had a strategy  
 5 that we wanted to follow but we did not fully align it.  
 6 So you have SAP. You've got licenses. You've  
 7 got software. You've got hardware. You need 50 people to  
 8 do that, what you call a centre of expertise, but you don't  
 9 resource that. Then you say no, go back to your vacancies.  
 10 So even if a full bus was to run away with 50 employees  
 11 within DIST those people had jobs that they are doing  
 12 today. I can't then fill those vacancies if that were to  
 13 happen with a new mandate because that new mandate requires  
 14 new skills. It requires new set up altogether. That is  
 15 why I'm saying the structure was not then fully supportive.  
 16 MR KAHLA: So am I getting you right that  
 17 the structure was therefore appropriate just for the  
 18 maintenance side rather than the build side?  
 19 MS MAKHEKHE-MOKHUANE: You're correct,  
 20 sir.  
 21 MS MASILO: I just need some clarity.  
 22 What percentage of the, I'm just not clear, what percentage  
 23 of the strategy are you uncomfortable with? Is it the  
 24 whole strategy or portions which can be realigned to suit  
 25 your, the purpose for which you need to deliver?

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1 MS MAKHEKHE-MOKHUANE: I think that is a  
 2 difficult question because when you talk about a strategy  
 3 that has not been implemented, you know, you're not able  
 4 then to articulate any percentage to it.  
 5 MS MASILO: Do you intend to implement  
 6 any of it if you had, if you have the support that you need  
 7 or do you, would you rather have a new strategy, you know,  
 8 drafted for your division?  
 9 MS MAKHEKHE-MOKHUANE: I'll do both.  
 10 I'll look at what is on the table, what is doable, what  
 11 budget do I have. If I need to do anything different I'll  
 12 definitely go back to the drawing board.  
 13 MS MASILO: Have you looked at what we  
 14 have, at what's on the table at the current strategy?  
 15 MS MAKHEKHE-MOKHUANE: Yes, ma'am.  
 16 MS MASILO: Have you fully considered it?  
 17 MS MAKHEKHE-MOKHUANE: Yes, ma'am.  
 18 MS MASILO: Okay.  
 19 MS MAKHEKHE-MOKHUANE: I've looked at it.  
 20 We have with my team January this year looked at the  
 21 strategy one that was on the table. We had discussions  
 22 around it. We then looked at what is doable within the  
 23 budget issues. So on the submissions that I've done we  
 24 have submitted what we call top ten priorities for DIST and  
 25 it has got things there that we wanted to do, that we can

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1 do. Let me put it that way. Some of them are from the  
 2 strategy itself but some of them are on the keeping the  
 3 lights on.  
 4 COMMISSIONER: What I'm hearing is  
 5 there's been a lot of discussion and there are visions of  
 6 how to collect VAT from Amazon purchases for example and  
 7 all these things but when is something going to be done?  
 8 MS MAKHEKHE-MOKHUANE: You see, Judge,  
 9 your job is to ask difficult questions.  
 10 COMMISSIONER: Well, just informative,  
 11 you know, just that will inform. I don't know if they're  
 12 difficult or not but I'd just like to -  
 13 MS MAKHEKHE-MOKHUANE: But some of them  
 14 in my view I think the Commissioner will be testifying. We  
 15 have put submissions on the table. It's discussions that  
 16 we want to have with Treasury if need be but in my view  
 17 some of these things should be done as a matter of urgency  
 18 because -  
 19 COMMISSIONER: I suppose that's what I'm  
 20 asking. When are they going to be done? I know that they  
 21 must be done but when will they be done do you think?  
 22 MS MAKHEKHE-MOKHUANE: Where's my boss?  
 23 COMMISSIONER: No, no, don't worry about  
 24 the boss for the moment. You can't pass the bill to the  
 25 pass. You're the boss.

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1 MS MAKHEKHE-MOKHUANE: Oh no, not now.  
 2 We are pursuing that. We have plans on the table, Judge.  
 3 The world has changed. The world has gone digital. People  
 4 don't - you must find them through technology, you know.  
 5 And we have quite a number of suggestions that we have put  
 6 on the table. There are a number of things in my view that  
 7 we want to do and that are going to receive well warm  
 8 welcome.  
 9 COMMISSIONER: I don't think you're quite  
 10 dealing with my question though. I understand that there  
 11 are a lot of things you would like to do but my question is  
 12 when will they be done. I mean, as you say the world moves  
 13 forward and I suppose one can get left behind.  
 14 MS MAKHEKHE-MOKHUANE: They are going to  
 15 be done, Judge. Like I'm saying we have evidence on the  
 16 table of the proof of concepts that we have already done.  
 17 For instance we have a proof of concept with block chain.  
 18 We did that with Transnet. We have successful feedback  
 19 from that and we went to Exco. Exco has approved that we  
 20 go ahead with block chain. So it's one of the things that  
 21 are going, are happening. Some things may not happen as  
 22 fast as we want including the VAT on E-commerce  
 23 transactions. We are going to have discussions further to  
 24 convince the Commissioner that some of those things have to  
 25 happen as a matter of urgency. In any case it was, it is

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1 an Exco resolution that those must happen.

2 PROF KATZ: Sorry, but who would take the

3 resolution to Exco? It should originate at DIST. And have

4 you got a formulation that Exco's in a position to look at?

5 MS MAKHEKHE-MOKHUANE: Yes, sir. So what

6 happened is that we looked at how the technology works. We

7 went through a demonstration. We actually wrote to

8 Treasury to request for approval to do a proof of concept

9 because in my mind we are not irritating anybody when we

10 take VAT that is due to South African Revenue Services for

11 online transactions, you know, because how they send it

12 back to us is when and how they wish. But it's our

13 obligation to make sure that we do. So Exco has got that

14 resolution. Of course there were changes and we're having

15 discussions with the acting Commissioner and we hope we'll

16 be able to use ICTs for the advantage of SARS.

17 MR KAHLA: Do you consider this, the

18 skills you've had from the modernisation process as

19 adequate or at least meeting the expectations you would

20 have in relation to the build programme of your strategy?

21 MS MAKHEKHE-MOKHUANE: Sir, I was not at

22 SARS during the modernisation process but I can say with

23 the team that I have if we put our minds together we can

24 achieve a lot.

25 MR KAHLA: The reason I'm asking this is

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1 that you put a lot of emphasis around not having the

2 resources to build on the build side and you put a lot in

3 relation to the resources around the issue around the

4 structure and people. So I'm trying to understand whether

5 are there no people who had been involved before at SARS in

6 build activities who would be able to inform build

7 activities going forward?

8 MS MAKHEKHE-MOKHUANE: Okay, so let me

9 put it this way. Within the build space which is what I

10 call maintain and I would like to invite you when you are

11 available, there are things that are happening for 52

12 weekends of the year. Every weekend there's something that

13 they are doing to keep the lights on. They have no time,

14 that build space, to sit and say how do we then think about

15 the future because their work is to make sure that this

16 doesn't fall.

17 MR KAHLA: So help me understand. What

18 you're doing now to keep the lights on as far as you're

19 concerned is that maintenance or is that build?

20 MS MAKHEKHE-MOKHUANE: That is

21 maintenance.

22 MR KAHLA: And your team, does your team

23 consider that to be build or maintenance?

24 MS MAKHEKHE-MOKHUANE: I'm sure they can

25 confirm that is maintenance.

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1 MR KAHLA: So you're all aligned around

2 you're keeping the lights on. It's just purely the portion

3 of the maintenance. Is there anything that's being done on

4 the build side?

5 MS MAKHEKHE-MOKHUANE: I thought I'd

6 already answer that question but let me attempt -

7 MR KAHLA: I think I'm slow today.

8 MS MAKHEKHE-MOKHUANE: I think a lot of

9 us are slow. Remember that there are changes from time to

10 time. Business requires to do enhancements. There are

11 legislative amendments. So much as you're keeping the

12 lights on if the Minister says something tomorrow that is

13 not necessarily maintaining as building or enhancing what

14 is there so that it complies to the law. But in terms of

15 the strategy itself on the new part we don't have that

16 capability because we have not build it.

17 MR KAHLA: And all of what you've just

18 referred to aren't those really just enhancements relating

19 to the maintenance, the ongoing, as opposed to the build?

20 I'm trying to understand what you are saying around the

21 build and I want to understand that first, whether are you

22 all aligned around the fact that you are involved in the

23 maintenance portion of the strategy, not the build portion.

24 I just want you to be clear with me on that and I'm not so

25 sure whether you're saying you're doing both build and

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1 maintain.

2 MS MAKHEKHE-MOKHUANE: I think you are

3 correct in your understanding. Currently we are building.

4 We have not built capability to build new solutions. So we

5 are maintaining what we have.

6 MR KAHLA: So currently all you are doing

7 is maintaining what you have.

8 MS MAKHEKHE-MOKHUANE: Within the build

9 space.

10 MR KAHLA: Please help me understand.

11 MS MAKHEKHE-MOKHUANE: Okay. We have

12 strategy which is plan, build and run. Okay. So when we

13 go into the build space you have an environment which is

14 running there which has already been explained. As and

15 when there are enhancements that have to happen, be it

16 enhancements on 1% VAT increase and so on and so forth, you

17 do it on the existing environment. So much as you are

18 enhancing but you're enhancing what is there. But you have

19 a strategy that says I want to move from this environment

20 to that environment.

21 MR KAHLA: Have you done an assessment of

22 the resources needed for you to do the build?

23 MS MAKHEKHE-MOKHUANE: Yes -

24 MR KAHLA: To get a sense around what

25 resources you have?

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1 MS MAKHEKHE-MOKHUANE: Yes, sir, we have.  
 2 MR KAHLA: That you need. Have you made  
 3 an assessment of whether those resources you need already  
 4 exist or don't exist within SARS?  
 5 MS MAKHEKHE-MOKHUANE: I can confirm that  
 6 having sat here for a few days there are no resources for  
 7 what SARS wants to achieve.  
 8 [10:42] MR KAHLA: When you say for a few days do  
 9 you mean for more than a year that you've been here?  
 10 MS MAKHEKHE-MOKHUANE: I'm saying here as  
 11 the testimony was being passed, but of course as I have  
 12 been in SARS I've done it, that assessment. That is why I  
 13 said to you when we went to Exco in March 2018 we had to  
 14 prioritise on top ten things that we want to do on a number  
 15 of circumstances.  
 16 MR KAHLA: So you're saying prior to  
 17 coming here this week you had made an assessment of the  
 18 resources required for you to do the build and come to the  
 19 view that SARS does not have the resources you need for you  
 20 to do the build?  
 21 MS MAKHEKHE-MOKHUANE: I am on record  
 22 saying, having said that in January I had a meeting with my  
 23 team where we looked at what we were supposed to deliver in  
 24 terms of the strategy and what we had the minister to  
 25 deliver on and then we went to Exco and said, these are the

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1 things that we can do with what we have. I have said that.  
 2 COMMISSIONER: Thank you.  
 3 MS HOBDEN: I would like to come back to  
 4 the issue of the strategy and where we left off was, you  
 5 explained that when you arrived at SARS on your first day  
 6 you had met with the Commissioner and he had told you that  
 7 there was a strategy in place and that he would need your  
 8 assistance to implement that strategy. So I would like us  
 9 to look at the strategy and look at the submissions you've  
 10 made to the Commissioner on that and unpack that. We've  
 11 heard testimony yesterday that there is no IT strategy at  
 12 SARS. What is your response to that?  
 13 COMMISSIONER: Well, sorry, it was not  
 14 quite that. It was that there is a strategy document but  
 15 it is not being executed, I think.  
 16 MS HOBDEN: Thank you, Judge.  
 17 MS MAKHEKHE-MOKHUANE: Your question,  
 18 Ma'am?  
 19 COMMISSIONER: The evidence yesterday was  
 20 that there is a strategy document but it is not being  
 21 executed.  
 22 MS MAKHEKHE-MOKHUANE: You see, Judge, in  
 23 my view there are things that you call institutionalised  
 24 chaos.  
 25 COMMISSIONER: Institutionalised chaos?

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1 MS MAKHEKHE-MOKHUANE: Yes.  
 2 COMMISSIONER: Explain that to me?  
 3 MS MAKHEKHE-MOKHUANE: Okay, so the  
 4 testimony was that there is no strategy and there is no  
 5 direction, okay. I sit on behalf of South Africa at the  
 6 WCO, the World Customs Union, as an example. I know that  
 7 the WCO and a number of countries that sit there are  
 8 looking at Blockchain to facilitate cross border trading,  
 9 okay. Now when I say we must do Blockchain somebody says  
 10 it is not leadership or it is not strategy. That is  
 11 strategy.  
 12 MS MASILO: What is Blockchain?  
 13 MS MAKHEKHE-MOKHUANE: Blockchain is a  
 14 technology that uses Bitcoin, if I may say that, to do  
 15 ledgers so that transactions are secured. So you know who  
 16 is buying, who is selling. You have a view of the  
 17 transaction throughout the value chain. So if you are  
 18 Shoprite or if you are Mr so and so, you're taking things  
 19 from South Africa to Zimbabwe or anywhere else, as they  
 20 pass through our borders we have proof of where they come  
 21 from and where they are going to.  
 22 COMMISSIONER: But look, as I understand  
 23 it at SARS, SARS has got major technology. Its technology,  
 24 as I hear the evidence, is bespoke technology built for  
 25 SARS. It is its main core. Does Blockchain assist to

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1 enhance that at all? I mean I understand Blockchain. It  
 2 is a security system, but is that enough to advance the  
 3 technology at SARS for revenue collection?  
 4 MS MAKHEKHE-MOKHUANE: Judge, okay, so we  
 5 have our core bespoke systems that have got our text  
 6 calculators and so on and so forth. On the other hand in  
 7 my view and I may be wrong, we need to have other things.  
 8 For instance other countries are already tracking their  
 9 consignments, so if a consignment leaves China and it goes  
 10 via Hong Kong and you open that consignment and put  
 11 anything else including a 2 cents in there, they will know  
 12 that you have opened that consignment, what was declared in  
 13 China and what gets into South Africa has been tampered  
 14 with. Those are the things that over and above keeping the  
 15 lights on in terms of what we are doing, then we must also  
 16 be able to secure our borders you know. So I can give you  
 17 a number of examples of things that are on the horizon that  
 18 we should be pursuing quite aggressively.  
 19 COMMISSIONER: Well, I go back to my  
 20 problem and –  
 21 MS MAKHEKHE-MOKHUANE: To your problem?  
 22 COMMISSIONER: Sorry?  
 23 MS MAKHEKHE-MOKHUANE: To your problem?  
 24 COMMISSIONER: I go back to the problem  
 25 that I've got.

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1 MS MAKHEKHE-MOKHUANE: Oh, okay, okay.  
 2 COMMISSIONER: And that is, I'm sure it  
 3 is an important thing to be able to monitor the borders and  
 4 so forth. These are all parts of what SARS is about, but  
 5 what I'm hearing about is maintenance subsistence which we  
 6 heard yesterday, as technology advances they fall behind.  
 7 I'm talking about hardware that is becoming –  
 8 MS MAKHEKHE-MOKHUANE: Obsolete?  
 9 COMMISSIONER: Obsolete and I just wonder  
 10 whether Blockchain should be the priority?  
 11 MS MAKHEKHE-MOKHUANE: You see, Judge, in  
 12 my world you have to keep the two hands open. You can't  
 13 ignore what the world is doing. First of all we have got  
 14 an obligation with the countries that we are trading with  
 15 to be compliant because that is where the world is going.  
 16 South Africa is a signatory and is a member. So you can't  
 17 fall behind on that, okay. So here you have a number of  
 18 issues. The infrastructure has aged and there are numbers  
 19 of factors that contributed to that. There are – there is  
 20 a drainage of resources that sometimes you're not able to  
 21 retain and even on that environment where the  
 22 infrastructure is failing, if I may say, you need to  
 23 enhance it to a certain level. So you have to keep the  
 24 balance of both worlds.  
 25 COMMISSIONER: Carry on, Ms Hobden?

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1 MS HOBDEN: Thank you, Judge. If we can  
 2 go back to the strategy –  
 3 MS MAKHEKHE-MOKHUANE: Yes, Ma'am.  
 4 MS HOBDEN: And I understand Adv Masilo  
 5 has touched on this but when did you receive a copy of that  
 6 strategy?  
 7 MS MAKHEKHE-MOKHUANE: I can't recall but  
 8 it was after a number of months that I've been there and  
 9 when you receive a document, okay, you go through it but  
 10 you need to have an engagement with the organisation to  
 11 say, this is the document. It was drafted in 2016, what  
 12 are we doing? How are we doing it? Are these still the  
 13 priorities and so on and so forth.  
 14 MS HOBDEN: So who did you engage with?  
 15 MS MAKHEKHE-MOKHUANE: I could only  
 16 engage through Exco and I'm sure through your previous  
 17 evidences, we have not had – at least at the time that I  
 18 have been with SARS, had a strategic planning session  
 19 because that document that I found on the desk after a  
 20 number of months that I've been there, remember that there  
 21 was no chief officer when I arrived and I did not have a  
 22 formal handover except to say Mr Shaik, we had been acting  
 23 for three days, you know. The rest of everything else that  
 24 was happening was happening elsewhere.  
 25 MS HOBDEN: Were you aware that Mr Barry

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1 Hore who was –  
 2 COMMISSIONER: Sorry, may I just ask, I  
 3 didn't get that? Do you say in the 15 months you've been  
 4 here you haven't yet had a strategy session? Did I hear  
 5 you correctly?  
 6 MS MAKHEKHE-MOKHUANE: Yes, you're  
 7 correct, Sir. It has been planned.  
 8 COMMISSIONER: Ja, no, I'm sure.  
 9 MS MAKHEKHE-MOKHUANE: It has been  
 10 postponed but we haven't had one.  
 11 MR KAHLA: So the assessment on the  
 12 strategy has just been your own assessment and not with the  
 13 team, not with your team together?  
 14 MS MAKHEKHE-MOKHUANE: I don't understand  
 15 the question?  
 16 MR KAHLA: Your assessment of the  
 17 strategy that you found and what you required to implement  
 18 it has been purely your own assessment, not an assessment  
 19 informed by an engagement with your team through a strategy  
 20 session.  
 21 MS MAKHEKHE-MOKHUANE: An IT strategy  
 22 that I found on paper is what I found, so under normal  
 23 circumstances from time to time in my world I go and sit  
 24 with, and listen to what the organisation wants to do, the  
 25 direction and then on that basis then I come and look at

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1 what I have on paper, is it going to support what the  
 2 organisation wants to do and then I go and implement, but  
 3 if you don't, if you have not had that session, what you  
 4 have on paper, what you want to do on a daily basis, it is  
 5 a bit of catch 22. You are between a rock and a hard  
 6 place, two hard places because you are doing IT, but IT is  
 7 not there for IT. IT is there to support the business.  
 8 MR KAHLA: So you have not had the  
 9 confirmation but you've not had a strategy session to  
 10 discuss the strategy. The impressions we have of the  
 11 strategy are just yours, not ones that have been informed  
 12 by an engagement with the others.  
 13 MS MAKHEKHE-MOKHUANE: Since I have been  
 14 at SARS, Sir, I have not attended any strategic session of  
 15 the organisation.  
 16 COMMISSIONER: Or of IT?  
 17 MS MAKHEKHE-MOKHUANE: Sorry, Sir?  
 18 COMMISSIONER: Or of the IT environment?  
 19 MS MAKHEKHE-MOKHUANE: Of the IT  
 20 environment, Judge, yes, we've had sessions. I've already  
 21 said that in January this year we had a session.  
 22 COMMISSIONER: January of this year?  
 23 MS MAKHEKHE-MOKHUANE: Yes, Sir, we have  
 24 minutes to that effect. We can produce them where we  
 25 looked at the IT strategy that was grafted by Gartner and

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1 the priorities that were there, the amount of monies that  
 2 we have, the capability that we have, but one of the things  
 3 that we resolved on was to say, the organisation has not  
 4 given us where it wants to go, you know. So we can't just  
 5 take a document and say we want to implement it. We need  
 6 to have confirmation to say, where are we going? Are we  
 7 going left or right? Is what we have on the table taking  
 8 us there or not?  
 9 COMMISSIONER: And that required the  
 10 strategy meeting, as you say of the organisation which  
 11 hasn't occurred?  
 12 MS MAKHEKHE-MOKHUANE: Certainly, Sir.  
 13 COMMISSIONER: Ms Hobden, do you want to  
 14 continue?  
 15 MS HOBDEN: I wanted to ask if you could  
 16 explain to us, what does the Gartner strategy say?  
 17 MS MAKHEKHE-MOKHUANE: Why do you call it  
 18 a Gartner strategy?  
 19 MS HOBDEN: The SARS –  
 20 COMMISSIONER: Well, I thought you said  
 21 it was the strategy devised by Gartner?  
 22 MS MAKHEKHE-MOKHUANE: Yes, I think that  
 23 was better because when you say the Gartner strategy I get  
 24 confused.  
 25 COMMISSIONER: Well, the strategy devised

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1 by Gartner, I think is the one she is talking about.  
 2 MS HOBDEN: I apologise for that, sorry,  
 3 I've misspoke.  
 4 MS MAKHEKHE-MOKHUANE: No, no problem.  
 5 We have already confessed that a lot of us are a bit slow,  
 6 me included. I think the Gartner drafted strategy proposed  
 7 a number of things of how SARS should do things  
 8 differently, but one of the things that personally I think  
 9 made sense to me and on the document that we have I can  
 10 refer you to, what page of it? It talks about three  
 11 things, about being agile in our delivery, about being  
 12 bimodal but also about the uptake and usage of new  
 13 technologies. So agility is doing things of course with  
 14 speed. Bimodal is about keeping the lights on but also  
 15 looking into the future and –  
 16 MS HOBDEN: I would like to start with  
 17 the first of those prongs which is agility. We've heard  
 18 evidence over the last two days that there is no agility in  
 19 DIST at the moment, either to procure what's needed or to  
 20 take decisions.  
 21 MS MAKHEKHE-MOKHUANE: Yes, Ma'am.  
 22 MS HOBDEN: Do you agree with that?  
 23 MS MAKHEKHE-MOKHUANE: That's correct.  
 24 MS HOBDEN: What plans and projects have  
 25 you put in place to try and ensure that DIST can align with

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1 the strategy which required agility?  
 2 MS MAKHEKHE-MOKHUANE: There are quite a  
 3 number of things that we have done. One is that I arranged  
 4 a meeting with the State Information Technology Agency.  
 5 I've had discussions with the likes of Schalk Human and  
 6 Treasury to say I've got a mainframe that has got a ten  
 7 year lifespan and Treasury gives me a three year approval,  
 8 okay. Every time I go back to use those licences it is  
 9 called a deviation and that takes a long time. So the  
 10 purpose of that meeting that I did with Situ Momahapi,  
 11 Johnston's team and my team was so that all the OEMs, you  
 12 know that are there, it should not be called a deviation.  
 13 It is going to be there at SARS for a long time. It must  
 14 be governed but I must not go and apply for a deviation  
 15 because it is not a deviation. I can't buy a Mercedes Benz  
 16 from Volvo, so you can, or Mercedes Benz parts from Volvo,  
 17 if I may say that. So everything that is on a platform,  
 18 that is on our technology, it must be a tick box. So the  
 19 mainframe has got ten years, three years, three years,  
 20 three years, it's got escalations but I can't take that  
 21 mainframe and throw it away. So we have been wanting to  
 22 have those from a policy perspective as well so that  
 23 turnaround times are quicker. So, from a procurement space  
 24 that Johnston is much more qualified, in fact I'm not even  
 25 qualified in that space at all, it is just so that we clean

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1 out the issues of saying, go out on tender to go and buy  
 2 IBM. I can only buy IBM from IBM.  
 3 MS HOBDEN: We will deal with procurement  
 4 in a bit but is your answer to the question, if the Gartner  
 5 strategy says, - sorry, the SARS strategy prepared by  
 6 Gartner, says agility is one of the strategy directions and  
 7 your evidence is, these consultations is one of the ways in  
 8 which you are seeking to achieve that?  
 9 MS MAKHEKHE-MOKHUANE: Yes, Ma'am.  
 10 MS HOBDEN: If we can move to the bimodal  
 11 capability within SARS can you explain to us the difference  
 12 between mode 1 and mode 2 for bimodal capability?  
 13 MS MAKHEKHE-MOKHUANE: Okay. Mode 1 is  
 14 people who know how things work. With due respect some of  
 15 our colleagues have been in an environment for 20 years,  
 16 you know and if you say that, let's switch off the lights  
 17 they will say, no, the lights have always been on for the  
 18 past 20 years. There is no problem with the electricity,  
 19 so that's mode 1. Mode 2 are those guys that their pants  
 20 are almost falling, if I may say that, you know. You know  
 21 they don't sleep. They are just ready to do anything you  
 22 know. They have solutions to solve the world's problems  
 23 and they are futuristic. They are disruptive. They are  
 24 forward looking. So if you tell them of a problem they  
 25 have a solution now, you know kind of our kids. No, Mom, I

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1 can take you to Cape Town now. How are you going to do it?  
 2 You don't even have a driver's license, but here is the  
 3 solution, kind of thing. So, those are the two modes and  
 4 organisations from time to time that want to be futuristic  
 5 in their approach, you keep your mode 1 people happy. You  
 6 keep your mode 2 people happy, because if you put them into  
 7 one room, trust me, I've been there, nothing gets  
 8 happening.  
 9 MS HOBDEN: As I understood bimodal  
 10 capability and you can correct me, it referred more to a  
 11 methodology for application development rather than  
 12 personalities and the way people work.  
 13 MS MAKHEKHE-MOKHUANE: Not from my  
 14 dictionary.  
 15 MS HOBDEN: So you understand that as  
 16 personality differences within the workplace?  
 17 MS MAKHEKHE-MOKHUANE: It is not only  
 18 personalities. I think you may be right, but it is about  
 19 how you're going to do it and that has got to do with  
 20 personalities, because people who are not happy with  
 21 change, not happy with change, I go to my house and my TV  
 22 is connected to a radio you know and then there is noise  
 23 all of a sudden, I just want to get the news, you know.  
 24 So, it is about a personality, about how you accept new  
 25 ways of working.

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1 MS HOBDEN: And that's how I understand  
 2 it. Can you explain how fast applications are developed  
 3 depending on whether you are focussing on mode 1 or mode 2?  
 4 MS MAKHEKHE-MOKHUANE: How fast?  
 5 COMMISSIONER: Sorry, what do you call,  
 6 it seems there is a definition problem. What do you call  
 7 mode 1 and mode 2?  
 8 [11:02] MS HOBDEN: As I understand it, mode 1 is  
 9 a theory of application development where one works on  
 10 sustainable long term projects slowly and carefully if I  
 11 can put it in layman's terms. Mode 2 is a way of  
 12 developing your applications where you do it rapidly and  
 13 you do it with a high level of risk because you're doing it  
 14 rapidly and maybe in the time that someone in mode 1 will  
 15 develop one application you may develop 5. But out of  
 16 those five one will probably work.  
 17 COMMISSIONER: Yes. Do you understand  
 18 mode 1, by modality in that sense or not?  
 19 MS MAKHEKHE-MOKHUANE: I think I do,  
 20 Judge. That is why I said mode 1 is doing what you know,  
 21 what is known, you know. Known territory.  
 22 COMMISSIONER: Ja.  
 23 MS MAKHEKHE-MOKHUANE: Mode 2 is of  
 24 course taking risks and doing what is unknown.  
 25 COMMISSIONER: Thank you. That helps me.

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1 Can you carry on?  
 2 MS HOBDEN: So you've mentioned one of  
 3 the strands of Gartner's strategy was bimodal capability  
 4 which was to have both and I'd like to ask if you think  
 5 it's appropriate for an organisation like SARS to use the  
 6 mode 2 theory of application development?  
 7 MS MAKHEKHE-MOKHUANE: I've already  
 8 alluded to the fact that SARS is subscribed to a number of  
 9 organisations internationally and that world is moving SARS  
 10 has to be. So it's not even a choice. Much as we have  
 11 people who are doing things that they know, that they like  
 12 and so on and so forth SARS is obliged uptake new  
 13 technologies so that it can transact with the rest of the  
 14 world and you can't have a situation that closes the door  
 15 to the rest of the world that you belong to so that then  
 16 you do what is known.  
 17 MS HOBDEN: Do you understand a model  
 18 where one doesn't divide into mode 1 or 2, to mean that  
 19 there would be no innovation at all?  
 20 MS MAKHEKHE-MOKHUANE: Say that again?  
 21 MS HOBDEN: If Gartner uses, in the  
 22 strategy we see the theory of mode 1 and mode 2, if one did  
 23 not use that theory of dividing do you understand that to  
 24 mean there would be no innovation?  
 25 MS MAKHEKHE-MOKHUANE: I don't think so.

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1 I think there would be some innovation but it may not be at  
 2 the pace that is required to be abreast with your peers.  
 3 MS HOBDEN: And the risk involved in  
 4 operating on a mode 2 theory, do you think that risk was  
 5 appropriate for an organisation like SARS, the risk of  
 6 money being spent developing applications that will not  
 7 work?  
 8 MS MAKHEKHE-MOKHUANE: Of course, if you  
 9 say developing applications that would not work that would  
 10 be reckless and I cannot say that. All I am saying is that  
 11 SARS must keep the lights on but SARS must use new  
 12 technologies and new methods of collecting revenue.  
 13 MS HOBDEN: In your view that requires  
 14 mode 1 and mode 2 as a theory -  
 15 MS MAKHEKHE-MOKHUANE: Of course.  
 16 MS HOBDEN: Of Development.  
 17 MS MAKHEKHE-MOKHUANE: Of course.  
 18 MS HOBDEN: Even with the attendant  
 19 risks.  
 20 MS MAKHEKHE-MOKHUANE: Okay now, if I  
 21 track a consignment, what is at risk for SARS except that  
 22 there's advantages and security for our country?  
 23 MS HOBDEN: So as I understand it and you  
 24 can correct me, for many organisations mode 1 and mode 2  
 25 development is worth the risk because if you develop at a

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1 rapid rate, five applications, four of them don't work but  
 2 one does you gain first mover advantage in the market place  
 3 and you ultimately make a lot of money. So the risk is  
 4 worth it. The risk of pursuing mode 2 development strategy  
 5 is worth it because even though you've spent money on four  
 6 applications that don't work you've entered the market  
 7 first with one and I'm asking you if you think that's  
 8 appropriate for an organisation like SARS?  
 9 MS MAKHEKHE-MOKHUANE: It wouldn't be  
 10 appropriate to spend money on four applications that are  
 11 not going to work. That is why in our world we used to  
 12 have things that we call proof of concepts or pilots. Now  
 13 we have left pilots at SAA so that we can do work. So  
 14 after proof of concept then you can confirm that this can  
 15 go on production because it's going to work but what you  
 16 have to allow is that those five innovative ideas must be  
 17 tested, they must be, go through all processes so that you  
 18 can use them once they've passed or you know tick boxes but  
 19 you must allow the environment such as SARS to look at  
 20 alternatives.  
 21 MS HOBDEN: The procedure you're  
 22 describing to me sounds like it fits in mode 1 but I'm  
 23 happy to leave it there on that issue. I'd like to look at  
 24 your submissions on the strategy that you made to the  
 25 commission. What you've said and you've spoken about your

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1 first 100 days at SARS and you've provided the commission  
 2 with your observations from those first 100 days and what  
 3 you say about strategy is, "the strategy formulated with  
 4 the assistance of Gartner is not being implemented  
 5 according to plan (the 120 day plans) and that it would  
 6 appear that some executives are reverting to business as  
 7 usual. This is of high concern given the investment SARS  
 8 has made in crafting a strategy that improves this  
 9 capabilities and delivers a number of major initiatives."  
 10 Can you expand on that or elaborate your views on when you  
 11 first saw the strategy and you read it. What you saw about  
 12 it being implemented.  
 13 MS MAKHEKHE-MOKHUANE: Over the past few  
 14 days in my mind there were a bit of contradictions. Okay  
 15 the strategy was on A, B, C, D, E and F but it rated me to  
 16 be on 3.5 which is good. So you pick and choose things  
 17 that are good on the strategy that you like, that make you  
 18 shine but the rest of the things you drop. Done deal.  
 19 When I got there and what we discussed in January was the  
 20 fact that there were 120 day plans that people knew about  
 21 and I wanted to have an assurance of sorts that says what  
 22 have you done to change this, that, that or the other and I  
 23 think people have amnesia.  
 24 So this Gartner thing is wasting our time let's  
 25 put it under the shelf. My concern amongst others was the

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1 fact that SARS of course had invested money. So probably  
 2 there were one or two things, no proper consultation,  
 3 whether it's right or wrong it's something else. Whether  
 4 there was proper communication, whether there was, you know  
 5 engagements to an extent that there's buy in and I can  
 6 elaborate further, if you allow me Ma'am, to say sometimes  
 7 the uptake of anything is around circumstances. We've  
 8 already spoken about mode 1 and mode 2 today. So right now  
 9 we've already spoken about things that happened, things  
 10 that I can do, that we can't do, you know what I'm saying.  
 11 So if you want to introduce something that will unsettle me  
 12 at my age, having worked for the organisation for the past  
 13 20 years and you bring new strategies, you bring new  
 14 technologies, quite honestly I'm not sure if I'm able to go  
 15 back into coding, you know what I'm saying. So I'll be  
 16 resistant to be going that route. So there are a number of  
 17 things that affect the lack of uptake of new ideas.  
 18 MS HOBDEN: In your action plan to  
 19 correct, which is part of that document you say I have  
 20 reviewed the strategy and find that it is both sound and  
 21 substantive. "The strategy goes beyond a simple paper  
 22 strategy with plans for every area and sub strategies.  
 23 There are also artefacts for communicating the strategy.  
 24 The first point of order is to communicate the strategy to  
 25 the whole of DIST, decisions taken will be enforced and

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1 these include the executive decision to fully utilise the  
 2 SAP capability." So can you tell us how you communicated  
 3 the strategy to DIST?  
 4 MS MAKHEKHE-MOKHUANE: We have Manco  
 5 meetings we have DIST OPS meetings, we have had quite a  
 6 number of extensive debates around the so-called Gartner  
 7 strategy and the reason why I'm uncomfortable for people  
 8 calling it a Gartner strategy is that in my mind that is a  
 9 SARS strategy, if it's not a SARS strategy then let's say  
 10 so. If it is not a SARS strategy how then do we make sure  
 11 that we have a strategy that we can put on the table and in  
 12 that January discussion as far as I'm concerned we were  
 13 quite aligned to say this is the strategy that is on the  
 14 table. This is the strategy that we have to implement,  
 15 notwithstanding the fact that we have constraints around  
 16 this.  
 17 MS HOBDEN: So what has been done since  
 18 this 100 day report to implement the 120 day plans, which  
 19 ones have been implemented?  
 20 MS MAKHEKHE-MOKHUANE: I think there's  
 21 quite a number of places, I think Artwell mentioned, Herman  
 22 has got issues, Gareth is busy with the implementation,  
 23 Palesa is basically the implementation, we had issues  
 24 around improvement of security, Kgomoitso would have done,  
 25 so there are quite a number of things that have happened.

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1 But my issue is that beyond 120 days there were things that  
 2 we needed to pursue but it's like when you behave in a  
 3 class, when the teacher is there, you know and then as soon  
 4 as the teacher walks out then you go back to chatting.  
 5 MS HOBDEN: Who is behaving when the, who  
 6 is the teacher and who are the pupils in that -  
 7 MS MAKHEKHE-MOKHUANE: Ma'am, that was  
 8 just a phrase but I am saying -  
 9 COMMISSIONER: It was a good metaphor.  
 10 Can you tell her who in that metaphor is the teacher, you  
 11 mean Gartner?  
 12 MS MAKHEKHE-MOKHUANE: Probably, Sir.  
 13 COMMISSIONER: So when Gartner goes then  
 14 everyone goes back to square 1 is that what you're saying?  
 15 MS MAKHEKHE-MOKHUANE: It sounds correct.  
 16 COMMISSIONER: But I mean Gartner is not  
 17 running SARS.  
 18 MS MAKHEKHE-MOKHUANE: No, no. Remember,  
 19 remember that when you have a project that you're running.  
 20 COMMISSIONER: Yes.  
 21 MS MAKHEKHE-MOKHUANE: You have project  
 22 meetings that are scheduled. You give feedback and so on  
 23 and so forth and the moment the project mode fails you need  
 24 to keep up the momentum but if then that relationship of a  
 25 project fails or that kind of reporting goes away.

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1 COMMISSIONER: But I don't understand  
 2 that. I mean if, you know, Gartner as I say is not running  
 3 SARS. Gartner gives advice, they come with the strategy  
 4 and you say well as soon as they walk out well then we go  
 5 back to square one and we don't do anything. Is that, am I  
 6 to understand you in that way?  
 7 MS MAKHEKHE-MOKHUANE: Okay let me  
 8 attempt to explain.  
 9 COMMISSIONER: Ja.  
 10 MS MAKHEKHE-MOKHUANE: When you are in an  
 11 environment, let me give a different explanation, maybe  
 12 you'll understand it. While I was doing a disaster  
 13 recovery and business continued with IBM. We would have  
 14 sessions where we say how are we going to backup, how are  
 15 we going to restore and that continues because we're on a  
 16 project mode. When the project finishes you need to  
 17 continue to do what is on the project, as far as I'm  
 18 concerned. You hear what I'm saying. But if then the  
 19 project finishes and then you disregard what is on the  
 20 table. That is a problem for the environment.  
 21 COMMISSIONER: Sorry, I perfectly  
 22 understand you. There's no misunderstanding between us. I  
 23 mean you really saying the same thing again as soon as the  
 24 teacher walks out the children start chatting away. My  
 25 difficulty is I'm not hearing of anything being done. I'm

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1 hearing of lots of plans, I'm hearing of strategies, you've  
 2 had one strategy meeting in January apparently or some  
 3 meeting in January but I'm not hearing of anything coming  
 4 out of all of this. So I am hearing of Gartner's or  
 5 whatever saying this is what is to be done and then  
 6 everyone just going back and saying well we're not going to  
 7 do anything because the teacher's gone. .  
 8 MR KAHLA: Did you step into the role of  
 9 being the teacher when Gartner had left?  
 10 MS MAKHEKHE-MOKHUANE: The environment as  
 11 I have alluded before in terms of its capability does not  
 12 allow me to kind of sit there and be a teacher 24/7. But  
 13 also if there's no change management entrenched then it  
 14 then requires me to sit 24/7 to say this is the way to go.  
 15 I have already alluded to the issues with regards to  
 16 resistance to change and the reasons thereof, you know. So  
 17 you only go this much.  
 18 MR KAHLA: But as the leader what have  
 19 you done to take, to get people to buy into the change and  
 20 to accept what you believe is sound to be sound?  
 21 MS MAKHEKHE-MOKHUANE: That is where I've  
 22 said in my mind I think at least at the January session we  
 23 had some sort of meeting of minds around the strategy as we  
 24 were beginning to be warming up to each other, agreeing on  
 25 what we wanted to implement going forward. Then we had

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1 budgetary constraints. You know but in my mind if we had  
 2 had the original budget I am of the view quite certainly  
 3 that we could have gone far on a number of things as a  
 4 team.  
 5 MR KAHLA: Is it because of the budgetary  
 6 constraints that you have not been able to move or is it  
 7 because of, am I getting you right now that the buy in is  
 8 no longer the issue? What is now left is the budget?  
 9 MS MAKHEKHE-MOKHUANE: Yes, I think so.  
 10 MR KAHLA: Am I also correct in  
 11 understanding you that we, you having resolved the buy in  
 12 issue you have the resources in terms of human resources to  
 13 deal with the issues but if you had the budget, would you  
 14 be able with the people you have to deal with what you need  
 15 to do in implementing the strategies that you consider to  
 16 be sound?  
 17 MS MAKHEKHE-MOKHUANE: As far as I am  
 18 concerned we would have gone far.  
 19 MR KAHLA: So the people are not the  
 20 issue, it's just the budget?  
 21 MS MAKHEKHE-MOKHUANE: The people that I  
 22 have in my shop right now which is our shop if we had the  
 23 buck we would have done a lot of things.  
 24 COMMISSIONER: Yes, Ms Hobden.  
 25 MS HOBDEN: I'd like to ask you a

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1 question about the resistance to change that you've  
 2 mentioned and you've mentioned it in your submissions to  
 3 the commission and I'd like to just read it out and I'd  
 4 like us to elaborate on it. The first thing you say in the  
 5 submission that you provided the commission this morning  
 6 was in respect of some of the new technologies that you  
 7 would like to implement which you've mentioned today. You  
 8 say "all these things the world is looking at seems to be  
 9 regarded as foreign and unwelcome to SARS for some unknown  
 10 reasons. It is my perception that the challenge could be  
 11 that they are being introduced by new leadership".  
 12 The second comment I'd like to read out and this  
 13 comes from your first submission. It says "it is clear  
 14 that was a lack, there has been a lack of consistent  
 15 leadership for a number of years that has left many  
 16 managers expecting instructions and used to micro  
 17 management. This cultural shift will take time and effort.  
 18 Over the long term it is important to normalise the culture  
 19 to create high performing teams that are self-motivated and  
 20 self-directed to achieve this the HR building blocks  
 21 recommended by HR strategy team needs to be implemented".  
 22 You also mention in your first submission you make a  
 23 comment about people who had been at SARS for many years.  
 24 What do you mean by this?  
 25 MS MAKHEKHE-MOKHUANE: The Drakensburg

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1 choir was established in 1967 and it's a boys' choir, if I  
 2 may say that. Drakensburg -  
 3 MR KAHLA: The what choir?  
 4 MS MAKHEKHE-MOKHUANE: Boys choir, Judge.  
 5 COMMISSIONER: What sorry?  
 6 MS MAKHEKHE-MOKHUANE: Boys choir.  
 7 COMMISSIONER: A boys choir?  
 8 MS MAKHEKHE-MOKHUANE: Ja, Drakensburg,  
 9 I'm talking about the Drakensburg -  
 10 COMMISSIONER: Drakensburg Boy Choir?  
 11 MS MAKHEKHE-MOKHUANE: Ja, it was  
 12 established in 1967.  
 13 COMMISSIONER: Ja.  
 14 MS MAKHEKHE-MOKHUANE: You know.  
 15 COMMISSIONER: They sing quite well  
 16 though, what's the point.  
 17 MS MAKHEKHE-MOKHUANE: I know. But if  
 18 you're a girl the establishment doesn't allow you to go  
 19 there. You know.  
 20 COMMISSIONER: Ja.  
 21 MS MAKHEKHE-MOKHUANE: But it's 2018 but  
 22 the Drakensburg will remain as a boys' choir and they sing  
 23 quite well. Okay let's not go to the choir if you allow me  
 24 Sir.  
 25 COMMISSIONER: Ja, no, no I'm just -

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1 MS MAKHEKHE-MOKHUANE: So Ma'am I want to  
 2 go back to some of the testimonies that, in terms of saying  
 3 it will take quite a lot of effort.  
 4 [11:22] In terms of saying it will take quite a lot of  
 5 effort. We spoke about Cloud and the uptake of Cloud.  
 6 When I joined SARS the success factors project which is an  
 7 E-recruitment platform was running from a Cloud, okay. And  
 8 there was resistance, I've got evidence on the pack that  
 9 you have from colleagues of mine such Frank Groenewald who  
 10 we engaged. We went to the state information technology,  
 11 we went to the state security agency to get guidance, you  
 12 know. But you still go back to your colleagues who say you  
 13 can't put this on Cloud. Why not? There are more attacks  
 14 on PREM than on Cloud because Cloud has the best of the  
 15 skills in the world to make sure that your data in  
 16 protected than on PREM. So when I say it takes effort, it  
 17 takes extra measures for you to convince your colleagues  
 18 that this is the right thing to do. Now if you provide  
 19 leadership and you get resistance it's very difficult  
 20 because you are like who am I reporting to?  
 21 MS HOB DEN: And how do you distinguish  
 22 between what you call resistance and what others may call  
 23 debate and disagreement?  
 24 MS MAKHEKHE-MOKHUANE: Resistance is when  
 25 you don't take instruction. Or you discuss and then you go

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1 outside the room and you do the opposite. That is  
 2 resistance.  
 3 MS HOB DEN: And is that what you are  
 4 saying is happening in DIST?  
 5 MS MAKHEKHE-MOKHUANE: That is what  
 6 happened, used to happen to, in DIST. And it took me quite  
 7 a lot of effort to convince my colleagues that know what  
 8 I'm talking about.  
 9 MS HOB DEN: We've heard a lot of evidence  
 10 over the last two days from a number of people who have  
 11 been at SARS for some time and who are still currently at  
 12 SARS and they are people who experienced and initiated one  
 13 of the major transformation of SARS IT technology and  
 14 landscape.  
 15 MS MAKHEKHE-MOKHUANE: Such as?  
 16 MS HOB DEN: Is your evidence that it is  
 17 those same people who are now resisting new ideas in  
 18 technology?  
 19 MS MAKHEKHE-MOKHUANE: I don't know how  
 20 to put that, this so that it sounds right. A lot of good  
 21 work has happened at SARS. SARS is or was highly regarded  
 22 but in my view I think we also became arrogant and they  
 23 know that I call them imaginary beauty. We have been  
 24 beautiful therefore nobody can tell us anything. So you  
 25 have to tell them as much as you were beautiful when you

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1 were 18 years old, now you are 50 years old, you are no  
2 longer as beautiful as you were 18 years ago. Step up and  
3 those are the debates and we, I fight with them and like I  
4 said before, we have at least from where I'm sitting  
5 consensus. We go into my Mancos and we discuss issues and  
6 things happen but that was not the issues when a few months  
7 ago or at least a year ago or when I arrived.  
8 COMMISSIONER: I'm sorry, I don't quite  
9 understand your answer. Could you just elaborate a bit for  
10 me please?  
11 MS MAKHEKHE-MOKHUANE: So, Judge, when we  
12 get into a relationship and your partner leaves the  
13 toothpaste open you fight about that until you accept that  
14 this is the situation. So going back to what I was saying  
15 is that when you get into a new environment you have to  
16 take twice as much effort to convince your colleagues,  
17 especially people who report to you that this is the way  
18 things should happen. So they used to a certain way of  
19 doing things, they're used to being micromanaged. That is  
20 why people will moan that I did not attend a DIST ops  
21 meeting. That's three chief group executives and 15  
22 executives. I don't have to be there every time to babysit  
23 them because I have got a revenue target on my scorecard.  
24 COMMISSIONER: But you can only achieve  
25 it with the people that you work with.

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1 MS MAKHEKHE-MOKHUANE: That is what I'm  
2 saying.  
3 COMMISSIONER: Well may I just ask you,  
4 do you not think that maybe the people you work with have  
5 also got something to contribute?  
6 MS MAKHEKHE-MOKHUANE: And they do that.  
7 COMMISSIONER: But you say –  
8 MS MAKHEKHE-MOKHUANE: Excellently.  
9 COMMISSIONER: - you don't attend DIST  
10 meetings?  
11 MS MAKHEKHE-MOKHUANE: Sorry, Sir?  
12 COMMISSIONER: Did you say you don't –  
13 MS MAKHEKHE-MOKHUANE: No, I'm saying –  
14 COMMISSIONER: Sorry you've got –  
15 MS MAKHEKHE-MOKHUANE: - if people say I  
16 don't attend –  
17 COMMISSIONER: - you've got to let me  
18 finish otherwise you won't know what I'm and then we'll  
19 just get confused.  
20 MS MAKHEKHE-MOKHUANE: I apologise, Sir.  
21 COMMISSIONER: No, it's not a matter of  
22 apology, it's just a matter of practicality. Are you  
23 saying that you needn't attend DIST meetings because  
24 otherwise you'll be babysitting the, your subordinates?  
25 MS MAKHEKHE-MOKHUANE: Judge, all of

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1 these things that were written on my letter from the  
2 Commission was to say I don't attend DIST meetings often.  
3 Okay. So –  
4 COMMISSIONER: Well is it correct?  
5 MS MAKHEKHE-MOKHUANE: Can I finish?  
6 COMMISSIONER: No, just I want to know if  
7 that's correct.  
8 MS MAKHEKHE-MOKHUANE: But we have just  
9 agreed that we give each other a chance.  
10 COMMISSIONER: Certainly, carry on.  
11 MS MAKHEKHE-MOKHUANE: Okay. So DIST ops  
12 meetings used to sit on Wednesdays and then they were  
13 coinciding with Exco. I moved them on to Mondays and then  
14 all of a sudden I had to be responsible for R11 billion  
15 worth of revenue and Mondays were then revenue Mondays. So  
16 I can't take a governance structure and chop and change it  
17 according to my budget because there are quite a lot of  
18 capable people there. There is nothing that goes there  
19 that has been debated, that has been recommended by that  
20 structure that I have not approved. So on the events that  
21 have not been there work still happens because there are  
22 people who are capable, people who are able to advise me  
23 accordingly. So all I was trying to illustrate is to say  
24 when somebody says to you, I mean really it's fruitless and  
25 wasteful expenditure for somebody to come and tell you that

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1 I didn't attend a meeting. In the first place somebody  
2 must tell the Commissioner because wherever I go the  
3 Commissioner knows.  
4 MR KAHLA: So your team is still as  
5 beautiful as you found it?  
6 MS MAKHEKHE-MOKHUANE: Yes, Sir.  
7 MS HOB DEN: So in relation to the DIST  
8 ops meetings –  
9 COMMISSIONER: May I – I wonder if we  
10 could break for 15 minutes?  
11 MS HOB DEN: Ja. Okay.  
12 [INQUIRY ADJOURNS INQUIRY RESUMES]  
13 [11:52] COMMISSIONER: No one listens to me. Can  
14 we settle down? And – Can we settle down and also I think  
15 I'm told there's a bit of chatting going on which makes  
16 some people, it distracts them and so forth. So if we  
17 could try and remain quiet. Thanks. Right?  
18 MS HOB DEN: Thank you, Judge. We left  
19 off when we took a break talking about the DIST ops  
20 committee and I'd just like to ask if you could explain  
21 what the DIST ops committee does and what its function is?  
22 MS MAKHEKHE-MOKHUANE: Okay. The DIST  
23 ops does one recommendation of business cases, we discuss  
24 operational issues from time to time, what the issues were,  
25 big issues like when the mainframe memory is running at

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1 100%. We discuss budgets, we discuss human resources, we  
 2 discuss risks and how we mitigating the risks. We discuss  
 3 audit issues and we give feedback in terms of who is doing  
 4 what on, insofar as those issues are concerned including  
 5 our projects that are on our divisional plan and especially  
 6 our projects that are on the organisational plan especially  
 7 with regards to us maintaining the 99.6% up time.  
 8 MS HOBDEN: And do you attend those  
 9 meetings?  
 10 MS MAKHEKHE-MOKHUANE: Before we took a  
 11 break, Ma'am, I told you that I attend those meetings as  
 12 often as I can. Where I can't attend, in terms of the  
 13 terms of reference there's delegations of who should be  
 14 able to chair those meetings in my absence so that the  
 15 organisation can go forward.  
 16 MS HOBDEN: The commission requested the  
 17 minutes of those meetings and in the last year there have  
 18 been 14 and you've attended 4 of those.  
 19 MS MAKHEKHE-MOKHUANE: 4?  
 20 MS HOBDEN: 4.  
 21 MS MAKHEKHE-MOKHUANE: That is classified  
 22 rubbish.  
 23 MS HOBDEN: Are you saying that the  
 24 minutes don't accurately reflect your attendance?  
 25 MS MAKHEKHE-MOKHUANE: It can't be.

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1 MS HOBDEN: Shall we have a look?  
 2 MS MAKHEKHE-MOKHUANE: You can have a  
 3 look if you have time. They sit every two weeks. It's not  
 4 possible that I could have attended 4 and missed 10.  
 5 COMMISSIONER: Well perhaps there's a  
 6 misunderstanding. So let's look at the record and then  
 7 we'll see what it says.  
 8 MS MAKHEKHE-MOKHUANE: But let me  
 9 continue as you're going through the papers. Remember I  
 10 told you that those meetings used to sit on Wednesdays, I  
 11 moved them to Mondays and Mondays became budget or revenue  
 12 Mondays. But I have attended those meetings. I mainly  
 13 have not chaired them, I may have sat there to be on  
 14 standby for revenue meetings but I couldn't have attended 4  
 15 out of 14 meetings.  
 16 MS HOBDEN: Well the documents we have is  
 17 the minutes from the 14th of August 2017 and that states you  
 18 as not present, apology. 28th of August not present,  
 19 apology. 27th of September, not present, apology. 23rd of  
 20 October 2017, present. 6th of November, not present,  
 21 apology. 4th of December not present, apology. 15th of  
 22 January, not present, apology. 12th of February -  
 23 MS MAKHEKHE-MOKHUANE: Excuse me, Ma'am,  
 24 if I may. Under normal circumstances in terms of our  
 25 practice when there's an apology there's a reason why

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1 there's an apology. Can you also read out?  
 2 MS HOBDEN: Sure. It just says the  
 3 attendance and apologies were noted. So I'm afraid I can't  
 4 give a reason there. Do – would you like an opportunity to  
 5 give a reason in relation to each of these?  
 6 MS MAKHEKHE-MOKHUANE: That is why I'm  
 7 saying under normal circumstances as far as I'm concerned  
 8 on the minutes that I saw as and when you apologise there's  
 9 a reason that is recorded. She's either in an Exco meeting  
 10 or she's in a Revenue meeting because there's never a time  
 11 when I have apologised and sat in my office and watched  
 12 cartoon network. Never.  
 13 MS HOBDEN: Well I don't think that's the  
 14 evidence that we've heard. The evidence that we've heard  
 15 is that you're not present at the meeting.  
 16 MS MAKHEKHE-MOKHUANE: Okay let me repeat  
 17 this and I'll repeat it very slowly.  
 18 COMMISSIONER: Well – sorry, where are we  
 19 now on that? Are those the minutes of the meetings?  
 20 MS HOBDEN: Yes.  
 21 COMMISSIONER: Do you want to see the  
 22 minutes of the meetings?  
 23 MS MAKHEKHE-MOKHUANE: No, Judge. I  
 24 don't want to see them.  
 25 COMMISSIONER: Okay and do the minutes of

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1 the meetings not record why there is an apology, is that  
 2 the point?  
 3 MS MAKHEKHE-MOKHUANE: As far as I'm  
 4 concerned it should.  
 5 MS HOBDEN: No, they don't.  
 6 COMMISSIONER: They should? Ja –  
 7 MS MAKHEKHE-MOKHUANE: Yes.  
 8 COMMISSIONER: - well just, won't you  
 9 just, I think that you should just show the documents.  
 10 MS MAKHEKHE-MOKHUANE: I've got a very  
 11 rare eye disease but I can try.  
 12 COMMISSIONER: Why don't you just take  
 13 out a few of the documents and let's get clarity.  
 14 MS HOBDEN: Well have you read these  
 15 minutes? I did get them from your office.  
 16 MS MAKHEKHE-MOKHUANE: Do they have my  
 17 signature?  
 18 COMMISSIONER: Why don't you show her the  
 19 documents?  
 20 MS HOBDEN: I –  
 21 PROF KATZ: Judge, it's easier for her.  
 22 MS MAKHEKHE-MOKHUANE: Last page.  
 23 COMMISSIONER: Sorry, what is the last  
 24 page?  
 25 MS MAKHEKHE-MOKHUANE: The last page it

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1 says chairperson chief officer there's a blank line, Judge.  
 2 COMMISSIONER: So that does that mean?  
 3 MS MAKHEKHE-MOKHUANE: It means I've not  
 4 authorised this. So as –  
 5 COMMISSIONER: No, but is it accurate or  
 6 not whether you've authorised it?  
 7 MS MAKHEKHE-MOKHUANE: If it was accurate  
 8 it would have my signature wouldn't it?  
 9 COMMISSIONER: I don't know, I'm asking  
 10 you if it is, is it accurate or is it not accurate.  
 11 MS MAKHEKHE-MOKHUANE: That is why I'm  
 12 saying, Sir, it does not have my signature.  
 13 COMMISSIONER: I know you said that but  
 14 I'm asking you if it is accurate even if it hasn't got your  
 15 signature?  
 16 MS MAKHEKHE-MOKHUANE: I've not gone  
 17 through this set of minutes. The set of minutes that I  
 18 have in my possession that I know of should have my  
 19 signature.  
 20 COMMISSIONER: Well could you, could  
 21 someone get those minutes for us because I think that  
 22 counsel is saying we asked for the minutes and they came  
 23 from your office. One assumes that those are the minutes.  
 24 If they are not the minutes well then correct counsel.  
 25 MS MAKHEKHE-MOKHUANE: Yes.

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1 COMMISSIONER: I don't know if it matters  
 2 whether it has your signature on it. I think what matters  
 3 is if it's an accurate record of the meeting.  
 4 MS MAKHEKHE-MOKHUANE: In terms of  
 5 protocol that I understand –  
 6 COMMISSIONER: Sorry, carry on.  
 7 MS MAKHEKHE-MOKHUANE: Thank you, Sir.  
 8 COMMISSIONER: Ja.  
 9 MS MAKHEKHE-MOKHUANE: The minutes can't  
 10 just come from my office, they should come from me as an  
 11 accountable person.  
 12 COMMISSIONER: Well you're welcome to  
 13 produce the formalised minutes.  
 14 MS MAKHEKHE-MOKHUANE: Okay.  
 15 COMMISSIONER: But at the end of the day  
 16 - at the end of the day I mean they record your absence  
 17 from them and that's really what counsel is interested in.  
 18 Were you at those meetings or weren't you at those  
 19 meetings?  
 20 MS MAKHEKHE-MOKHUANE: That is why I'm  
 21 saying those meetings that I did not attend there should be  
 22 a reason and I can give a reconciliation of the meetings  
 23 that I was not at and where I was at –  
 24 COMMISSIONER: That –  
 25 MS MAKHEKHE-MOKHUANE: - and besides,

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1 Judge, I report to the Commissioner. This I want to put on  
 2 record. I'm not going to sit here and discuss whether I  
 3 attended meetings and operational meetings for that matter  
 4 because as and when I get assignments I get them through  
 5 the Commissioner. I think this is beyond a waste of your  
 6 time. Your time is in my understanding of your terms of  
 7 reference is to look at the governance but not what I do as  
 8 a chief officer, including when I go to the bathroom. With  
 9 due respect, Sir. Please protect me. Please.  
 10 COMMISSIONER: Well I – all I want is  
 11 information and governance seems to me to include  
 12 governance and governance is management of an organisation.  
 13 So I think that we'll determine what our terms of reference  
 14 are and I think that we should just get information that  
 15 assists us to reach our conclusions and for the moment  
 16 where it fits into the whole picture is another matter.  
 17 We'll look at it in due course but the question being asked  
 18 at the moment is did you attend the meetings or didn't you  
 19 and if we can get beyond that then we can go on.  
 20 MS MAKHEKHE-MOKHUANE: I attend meetings,  
 21 Sir, as and when I'm able to.  
 22 COMMISSIONER: Yes, okay.  
 23 MS MAKHEKHE-MOKHUANE: Next question  
 24 please.  
 25 COMMISSIONER: No, I'm sorry. It's not

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1 for you to say the next question.  
 2 MS MAKHEKHE-MOKHUANE: I thought that -  
 3 COMMISSIONER: If you don't mind.  
 4 MS MAKHEKHE-MOKHUANE: - we had dealt  
 5 with that, Judge.  
 6 COMMISSIONER: Sorry?  
 7 MS MAKHEKHE-MOKHUANE: We have dealt with  
 8 this matter before the break.  
 9 COMMISSIONER: Well that's fine, we  
 10 hadn't dealt with it before the break but I think that you  
 11 must leave the commission to run its own business.  
 12 MS MAKHEKHE-MOKHUANE: Of course.  
 13 COMMISSIONER: I hope we can get on and,  
 14 Counsel, would you just get on with where you were?  
 15 MS HOB DEN: Thank you, Judge. Could you  
 16 explain to us the process for securing the budget annually  
 17 for DIST? As I understand it there are various periods  
 18 where budget is allocated. Could you just explain that for  
 19 the commission?  
 20 MS MAKHEKHE-MOKHUANE: Okay we have a  
 21 shop that we're running every day which is called, what we  
 22 call business as usual and we say licenses, hardware and  
 23 also soft things and we have a budget for that. And then  
 24 there are projects from time to time that business wants to  
 25 do that I expected from DIST to deliver and we also prepare

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1 a budget accordingly. One of the things I think, let me  
 2 just add if I may, Counsel and my apologies for the  
 3 animosity, is that we have legal changes. Some of which  
 4 are announced quite, you know, and we have to find within  
 5 our budget how we implement those legislative requirements.  
 6 MS HOBDEN: And so ultimately whose  
 7 responsibility is it to secure the budget for DIST? Who  
 8 says this is the amount of money DIST needs to fulfil its  
 9 function?  
 10 MS MAKHEKHE-MOKHUANE: We make  
 11 submissions, the governance processes within the  
 12 organisation and we have an investment council that  
 13 ultimately gives a tick box.  
 14 MS HOBDEN: When you say we make  
 15 submissions, do you mean, who is the final signature on  
 16 that submission for a budget request?  
 17 MS MAKHEKHE-MOKHUANE: I'm the one who  
 18 finally says this is my requirement or these are my  
 19 requirements but the investment council then looks at it,  
 20 prioritises and then says this shall go, that can go and so  
 21 on and so forth.  
 22 MS HOBDEN: Yes. We have a copy of the  
 23 risk memo that you sent to the Commissioner earlier this  
 24 year and that document sets out some of the difficulties  
 25 that DIST is facing and there are some that you've

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1 mentioned today, also highlights some of the risks and the  
 2 purpose of the memorandum is to request additional funding.  
 3 And can you elaborate on that and explain what you are  
 4 requesting there?  
 5 MS MAKHEKHE-MOKHUANE: Earlier on this  
 6 morning, Counsel, I indicated that we had priorities, just  
 7 to keep the business running. The priorities of which at  
 8 least required about 377 million and we were allocated 88  
 9 million. The risk memo was then therefore to say with this  
 10 kind of money we'll not be able to keep the environment up  
 11 and running and stable. We have as part of our submission  
 12 or at least my submission where we have got notifications  
 13 from people like IBM who says this particular technology  
 14 that you have or this particular box is getting, is not  
 15 going to be supported.  
 16 We've had situations where part of our software  
 17 was on extended maintenance because we didn't have budget  
 18 to do A, B, C, D, F. You'd have heard that earlier on as  
 19 colleagues were having discussions when I joined because my  
 20 office was like a casualty. Everything was urgent and an  
 21 emergency, sign here, sign here, if you don't sign here  
 22 something is dying. Then we did an analysis across the  
 23 board where we said we wanted to know what is expiring  
 24 when, what is the status of everything. We did what we  
 25 call bill of materials. We submitted that as part of our

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1 risk memo to say these particular things have been, what do  
 2 they call it, where they call it (inaudible) assets.  
 3 They're fully depreciated. Some of them are running  
 4 through God's grace. They have been allocated budget now.  
 5 We are going to look at the ones that are at high risk  
 6 across the country and those are the ones that we have  
 7 prioritised. In fact as a matter of fact things like your  
 8 switches, your load balancers and so on and so forth, we  
 9 have been able to deal with those in the recent past  
 10 months.  
 11 MS HOBDEN: So I'd like to have a look at  
 12 the demand plan that was attached to the risk memo. It's  
 13 entitled schedule of integrated SARS strategic procurement  
 14 demand plan in respect of projected ITT goods, software and  
 15 service business requirements for the next five years. I  
 16 think you would have a copy of this document in the file of  
 17 documents that you provided us this morning. Can you  
 18 explain what a demand plan is, what is the purpose of this  
 19 document? I think you've given a partial answer but what  
 20 does it contain?  
 21 MS MAKHEKHE-MOKHUANE: Okay. First of  
 22 all for you to be allocated budget there must be a demand.  
 23 Okay. [Inaudible] and minus 1 we did an analysis to say  
 24 across the country there's a kind of pieces of technology,  
 25 software, hardware and on so on forth that we have. So on

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1 the cycle to say these ones we want to do in the first year  
 2 and we must do immediately, these ones we must do in the  
 3 second year and third year and so on and so forth. So that  
 4 five-year plan gives the chief officer of Finance an  
 5 indication of our budget needs so that we can be able to  
 6 run the environment. I've already indicated that the part  
 7 of that was to say how do you then avoid these casualty  
 8 issues where everything is an emergency or everything is on  
 9 extended maintenance and so on and so forth. So that  
 10 demand plan also seeks to have a relationship between us  
 11 and procurement so that procurement understands our needs  
 12 well in advance, they are prepared, they've done the  
 13 processes, market analysis and they can help us. And if I  
 14 may go back, some of those things that are on that demand  
 15 plan are things that we want to go to Treasury with to say  
 16 I've got Microsoft shop. Can you please realise that in  
 17 the next five years Microsoft is going to be here, IBM is  
 18 going to be here, so that even when I come here, don't  
 19 come, don't tell me that it's a deviation and I didn't  
 20 tell. I've already told you five years in advance.  
 21 MS HOBDEN: So on the demand plan at  
 22 present what are the major items? And by major I mean the  
 23 big money items.  
 24 MS MAKHEKHE-MOKHUANE: From the top of my  
 25 head the E-services is one of the key issues. You realise

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1 that we have e-filing hosting platform, we have what we  
 2 call high availability, we have security issues that we  
 3 need to deal with. I think those are the key issues that I  
 4 think are on that demand plan.

5 MS HOBDEN: So I see here E-service  
 6 hosting platform rebuild, R180 million. Is that your  
 7 recollection of -

8 MS MAKHEKHE-MOKHUANE: I think that  
 9 sounds correct. That demand plan I know we did with the  
 10 team.

11 MS HOBDEN: We – I will move on from this  
 12 topic, but we have heard evidence about the need for  
 13 infrastructure refreshers at SARS and on this demand plan  
 14 the major items to my mind, the big money items are all  
 15 refresh items. The first is the network equipment refresh  
 16 for R405 million. The server hardware refresh for R180  
 17 million and the desktop and laptop hardware refresh for  
 18 R282 million. Those are hardware refresh items in the DIST  
 19 demand -

20 MS MAKHEKHE-MOKHUANE: Demand plan.

21 MS HOBDEN: - plan at the moment. And  
 22 can you tell us what the total amount, the total estimated  
 23 costs for goods, software and support services are coming  
 24 out of this demand plan?

25 MS MAKHEKHE-MOKHUANE: I don't have it on

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1 top, in front of me. -

2 MS HOBDEN: I can read it if you're happy  
 3 for me to do so. I can read the figure.

4 MS MAKHEKHE-MOKHUANE: Yes you can do  
 5 that.

6 MS HOBDEN: The figure is R2.16 billion.

7 MS MAKHEKHE-MOKHUANE: Yes, Ma'am, you  
 8 are correct.

9 MS HOBDEN: So is that the costs over the  
 10 next five years for SARS to do the necessary hardware  
 11 refreshers and to procure the services and skills to get  
 12 DIST to keep the lights on.

13 [12:12] Or is it to the budget needed to take SARS into  
 14 the future as you point out?

15 MS MAKHEKHE-MOKHUANE: Yes, ma'am.

16 MS HOBDEN: Sorry, which one is it? This  
 17 was necessary just to keep the lights on?

18 MS MAKHEKHE-MOKHUANE: To keep the lights  
 19 on because part of our infrastructure as I've already  
 20 alluded needs refresh so under normal circumstances if we  
 21 have 10 000 laptops you refresh 2 000, 2 000, 2 000 over a  
 22 five-year cycle and so on and so forth. But because we've  
 23 not had budget over a long time we are trying to start with  
 24 those things that are urgent so that we can make sure that  
 25 they don't collapse if I may put it that way and those that

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1 are at less risk then we do it in a future date.

2 MS HOBDEN: So have I still got budget  
 3 because it's a theme from some of our previous witnesses  
 4 and you have given evidence that budgets and the lack of  
 5 budget is what has prevented you doing a number of projects  
 6 that you would've liked to do and I requested, the  
 7 Commissioner requested this information from the CFO. And  
 8 it sets out the budgets and the spending of DIST over the  
 9 last four years and as you described there is a budget for  
 10 projects and there is a budget for business as usual. And  
 11 what I see for 2018 and you can elaborate on this is that  
 12 although business as usual spending has been, you have  
 13 spent most of the budget in terms of projects the budget  
 14 was, the total funding available was R329 million but only  
 15 149 has been spent.

16 MS MAKHEKHE-MOKHUANE: Ma'am, you would  
 17 recall that I indicated that we were given 80 million  
 18 instead of 337. We have recently been allocated additional  
 19 funding which builds it to about 200 million which is what  
 20 I have in front of me. So when we did the prioritisation  
 21 in terms of the 80 million that we had available it's what  
 22 is committed. The rest of the money that we were allocated  
 23 recently, most of it doesn't have procurement vehicles if I  
 24 may say that. So that is what we're doing I think tomorrow  
 25 morning to see how we are going to be able to spend that

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1 money. But I'm sure the CFO is going to be or the chief  
 2 officer, Finance is going to be coming next and he'll  
 3 elaborate in terms of how procurement is going to help us  
 4 use that money.

5 MS HOBDEN: Do I understand you to say  
 6 that there is budget available but that you are, you do not  
 7 see yourself being able or in a position to spend that  
 8 money before the financial yearend?

9 MS MAKHEKHE-MOKHUANE: I can confirm that  
 10 for the, until last week if I'm correct we had 80 million  
 11 that we have committed. That is the money that we had all  
 12 along. We have recently been given additional budget of  
 13 about 30 million, 35 million is about to be confirmed. We  
 14 have 200 million that has recently been in our books where  
 15 we are saying what are the procurement vehicles available  
 16 for us to do some of those things.

17 Now let me explain. When we put together a  
 18 business case, okay, it gets approval subject to budget,  
 19 you know. So when there's no budget you can't even put it  
 20 any further because that is a tick box. What has changed  
 21 is that what we are saying now is that let's make the  
 22 procurement vehicles available. As and when budget becomes  
 23 available then we can go procure because it's a governance  
 24 issue and I think it's an organisational issue that we have  
 25 then realised that budget is not available. As and when it

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1 becomes available it's too late to spend it. But like I'm  
 2 saying we're having a meeting tomorrow with the rest of the  
 3 team to say the budget that we are allocated as a week ago  
 4 or so, how then do we make sure that we spend it and within  
 5 regulations if I may say that.

6 MS HOBDEN: This document was provided to  
 7 me not a week ago so it would not include the money that  
 8 has recently, the budget that has recently been allocated  
 9 to DIST. What I am trying to understand is it appears that  
 10 there's R278 million available for DIST to spend as of  
 11 three weeks ago. And I'm asking why that seems to conflict  
 12 with what you say which is that there was, there is no  
 13 money at all.

14 MS MAKHEKHE-MOKHUANE: Can you please say  
 15 that again? Did you say as of three weeks ago?

16 MS HOBDEN: When I received this  
 17 spreadsheet.

18 MS MAKHEKHE-MOKHUANE: Yes, ma'am.

19 MS HOBDEN: It showed that there was  
 20 still budget that had not been, had been allocated to DIST  
 21 and had not been spent. That's what's reflected here and  
 22 I'm asking you that that seems to be inconsistent with what  
 23 you say which is that there is no budget. It is  
 24 insufficient.

25 MR KAHLA: Counsel, you say you received

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1 that about three weeks ago.

2 MS HOBDEN: Yes, it would've been before  
 3 the recent allocation as I understand.

4 MS MAKHEKHE-MOKHUANE: Advocate, I think  
 5 it would be proper that over and above this session you  
 6 come to our offices, we show you by detail what has been  
 7 happening between ourselves, between Exco. The  
 8 Commissioner is going to give testimony. She has written a  
 9 long email of things that we must do within DIST and to  
 10 help DIST to deliver on its mandate. So that allocation  
 11 that you're talking about whether it's three weeks or two  
 12 weeks ago it is because of what's called an alarmist of the  
 13 things that I was saying that if we don't get budget we'll  
 14 not be able to do. So you are free to come to our office  
 15 and then we'll give you to detail what is on the table and  
 16 how we intend to solve it.

17 COMMISSIONER: Well, I think that the  
 18 more important thing is that we'd like to know as well.  
 19 It's not just counsel. But she says that there was - when  
 20 you got that spreadsheet, where did the spreadsheet come  
 21 from?

22 MS HOBDEN: I understand from the CFO's  
 23 office.

24 COMMISSIONER: And it showed how much?

25 MS HOBDEN: It showed the actual spend

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1 under budget.

2 COMMISSIONER: Amount available?

3 MS HOBDEN: Under budget as R278 million.

4 COMMISSIONER: Would that be correct?

5 MS MAKHEKHE-MOKHUANE: In terms of the  
 6 spreadsheet, yes, sir, but like I said we had 80 million  
 7 for the better part of the year. That amount of money that  
 8 we have now is a recent allocation and we can even prove to  
 9 the commission that engagements that we were having in  
 10 terms of how we were going to spend that money even my  
 11 colleagues that are in here in my absence can then say how  
 12 do we then spend this money within the current what they  
 13 call MSAs, what is it that you need to go out on tender on.  
 14 Can we go to SETA and use SETA tenders to procure some of  
 15 the services? Because like I said you can't process a  
 16 business case if budget is not approved in advance. Now  
 17 budget has been approved. Then we have to go back and then  
 18 pick up all those things and put them on the table,  
 19 reprioritise and go ahead with them.

20 COMMISSIONER: Ja, but I think the fact  
 21 of the matter is that National Treasury has given you money  
 22 though so you're not short of money. As to how long it  
 23 will take to spend it is another matter but the block here  
 24 is not National Treasury. Am I wrong?

25 MS MAKHEKHE-MOKHUANE: Yes, you're wrong,

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1 Judge.

2 COMMISSIONER: Tell me why I'm wrong.

3 MS MAKHEKHE-MOKHUANE: Because that money  
 4 I've not had it for more than a month.

5 COMMISSIONER: No, I understand that.

6 MS MAKHEKHE-MOKHUANE: Yes, sir, so -

7 COMMISSIONER: You now have it though.

8 MS MAKHEKHE-MOKHUANE: Yes, and that is  
 9 why I'm saying -

10 COMMISSIONER: You asked Treasury for it  
 11 and they gave it to you.

12 MS MAKHEKHE-MOKHUANE: Exactly.

13 MR KAHLA: What I'm trying to understand,  
 14 the amount that you're reflecting on that sheet I would  
 15 expect they relate to the budget in respect of the  
 16 financial year 2018/19 which would have commenced on the 1st  
 17 of April. So I'm trying to understand which you say was,  
 18 that was set aside for this was about 270?

19 MS HOBDEN: Yes.

20 MR KAHLA: Was it more than that?

21 MS HOBDEN: Ja, it's around that. 278.

22 MR KAHLA: So this amount would've been  
 23 available from give or take the 1st of April.

24 MS MAKHEKHE-MOKHUANE: No, sir.

25 MR KAHLA: When does your budget get

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1 approved?

2 MS MAKHEKHE-MOKHUANE: I'm not qualified

3 to answer that question but the CFO or chief officer,

4 Finance will be here to come and elaborate on that. I put

5 my demand. I've already indicated and I'll repeat and I'll

6 put it on triplicate. My demand was 377. I was given 80

7 million until a few weeks ago.

8 MR KAHLA: So that 270 million you

9 weren't aware of until -

10 MS MAKHEKHE-MOKHUANE: Very recently.

11 MR KAHLA: Until very, about two weeks

12 ago.

13 MS MAKHEKHE-MOKHUANE: Yes, sir. We had

14 requested for it. It has come and now we must be told how

15 to use it. And for the record I think as the Commission

16 does its work you must go back and see as and when money

17 gets allocated in SARS because half of the time money gets

18 allocated later in the year. December is a dead month.

19 January is a dead month. February and March what can you

20 do?

21 MR KAHLA: When do you get the allocation

22 for the financial year? Let's take now we're talking about

23 2018/19 which is the financial year that begins on the 1st

24 of April and will end on the 31st of March 2019. When is

25 the - you do your planning and you seek a budget to be

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1 approved. Are you saying that at the time the financial

2 year begun out of the 300 or so million that had been

3 sought you were only approved about 80 million?

4 MS MAKHEKHE-MOKHUANE: Yes, sir.

5 MR KAHLA: That's what you've been

6 working on until about a week or two ago.

7 MS MAKHEKHE-MOKHUANE: Yes, sir.

8 COMMISSIONER: And then did you ask for

9 the extra money from Treasury?

10 MS MAKHEKHE-MOKHUANE: Yes, sir.

11 COMMISSIONER: And they gave you the

12 extra money.

13 MS MAKHEKHE-MOKHUANE: Yes, sir.

14 COMMISSIONER: So Treasury is not the

15 block to doing anything. You just have to ask for -

16 MS MAKHEKHE-MOKHUANE: I don't know

17 whether it's Treasury or my chief officer, Finance. He

18 will come and answer.

19 COMMISSIONER: Is that not something that

20 in your division you would know about as to money being

21 allocated to your division?

22 MS MAKHEKHE-MOKHUANE: Within Exco we

23 have had discussions. I've already indicated that we have

24 submitted risk memos and after careful consideration of

25 projects that may not be able to spend money and

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1 prioritisation that was happening then DIST was given

2 money.

3 COMMISSIONER: I understand that but if I

4 may just clarify. Is it not within your division that you

5 would know how much money is asked for and whether it comes

6 or not? Would you not know that? I'm not sure why we have

7 to ask the chief officer, Finance. I would've thought that

8 DIST would itself know.

9 MS MAKHEKHE-MOKHUANE: Judge, I want to

10 put it very clearly. Our request and submission was 377

11 million. We were given 80 million. When the difference is

12 going to come as DIST we don't know.

13 COMMISSIONER: Why not?

14 MS MAKHEKHE-MOKHUANE: I don't think

15 we're in control of the purse of SARS. We're in control of

16 the purse that we're given and then we make moves to use

17 the 80 million that we're given. As and when the

18 organisation has looked at its spending then it decides to

19 shift funding. That is why I'm saying from where I'm

20 sitting I can only make submission of what I require and

21 then I'm given an amount and I use the amount that I'm

22 given.

23 MR KAHLA: Advocate Hobden that list is

24 it tracking expenditure on a month to month - is it a focus

25 of expenditure or what is it? What is the purpose of that

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1 document you just made reference to?

2 MS HOBDEN: It does not track month to

3 month. It tracks on an annual basis. I requested the

4 information of the budget allocated to DIST against the

5 actual spend and this is the document I received.

6 MR KAHLA: When you say it's tracking on

7 an annual basis we are pretty much around maybe the sixth

8 or so month of the year now. So what is it tracking? Is

9 it tracking from 1 April up to where we are now in October

10 or in September?

11 MS HOBDEN: I assume so but I'm not going

12 to give a definitive answer because I haven't queried it

13 with the person who prepared this but my understanding was

14 that is what it would show and it showed that there was

15 money still available for the rest of the financial year.

16 That was what I understood from the documents. But we can

17 have a -

18 MR KAHLA: And the money that's still

19 available, that 200 or so million -

20 MS HOBDEN: Yes, but we haven't -

21 MS MAKHEKHE-MOKHUANE: Counsel, if I may

22 humbly, I think it's a very important point because it

23 would show you that at some point we were actually in a

24 deficit having used or committed money that we didn't have

25 because we had contracts and so on and so forth. So that

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1 month to month from April we are prepared to go back to our  
 2 office in ten minutes after this and choose those records  
 3 so that you confirm that spreadsheet because of course what  
 4 we have is out of context.

5 MS HOBDEN: Thank you. And we look  
 6 forward to receiving those and we'll do that exercise.

7 MS MAKHEKHE-MOKHUANE: Thank you.

8 MS HOBDEN: You've said that money has  
 9 now become available. Are you confident that that money  
 10 can be spent before the end of the financial year?

11 MS MAKHEKHE-MOKHUANE: I think that is a  
 12 very difficult question. I have told you, ma'am, and the  
 13 commission that we're having a session with our procurement  
 14 colleagues to say what vehicles do we have, what can be  
 15 spent by when. And then obviously if you're not able to do  
 16 procurement processes which have their own processes then  
 17 you will be able to confirm that but at this point in time  
 18 where I'm sitting before tomorrow's meeting I'm not able to  
 19 give you that answer, ma'am.

20 MS HOBDEN: But outside of the  
 21 procurement processes which of these items on the demand  
 22 plan do you think that 200 million should go to? What are  
 23 the priorities for the spend for DIST?

24 MS MAKHEKHE-MOKHUANE: The e-services of  
 25 course is a priority. We have issues of building of the

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1 new forms as we heard yesterday that the Adobe is getting  
 2 out of support. So we can use that money. We have now,  
 3 what do I call it, a catalogue of providers that can help  
 4 us build HTML forms and so on and so forth. So all the  
 5 things that are going to make sure that SARS is able to  
 6 render a service, those are going to be a priority. One of  
 7 the things that we are doing if I may add is to make sure  
 8 that our environment is replicated. As and when we can  
 9 have a problem at least we'll be able to bring up the  
 10 services. So those are things that are very important to  
 11 us.

12 MS HOBDEN: But the finalisation of the  
 13 spend will depend on the meeting that you're having  
 14 tomorrow. Am I correct?

15 MS MAKHEKHE-MOKHUANE: Yes, ma'am, and we  
 16 are also prepared because the commission will still be in  
 17 place to give the minutes of that meeting and I'll sign  
 18 those minutes to say that this is what we discussed, this  
 19 is what we think we're going to spend and these are the  
 20 resolutions and we can give you timelines of what we will  
 21 do by when so to make sure that we are able to spend that  
 22 money. Where we are not able to spend that money because  
 23 of lack of procurement vehicles we will also say that.

24 MS HOBDEN: That's the end of the topic  
 25 on budget. Would the panel like to ask some questions?

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1 PROF KATZ: May I then ask, sorry, you  
 2 just answered counsel now on the priorities of the  
 3 expenditure. Are those your priorities or has the  
 4 committee determined them already?

5 MS MAKHEKHE-MOKHUANE: It's the committee  
 6 and the organisation. So if I may add part of the budgets  
 7 that we have been allocated, I don't sit on the investment  
 8 council and I don't want to sit in the investment council.  
 9 I service business and individual taxes which is BAIT.  
 10 I service customs. I service enforcement. If I'm not able  
 11 to render a service to them it's a problem. So they go  
 12 amongst others to argue budget on my behalf so that they  
 13 are able to render a service. PROF KATZ: My  
 14 question was counsel asked you what would the priorities be  
 15 for the expenditure now. You gave her an answer. Are  
 16 those your views on it or is it's the committee's views?

17 MS MAKHEKHE-MOKHUANE: It's the  
 18 organisational view, sir.

19 MR KAHLA: Exco?

20 MS MAKHEKHE-MOKHUANE: Yes, sir, or SARS,  
 21 not just Exco.

22 MR KAHLA: Who approves these priorities?

23 MS MAKHEKHE-MOKHUANE: They are approved  
 24 by the organisation as in the DIST risk memo that we  
 25 submitted to the Commissioner was presented at Exco and

Page 3318

1 Exco approved that we get this budget.

2 MR KAHLA: So the priorities are approved  
 3 by Exco.

4 MS MAKHEKHE-MOKHUANE: Yes, sir.

5 MS HOBDEN: As I understand it that's  
 6 just, that's the whole demand plan which is the 2.1  
 7 billion, not necessarily the priorities. Am I correct?

8 MS MAKHEKHE-MOKHUANE: Okay, let me put  
 9 it this way. I have a shop to run in terms of my own  
 10 business but the requirements from an organisation like I  
 11 have already indicated that requires to render a service to  
 12 the citizens or to the taxpayers, okay.

13 [12:32] So those things that make SARS to deliver on its  
 14 mandate, it is the responsibility of Exco to make sure that  
 15 they happen, okay, and those things, where I'm saying I am  
 16 not able to do these things and the organisation is at a  
 17 risk then Exco takes priority and says, this must happen,  
 18 you know. Those things that I have to keep the lights on,  
 19 I then have to fight for a budget but often, like I'm  
 20 saying, some of them are either on the BAU but if that  
 21 service is going to collapse then Exco steps up to say, we  
 22 are going to give you budget, we can't afford this risk.

23 COMMISSIONER: But I'm not sure that it  
 24 is quite dealing with Prof Katz's question. You were asked  
 25 about the priorities for the "spend" of this money.

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1 MS MAKHEKHE-MOKHUANE: Yes, Sir?

2 COMMISSIONER: And you said you have the

3 priorities in place. Who has approved those priorities,

4 not the whole amount, not the spending of the money, the

5 whole amount, but who has approved the priorities that will

6 be used in the "spend" of that money? Has that been

7 approved by someone and if so by who?

8 MS MAKHEKHE-MOKHUANE: It has been

9 recommended by DIST and approved by Exco. In part of those

10 documents that counsel has, Judge, you will see in terms of

11 the priorities where we have a triangle and Exco considered

12 those matters and they found them to be very serious and of

13 course then supported that we get that budget.

14 MS HOBDEN: Perhaps you could provide us

15 with a copy of that document because I'm not quite sure

16 what you're referring to.

17 MS MAKHEKHE-MOKHUANE: I think it is

18 under annexure, what, where are they, those people? Under

19 strategy which is annexure 1, the top ten risks. So you

20 would have something like that, Ma'am, and something like

21 that, okay.

22 MS HOBDEN: Alright, DIST top ten

23 priorities.

24 MS MAKHEKHE-MOKHUANE: Yes.

25 MS HOBDEN: March 2018?

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1 MS MAKHEKHE-MOKHUANE: Yes and those

2 things went to Exco and they talk about 99% availability.

3 They talk about hardware and software, disaster recovery,

4 E-senses, NCAP, GRAP on SAP, e-Filing, refresh, ATM

5 (inaudible) and so on and so forth. So these things went

6 to Exco and Exco considered them and Exco saw them fit to

7 give the allocation of the budget.

8 MS HOBDEN: And as I understand it this

9 was when you were requesting the 377 million?

10 MS MAKHEKHE-MOKHUANE: Yes, Ma'am.

11 MS HOBDEN: It doesn't relate to the

12 further budget that's now being allocated to you.

13 MS MAKHEKHE-MOKHUANE: Yes, but of course

14 they looked at this. They looked at the risk memo and all

15 those things that are in red, they realised that if these

16 things would happen we are going to be in trouble.

17 MS HOBDEN: So while we're on this

18 document I see that one of the items for keeping the lights

19 on is hardware refresh and software licence compliance.

20 Now if I have a look at the demand pan, just the hardware

21 refreshers come to almost a billion Rand. So which of

22 those hardware refreshers are you prioritising - well, were

23 you prioritising when you asked for R377 million and will

24 you prioritise now that you have 200?

25 MS MAKHEKHE-MOKHUANE: I have explained

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1 and I'll try to explain, maybe I was explaining in my head,

2 I did indicate that we had a budget of almost out of

3 support, okay, from an IBM point of view our Cisco, our

4 (inaudible) SARS and so on and so forth, so those things

5 for instance, if your branch in PE goes in you look at

6 saying this one, tomorrow, even the manufacturer says if

7 this thing goes down don't call me because it is out of my

8 purview kind of thing. You've risked your sell by date, so

9 these things that we have prioritised like I am saying, are

10 the things that are going to make sure that there is

11 stability on the infrastructure.

12 MS HOBDEN: That I understand. It just

13 seems to me that what is required for the hardware refresh

14 is far beyond R377 million.

15 MS MAKHEKHE-MOKHUANE: Ma'am, I indicated

16 and the colleagues have indicated before that best practice

17 is that you would have continuous refresh. For an

18 organisation as big as this, if you skip a year or two, so

19 the 2 000 that you were supposed to replace the previous

20 year, I'm just talking about desktops as an example, and

21 the 2 000, all of a sudden you have 4 000 of two previous

22 years, one, you have another 2 000 this year, so you have a

23 backlog, okay. So, yes, we need a budget but also we have

24 issues with the procurement vehicle you know and

25 procurement vehicles that the CFO will speak about,

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1 includes just not us. I've already explained that for me

2 to go and extend a Cisco router, I must go to Treasury and

3 say, I am going to buy another Cisco because my platform is

4 on Cisco, and then why are you buying Cisco? Because

5 that's what I have, I can't just go and buy a Volvo engine

6 to restore a Mercedes Benz parts.

7 MS HOBDEN: Why are there not procurement

8 vehicles in place for these kinds of hardware and

9 infrastructure that seem very standard service desktops,

10 switches?

11 MS MAKHEKHE-MOKHUANE: When you procure a

12 service or request a service through a business case you

13 must have a budget. When there is no budget you can't even

14 process up to a procurement level. I've already indicated,

15 Ma'am, if I may humbly, that that is what we are working on

16 as an organisation. We want to have all procurement

17 vehicles on board so that as and when the budget becomes

18 available like now, we just go and procure, but the

19 practice which is the best practice is that you can't say,

20 please approve this, because there is no budget.

21 MS HOBDEN: Is that best practice for

22 SARS now?

23 MS MAKHEKHE-MOKHUANE: To do what, Ma'am?

24 MS HOBDEN: To only allow procurement

25 processes to begin once budget has been approved?

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1 MS MAKHEKHE-MOKHUANE: No, Ma'am, those  
 2 are the things that we have just changed. There is  
 3 evidence now that we are putting in place procurement  
 4 vehicles so that as and when the budget becomes available  
 5 we go and procure and then we don't go through the whole  
 6 cycle. So we say, this is my business need, please, these  
 7 are the implications. I don't have money, but as and when  
 8 money becomes available please can I? So you put it there.  
 9 When the money comes available you run to the shop.  
 10 MS HOBDEN: So there are no procurement  
 11 vehicles in place at the moment?  
 12 MS MAKHEKHE-MOKHUANE: Some are there,  
 13 some are not.  
 14 MS HOBDEN: Are the procurement vehicles  
 15 required to do the rolling hardware refreshers in place?  
 16 MS MAKHEKHE-MOKHUANE: From the matters  
 17 that I've just raised I think we had procurement vehicles  
 18 for some of the hardware, like I've said switches and load  
 19 balances, but those were also attached to a budget you  
 20 know. So the approval would be saying you have 200  
 21 million, I've given you permission to go and spend 200  
 22 million. If you spent more than that come back to me, but  
 23 like I'm saying tomorrow afternoon I'll come back to you  
 24 and say, in terms of the procurement vehicles this is what  
 25 is available and this is what is not available.

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1 MS HOBDEN: Is DIST – are the decisions  
 2 of DIST with regards to priority and spending dictated to  
 3 by what procurement vehicles are available in order to  
 4 spend that money before the end of the year?  
 5 MS MAKHEKHE-MOKHUANE: Please say that  
 6 again, Ma'am?  
 7 MS HOBDEN: From what you're saying it  
 8 sounds like you will be meeting with procurement and you  
 9 will be asking what procurement vehicles are available in  
 10 order to decide how to spend the money.  
 11 MS MAKHEKHE-MOKHUANE: That's correct.  
 12 I'm not responsible for procurement. I'm responsible for  
 13 DIST.  
 14 MS HOBDEN: If there is no procurement  
 15 vehicle in place for something that you consider a priority  
 16 then can you proceed with that, to spend that money before  
 17 the end of the financial year?  
 18 MS MAKHEKHE-MOKHUANE: Please educate me,  
 19 how would you do that?  
 20 MR KAHLA: Is that the answer that you're  
 21 not going to be able to procure those services before the  
 22 end of the year?  
 23 MS MAKHEKHE-MOKHUANE: No, Sir, I think  
 24 you're talking about something else. Counsel is saying if  
 25 there is no procurement vehicle and you consider something

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1 a priority wouldn't you just procure? And I'm saying she  
 2 must then maybe advise me, because I think how would I do  
 3 that?  
 4 COMMISSIONER: Well, I don't think she  
 5 said that.  
 6 MR KAHLA: Ja, I don't think she said  
 7 that. Could you please –  
 8 MS MAKHEKHE-MOKHUANE: That's what she  
 9 said –  
 10 MR KAHLA: - answer?  
 11 COMMISSIONER: Sorry, I don't think she  
 12 said that. If you want to go through it again, if  
 13 necessary –  
 14 MR KAHLA: Let her just repeat the  
 15 question rather, please?  
 16 MS HOBDEN: The question I'm asking,  
 17 maybe it is an issue of terminology. When I refer to a  
 18 procurement vehicle it is a contract in place that DIST can  
 19 use to get hardware or software that they need without  
 20 necessarily going to market every time, and that's what I  
 21 understood you were saying you were going to ask at the  
 22 meeting with procurement, which of these were in place so  
 23 that you could efficiently procure what you needed before  
 24 the end of the financial year.  
 25 MS MAKHEKHE-MOKHUANE: That's correct.

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1 MS HOBDEN: And I was asking the  
 2 question, if there is no vehicle in place for something  
 3 that you consider a priority then can that procurement not  
 4 take place before the end of the year?  
 5 MS MAKHEKHE-MOKHUANE: No, no, the  
 6 procurement can take place before the end of the year, but  
 7 the procurement will happen through procurement.  
 8 MS HOBDEN: Yes.  
 9 MS MAKHEKHE-MOKHUANE: Yes.  
 10 MS HOBDEN: It will go to market.  
 11 MS MAKHEKHE-MOKHUANE: Ja, of course.  
 12 MS HOBDEN: And are you confident that  
 13 something can go to market and get a result and procure the  
 14 goods before the end of the financial year?  
 15 MS MAKHEKHE-MOKHUANE: Say that again?  
 16 MS HOBDEN: If there is no procurement  
 17 vehicle in place and you need to go to market are you  
 18 confident that you can spend the money before the end of  
 19 the financial year?  
 20 MS MAKHEKHE-MOKHUANE: I think that's a  
 21 tricky question and I'm saying it is a tricky question in  
 22 the sense that I have said we have a number of contracts in  
 23 place, okay. We are going to go back to the drawing board  
 24 and say, this is (inaudible) A, that's part B, procure,  
 25 this is, da, da, da, those that are not, that do not have

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1 procurement vehicles, then we look across and I've already  
 2 even said we go to SETA sometimes to say, SETA, you've  
 3 already gone out on tender on this particular service, as  
 4 SARS we would want to participate on this particular  
 5 contract because of shorter turnaround times, because  
 6 you've already cured these people. They are qualified or  
 7 they can render a service, and those are the kinds of  
 8 things that I'm talking about. So where there is no other  
 9 mechanism and we really have to go out on tender because  
 10 neither us nor SETA have that mechanism, then you have to  
 11 go out on tender.

12 MS HOBDEN: The evidence we've heard is  
 13 that sometimes these procurement processes take eight,  
 14 nine, ten months a year to get something through the  
 15 internal procurement process and out into procurements and  
 16 get it to market. Is that your experience?

17 MS MAKHEKHE-MOKHUANE: I can't recall  
 18 anything that has taken more than ten months since I've  
 19 been at SARS.

20 MS HOBDEN: Do procurement processes take  
 21 longer than they should?

22 MS MAKHEKHE-MOKHUANE: Nope and the  
 23 reason why I'm saying no is because there is tension  
 24 between, and I think somebody was leading evidence here, I  
 25 can't remember his name, between IT and between

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1 procurement. IT wants to do things very fast and now and  
 2 yesterday and very quickly and procurement has got rules  
 3 and regulations to follow. They have to make sure that we  
 4 comply to the PFMA, Section 217 of the Constitution in  
 5 terms of transparency and so on and so forth, you know.  
 6 And if I don't do my job properly, if I don't articulate my  
 7 requirements properly, so there will be that to and fro  
 8 between myself and procurement, but if I tell procurement,  
 9 like I've done on that demand plan, well in advance to say  
 10 this is what I am going to need in the next five years, it  
 11 shouldn't take long because they know that in the next year  
 12 I'm going to need this and that and that, but before, as  
 13 and when I go to them with piecemeal I keep them very busy  
 14 as they've got other businesses to serve. They're not just  
 15 there for DIST. So it is proper that we do proper planning  
 16 so that our other support structures can work efficiently.

17 MS HOBDEN: Well, as I understand it  
 18 there is a particular ICT portion of procurement who does  
 19 deal specifically with DIST. So those people are allocated  
 20 to DIST procurements.

21 MS MAKHEKHE-MOKHUANE: Yes, Ma'am.

22 MS HOBDEN: I just – may I continue?

23 COMMISSIONER: I'll tell you what's  
 24 worrying me and it is because I probably don't know the  
 25 detail as much as you do, but I've heard the evidence here

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1 and as you've confirmed that if you don't have this refresh  
 2 every year you get into a backlog and we've heard, as I  
 3 understand it, do you agree that there hasn't been a  
 4 regular refresh for years, for some years?

5 MS MAKHEKHE-MOKHUANE: Yes, Sir.

6 COMMISSIONER: And I'm hearing about the  
 7 lights being kept on, but I'm just worried that should SARS  
 8 be running on the basis that you just keep the lights on,  
 9 in other words what if the lights go off? I mean are we  
 10 getting anywhere in SARS? I mean you've got this backlog.  
 11 The refresh is not taking place fast enough, it seems.  
 12 Things are falling. I've seen in your statement things are  
 13 falling into arrears. It becomes obsolete and so forth but  
 14 what I am not hearing is of any vision or plan to make sure  
 15 you get beyond, keeping the lights on.

16 MS MAKHEKHE-MOKHUANE: Judge, the  
 17 Commissioner is going to be giving testimony. I think one  
 18 of the things that we've made good progress on is on our  
 19 relationship with Treasury. I've already indicated that we  
 20 have had engagements in terms of things that we should not  
 21 be doing repeatedly, so as and when everybody understands  
 22 where we are at, what are the implications to the budget  
 23 cards, we are going to be going on the fast lane, if I may  
 24 put it that way.

25 COMMISSIONER: Well, when are you going

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1 to get into the fast lane?

2 MS MAKHEKHE-MOKHUANE: You see this 200  
 3 million, so tomorrow afternoon we're having my fast lane,  
 4 okay, so I'm on the third lane, coming to the second lane  
 5 and then, and they give me another 200 million because of  
 6 that five-year horizon, then you will be knowing that I am  
 7 on the fast lane.

8 COMMISSIONER: My question was, when will  
 9 we be in the fast lane, not what stages we have to go  
 10 through but –

11 MS MAKHEKHE-MOKHUANE: As and when budget  
 12 becomes available, that is as much as I can say from a DIST  
 13 perspective.

14 PROF KATZ: Can I just, on that I had a  
 15 similar question to the judge's Ma'am. Assume that you got  
 16 Treasury agreeing tomorrow morning would you then exactly  
 17 know what you're going to buy from whom, at what price to  
 18 do this refreshment that hasn't taken place since 2014?

19 MS MAKHEKHE-MOKHUANE: Yes, Sir.

20 PROF KATZ: You would know exactly what  
 21 item, what cost, from whom the minute Treasury approves?

22 MS MAKHEKHE-MOKHUANE: Is what we call on  
 23 N minus 1, which is a five-year plan, so we know exactly  
 24 what we need by detail, how many switches, for what size,  
 25 what is going – we have it to the detail.

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1 MR KAHLA: And how long ordinarily, I  
 2 mean from what you've experienced at SARS does it take for  
 3 you to get through a procurement cycle? So you get the  
 4 approvals, how long would it take for you to get the goods  
 5 or services that you need to procure from your experience  
 6 having been in SARS now for about 15 months?  
 7 MS MAKHEKHE-MOKHUANE: I would like to  
 8 repeat if I may, remember I said traditionally you would  
 9 only get approval or if there is budget and budget tick box  
 10 and then you go and procure. What we are doing currently  
 11 is to say this is our shop. This is what it looks like,  
 12 whether we have money or not, we want to have this  
 13 procurement vehicle. So you give me money now, I go to HP  
 14 tomorrow. I go to Cisco. I go to Dell tomorrow because  
 15 you've given money. That vehicle is created. That is what  
 16 we are doing now. That is changing the way things used to  
 17 happen. That is why we want to have that agility and to  
 18 address issues of the backlog within the procurement space.  
 19 MR KAHLA: Is that approach that you've  
 20 just referred to consistent with the advice that Gartner  
 21 provided in the assessment or is it different from it?  
 22 MS MAKHEKHE-MOKHUANE: I am not able to  
 23 answer that question, Sir. All I know is that having sat  
 24 down with procurement, having looked at the challenges that  
 25 we have in terms of us giving them our demands in time so

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1 that they can go out on procurement, then we agreed that as  
 2 an organisation let's make procurement vehicles available  
 3 so that as and when money becomes available then we are  
 4 ready to procure.  
 5 MR KAHLA: Are you aware of that  
 6 assessment that Gartner had made in respect of SARS, what  
 7 is it, the SARS strategic IT assessment, are you aware of  
 8 that assessment?  
 9 MS MAKHEKHE-MOKHUANE: Parts of it, yes  
 10 Sir.  
 11 MR KAHLA: Sorry?  
 12 MS MAKHEKHE-MOKHUANE: Parts of it, yes  
 13 Sir.  
 14 MS HOBDEN: Which parts aren't you aware  
 15 of?  
 16 MS MAKHEKHE-MOKHUANE: Issues of  
 17 security, issues of skills, of course parts of procurement.  
 18 Remember when I joined SARS, Sir, Gartner was not there,  
 19 Bain was not there you know. Now when you get a report you  
 20 don't take a report and run with it without engaging with  
 21 it.  
 22 [12:52] Under normal circumstances if you were to become  
 23 Chief Officer DIST tomorrow you'd want to have an  
 24 engagement with me to say what informs this sentence, what  
 25 informs that sentence, do your own assessment, vis-à-vis

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1 the paper that I've given you and then have your own view.  
 2 But if you get a document in front of you, you need to  
 3 assess the environment, make your own judgment to say am I  
 4 coming left or right.  
 5 MR KAHLA: Did you get the assessment  
 6 when you got into the, into your position as chief officer?  
 7 MS MAKHEKHE-MOKHUANE: When I started my  
 8 testimony, Sir, I indicated that I got that assessments  
 9 months after I'd been there.  
 10 MR KAHLA: Roughly how many months? Was  
 11 it six months? Was it three months? How long did it take  
 12 – I want to really understand how much time you've spent  
 13 around engaging with the assessment to understand what it  
 14 means and whether you or not you agree with what it  
 15 requires to be done and the measures you're putting in  
 16 place? Are they consistent with it or are they  
 17 inconsistent with it? Now of course you've indicated  
 18 already that there is a big chance of it that you don't  
 19 understand and I don't know how much of the assessment do  
 20 you understand.  
 21 MS MAKHEKHE-MOKHUANE: Okay. In my  
 22 assessment is that in the last months having realised that  
 23 procurement, the challenges in terms of procurement  
 24 turnaround times. We have then engaged with procurement.  
 25 We have then agreed that we have procurement vehicles in

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1 place irrespective of budget availability. So I don't want  
 2 to go into an assessment that you are referring to. I will  
 3 speak about the assessment that I made with my colleagues  
 4 and that I can confirm.  
 5 COMMISSIONER: Ja and also following on  
 6 what my colleague says, I've also not, I'm hearing about  
 7 buying computers and buying this and procurement and that.  
 8 I'm not hearing anything about the sort of intellectual  
 9 engagement to devise and know where you're going with the  
 10 strategy. We heard from witnesses yesterday of how they  
 11 would have these meetings once a week, twice a week. They  
 12 would engage, they would debate, they would see where they  
 13 were going and I'm not hearing any of that either. Is that  
 14 happening? If one – sorry, excuse me.  
 15 MS MAKHEKHE-MOKHUANE: Okay, Sir. You  
 16 want to go –  
 17 COMMISSIONER: No, you carry on.  
 18 MS MAKHEKHE-MOKHUANE: Okay, thank you  
 19 very much, Sir. 15 years ago when I was an IT manager and  
 20 running networks in the North West province, okay, the  
 21 entire province. When I was migrating from Ziplax to Three  
 22 Com I would have those meetings every Monday.  
 23 COMMISSIONER: Yes.  
 24 MS MAKHEKHE-MOKHUANE: Yes, Sir. Right  
 25 now –

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1 COMMISSIONER: Did they have regard –  
 2 sorry.  
 3 MS MAKHEKHE-MOKHUANE: Right now where I  
 4 am sitting, Sir, with the maturity of the organisation as a  
 5 digital officer I have to spend 20% of my time in  
 6 operations and key operations for that matter and 80% of my  
 7 time on where the organisation is going. So the Monday  
 8 meetings are happening but are not happening at a level of  
 9 a chief officer. So I can come and give you a job  
 10 description of an IT operations manager and what a digital  
 11 officer is. They are two different things.  
 12 MR KAHLA: Are there fora where you  
 13 provide this strategic direction that you're making  
 14 reference to, the 80% of it, outside of the DIST meetings  
 15 that there was reference to, the fortnightly ones which  
 16 there were 14 already, the 14 already that have happened of  
 17 which you've missed, and you said to have missed 10. Are  
 18 there are other – is there another platform where you would  
 19 engage with the team to provide the strategic direction  
 20 that you ought to be providing as part of your 80% focus?  
 21 MS MAKHEKHE-MOKHUANE: Yes, Sir. There's  
 22 a Manco and that Manco as far as I'm concerned and for the  
 23 record if I've missed any it's very rare. Because as  
 24 myself and the group executives it's easy to reschedule if  
 25 I'm not available. It's easy to engage. Okay, those DIST

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1 Mancos that are attended by group executives is where we  
 2 discuss strategic issues, where we look at the APP as well  
 3 and so on and so forth. You see a Manco and a DIST ops  
 4 should not be discussing the same thing.  
 5 MR KAHLA: So how many times does that  
 6 Manco meet?  
 7 MS MAKHEKHE-MOKHUANE: A Manco sits once  
 8 a month.  
 9 MR KAHLA: Once a month.  
 10 COMMISSIONER: And who sits on Manco?  
 11 MS MAKHEKHE-MOKHUANE: It's the group  
 12 executives, service delivery, business solutions,  
 13 architecture innovation and strategy.  
 14 COMMISSIONER: May I ask what is your  
 15 background? You said you come from North West.  
 16 MS MAKHEKHE-MOKHUANE: My background,  
 17 where should I start?  
 18 COMMISSIONER: Well –  
 19 MS MAKHEKHE-MOKHUANE: I'm a certified  
 20 Novell engineer having secured a bursary from Novell South  
 21 Africa. I oversaw as software engineer. So I did Carbo  
 22 programming, I did basic programming. I'm also a network  
 23 certified engineer. So I'm able to splice a cable, I'm  
 24 able to do your network, I'm able to do the topology. I  
 25 have already explained that as part of migration from

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1 Ziplex to Three Com to HP, now I'm in an environment where  
 2 there's Cisco. I have actually sat, Judge, and the HP  
 3 Advisory Body, an international organisation that was  
 4 saying what technologies are appropriate for developing  
 5 countries. I have sat in the SETA board, appointed by the  
 6 minister of public service and administration after  
 7 extensive consultation with cabinet to advise the  
 8 shareholder, Judge, on how SETA should be rendering a  
 9 service to the public safety, public service.  
 10 I have also chaired a council that is represented  
 11 by the CIOs of all government departments. On that  
 12 platform, Judge, where you see Treasury and SETA engaging  
 13 with OEMs is when we were saying that I could sit in the  
 14 North West as an example and negotiate with Microsoft and  
 15 Microsoft would give me a cheaper rate than what they would  
 16 give the next department and so on and so forth. So we  
 17 said under my leadership, Judge, to say let's engage.  
 18 Let's make sure that this what we're getting from our OEMs  
 19 is in terms of best practice, it makes value for money and  
 20 so on and so forth. I have also submitted as part of my  
 21 evidence that in 1998 President Thabo Mbeki made a  
 22 commission of inquiry on the status of the review of public  
 23 services, chapter 6 of that document, Judge, talks about  
 24 the usage of ICTs so that there's economies of scale so  
 25 that we can leverage on each other's investments and so on

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1 and so forth. That is what made the formation of SETA.  
 2 One of the things that were on that document was  
 3 the over reliance of government on to the consultants and  
 4 one of the things which is what we're experiencing now is  
 5 the fact that we are becoming a training institution. You  
 6 get your graduates, you train them and the public sector  
 7 takes them. Why? Because you can't give them attractive  
 8 salary and so on and so forth. So SETA was put there so  
 9 that you can attract, retain best of skills and those  
 10 skills then can render a service to government. So that is  
 11 my background. I have sat in the information society in  
 12 terms of the usage of ICTs on information society and how  
 13 IT can address socio economic issues, Chair, Sir. We have  
 14 had situations where there were challenges with teachers  
 15 who were not available, whether he's a maths or science  
 16 teacher and what you'd do is to take a lecture, you capture  
 17 it and you play it onto the schools that don't have those  
 18 kind of skills in terms of teachers. What is the advantage  
 19 of that in terms of ICTs over and above what an  
 20 administration does is that if you have a child that needs  
 21 beyond 45 minutes, that child can then replay that in a  
 22 library of school over and over so that they have an  
 23 understanding of this subject. So it's even better  
 24 actually in my mind to have a teacher, I'd rather than use  
 25 those ICTs because that child instead of 45 minutes they

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1 have an advantage of listening to those tapes for the whole  
 2 week. So that is my background. So my issues about the  
 3 usage of ICTs is not just to enable an administration to  
 4 run, but it's also to address issues of poverty and so on  
 5 and so forth. With, through ICTs right now things that we  
 6 did a long time ago when you go to any other place and you  
 7 want a Halal restaurant you are able to google and check  
 8 how far it is. That is the usage of ICTs. So ICTs are not  
 9 just about making sure that you print paper. ICTs are  
 10 about addressing issues of people of how they embrace  
 11 technology to improve their lives as well.

12 MS HOBDEN: And if I can just interject  
 13 there, Judge, one of your previous positions was at the  
 14 department of water and sanitation and maybe you could tell  
 15 us some of the initiatives you undertook there to improve  
 16 service delivery and the ability of that department to  
 17 fulfil its mandate to ensure the sanitation for everyone in  
 18 South Africa?

19 MS MAKHEKHE-MOKHUANE: When I was at the  
 20 department of water and sanitation we were having a lot of  
 21 drought. One of the things that I did and it's on record  
 22 was to have what we call a hackathon. So on that hackathon  
 23 that I championed was to say what are the alternatives of  
 24 having water solutions? How do you preserve your water,  
 25 what kind of technology can we actually leave in this room

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1 using the atmosphere and all sorts of things so that  
 2 tomorrow they turn into water? What kind of bottles can we  
 3 have such that you preserve water? What kind of  
 4 technologies do you have to either manage flooding that is  
 5 happening in Mozambique? How do you then transfer water to  
 6 a place that needs that water instead of flooding?

7 So those are the technologies that we put in  
 8 place. You'd find situations even today where somebody  
 9 puts and dumps, I don't know what to call it to be correct,  
 10 let me just say rubbish. Dump it into a river. Downstream  
 11 you have people that are affected by a lot of things. So  
 12 you need to know to say at this point the water was clean,  
 13 at that point a certain kilometres down the line the water  
 14 was contaminated. Where could the problem be? Some of the  
 15 things that happened, Counsel, if I may say, we introduced  
 16 trucking of water on our pipes because you know what  
 17 happens? People between the municipality which is what the  
 18 Auditor-General is having a services board, a water board  
 19 serves municipality 100 cubic litres, if I may say that.  
 20 They receive 80. 20 has disappeared somewhere else.  
 21 Because somebody has decided to go there and tap because  
 22 they know that this is not on the records of the water  
 23 board or the municipality. So some of the things that we  
 24 have put on the place is to make sure that you monitor that  
 25 pipe so that as when there are leakages you are able to

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1 find them.

2 MS HOBDEN: So some of the issues –

3 COMMISSIONER: Sorry, are there any other  
 4 solutions that you, you know you had said earlier that you  
 5 had submissions you wanted to make to the commission. Now  
 6 you've done it in writing, is there anything further you  
 7 want to say, to tell the commission and in particular to  
 8 make any particular recommendations to the commission as to  
 9 what it should report?

10 MS MAKHEKHE-MOKHUANE: Yes, Judge, and  
 11 thank you for protecting me from counsel.

12 COMMISSIONER: No, no, no.

13 MS MAKHEKHE-MOKHUANE: Because I –

14 COMMISSIONER: Please there's no need for  
 15 that.

16 MS MAKHEKHE-MOKHUANE: No, okay. Judge,  
 17 I think I'm the first person to accept that there are  
 18 serious challenges within SARS but like I've already said  
 19 organisations evolve. There are times when I would want to  
 20 have my own HR manager so that as and when I call that  
 21 person that person runs. So we need to look at our  
 22 governance structures. How long – in fact that is what is  
 23 happening. How long do I spend in what meeting, how can we  
 24 make sure that decision making is quicker, how can we make  
 25 sure that those 20 signatures that people were talking

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1 about have reduced where people will be held accountable.  
 2 But of importance, Judge, if I may say, once again let's  
 3 embrace each other. You have an organisation where there  
 4 is smoking places. But my girls express milk in the  
 5 toilet, you know. So it's – you must then if you are a  
 6 smoker of course, you'd think I'm crazy to say no, you  
 7 can't have a smoking place but why should I make a smoking  
 8 place when a mother must express milk in the toilet. So  
 9 it's those sort of things that we are addressing.

10 MR KAHLA: These issues that you've  
 11 raised, have you sought or made any proposals on them, on  
 12 how they should be addressed?

13 MS MAKHEKHE-MOKHUANE: Yes, Sir.

14 MR KAHLA: Besides here?

15 MS MAKHEKHE-MOKHUANE: Yes, Sir.

16 MR KAHLA: And what's come out of that?

17 MS MAKHEKHE-MOKHUANE: One of the things  
 18 that we have heard is what SARS has put together, amongst  
 19 others, women to deal with women issues because we have  
 20 women in our borders. How do we make sure that we support  
 21 them because they are 200 kilometres away from home. There  
 22 is shortages of staff. Of course by the time they go back  
 23 home after two months you find that the husband has got an  
 24 acting wife. So those things we are addressing. But for  
 25 the commission specifically we have made a number of

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1 recommendations, Judge, some of which are in your  
 2 possession but over and above that our quantum leap  
 3 document and all other documents that we have submitted in  
 4 terms of how to address challenges, we can make them  
 5 available.  
 6 COMMISSIONER: But why haven't you made  
 7 them available? This commission's been running for four  
 8 months, four and a half months.  
 9 MS MAKHEKHE-MOKHUANE: I'm here to talk  
 10 about DIST issues, Sir. But the Commissioner -  
 11 COMMISSIONER: I understand that but you  
 12 -  
 13 MS MAKHEKHE-MOKHUANE: - is meant to be -  
 14 COMMISSIONER: Sorry. You raised it, you  
 15 said that you're putting things together and we'll get  
 16 them. Is that from Exco?  
 17 MS MAKHEKHE-MOKHUANE: Well the Exco is  
 18 going to be represented by the Commissioner. So our  
 19 submission, all of it, in terms of what we are doing as an  
 20 organisation will be presented by the Commissioner.  
 21 COMMISSIONER: Okay, thank you.  
 22 MR KAHLA: And you say on relation to  
 23 DIST matters all of the issues that you believe ought to be  
 24 key areas of focus you've raised those and there's a focus  
 25 around them?

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1 MS MAKHEKHE-MOKHUANE: Yes, Sir. On the  
 2 documents that the counsel has we have raised issues of  
 3 risks, what we're doing insofar as some of them we've  
 4 escalated to the risk and audit committee, on people  
 5 resources and so on and so forth and the -  
 6 MR KAHLA: And what -  
 7 MS MAKHEKHE-MOKHUANE: - detailed -  
 8 MR KAHLA: And what have they done with  
 9 all of those? Have they approved what you proposed to be  
 10 done or have they just noted what you've raised on those  
 11 reports?  
 12 MS MAKHEKHE-MOKHUANE: Okay. So when you  
 13 escalate is when you want someone to take action but we've  
 14 already said earlier on, throughout the morning if I may  
 15 say, that due to budget constraints then you go back and  
 16 prioritise and one of the things that have happened in my  
 17 mind, having had those engagements, is now that we have the  
 18 budget that has been allocated to us a few weeks ago is  
 19 because we had escalated issues and somebody listened.  
 20 COMMISSIONER: Okay, thank you. Thanks.  
 21 Okay. I think that's it, thank you. Thank you very much  
 22 for coming.  
 23 MS MAKHEKHE-MOKHUANE: Thank you very  
 24 much, thank you once again.  
 25 COMMISSIONER: Yes, can we break now?

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1 MS HOBDEN: So it's 10 past 1, should we  
 2 convene at 10 past 2?  
 3 COMMISSIONER: That would be fine. Thank  
 4 you very much.  
 5 [INQUIRY ADJOURNS INQUIRY RESUMES]  
 6 [14:11] COMMISSIONER: Are you ready?  
 7 MS STEINBERG: We are ready.  
 8 COMMISSIONER: Right let's go.  
 9 MS STEINBERG: Judge, we call Mr Michael  
 10 Mavuso.  
 11 COMMISSIONER: Good afternoon.  
 12 MR MAVUSO: Afternoon Sir.  
 13 COMMISSIONER: Can I ask you something.  
 14 Are you nervous?  
 15 MR MAVUSO: I wish this would have ended  
 16 already.  
 17 COMMISSIONER: Please don't be nervous.  
 18 We're very interested to hear what you have to say, it will  
 19 assist us and she's not such a tiger. Will you swear, will  
 20 you affirm that the evidence you give will be the truth,  
 21 the whole truth and nothing but the truth, if so will you  
 22 say I do.  
 23 MR MAVUSO: I do.  
 24 EVIDENCE BY MR MAVUSO  
 25 COMMISSIONER: Thank you.

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1 MS STEINBERG: Afternoon, Mr Mavuso.  
 2 MR MAVUSO: Afternoon, Ma'am.  
 3 MS STEINBERG: What is your position in  
 4 SARS?  
 5 MR MAVUSO: At the moment I'm senior  
 6 specialist, it's called senior specialist generic, it's for  
 7 all those that were not put into positions.  
 8 MS STEINBERG: So you're a senior  
 9 specialist generic?  
 10 MR MAVUSO: Yes.  
 11 MS STEINBERG: And before you're a senior  
 12 specialist generic what was your position?  
 13 MR MAVUSO: Okay let me take from 2014,  
 14 from 2014 I was acting senior manager ICT. 2015 in June I  
 15 was appointed as a senior manager facilities in procurement  
 16 and, ja 2016 I would say somewhere in November that's when  
 17 the hurricane hit SARS and I would say that's where we  
 18 started to have this senior specialist people who were put  
 19 on the site and my contract for senior specialist was  
 20 signed in 2017, in June.  
 21 MS STEINBERG: You know we've always  
 22 wondered what a specialist, a generic specialist does, do  
 23 you know?  
 24 MR MAVUSO: Interestingly I went through  
 25 my appointment letter yesterday, I was thinking possibly

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1 you'll ask me that. But it's written here that it will be  
 2 determined as and when the group executive will decide what  
 3 I will do and the position will cease to exist immediately  
 4 I'm out of that position. So it can't be replaced. So  
 5 there's nothing that says anything about it. It's just a  
 6 generic contract, it says what questions they must ask me  
 7 and for everybody who's a senior specialist.

8 MS STEINBERG: And did anyone ever  
 9 determine what it is you should be doing in that contract?

10 MR MAVUSO: What I, I sat down with my  
 11 manager and we did what we call the KPIs. That was in  
 12 August of 2017. So that gave me an idea that I must work  
 13 in the strategy of procurement. So the strategy of  
 14 procurement that's where I started working in until  
 15 somewhere in 2017 when some, someone that was hired left  
 16 and I had to take over as an acting executive in the  
 17 facilities for 12 months, just finished the last two weeks.

18 MS STEINBERG: Okay. We've called you to  
 19 talk about the period when you were involved in procurement  
 20 and I must actually seriously underline what the judge said  
 21 about not being nervous. We know from the Treasury witness  
 22 that the Gartner contract was highly irregular from start  
 23 to finish and we, we have put together a lot of the pieces  
 24 of how it happened. A lot of that evidence we will lead  
 25 next week when Gartner's here. We're not calling you here

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1 to hold you to account. You, we can see there clearly from  
 2 the evidence were taking orders from the highest people in  
 3 this organisation. So we're not here to cast blame at your  
 4 door. We're merely here to get the evidence to the judge  
 5 and his panel and to understand it as best as we can and  
 6 perhaps you can help us with that. I'd like to talk to you  
 7 about the Gartner procurement process. You were quite  
 8 centrally involved in your position as a procurement  
 9 officer at that point. Judge, just for some context about  
 10 how much SARS spent on Gartner. The witness this morning,  
 11 our first witness spoke about the way in which SARS used to  
 12 use Gartner as an advisory service subscribing to them and  
 13 that cost the organisation about R4 million to have access  
 14 to Gartner's library and expertise and that's what they  
 15 used to use Gartner for and then their own internal  
 16 specialists would do, would create strategy and make  
 17 decisions off that information. The Gartner contract that  
 18 we are concerned with, the first, the phase 1 ICT strategy  
 19 development cost some R12 981 000, that was the first  
 20 phase. Phase 2 ICT strategy implementation was a  
 21 R144 461 000 and some cents and then there were another  
 22 four contracts for approximately 5.6 million which says  
 23 research advisory services. Then Gartner GRAP  
 24 implementation 9.774 million. The Star assessment that was  
 25 the security assessment 8.7 million and research for IT

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1 executives and technical professional 16.397 million. So  
 2 most of that expenditure is actually in 2015. Now there's  
 3 another aspect of the Gartner procurement process that's  
 4 very important and that's they in sourced another company  
 5 called Rangewave and Rangewave ended up with about 30 to  
 6 40% of the value of Gartner's contract. The way in which  
 7 it was structured is that SARS only received invoices from  
 8 Gartner. Rangewave would invoice Gartner. So they were in  
 9 the form of subcontractors. But for the purposes of the  
 10 SARS people they were indistinguishable. They were one  
 11 team and the Rangewave people were integrated into the  
 12 various work streams that Gartner set up. So the amounts  
 13 paid to Rangewave, from Gartner to Rangewave in the three  
 14 phases, phase 1 was 2.7 million, phase 2 was 52 million and  
 15 phase 3 was 5.3 million.

16 COMMISSIONER: So that was paid by  
 17 Gartner?

18 MS STEINBERG: Yes. Mr Mavuso, you gave  
 19 us a helpful affidavit and I'd just like to take you  
 20 through some aspects of that. Can you tell us when and  
 21 from whom did you first hear about the proposed IT  
 22 assessment, the review of the IT strategy.

23 MR MAVUSO: IT assessment strategy I  
 24 heard about it from the newsflash on the 9th of December, it  
 25 was a newsflash coming from the Commissioner talking about

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1 the ICT strategy, talking about the model and those things  
 2 will be implemented and then it says somewhere at the end,  
 3 Mr Jonas Makwakwa will be responsible for it as a project  
 4 manager.

5 MS STEINBERG: Yes. You go on to say  
 6 that you asked your colleagues to do some market analysis  
 7 on the available transversal contracts, could you just  
 8 explain that?

9 MR MAVUSO: Yes, I would say immediately  
 10 thereafter I got a request coming from my executive at the  
 11 time, my boss Mrs Magoga Didioka to say she has been in a  
 12 meeting with the sponsor, the Jonas Makwakwa and she said  
 13 to me can you guys find out very quickly what are the  
 14 vehicles we can use to implement this strategy and I wanted  
 15 to find out more information, said no just give me verbally  
 16 those information to say just look for any other contract  
 17 that you can use and I've asked my two people that was  
 18 working at that moment, Mr Malane Malatsi and Mr Duduma and  
 19 they went through some of the government contracts, went  
 20 through to SETA, they found 11 contract 11 83 and in this  
 21 contract it was talking about strategies and ICT  
 22 consultancies. So they scrapped through all that, the  
 23 information and then they said to me this is what they can  
 24 use.

25 I went back to my boss and I told my boss and the

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1 boss was saying okay what are you going to do from here and  
 2 I said I'll ask the people to, because we don't have any  
 3 other information we're just having verbal information. I  
 4 asked my people to see which service providers might be  
 5 capable to bring that strategy to the size of SARS, the  
 6 capabilities. So they did what we call a questionnaire.  
 7 So Mr Duduma was good in doing that, that questionnaire so  
 8 he gave it to me, I think it has about ten questions. So  
 9 we sent it to a number of people in there and end up, I  
 10 think in one of my presentation that shows the number of  
 11 those people and then since it was December we didn't get a  
 12 lot of responses. So we got some few responses but they  
 13 were good. So out of the ten that were there we also  
 14 presented okay these are the ten and out of the ten we  
 15 selected the five according to that questionnaire and then  
 16 in that five we say okay I've asked him to summarise, he  
 17 summarised it and then I said to him okay what we can do is  
 18 send it to my boss and my boss was saying okay also send it  
 19 to the sponsor Mr Jonas Makwakwa. So Mr Duduma sent all  
 20 those results to them. It shows the 10 and it shows also  
 21 the five and then it also shows the risks and other things  
 22 that we need to check further from that.  
 23 MS STEINBERG: Now in your five that you  
 24 selected was Gartner there?  
 25 MR MAVUSO: No I think on that one we,

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1 when you come to page 9 we explain why, I think Duduma has  
 2 made a very good presentation to say now, he explained that  
 3 to say Gartner was eliminated on this the reason was  
 4 Gartner is doing what we'll call benchmarking and research.  
 5 So on benchmarking of the strategy our thoughts at that  
 6 time, remember nobody else gave us all the requirements.  
 7 Our thought was okay we cannot ask Gartner for this  
 8 strategy and then ask Gartner to benchmark the strategies  
 9 again. So they benchmark themselves. So even though those  
 10 things there to say why Gartner was excluded.  
 11 MS STEINBERG: You spoke about having to  
 12 do this in December, mid-late December and that you got,  
 13 there weren't as many companies available as there usually  
 14 are, were you told that this was urgent, was that the  
 15 reason why it had to happen literally over the Christmas  
 16 period?  
 17 MR MAVUSO: Yes, I was told that it was  
 18 urgent.  
 19 MS STEINBERG: Who told you it was  
 20 urgent?  
 21 MR MAVUSO: It was my boss also, that's  
 22 been from a meeting.  
 23 MS STEINBERG: And was the reason that  
 24 you were asked to use it transversal contract if possible  
 25 was that because of urgency?

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1 MR MAVUSO: Yes, Ma'am.  
 2 MS STEINBERG: Who instructed you then,  
 3 you gave five names, they didn't include Gartner, who  
 4 instructed you then to contact the Gartner Group?  
 5 MR MAVUSO: Personally, we gave the five  
 6 names, I think it was early on the 14th or somewhere there  
 7 in December then we sent all these things and somewhere, a  
 8 day or so in the middle of December we got a request coming  
 9 from my boss, that said they had a meeting with Gartner,  
 10 with Mr Makwakwa and then they talked about implementing  
 11 this thing, the strategy but she said to me now things have  
 12 changed, they are looking for Gartner instead of those,  
 13 these other people that were there and I just wanted to  
 14 find out more, to say now what are the reasons, she gave me  
 15 the reasons and said there's a reasoning that they're using  
 16 in ICT to say Gartner is not, I think we wrote that  
 17 reasoning also in the condonation, Gartner is not  
 18 participating much in the SARS implementation.  
 19 So they, the people that I've already earmarked  
 20 they participate, they may participate once they go out.  
 21 Okay that time I thought okay there's reason enough and  
 22 said now what do we do, says no find Gartner. I think on  
 23 the 17th that's when I now email, I was sending 17th or 16th  
 24 to my colleagues, somewhere in ICT to say I don't know  
 25 Gartner number can you give me the Gartner number, I think

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1 the answer came on the 17th and this lady was saying she was  
 2 sick and she gave me the one number of Annelie Frost, I  
 3 think so and I had to contact Annelie Frost.  
 4 MS STEINBERG: From Gartner?  
 5 MR MAVUSO: Yes, of Gartner to arrange  
 6 the meeting for the following day on the 18th.  
 7 MS STEINBERG: Yes, you had a meeting on  
 8 the 18th and then you had a meeting on the 2nd of January.  
 9 MR MAVUSO: Yes.  
 10 MS STEINBERG: That was Tweede Nuwe Jaar,  
 11 you were meeting and it says that you met, Gartner was  
 12 represented by Annelie Frost and Neville Willemse who we've  
 13 called next week, Judge. Who was remotely connected on  
 14 telephone speaker and SARS representatives were Mr Dan  
 15 Zulu, Mr Jonas Makwakwa, Mr Eric Smith and Kamagelo Mapane  
 16 and yourself. Do you remember what happened at that  
 17 meeting?  
 18 MR MAVUSO: Yes, on, okay if I can just  
 19 go back a bit on the 18th, the meeting of the 18th. There  
 20 were other things that were against my grain, I would say.  
 21 I wasn't happy with because when you get instructions from  
 22 business it must be written, it must be crisp. There must  
 23 be some BRS, people should know exactly what they're  
 24 looking for. By that time there was a pager that the  
 25 sponsor came with.

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1 MS STEINBERG: The sponsor Mr Makwakwa.  
 2 MR MAVUSO: Mr Makwakwa when we met with  
 3 the Gartner, the two ladies and on that pager she was  
 4 reading, he was reading the questions from that pager and  
 5 it was just questions like probing question. To me it  
 6 wasn't the BRS and I wasn't happy.  
 7 MS STEINBERG: BRS?  
 8 MR MAVUSO: BRS is a business  
 9 requirement, sorry I'll be talking about some of these  
 10 things because in procurement we talk in acronyms and  
 11 something happened there because Annelie wanted to find out  
 12 those questions and can you give me that paper and I  
 13 looked, looking at my boss, my boss was no I just jumped in  
 14 said no, no everything comes through procurement, send it,  
 15 you'll get it through me. So that's the time I took that  
 16 thing over and then I send it to Annelie.  
 17 So there were questions coming to your question  
 18 now, there were questions coming from Gartner, not  
 19 understanding some of the things that they were looking for  
 20 because an ordinary person wouldn't understand that in any  
 21 way because they were, things were not as crisp as they  
 22 should be and they asked questions and those questions, Mr  
 23 Makwakwa was off, Mr Makwakwa said to me and to all of us  
 24 when we left there, he said no, no Dan we'll take over, Mr  
 25 Dan Zulu and I sent the questions to Mr Dan Zulu, I think

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1 that's when, I've sent the email to you also about that on  
 2 the 22nd where he answered some of the questions and Gartner  
 3 wanted to find out more and that's the reason of the  
 4 meeting of the 2nd of January. Okay on the meeting of the  
 5 2nd of January Gartner was asking some few questions to say  
 6 where is this landscape going to, how many people are there  
 7 in SARS and asking about is there any strategy existing,  
 8 you know things like that that they wanted to know so that  
 9 they can price this thing well and they don't know what's  
 10 going on. That was the main reason for that meeting and  
 11 also on that meeting we wanted to, I think the first time  
 12 Mr Eric Smith came in to also observe and also assist on  
 13 the contractual agreements. Was brought by Mr Makwakwa on  
 14 that day. So the main aim was that just for, to give  
 15 Gartner some answers.  
 16 MS STEINBERG: Did you have any meetings  
 17 or communications with anyone from Rangewave?  
 18 MR MAVUSO: No, I didn't even know there  
 19 was anything called Rangewave at the time because it was  
 20 just one of the five that were there. So no.  
 21 [14:31] COMMISSIONER: Sorry, one of the five  
 22 that were there, Rangewave was there you say?  
 23 MR MAVUSO: Yes, Rangewave –  
 24 COMMISSIONER: At the meeting?  
 25 MS STEINBERG: No, on the list –

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1 COMMISSIONER: On the list, okay.  
 2 MS STEINBERG: - the top five, Rangewave  
 3 was one of the companies I'm talking about. Now we'll see  
 4 that SARS told Gartner that it had to contract with an  
 5 empowerment partner from a SARS preferred list. Are you  
 6 aware of a SARS preferred list of empowerment partners?  
 7 MR MAVUSO: There's no such, as far as I  
 8 know. I've been in SARS for more than 13 years, there's no  
 9 such. If there was then it's not in procurement and we are  
 10 the people who should be implementing that. Even the names  
 11 of those, there will be no name because there's no such.  
 12 MS STEINBERG: There's no preferred list?  
 13 MR MAVUSO: No, there's no preferred  
 14 list, Ma'am.  
 15 MS STEINBERG: Now Gartner we will see  
 16 primarily used a company that it had a sort of standing  
 17 contract with, that was a level BEE 1 –  
 18 MR MAVUSO: Yes.  
 19 MS STEINBERG: - company. Now does that  
 20 not mean that the empowerment provisions are met if it's a  
 21 level 1 company?  
 22 MR MAVUSO: Ja, they are met. So you  
 23 can't make it better than that. To be honest that's the  
 24 best level. So it will be not truthful to say SARS will be  
 25 looking for a BEE partner on that.

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1 MS STEINBERG: So we have two mysteries  
 2 at the moment. The one is we seemingly had a BEE compliant  
 3 company and there's no such thing as SARS' preferred list  
 4 of BEE partners. But we know and we'll see on Tuesday that  
 5 Gartner were told that they had to use a BEE company from a  
 6 SARS preferred list.  
 7 COMMISSIONER: And who told them that?  
 8 MS STEINBERG: I'll get to those –  
 9 COMMISSIONER: Okay.  
 10 MS STEINBERG: Now do you know who  
 11 prepared the terms of reference that formed the basis for  
 12 the proposal that Gartner submitted?  
 13 MR MAVUSO: The terms of reference I  
 14 would say it was just a document that Mr Makwakwa brought  
 15 in and for lack of a better word, I call it terms of  
 16 reference and when it came to me it was written RFP and  
 17 it's none of those. Because it was, I don't know it was  
 18 bad. It was just – it cannot be an RFP. It cannot be a  
 19 terms of reference. I think that's the thing that made me,  
 20 when I was saying it was against my grain some of the  
 21 things, that's one of those to say guys, we're looking for  
 22 this and you don't know exactly what you're looking for.  
 23 So I was brought in that and at the same time I could see  
 24 that this, it's either these people don't know what they're  
 25 looking for or they're not giving us, they're not playing

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1 the open cards because if you have open cards you'll tell  
 2 me exactly what is your business requirements so that I can  
 3 look for that.

4 MS STEINBERG: So you're saying you were  
 5 given terms of reference that weren't specific enough.

6 MR MAVUSO: Yes.

7 MS STEINBERG: You didn't really know  
 8 what the contract, what you were going to contract Gartner  
 9 for.

10 MR MAVUSO: Yes. I can explain a little  
 11 bit on that to say one point is this went all along and  
 12 somewhere somehow this, it confused me and it also confused  
 13 Kamagelo. Just to add one part is that on the 2nd of  
 14 January Mrs Mogogodi was not in. So she was on leave and  
 15 when she came back again she said to me, she said to  
 16 Kamagelo you take over because you are running with Gartner  
 17 and Kamagelo was almost like my boss now at that time when  
 18 it comes to the Gartner thing. And just to explain a bit  
 19 on what was happening, those requirements caused some  
 20 changes in Gartner version. So there's a version 1,  
 21 version 2, version 3 and I was really unhappy to say what  
 22 is going on and generally they didn't want to even speak to  
 23 me, the sponsor, and spoke to Kamagelo. But it comes to a  
 24 point where on the 23rd you will see possibly that version 6  
 25 now becomes 12 million. 11 point something to 12 million

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1 but our normal version that we know was 5 million on the  
 2 first phase and that's a version we contracted on. So  
 3 there's other versions and I said to Kamagelo what is this  
 4 and Kamagelo said no, leave it Mike. Let me take it on. I  
 5 think he wrote the email to ask Sherilee and Mr Makwakwa  
 6 about this thing saying the difference in the money, why  
 7 now things are happening and changing and the answers were  
 8 also not forthcoming. They came on the 23rd of January and  
 9 they were not that crisp. They said no we added one thing  
 10 here on modernisation, we added that and said from 5 to 12  
 11 million it doesn't make sense. So those are the things  
 12 that we had tension on.

13 MS STEINBERG: Well now know from the  
 14 email chain that we'll put before the panel next week, we  
 15 know who wrote the terms of reference.

16 MR MAVUSO: Okay.

17 MS STEINBERG: We know that they were  
 18 initially started by Mr Patrick Monyeke from Rangewave and  
 19 then he got Mr Neville Willemse from Gartner's help. So my  
 20 question to you is this. Is it proper for the companies  
 21 who are going to receive the contract to write the terms of  
 22 reference?

23 MR MAVUSO: No, it's even unethical.  
 24 It's improper and unethical. Business should tell us what  
 25 they're looking for. In actual fact business should've

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1 given us the BRS and this was the thing that I was against,  
 2 to say business you're really looking for this thing but  
 3 you don't know what is it. And to me it was either it was  
 4 hidden or it was incompetence but I can't say that about my  
 5 bosses. But generally it might have been that because they  
 6 couldn't understand what ICT is. So to be honest with you  
 7 that irked me a lot and I told Kamagelo about it.

8 MS STEINBERG: Well the service providers  
 9 wrote their own terms of reference. In procurement the  
 10 emails suggest that Mr Monyeke for Rangewave was in some  
 11 sort of consultancy position to the Commissioner. Are you  
 12 aware or were you aware at the time of any contract between  
 13 SARS and Monyeke?

14 MR MAVUSO: No, nothing. I wasn't  
 15 heading the ICT at the time but nothing on that consultancy  
 16 that came through us. I wasn't aware. I don't even know  
 17 him and I –

18 MS STEINBERG: So it's another mystery  
 19 because the emails we'll see Mr Monyeke speaks for the  
 20 client at times and he speaks for the Commissioner at times  
 21 but we have asked SARS for any contracts between Mr Monyeke  
 22 and SARS or his companies and SARS before Rangewave and  
 23 there are none. So we again, we're not sure the basis on  
 24 which but he was writing the terms of reference and then  
 25 Gartner assisted him in doing so. The reason why as we

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1 understand by the way the contract was inflated the way it  
 2 was, was because Mr Makwakwa insisted that in addition to  
 3 doing a general IT review there must be scrutiny of the  
 4 modernisation process and particularly the way in which  
 5 products and services were secured, were procured under  
 6 modernisation and that's what inflated the figures. And  
 7 yes, I have your emails, thank you. We have that chain.  
 8 Just for the record we also have a statement from Mr Caston  
 9 De Tuma who assisted Mr Mavuso in doing that market survey  
 10 and he gives his story which correlates entirely with Mr  
 11 Mavuso's but he says at the end that "I personally still do  
 12 not know how Gartner was appointed and I still have not met  
 13 or spoken to anyone from Gartner about their appointment".  
 14 We also then asked Mr Dan Zulu for, either to come and  
 15 testify or for an affidavit because he is the most senior  
 16 person left in SARS who was involved in this and he doesn't  
 17 take the matter any further. None of these mysteries are  
 18 answered in his affidavits.

19 MR KAHLA: Counsel –

20 MS STEINBERG: Ja.

21 MR KAHLA: - just before you move on I  
 22 just want to understand, you had made reference to some  
 23 information that suggests that Mr, is that Monyeke?

24 MS STEINBERG: Yes.

25 MR KAHLA: Had been consulting for SARS.

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1 MS STEINBERG: Yes.

2 MR KAHLA: What information is that?

3 MS STEINBERG: Mr Kahla, if you don't

4 mind, there's a long chain of emails between Mr Willemse

5 from Gartner and SARS and Mr Monyeke and I'd like to adduce

6 that evidence when he is here.

7 MR KAHLA: When he's here, okay.

8 MS STEINBERG: When Mr Willemse is here.

9 MR KAHLA: Ja, thank you.

10 MS STEINBERG: I'm just trying to give –

11 MR KAHLA: That's fine.

12 MS STEINBERG: - context for the moment.

13 The documents that we have, from the 5th of December for a

14 week or so we have documents between SARS, the office of

15 the Commissioner actually and SETA asking to, for SARS to

16 participate in transversal contracts. Mr Moyane had

17 requested a transversal contract with EOH Mthombo.

18 There's backwards and forwards and some

19 contradiction but at the end of the day SETA says they're

20 not available and it's not appropriate. We then – I have a

21 document called the master consulting services agreement

22 which is the overarching contract that Gartner and SARS

23 entered into dated the 6th of February 2015. We know from

24 the Treasury that the problem with using Gartner at all on

25 the basis of a transversal contract was that SETA had not

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1 procured them via an open and competitive tender process in

2 the first place. They had – Gartner had somehow got onto

3 SETA's books without a competitive process, then SARS

4 participated in a contract which hadn't been competitively

5 procured in the first place which broke the first rule of

6 transversal contracts. We then – questions for you, we

7 have the first three invoices that –

8 COMMISSIONER: Sorry, I'm just not –

9 MS STEINBERG: Yes.

10 COMMISSIONER: - sure I'm following this

11 entirely.

12 MS STEINBERG: Okay.

13 COMMISSIONER: So the first contract that

14 is concluded with Gartner does this come about through a

15 transversal process on the riding on the back of SETA?

16 MS STEINBERG: Yes.

17 COMMISSIONER: Okay.

18 MS STEINBERG: Gartner then start to

19 invoice SARS and the first three invoices which cover phase

20 1, the invoice merely says professional fees and then it

21 gives the amount. So it's 3.8 million, 6.4 million

22 etcetera. The Treasury official said that an invoice that

23 merely says professional fees without timesheets is not an

24 invoice that a public body should pay. Would you agree

25 with that?

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1 MR MAVUSO: Yes, I would agree with that.

2 MS STEINBERG: Why?

3 MR MAVUSO: It has to be stipulated

4 because what we do on outline agreements, on our agreement

5 we're saying per line what is it that was done and so that

6 we can compare. If you look at the phase 2 you would see

7 what, because that one was done better. You would see what

8 the comparison should be. So that should've been the

9 comparison to the say the DPSA consultancy rate is it met

10 or not or is it higher. So if they just give us one line

11 and those millions, you cannot measure in between. So but

12 unfortunately it doesn't come to procurement.

13 MS STEINBERG: Yes.

14 MR MAVUSO: Yes.

15 MS STEINBERG: I understand.

16 Nevertheless the money was paid over.

17 MR MAVUSO: Yes.

18 MS STEINBERG: The next document we have

19 is Gartner lining up for phase 2 which is the big phase,

20 144 million pre VAT and that's dated 26 May 2015 and we

21 know that that resulted in the big contract. I have not

22 seen terms of reference or an RFP or anything that would

23 have solicited a document like that. Are you aware of an

24 RFP or terms of reference?

25 MR MAVUSO: No, Ma'am. It didn't go that

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1 way. It went into a 16(a)6.4 which is a deviation. It was

2 called a deviation, it went straight to the accounting

3 authority to accept that deviation.

4 PROF KATZ: Was that 16(a)6.4 a Treasury

5 regulation?

6 MS STEINBERG: Yes.

7 MR MAVUSO: Yes.

8 COMMISSIONER: And why did it go on

9 deviation? Do you know? Well why did they say it went on

10 deviation I should say?

11 MS STEINBERG: Can I help you with the

12 minute, Mr Mavuso?

13 MR MAVUSO: Ja, please.

14 MS STEINBERG: Minute of the national bid

15 adjudication committee, 8 of July 2015 and it's called

16 deviation to acquire the services of Gartner for the

17 implementation of phase 2 for a period of 2 years. It

18 starts, the committee considered the submission presented

19 by yourself and team and it said that the submission did

20 not adequately address the matters raised during this

21 meeting and it required, the committee required further

22 information. Do you recall that meeting?

23 MR MAVUSO: Yes, Ma'am.

24 MS STEINBERG: The sort of questions

25 being asked is the price provided competitive with other

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1 suppliers, what's the methodology used to determine  
 2 pricing, etcetera. In the middle of all of this, so let's  
 3 recap. We have phase 1 worth about 13 million which was  
 4 procured via an invalid transversal contract. Off the back  
 5 of that we asked for a huge deviation to 144. At that  
 6 point the committee said do some more research. A few days  
 7 after that committee met we see your then boss, the  
 8 executive procurement sending a memo to the Commissioner  
 9 asking for a condonation in respect of phase 1. SARS had  
 10 by that stage realised that the phase 1 procurement was  
 11 highly irregular and you will know better than me what the  
 12 procedure is at that point is you have to get a  
 13 condonation.  
 14 MR MAVUSO: Yes, Ma'am.  
 15 MS STEINBERG: If I can remind you that's  
 16 what the Treasury official said, that's when you sin and  
 17 forgive yourself. The condonation is the forgiving  
 18 yourself.  
 19 MR KAHLA: Just also on that, Counsel –  
 20 MS STEINBERG: Ja.  
 21 MR KAHLA: - because I needed that for my  
 22 own clarity. At what point exactly did SARS get to know  
 23 that the transversal that they were riding on was in fact  
 24 irregular?  
 25 MS STEINBERG: Mr Kahla, it's not clear

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1 from this document when it was discovered.  
 2 MR KAHLA: But do you know whether they  
 3 knew at that time of using the transversal that that  
 4 transversal contract they were riding on was irregular?  
 5 MS STEINBERG: We don't know. And what  
 6 they acknowledge the big mistake was at the time of  
 7 engaging and determining that Gartner and SETA would serve  
 8 the purpose procurement did not then make a formal request  
 9 to SETA to participate specifically in the Gartner contract  
 10 as should've been done. So in other words the rules for a  
 11 transversal, you make a formal request to both parties to  
 12 SETA and to Gartner. The request was clearly made to  
 13 Gartner but not to SETA. But I may add in addition to that  
 14 and perhaps if they had contacted SETA they would've found  
 15 out that SETA had not procured Gartner through a  
 16 competitive process.  
 17 MR KAHLA: But are we still – is that  
 18 still with reference to phase 1 or –  
 19 MS STEINBERG: Phase 1. Phase 1.  
 20 MR KAHLA: So phase 1 in addition to them  
 21 having used the transversal that seems to have been  
 22 irregular they did not follow the process for getting into  
 23 a transversal, mainly the party to render the services as  
 24 well as the party who have the contract with the service  
 25 provider.

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1 MS STEINBERG: Exactly. Now we know that  
 2 SARS knew that that was the procedure to follow because  
 3 they had tried to follow it with the EOH Mthombo agreement.  
 4 They had applied for permission, that's what you do. But  
 5 they chose not to apply for permission when it came to the  
 6 Gartner contract.  
 7 COMMISSIONER: And just while we're there  
 8 and to clear something up in my mind, the RFP you're  
 9 talking about prepared by you say Mr Monyeke and Gartner –  
 10 MS STEINBERG: Mr Willemse, ja.  
 11 COMMISSIONER: - where does that fit in?  
 12 If you – I mean they weren't going out to tender anyway, so  
 13 where does that fit?  
 14 MS STEINBERG: So that we will see in  
 15 detail next week. That was happening in early December and  
 16 mid-December while all these negotiations were going on.  
 17 [14:51] COMMISSIONER: But then it was abandoned  
 18 and they went the transversal process route.  
 19 MS STEINBERG: Well, except that to even  
 20 go through a transversal process you need you need your  
 21 terms of reference.  
 22 COMMISSIONER: Oh I see.  
 23 MS STEINBERG: Okay. Now, the reason  
 24 that is given in this application for condonation is that  
 25 there was "intense" time pressure and it remains one of the

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1 questions that needs to be answered is what was, why was  
 2 this so urgent which perhaps Gartner will be able to answer  
 3 for us.  
 4 MS MASILO: Advocate Steinberg, with  
 5 regard to condonation I'm not clear as to, you know, the  
 6 time at which SARS realises it had to apply for condonation  
 7 because the service was provided in respect of phase 1. My  
 8 recollection was in April. And SARS only applies for  
 9 condonation, I mean, sorry, procurement only applies for  
 10 condonation in July. So what is the time period within  
 11 which you have to apply for condonation when you know that  
 12 there is a problem ordinarily?  
 13 MR MAVUSO: There's no time period  
 14 because if you know then you must condone it so that time -  
 15 MS MASILO: Is it immediately when you  
 16 realise?  
 17 MR MAVUSO: Yes, exactly. Sometimes  
 18 maybe it's found by internal audit or AG or anyone else so  
 19 immediately you realise that.  
 20 MS MASILO: Okay.  
 21 MR KAHLA: What are the factors that  
 22 would inform the granting of the condonation of condoning  
 23 irregular expenditure?  
 24 MR MAVUSO: Factors will be that was it  
 25 in SARS' interest first. It's not a personal interest. It

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1 was in SARS' interest. And the second one was that was  
 2 there any other wastage or anything and those factors  
 3 should be weighed by the committee or the accounting  
 4 authority.  
 5 MS STEINBERG: So the condonation memo  
 6 was sent on the 10th of July 2015 and the Commissioner  
 7 forgave the sin. Three days later he wrote to the chief  
 8 financial officer so the Commissioner wrote to the chief  
 9 Finance officer and he said that he's extremely unhappy and  
 10 perturbed that this happened and he asked for an  
 11 investigation to provide a response that includes a plan to  
 12 remedy the situation and measures against officials  
 13 involved in this anarchy, bearing in mind that it was Mr  
 14 Makwakwa who said that this is extremely urgent and must  
 15 happen literally over the Christmas period.  
 16 Now, Judge, I'm told that the, your previous boss  
 17 actually lost her job over this. That was one of the  
 18 consequences of this. And if I may say it goes to the  
 19 atmosphere of fear that we have heard so much about. The  
 20 email chains show us that she was following orders from on  
 21 high. She was put under enormous pressure to make sure  
 22 that this contract was turned around over the Christmas  
 23 period and the New Year and she lost her job for doing so.  
 24 On the 14th -  
 25 COMMISSIONER: By the way do you know

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1 about that?  
 2 MR MAVUSO: Yes, Judge, I know about  
 3 that.  
 4 COMMISSIONER: Is that a fair reflection  
 5 of what occurred?  
 6 MR MAVUSO: It is and also I was also  
 7 disciplined for that.  
 8 COMMISSIONER: You were?  
 9 MR MAVUSO: I was also disciplined for  
 10 it.  
 11 COMMISSIONER: Disciplined for what?  
 12 What, no, disciplined for - what did they say you were  
 13 being disciplined for?  
 14 MR MAVUSO: Judge, they said it's - I  
 15 didn't use oversight or something like that.  
 16 MS STEINBERG: Were the senior officials  
 17 involved ever disciplined?  
 18 MR MAVUSO: Never. I think they were the  
 19 ones pushing us to be disciplined. I think that's where I  
 20 was saying it was a runaway train where it was against my  
 21 grain because we knew that anything - I think it's known  
 22 that in government, even AG they will check December. If  
 23 there's anything that's happening in December it's a wrong  
 24 thing. So and this is a fact and that's where they found  
 25 it out. Even our internal auditors when speaking to them

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1 said if it's in December and it says pressure there's  
 2 something going on. That's -  
 3 COMMISSIONER: Well, that's what we heard  
 4 from the gentleman from Treasury.  
 5 MS STEINBERG: Yes.  
 6 COMMISSIONER: He says if something is  
 7 happening in December you must smell a rat. There's  
 8 something going on because people don't do business in  
 9 December.  
 10 MR KAHLA: But did you raise that with  
 11 the senior ups who were requiring this to be done in  
 12 December that you have difficulties around doing such  
 13 procurement in December? Were they aware of those  
 14 requirements?  
 15 MR MAVUSO: Yes, they are aware. Even my  
 16 boss spoke about it. And Mr Duduma was speaking to me more  
 17 often to say what is it, what is, why is this thing urgent.  
 18 And I said I also don't know why it's urgent. But those  
 19 are the things you raise up to a certain level in SARS.  
 20 There was nothing else I could do.  
 21 MR KAHLA: For whatever is in writing by  
 22 - is it Mr Duduma?  
 23 MR MAVUSO: No, no, no, he spoke to me.  
 24 MR KAHLA: You spoke to you.  
 25 MR MAVUSO: Yes.

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1 MS MASILO: So there was no explanation  
 2 of the urgency.  
 3 MR MAVUSO: No, that was a wrong time.  
 4 If you look at that, if you just - let me just take you  
 5 through the 2014. The 2014, that December there was a new  
 6 acting COO and the other COO has left SARS. To use the  
 7 expression I will hit the shepherd and the flock will run.  
 8 So who won't be fearing, honestly and I spoke to one of my  
 9 friends in CLS who say who was going to protect you and Mrs  
 10 Mogogodi. No one. To be honest the fear that was there -  
 11 the big guys were chopped off so who am I?  
 12 MS STEINBERG: That's why I started by  
 13 saying we're not here to blame you because I think we  
 14 perfectly understand your position. Now, we see the  
 15 deviation for phase 2. You'd been sent back to get more  
 16 information. Then there is another national bid  
 17 adjudication committee on the 14th of July. You were not at  
 18 that meeting -  
 19 MR MAVUSO: No.  
 20 MS STEINBERG: As far as the attendees  
 21 show. What it says in terms of the request for condonation  
 22 for phase 2, it says that business urgently needed the IT  
 23 review services to ensure that the IT review would be  
 24 aligned with and synchronised to the process of designing  
 25 the new SARS operating model so that was the urgency. So

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1 now designing the new operating model was urgent and this  
 2 became urgent. Against that background procurement  
 3 recommended the use of a contract as contemplated in the  
 4 National Treasury regulation 16A6.6 as the most appropriate  
 5 procurement method.  
 6 Accordingly Gartner was appointed to take into  
 7 account its appropriateness and to deliver the services  
 8 required and the business urgency for such services. And  
 9 then it actually lists the requirements from that  
 10 regulation. It lists that the service provider must have  
 11 been procured by the other organ of state via a competitive  
 12 bidding process. It lists that you need to ask for  
 13 permission. The abovementioned requirements were not met  
 14 in dealing with phase 1.  
 15 And the decision of the committee was that the  
 16 contract was concluded contrary to the provisions of the  
 17 National Treasury regulations. The expenditure was  
 18 irregular. Then at the same meeting they discuss a  
 19 deviation from that irregular contract to the tune of R144  
 20 million and they say that they've received the submission  
 21 requesting the deviation for two years and the committee  
 22 noted and accepted the technical motivation for  
 23 impracticality as a basis for the deviation. And they  
 24 quote the regulation and they say yes, they accept it's  
 25 impractical because we need to strengthen continuity in

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1 service provision. So Gartner had started with a small  
 2 contract. It's impractical to go out to market because we  
 3 now need continuity with Gartner and they were awarded a  
 4 R144 million contract.  
 5 MR KAHLA: So the point that was being  
 6 made was that from the assessment that had been made by  
 7 Gartner nobody else could then build on the work post the  
 8 assessment but Gartner and that was considered an  
 9 impracticability.  
 10 MS STEINBERG: Yes.  
 11 COMMISSIONER: That was the continuity  
 12 they were speaking about.  
 13 MS STEINBERG: Yes. And you'll recall -  
 14 this is something I want to take up with Mr Makhubu. You  
 15 will recall that the Treasury officials said in  
 16 practicality means an emergency.  
 17 MR KAHLA: Sorry, just if I may because I  
 18 want to understand this.  
 19 MS STEINBERG: Please.  
 20 MR KAHLA: Did the procurement team  
 21 within SARS share the view that it would be impractical,  
 22 objectively impractical I would expect, to invite other  
 23 bidders for the work for this phase 2 or was it a case of  
 24 simply taking from the higher ups that they deemed it  
 25 impractical? Who made the assessment that it was

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1 impractical?  
 2 MR MAVUSO: Honestly everything came up  
 3 from the higher up.  
 4 MR KAHLA: Okay.  
 5 MR MAVUSO: One. The second is, and this  
 6 is the emphasis that I don't know if you can get in the  
 7 document is that the first assessment was not open to  
 8 anyone. It was top secret. So they cannot share with  
 9 procurement. So we can't go up in BRS because we don't  
 10 even know what the results were. So that made it very  
 11 difficult for procurement to ask somebody else to work on  
 12 something that you don't know is a black box because only  
 13 few people in SARS knew about it.  
 14 MR KAHLA: That first one -  
 15 MR MAVUSO: Yes.  
 16 MR KAHLA: Is it the one that resulted in  
 17 a disciplinary, in disciplinary proceedings for others?  
 18 MR MAVUSO: Exactly.  
 19 MS STEINBERG: Can I just answer this  
 20 question of impracticality? The SARS investigation into  
 21 why the condonation had to happen, there's a report  
 22 published on the 10th of August 2015 which is the result of  
 23 that investigation. What's interesting about that report,  
 24 it's something our witness said earlier, that the reason  
 25 EOH Mthombo was deselected in the first round is this.

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1 It's inadvisable to have the same service provider involved  
 2 in both phases of the contract. However Gartner Inc was  
 3 later appointed to implement phase 2 on the basis of  
 4 maintaining confidentiality and continuity.  
 5 And the report notes this apparent contradiction  
 6 has never been addressed. To this day it hasn't been  
 7 addressed. So initially as exactly the same as with Bain,  
 8 we see SARS say we want this quick, urgent diagnostic.  
 9 Then we'll put it out to market in order to implement the  
 10 findings of that diagnostic. Yet in both cases a deviation  
 11 procedure was chosen and the same consultancy was then used  
 12 to implement its findings without ever going to market.  
 13 MR KAHLA: But who in the business would  
 14 be requesting the deviation? Procurement enables the  
 15 service provider but who in the business would have been  
 16 requesting that there must be some confinement to Gartner  
 17 on the basis of the "impracticality"?  
 18 MS STEINBERG: As I understand, and you  
 19 might have more information than me, Mr Mavuso, the project  
 20 sponsor, Mr Makwakwa, was responsible for those decisions.  
 21 Is that correct?  
 22 MR MAVUSO: Yes, it's correct.  
 23 COMMISSIONER: Is there anything in the  
 24 first contract, phase 1, that foreshadowed the next phase?  
 25 MS STEINBERG: No.

<p style="text-align: right;">Page 3379</p> <p>1 COMMISSIONER: And that the two would be 2 linked. 3 MS STEINBERG: No. 4 COMMISSIONER: No. 5 MS STEINBERG: However as with Bain we 6 will see next week that Mr Monyeke and Mr Willemse say when 7 they have email exchange while they are developing the 8 terms of reference for phase 1 that this will lead to much 9 more work for us in phase 2. 10 COMMISSIONER: That's the point. 11 MS STEINBERG: So as with Bain they are 12 well aware that although formally it looks like a small 13 diagnostic they're lining themselves up for the big R144 14 million deal as it came to pass. 15 COMMISSIONER: That's my question. 16 MS STEINBERG: Yes. 17 COMMISSIONER: But tell me on what basis 18 do you say that? You know in Bain it's quite straight 19 forward. There's an email in which they say right, let's 20 start with this thing now and we'll set the platform for 21 the next 12 months. Have you got such a document of some 22 kind that - 23 MS STEINBERG: I do, Judge. I must find 24 it but I do. 25 COMMISSIONER: No, that's fine.</p>	<p style="text-align: right;">Page 3381</p> <p>1 MS STEINBERG: 10, 22 April. 10 April. 2 MR KAHLA: And the document here is 22 3 April 2015 which is the assessment. 4 MS HOBDEN: Okay, so there were two. So 5 it was 10 April and the 22nd. 6 PROF KATZ: 22. We asked you yesterday. 7 MS HOBDEN: Yes. 8 MS MASILO: I'm just trying to understand 9 or to get clarity on, I mean, if SARS receives the 10 assessment on the 10th of April and then two months later 11 there is impracticality and urgency what's happened in the 12 intervening two months? Because SARS would then have had 13 to understand that they needed to implement and if they 14 wanted to have the implementation one by a service 15 provider, you know, they could have started the process, 16 isn't it, to avoid the urgency and to avoid the 17 impracticalities? 18 MS STEINBERG: One would think so. The, 19 so just to go back to where I was the bid adjudication 20 committee approved the deviation for phase 2 on 14 July 21 2015. And the Commissioner then approved it on the same 22 day so this was happening very quickly. A memo was sent to 23 him and he approved the deviation. And again the grounds 24 were maintaining operational continuity and 25 interdependence, the urgency and some talk of a new</p>
<p style="text-align: right;">Page 3380</p> <p>1 MS STEINBERG: I have an email exchange 2 which says that. 3 PROF KATZ: And then the Bain one they 4 gave the discount for the first - 5 COMMISSIONER: Ja, but they planned in 6 August. They were already planning for the 12-month 7 contract. 8 MS STEINBERG: Well, this is in December. 9 Before even the first contract is issued they're planning 10 for the second one. 11 COMMISSIONER: That was the same with 12 Bain I suppose. That was August. 13 MS STEINBERG: Yes. 14 COMMISSIONER: Ja. 15 MS MASILO: Counsel, what's the date of 16 the assessment? 17 MS STEINBERG: 10 August 2015. 18 MS MASILO: No, of the phase 1 assessment 19 by Gartner. 20 MS STEINBERG: The contract was signed on 21 the 6th of February 2015. 22 MS MASILO: Okay. And when did they 23 finish the work and provide the report to SARS on phase 1? 24 MR KAHLA: 22 April. 25 MS MASILO: Sorry?</p>	<p style="text-align: right;">Page 3382</p> <p>1 supplier would escalate risk of lapses in SARS information 2 security. On the 22nd of July 2015 SARS writes to Gartner 3 with a letter of award for phase 2. 4 COMMISSIONER: Were you involved at all 5 in phase 2 then? 6 MR MAVUSO: Initially, Judge, I was 7 involved but when it goes again - because an initial one 8 which failed my signature is there and I was involved but 9 from there I think they got somebody else to work on it 10 because I was appointed somewhere. 11 MS STEINBERG: I then see the SARS 12 investigation and this contradiction that emerges and you 13 get disciplined and your boss loses her job. That's all 14 we've been able to find. There were the further deviations 15 that led to the rest of the Gartner contracts through - 16 COMMISSIONER: And phase 3, those other 17 things. 18 MS STEINBERG: Yes, I don't have minutes. 19 I've called for them. That's all I have for the time 20 being. I do have minutes of an Exco meeting of 23 November 21 2016 where Exco said that there should be a clear cost 22 benefit analysis of Gartner's work. Do you know if that 23 was ever done? 24 MR MAVUSO: I think by that time I was 25 not in that -</p>

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1 MS STEINBERG: Oh, okay.  
 2 MR MAVUSO: Yes.  
 3 MS STEINBERG: You were a generic  
 4 specialist by then.  
 5 MR MAVUSO: By that time I was appointed  
 6 - on June, it was in June I was appointed as facility  
 7 senior manager.  
 8 MS STEINBERG: So Advocate Hobden is  
 9 pointing out that in Gartner's IT assessment report, oh the  
 10 progress minutes - of which date? The end of April Gartner  
 11 are already saying.  
 12 [15:11] "12 of the original team will be back on site  
 13 scoping" so these, this progress report anticipates phase  
 14 2.  
 15 COMMISSIONER: Well you'll be asking  
 16 Gartner about that in due course.  
 17 MS STEINBERG: We will.  
 18 PROF KATZ: Sorry what was that date  
 19 please? The one you've just spoken, they'll be back on  
 20 site.  
 21 MS HOBDON: On April 20th to the 24th.  
 22 MR KAHLA: Counsel sorry, I just want to  
 23 go back to the disciplinary. What do the individuals that  
 24 were subjected to the disciplinary process get attacked  
 25 for?

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1 MS STEINBERG: For allowing a procedure  
 2 that led to a condonation. Allowing this irregular phase 1  
 3 procedure.  
 4 MR KAHLA: But how do they allow that  
 5 phase 1 procedure then understand that, the phase 1 process  
 6 from what has been led so far, was something done in secret  
 7 through the transversal arrangement? Were they, were you  
 8 involved in phase 1, once it had moved onto the transversal  
 9 arrangement with SETA?  
 10 MR MAVUSO: I was involved in the  
 11 December one, all those meetings until they appointed on  
 12 the 6th April.  
 13 MR KAHLA: But isn't it that, just help  
 14 me if, I just want, just for my own, take us back to that  
 15 December, what is it that was done by procurement in light  
 16 of what you've said around the process having been  
 17 secretive, what is it that procurement was able to do  
 18 anything about? And what is it that would have been done  
 19 outside of procurement? For example the transversal, was  
 20 procurement involved in the transversal with SETA?  
 21 MR MAVUSO: No, like I said on 2nd  
 22 January, January yes, the executive from CLS, our corporate  
 23 legal services was brought in. So contractually, and I was  
 24 saying my email everything was coming from, everything from  
 25 Gartner had to go through him so he didn't even fire me.

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1 And to be honest somehow you take a punishment even if -  
 2 MR KAHLA: I understand that you would  
 3 have taken the punishment, I'm just trying to understand  
 4 what was the punishment for? What is it was done by  
 5 procurement? Because you made to reference to things  
 6 having been done secretly so I'm trying to assert if  
 7 they're done secretly I'm assuming that you would not  
 8 have been in the picture.  
 9 MR MAVUSO: Yes, I wasn't in -  
 10 MR KAHLA: What portion of this  
 11 arrangement were you not in the picture of?  
 12 MR MAVUSO: To me everything that was -  
 13 MR KAHLA: Because I was, and your boss.  
 14 MR MAVUSO: Everything that's in  
 15 secretive that I'm hearing now it's new, okay.  
 16 COMMISSIONER: But what did they accuse  
 17 you of and accuse your boss of actually doing?  
 18 MR MAVUSO: They said we caused the  
 19 condonation or the irregular.  
 20 COMMISSIONER: You caused it?  
 21 MR MAVUSO: Yes.  
 22 COMMISSIONER: But you had had nothing to  
 23 do with it?  
 24 MR MAVUSO: We caused it.  
 25 COMMISSIONER: But had you had anything

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1 to do with it at all, forget about whether you did it  
 2 correctly or not, had you had anything to do with the event  
 3 that caused the condonation, you or your boss?  
 4 MR MAVUSO: Some information that  
 5 possibly I wouldn't answer is that my boss might have known  
 6 something, because information is coming through my boss  
 7 and then it comes through to me. And the information that  
 8 was coming through to me was not enough and I got an email  
 9 also from my boss saying this is a transversal contract you  
 10 can use. And my boss is coming from the SETA and I trusted  
 11 that.  
 12 COMMISSIONER: Ja, I'm not blaming you at  
 13 all.  
 14 MR MAVUSO: And all those things,  
 15 according to me, you can sleep with your conscience clear  
 16 that I didn't do anything.  
 17 MR KAHLA: So your boss knew of who  
 18 brought to the picture that there's some transversal  
 19 contract with Gartner which SETA has that could be used,  
 20 who brought that into the picture? Was it your boss,  
 21 yourself or was it one of the leaders, the senior ups?  
 22 MR MAVUSO: No it was my boss.  
 23 MR KAHLA: Okay.  
 24 PROF KATZ: Sorry can I ask, I missed, in  
 25 the beginning you spoke about Range Wave doing other work

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1 for SARS.

2 MS STEINBERG: Not Range Wave, actually

3 Mr Monyeke who, I will go through the email chains next

4 week but in summary, Mr Monyeke reaches out to Mr Willemse

5 of Gartner and says I'm drawing up terms of reference for

6 an IT review and I need your help, and he asks Gartner to

7 give examples of ones they've done in the past. And the

8 email chains show that Mr Monyeke is talking for what he

9 calls his client or Mr Moyane. Now it's a mystery within

10 SARS as to what the contractual basis of the arrangement

11 between SARS and Mr Monyeke was.

12 COMMISSIONER: We'll hear more, to be

13 continued.

14 MS STEINBERG: Yes we haven't answered,

15 we've never got to the bottom of that. The Commission

16 might choose to call Mr Monyeke one day but we don't know.

17 COMMISSIONER: Incidentally is anyone

18 present for Mr Monyeke, because he was written to a week or

19 two ago and said that he might have an interest in being

20 here? Is there anyone? No, okay. Thank you.

21 MS STEINBERG: I don't have more

22 questions for this witness.

23 COMMISSIONER: Thank you very much. That

24 wasn't so hard, was it?

25 MR MAVUSO: No it wasn't hard, Judge.

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1 Thank you.

2 MS STEINBERG: Now Judge, we call Mr

3 Johnston Makhubu.

4 COMMISSIONER: Afternoon Mr Makhubu.

5 Thank you very much for coming to assist us. Will you

6 affirm that the evidence you give will be the truth, the

7 whole truth and nothing but the truth? If so, will you say

8 I do.

9 MR MAKHUBU: I do.

10 EVIDENCE BY MR MAKHUBU

11 MS STEINBERG: Mr Makhubu, what is your

12 current position?

13 MR MAKHUBU: I'm currently the chief

14 officer for Finance.

15 MS STEINBERG: And you took up that job

16 on the 1st September this year, is that correct?

17 MR MAKHUBU: Yes.

18 MS STEINBERG: Well congratulations on

19 your new position.

20 MR MAKHUBU: Thank you.

21 MS STEINBERG: You joined SARS on the 1st

22 June 2016, is that correct?

23 MR MAKHUBU: Yes I did.

24 MS STEINBERG: And you were the GE for

25 procurement?

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1 MR MAKHUBU: Yes indeed.

2 MS STEINBERG: So Judge, Mr Makhubu

3 wasn't here personally for a lot of the ground that we need

4 to cover with Gartner and with Bain. And the people

5 involved in fact are no longer with the organisation. So

6 the best we can do is adduce some of the evidence and I

7 asked Mr Makhubu for his views on what went wrong and how

8 the organisation stops this going wrong in the future. Now

9 Mr Makhubu has given the commission a substantial statement

10 and submission and what I want to propose is that we deal

11 with these procurement issues and then we invite Mr Makhubu

12 to say what he'd like to say. I also have a couple of

13 questions coming out of your statement, if that's alright?

14 COMMISSIONER: Is that in order to do it

15 in the way counsel suggests?

16 MR MAKHUBU: Judge I'm comfortable.

17 MS STEINBERG: Ja, we discussed it

18 briefly beforehand. The only thing left to, I presume you

19 were here during the last testimony about Gartner?

20 MR MAKHUBU: Yes I was.

21 MS STEINBERG: I just found that email

22 and I would just like to read it. So this is from Neville

23 Willemse of Gartner to Patrick Monyeke on December 11th and

24 it says, "Hi Patrick, I've changed the outcome slightly.

25 My suggestion would be that the approach we follow is to" –

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1 and it gives a bullet point list of how they should

2 structure this contract. And then he says, "Coming out of

3 the roadmap – which I think is the diagnostic – will be

4 additional initiatives that we could assist them with so

5 that the first phase is really the review and

6 recommendations via the roadmap." Mr Makhubu, we see it

7 both with Gartner and with Bain, and I'd like to go back to

8 Bain because SARS have never responded to what the Treasury

9 has said about Bain. But we see something in common here

10 and that's that you have, before the contract, the first

11 contract is even awarded, we have service providers knowing

12 that they'll get the initial contract, number 1, and number

13 2, it will lead to a much bigger contract. And we're

14 talking between Bain and Gartner about R400 million at the

15 end of the day that was spent on these consultants.

16 Putting aside the questionable quality of the work, it's

17 obviously terribly worrying for a public body like SARS

18 that this could have happened twice, the same modus

19 operandi happened twice and we see minutes of all the BAC

20 meetings and the Exco meetings and everyone, legal opinions

21 and everyone assuring everyone else that the process is

22 kosher, yet we now know this is what happened. And as we

23 go through Bain, I'm really interested in your views as to

24 what was wrong and how you propose to fix it or perhaps

25 have started fixing it going forward. Do you want to make

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1 any initial comments?  
 2 MR MAKHUBU: Indeed, let me start by  
 3 saying that the procurement process should be kept  
 4 sacrosanct and the procurement professionals should be  
 5 protected from interference in executing their work. If  
 6 that is not done then you are leaving them to influence  
 7 that they may not be able to positionally manage and I  
 8 think it's important for people in my position who  
 9 ultimately is responsible for supply chain management to  
 10 come across as protecting of the procurement professionals.  
 11 I must say that in my opening remarks it should be easy for  
 12 any of the procurement professionals, no matter how lowly  
 13 they are in the organisation, to come knock on my door and  
 14 say there's something I'm being asked to do and I'm not  
 15 comfortable, and I think since my arrival a number of times  
 16 I've had that and I've accordingly advised, regardless of  
 17 where I am in the organisation, and I think that's  
 18 important. And maybe assure this commission to say that  
 19 continues from 2016 June onwards to say colleagues, you've  
 20 got an open door. I start work at half past 6 and they  
 21 know that they can come at any time between half past 6 and  
 22 9 o'clock to raise whatever issues that they'd like to  
 23 raise.  
 24 But key for me is that that process is  
 25 sacrosanct, that process is governed because a lot of

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1 challenges that we are facing currently are as a result of  
 2 that process not being, not only in SARS but elsewhere, of  
 3 that process not being kept sacrosanct. Even Exco members  
 4 need to have that appreciation. Thank you. In answering  
 5 the question, I think upfront, if you're going to have a  
 6 need in the business that requires that you've got multiple  
 7 phases to it, it becomes very important that upfront in  
 8 your sourcing strategy and your needs requirement you  
 9 define that clearly so that when you go out to the market  
 10 you become clear that I've got multiple phases and then in  
 11 your strategy you can then be able to articulate to say I  
 12 want to lock you in so you are coming in with the full  
 13 understanding that there is going to be phase 2, there is  
 14 going to be phase 3 but we will evaluate it fairly and  
 15 squarely openly because if you don't do that the subsequent  
 16 phases become either deviations or variations. So upfront  
 17 my view is that looking at the Bain and the Gartner matter,  
 18 there should have been effort to make sure that the scope  
 19 of the work is holistic. And you can then be able to say  
 20 though I cannot commit to phase 2 now, because I don't know  
 21 what the outcomes are going to be of phase 1, at least I  
 22 know what the price you are going to be charging out is and  
 23 upfront I've been quite open and transparent on how I  
 24 engage you from that perspective. So for me it's very  
 25 important not to parcel requirements but to make sure that

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1 they are consolidated from the beginning. Now that becomes  
 2 a challenge in most organisations in terms of business  
 3 because sometimes the requirements are not fully understood  
 4 even by business upfront and therefore you need a head of  
 5 procurement that is going to rather delay the procurement  
 6 transaction until those requirements are pretty much clear  
 7 because if you don't do that you will deal with the issues  
 8 at the end where you have to now deviate or expand or vary  
 9 the contract under questionable circumstances.  
 10 COMMISSIONER: Do you mind if I just  
 11 interrupt here for a moment?  
 12 MS STEINBERG: Go ahead.  
 13 COMMISSIONER: To go back to Bain and to  
 14 discuss –  
 15 MS STEINBERG: Gartner?  
 16 COMMISSIONER: Sorry, no, no, no, Bain  
 17 and discuss this a bit further. You see in Bain's case,  
 18 now by the way you will recall that Bain was invited, we  
 19 set aside the 22nd of this month, day and you will recall Mr  
 20 Min was told, if you want to say anything and come and  
 21 answer these things, you'll get emails, that's your day and  
 22 I've had a letter back from Bain saying no, thank you very  
 23 much, no one will be here. So that is the long and the  
 24 short of it at the moment. I think we've heard from Bain,  
 25 they don't want to say anymore and that's where we are. So

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1 what I'm left with is a set of affidavits from Bain. I  
 2 know, you've probably seen them, talking about a  
 3 relationship in which there are seven meetings between the  
 4 Commissioner and Bain even before the Commissioner became  
 5 the Commissioner. The last meeting comes when there is an  
 6 email which says, I don't, I wish I had it with me, guys,  
 7 we've just had the call. SARS will be making the  
 8 announcement tomorrow, which was the Commissioner's  
 9 appointment. We must all gather together to plan the  
 10 procurement process. And there is indeed a meeting at Bain  
 11 on that day. Mr Makwakwa is present. There's not even, Mr  
 12 Moyane's not even the Commissioner yet. And there he must,  
 13 email that tells us we must meet to now plan the  
 14 procurement and we must meet to plan the procurement and we  
 15 must now start building on that for the 12 month contract  
 16 we're going to get. Then it goes to the Minister and Mr  
 17 Moyane says to the Minister, Dear Minister, may I have your  
 18 permission, I think that I need to look for consultants and  
 19 may I have your permission to now go through and see if we  
 20 can find a consultant of some kind? Well the Minister is  
 21 not told that there's already been all this thing going on.  
 22 And the Minister says yes, we'll – you know. And then you  
 23 get to the stage where it goes to a bid committee. Now  
 24 none of this is disclosed to the bid evaluation committee,  
 25 none of it is disclosed to the bid adjudication committee.

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1 Now I'm sure you'll agree if all of that had been disclosed  
 2 to the bid evaluation committee, you would have said no,  
 3 no, we're not doing this deal. Would you agree with that?  
 4 MR MAKHUBU: I concur. So if that  
 5 disclosure was made –  
 6 COMMISSIONER: I have no doubt, I'm  
 7 sorry, I don't want to interrupt you because I haven't got  
 8 quite to where I am, but I would have thought and if anyone  
 9 told me, no, no, in SARS we don't worry about those things,  
 10 then that's the way it is but I don't think you would agree  
 11 with that. Anyway, so then the question becomes you've got  
 12 a bid evaluation committee, you've got a bid adjudication  
 13 committee, how much questioning was going on that allowed  
 14 all that to go through? Because clearly it was then being  
 15 manipulated through the system, and that's what I'm  
 16 interested in, the rigour of your adjudication and  
 17 evaluation process. Is there enough rigour in it to avoid  
 18 that kind of thing happening? Because there's a fraud  
 19 occurring there.  
 20 MR MAKHUBU: I think it's important to  
 21 state that procurement processes start with an appreciation  
 22 that the parties are acting in good faith. And I think  
 23 collusion between senior executives in organisations and  
 24 service providers is an anomalous situation in public  
 25 procurement, I must start there.

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1 COMMISSIONER: Ja, I hope so. I'm sure  
 2 you're right.  
 3 MR MAKHUBU: The prescripts, the  
 4 regulations are written with an assumption that senior  
 5 executives in an organisation will always act in the good  
 6 interests of the organisation. Now if there were meetings  
 7 that happened prior a procurement process starting and  
 8 there was no corporate governance or rather decency of  
 9 declaration that entire process is flawed.  
 10 [15:31] Because certainly when it comes to present itself  
 11 before a procurement professional he or she assumes the  
 12 bona fides of the senior executives in the organisation and  
 13 when, on the other side there's been coffee and golf and  
 14 all these other things and Treasury then says let there be  
 15 bid, standard bid documents that allow us to do  
 16 declarations in particular SBD4 and also let the people  
 17 that are adjudicating this also declare.  
 18 Now if people are dishonest they will not even  
 19 utilise the apparatus that are provided in the process to  
 20 try and act as controls. Now a dishonest person will  
 21 negate any control that you put in place and I think, I  
 22 must say it's sad when, as a chief officer I can mislead my  
 23 procurement colleagues. When they get a request from me of  
 24 any kind they must have the confidence that the chief is  
 25 acting in the interest of the organisation. They will

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1 indeed at least the ones I'm working with now, they will  
 2 come back and even challenge me, a number of times they've  
 3 come back and say no boss we think you've got a blind spot  
 4 on this particular matter and I've allowed for an open  
 5 engagement so that we take the best decision in the  
 6 interest of the organisation going forward. I always say  
 7 if it's on the Sunday's Time front page are we going to be  
 8 able to accept it on this coming Sunday and we work from  
 9 that premise and apply to inculcate that and I think my  
 10 colleagues would attest. So to answer the question crisply  
 11 if executives work in a manner that is collusive with  
 12 service providers it becomes problematic and it negates the  
 13 entire control system within a public procurement  
 14 controlled environment, if I may say.  
 15 COMMISSIONER: Well if I can just pick up  
 16 on that, if you don't mind if I take a few minutes, sorry.  
 17 But look you're quite right. I mean if the story I've told  
 18 you, all those facts are correct, aren't you appalled, I  
 19 mean I'm appalled but it seems to me that some people think  
 20 I shouldn't be appalled. Would that be right, is that  
 21 unfair to say I'm appalled at that, a thing like that  
 22 should occur?  
 23 MR MAKHUBU: I'm with you, I'm appalled.  
 24 COMMISSIONER: But now -  
 25 MR MAKHUBU: The professional I am.

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1 COMMISSIONER: Ja, but now the problem is  
 2 this you see, if in a public institution you're going to  
 3 have to put rules in place to avoid that. Well quite  
 4 frankly one cannot function.  
 5 MR MAKHUBU: Indeed.  
 6 COMMISSIONER: So you're quite right to  
 7 say you've got to make rules that are rigorous but you  
 8 can't go about making rules to prevent appalling things  
 9 like that happening. That requires some integrity.  
 10 MR MAKHUBU: It does. So if, hence I say  
 11 that I think some of my colleagues that sit in the bid  
 12 adjudication committee tier 2 who are Exco members  
 13 generally the expectation is that, and I think when, since  
 14 I've been there, maybe it's because I've got a supply chain  
 15 management background and I also want to advise accordingly  
 16 to make sure that the decisions that are made in my  
 17 presence are carefully considered. I think if they are not  
 18 aware of anything that is outside the procurement process  
 19 they're adjudicating over a blind matter. There's a number  
 20 of things I am making recommendations in terms of what can  
 21 be done to try and pick up things. Things like property  
 22 checks, I'll talk about that later. Whether it's at end,  
 23 at end level, N minus 1 or N minus 2, we need to be able to  
 24 know who are we dealing with, whose their wife, whose their  
 25 children upfront. So that these additional controls are

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1 there and we are in the process of trying to implement  
 2 those things but I'm just trying to say Judge that if  
 3 people are really acting to negate the controls that we've  
 4 put in place. They're fraudulent and I say to, I'm on  
 5 record saying it's appalling because -  
 6 COMMISSIONER: Well you can't run an  
 7 organisation when you have to be thinking that the  
 8 organisation is full of people that are trying to undermine  
 9 it. You can't run an organisation like that. That's as I  
 10 see it, I'm just a lawyer. These are the businessmen  
 11 around me. But it just seems to me and I, obvious and make  
 12 sure I'm right. You can't run an organisation unless you  
 13 can trust people at the top.  
 14 MR MAKHUBU: I agree but I think, I must  
 15 stress as well that I think in my responsibility the PFMA  
 16 makes it my accountability to test the controls in the  
 17 organisation.  
 18 COMMISSIONER: And what about the, sorry,  
 19 I'm sorry in interrupted you.  
 20 MR MAKHUBU: And accordingly whenever  
 21 there is breach of controls I worry and genuine, genuine  
 22 breach of controls. So if there's a control that is not  
 23 function and taking the bona fides as taken then I worry  
 24 about it. But if it's just a behaviour that is, is  
 25 inherent to being just dishonest then you have to somehow

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1 factor the fact that you cannot govern the integrity of  
 2 people to the nth degree. Thank you.  
 3 COMMISSIONER: And given what I've, the  
 4 events that have unfolded as I've described them, do you  
 5 think your procurement processes are rigorous enough given  
 6 what happened in this case and I know that as you say this  
 7 is, you know this doesn't happen every day or it shouldn't.  
 8 But, and you can't guard against it entirely.  
 9 MR MAKHUBU: My view is that we could  
 10 improve. I think have articulated that in the strategic  
 11 plan document that I have put forward to the organisation.  
 12 I think if you don't catch it properly upfront you should  
 13 be able to see in the delivery that there is issues and  
 14 that is contracts management and I do talk about that at  
 15 later stage.  
 16 COMMISSIONER: Well there you raise an  
 17 interesting thing. We had Mr, the man from the Treasury, I  
 18 can't remember his name.  
 19 MR KAHLA: Solly.  
 20 MS STEINBERG: Solly.  
 21 COMMISSIONER: Said call me Solly. Now  
 22 Solly's been around procurement and he says I can, I've got  
 23 a nose for these things and he picked up red flags all the  
 24 way along there and if you look at it in retrospect Solly's  
 25 nose was pretty good. So why weren't those picked up here

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1 though?  
 2 MR MAKHUBU: I believe that with  
 3 hindsight we are all smart and I'll qualify what I'm saying  
 4 and Solly and I engage quite a lot.  
 5 COMMISSIONER: Ja, well (inaudible) man.  
 6 MR MAKHUBU: I think if you look at  
 7 deviation 3 of Bain, that transaction was amongst the first  
 8 transactions that came after the instruction hat was  
 9 promulgated by Treasury that says if you deviate for  
 10 impractical reasons you must come to the Treasury and we,  
 11 it was the first one I presided over in the organisation  
 12 and indeed we went to Treasury. Now at that time him and I  
 13 and I don't want to speak on his behalf should have had a  
 14 very robust engagement similar to the engagement that he  
 15 presented with yourselves. But again that engagement with  
 16 yourself is after facts with hindsight and all the material  
 17 for phase 1 for instance and for phase 2 of Bain had been  
 18 made available to be able to apply mind. So I do think  
 19 that indeed with hindsight we are all wiser and I think not  
 20 to take away from his, from, he's an astute man and he's a  
 21 studious man and I think with hindsight we pick up things.  
 22 COMMISSIONER: That's true.  
 23 MR MAKHUBU: And that's why I think the  
 24 regulation now allows Treasury to come in and I think with  
 25 time that will mature to be able to pick these things up

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1 proactively instead of -  
 2 COMMISSIONER: But I don't, well that's,  
 3 I don't want to take, stop me if you think I'm taking too  
 4 much of your time.  
 5 MS STEINBERG: No, I'd like to discuss  
 6 this in connection with the facts.  
 7 COMMISSIONER: Okay.  
 8 MS STEINBERG: These exact points.  
 9 COMMISSIONER: Can I just get one more  
 10 thing because I'm interested in Bain now that it's gone  
 11 behind -  
 12 MS STEINBERG: You may, Judge.  
 13 COMMISSIONER: Thank you. You see I mean  
 14 the one thing that strikes me and this is not hindsight,  
 15 when someone comes in with a, there's a two phase contract  
 16 and they come in on the first leg at a 50% discount and  
 17 tell you the next leg is going to cost you double. That  
 18 seems to me to be something you don't have to have  
 19 hindsight to ask questions about. I mean it's obvious  
 20 what's going on.  
 21 MR MAKHUBU: Maybe let me respond.  
 22 Obviously when that second tranche, transaction happened I  
 23 was not in the organisation.  
 24 COMMISSIONER: No I -  
 25 MR MAKHUBU: And I look at it with

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1 hindsight. So in the limited bid that was done the first  
2 transaction of Bain.

3 COMMISSIONER: Ja.

4 MR MAKHUBU: Bain makes a submission  
5 which they signed, meaning they're bound by it. They say  
6 we've got normal rates, however for this transaction and  
7 they qualify it, they say and in the documents I've  
8 reviewed, rightly or wrongfully they qualify it they say we  
9 will not able to afford you these discounts further if any  
10 other work happens.

11 COMMISSIONER: Ja, well I say why are you  
12 giving it to me in the first place.

13 MR MAKHUBU: Now -

14 COMMISSIONER: We don't have to debate it  
15 too much but it just seems to me that there was an obvious  
16 red flag and if you tell me that you've been in procurement  
17 that is not a red flag, tell me why it's not a red flag.

18 MR MAKHUBU: So I think let me  
19 contextualise this by saying, if a service provider gives  
20 me a discount and says after that it will not apply.  
21 They've been quite transparent with me. It's up to me to  
22 decide whether I take them in. Treasury does tell us how  
23 we treat unencumbered discounts in a transaction because  
24 you must treat the transaction its own merits as an  
25 independent transaction. Now if you've treated phase 1 in

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1 its merits you must say to the service provider is this  
2 discount given or is it not given. The service provider  
3 says it's given, you evaluate it as an unencumbered  
4 discount.

5 COMMISSIONER: sure.

6 MR MAKHUBU: And I notice in the  
7 documents that I've reviewed that indeed there was 55, 50%  
8 for Bain, there was about 45% I think one of the service  
9 providers, if I'm not mistaken KPMG or -

10 MS STEINBERG: Ja.

11 MR MAKHUBU: I can't recall had also  
12 given.

13 COMMISSIONER: Ja.

14 MR MAKHUBU: So in essence it's not an  
15 anomalous thing to, for service providers to issue  
16 discounts.

17 COMMISSIONER: Yes.

18 MR MAKHUBU: I mean in the ICT  
19 environment we see it quite often and that's where myself  
20 and Solly disagree. To say there are those service  
21 providers that will come and say because of the SARS  
22 account, because of this and that, and I'm talking here  
23 under normal circumstances, if there's no collusion that  
24 has happened outside the process there are service  
25 providers that go in and say this will be a loss leading

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1 account I'm willing to take a knock but I know I can put  
2 SARS on my books, it's a credible institution. It will  
3 give me money elsewhere.

4 So it's, certainly I don't frown upon if service  
5 providers, especially if it's not more, it's not one,  
6 there's others. But again if you then hear that there were  
7 other conversations that took place outside you then have  
8 to ask yourself was that discount, was the process  
9 compromised to reveal the discount. So you have to go back  
10 to the procurement process and the people involved in that  
11 process and say can I trust them, can I have confidence  
12 that they wouldn't have leaked the pricing, but even if  
13 they leaked the pricing it would have been after the fact  
14 when all the bids would have been submitted. So I, I think  
15 I'm on record saying that I push service providers for  
16 discount and I, it's not an anomalous thing to get a  
17 service provider that says I'm tendering, I'm giving you a  
18 discount. Perhaps then it's upon us on the subsequent work  
19 -

20 COMMISSIONER: Well that's what I'm  
21 coming to. I mean it's all very well they say give a  
22 discount, the first round. But then you get to the second  
23 round and no one says but we had a discount, for him to get  
24 into the door and no one asks that question.

25 MR MAKHUBU: Judge -

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1 COMMISSIONER: Why are we now going  
2 ahead?

3 MR MAKHUBU: Judge I believe that  
4 question should have been asked, that question should have  
5 been put to Bain to say why don't you keep your prices the  
6 same as before. We know that it was a condition, it was  
7 conditional and we contracted with you for phase 1 with an  
8 understanding that these rates may change but I think a  
9 studious procurement person would have at least tried on  
10 record to push them in negotiation to still continue with  
11 those rates.

12 MS STEINBERG: Can I -

13 MR KAHLA: Was there an obligation to  
14 make declarations in relation to the executive committee  
15 members who had been involved in engagements with Bain  
16 prior to its appointment, was there an obligation that they  
17 make declarations in terms of your existing controls.

18 MR MAKHUBU: In fact in terms of 16A you  
19 have to. You have to declare that I've played golf with  
20 this service provider. This service provider comes to my  
21 church, you have to declare.

22 MR KAHLA: Ja, but I'm talking now  
23 specifically in relation to the Bain one. We know the  
24 individuals have already been mentioned by the Judge who  
25 had engagements with Bain. Was that required to be

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1 declared and was it declared?  
 2 MR MAKHUBU: In the documents it was  
 3 firstly to answer you categorically yes it was expected to  
 4 be declared. So if you're engaged and you've been in touch  
 5 with the service provider outside the process you must  
 6 declare in the process because it creates a conflict of  
 7 interest.  
 8 COMMISSIONER: Well I think it goes a  
 9 little further then playing golf. When you go and meet  
 10 with the people, you've just been appointed and you meet to  
 11 now collaborate on how you're going to go through the  
 12 procurement process.  
 13 MR MAKHUBU: I concur.  
 14 COMMISSIONER: More than golf.  
 15 MR MAKHUBU: I concur, I think I was just  
 16 trying to -  
 17 COMMISSIONER: No I understand that.  
 18 MR KAHLA: But the second question, was  
 19 it declared?  
 20 MR MAKHUBU: In the records I did not see  
 21 any conflict of interest declared. The contract bid  
 22 documents I've reviewed.  
 23 MS STEINBERG: The questions were asked,  
 24 the questions were asked Mr Kahla, they always asked.  
 25 MR KAHLA: Ja. But I'm trying to get to

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1 counsel just on the sense, in relation to the individuals,  
 2 for example the Commissioner, the chief officer concerned,  
 3 were those questions raised in relation to them and did  
 4 they omit to respond to them in the affirmative?  
 5 MS STEINBERG: Yes.  
 6 MR KAHLA: They were asked?  
 7 MS STEINBERG: Yes.  
 8 MR MAKHUBU: I can confirm that. The  
 9 process always, that every adjudication of a tender I start  
 10 with the declaration of interest.  
 11 COMMISSIONER: Okay thank you. I've  
 12 taken you off where you were but it's been helpful.  
 13 MS STEINBERG: I'd like to go through  
 14 some of the Bain steps because in my view it doesn't take  
 15 20/20 hindsight to see some of these red flags and I'd like  
 16 to discuss that with you. Now just to remind you of the  
 17 amounts involved. The first phase, the diagnostic  
 18 3.254 million and you'll remember that was at a 50%  
 19 discount.  
 20 COMMISSIONER: Post the discount.  
 21 MS STEINBERG: That's post the discount.  
 22 The first deviation was for a 151 million. The second  
 23 division was 40 million. We have minutes of the Exco  
 24 procurement subcommittee meeting on the 21st of January 2015  
 25 and the minutes reflect that a concern was raised as to why

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1 we did a closed tender. That was for phase 1 if you  
 2 remember some five or six companies were invited to tender  
 3 and the answer was time was of the essence. But nobody was  
 4 asked why time was of the essence. It's accepted that time  
 5 is of the essence. So my first question to you is should  
 6 that have been a closed bid in the first place?  
 7 MR MAKHUBU: I would, I always advocate  
 8 for open tenders. I, I'm of the view that in line with  
 9 that thinking that it should have been an open tender. I,  
 10 and again I'm retrospectively looking at documents. I then  
 11 go to try and answer this question because this question  
 12 has come up around the urgency So I go and I must say here  
 13 I'm speaking what I've observed in the documents and I take  
 14 the veracity of those documents. So there is an annual  
 15 performance plan of 2015/2016 that I've seen. In that  
 16 annual performance plan signed off by the, I think it's Mr  
 17 Pillay at the time it lists certain things that must be  
 18 achieved in the year and normally the Commissioner will be  
 19 then contracted by the minister on the basis of amongst  
 20 other things that annual performance plan. Now there is a  
 21 line in that document that says perform an operating model  
 22 view and I suspect that sitting in December that is what  
 23 they argued for urgency because then that annual  
 24 performance plan would have become due by the 31st of March  
 25 and this is me thinking before I even get to understand

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1 that there were other things that were happening outside.  
 2 So to answer your question I would have gone out on open  
 3 tender and perhaps the urgency that is not explained is  
 4 where the issue really becomes.  
 5 MS STEINBERG: Now I'm aware of Mr  
 6 Pillay's memo and I don't have it with me. But do you  
 7 remember how much he estimated the whole review, phase 1,  
 8 2, 3 and everything would cost?  
 9 MR MAKHUBU: I don't recall.  
 10 MS STEINBERG: R2 million.  
 11 COMMISSIONER: You see I've also heard  
 12 that said. I think it's on page 17, the bottom paragraph.  
 13 I don't know how many people have said no but look at what  
 14 Mr Pillay said. The 31st of March was no set date. That's  
 15 the date that Mr Pillay said our review will, I mean why is  
 16 the date so important? Mr Pillay said a date for his  
 17 review, you're not suggesting now that well that is set in  
 18 stone we've now got to do whatever we want to do within  
 19 that period. I mean it doesn't make sense. You can choose  
 20 whatever date you like.  
 21 MR MAKHUBU: So maybe can I explain?  
 22 COMMISSIONER: Ja.  
 23 MR MAKHUBU: At SARS currently if you've  
 24 got an annual performance plan that says you will roll out  
 25 a particular software you will implement GRAP or you'll

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1 implement NCAP phase 1 by this time we utilise that to  
 2 gauge and ever since I've been at Exco I've come to  
 3 understand that the annual performance plan is in fact even  
 4 yesterday we were reporting amongst other things how far we  
 5 went in meeting the milestones in the APP by the end of the  
 6 year, of course that is not room for, and I must be on  
 7 record saying if you now understand what happened in the  
 8 bigger scheme of things I'm just saying in my mind  
 9 reviewing the documents without the other knowledge that  
 10 has since come through from Bain I went, I looked at that  
 11 and I said okay generally if there is an annual performance  
 12 plan and there's a measure that is to be delivered it will  
 13 generally be delivered within that financial year. That's  
 14 why it's the annual performance plan for that financial  
 15 year. Meaning the deliverable is due in that financial  
 16 year.  
 17 [15:51] That's why it is the annual performance plan for  
 18 that financial year meaning the deliverable is due in that  
 19 financial year either complete or initiated. So in my  
 20 independent mind just reviewing what happened in 2015  
 21 before I got to found out that there were other things that  
 22 were happening outside the procurement process, I, that's  
 23 what I put the logic of urgency to. But I think my mind  
 24 subsequently changed after I got to find out that probably  
 25 it was an emergency created –

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1 COMMISSIONER: But I mean you've got in  
 2 your annual performance plan, "we've got a plan that must  
 3 be implemented by 31st of March". It doesn't mean that  
 4 someone else comes and says well I've got a different plan  
 5 and that must be implemented by that date because the other  
 6 plan was going to be implemented by that date. I mean it  
 7 just doesn't make sense. So I don't know why I'm, people  
 8 keep telling me about the annual performance review.  
 9 What's it got to do with the, what happened?  
 10 MR MAKHUBU: So, in my records review I  
 11 did not find any other, I did not see any other plan that  
 12 was meant to have been implemented.  
 13 COMMISSIONER: Ja, nor did I by the way.  
 14 MR MAKHUBU: So I think what I'm saying  
 15 is in looking at the documents I would've wanted to say so  
 16 what is it that you're going to, what's the plan that  
 17 you're going to implement. So my understanding was that  
 18 that plan still had to evolve through a process.  
 19 MR KAHLA: But just on the plan, isn't it  
 20 open to the institution to go back for example to the  
 21 minister and say due to certain factors we will not going  
 22 to be able to undertake this activity, could we moved off  
 23 because this is really part of the contract between the  
 24 organisation and the minister isn't that the case?  
 25 MR MAKHUBU: I confirm.

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1 MR KAHLA: Okay. Okay, that's all.  
 2 MS STEINBERG: Ja, but I mean Mr Pillay's  
 3 plan says things are working well here but you know all  
 4 organisations need to look and refresh themselves and there  
 5 was no sense of urgency there. Likewise with Gartner there  
 6 was a plan on the table. It was saying ja, we've come a  
 7 long way with modernisation, we've got a world class IT  
 8 infrastructure here. It's time for a review to go to the  
 9 next stage. The total budget was R10 million and it's  
 10 quite tragic when you look back to think that this winning  
 11 organisation said we'll spend 2 million and 10 million to  
 12 get a little bit of outside insight to improve ourselves  
 13 even further and what we see is R400 million and a broken  
 14 organisation at the end of that. That's in fact what  
 15 happened. I don't think that this, what was being put  
 16 before the BAC or the Exco had any relationship at all to  
 17 Mr Pillay's plan. It seems to me a completely fresh  
 18 unrelated plan that wasn't even in the annual performance.  
 19 MR MAKHUBU: I can't – I won't opine on  
 20 that.  
 21 MR KAHLA: I just want to ask, you've  
 22 just given a view as to what could've been behind the  
 23 urgency but in terms of practice, the person advocating the  
 24 route to be justified on urgency, wouldn't they have had to  
 25 set out what exactly is the urgency?

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1 MR MAKHUBU: They would have. So –  
 2 MR KAHLA: And did they in this one?  
 3 MR MAKHUBU: I did not see it.  
 4 COMMISSIONER: Well that's why you go  
 5 back to this question of how robust is your system because  
 6 if I read those, if I recall those minutes someone says  
 7 well why do we have to do this? Well it's urgent and  
 8 that's it and move on to the next question. Now it doesn't  
 9 sound very rigorous to me. Mr Kahla says so, he's  
 10 motivated why it's urgent.  
 11 MR MAKHUBU: I must say so since,  
 12 personally I speak to my term and my term being responsible  
 13 for procurement, if a transaction comes to me and it  
 14 doesn't make sense, regardless of whose putting me under  
 15 pressure because ultimately it's my signature or name on it  
 16 and I must state that ever since I've taken over  
 17 procurement at SARS nobody has put me under undue pressure  
 18 to sign certain things and I think it also speaks to  
 19 perhaps the levels, I must say in my submission I've stated  
 20 that perhaps it's proper to lift the person that's supposed  
 21 to push back on these things to the right level and I'm  
 22 glad that they at least in my term when I came the role  
 23 that I was doing and recognised to say maybe it should be  
 24 at a group executive level, so that we are able to have the  
 25 position of authority to be able to push back. And I think

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1 the issues that you were raising earlier on, to this  
 2 talking to the two colleagues that ultimately had to face  
 3 the brunt it's exactly that. That a group executive stands  
 4 a better chance administering procurement to say to a chief  
 5 officer this can't be and they are almost peers, almost  
 6 peers.  
 7 COMMISSIONER: Ja.  
 8 MR MAKHUBU: And it allows him as the  
 9 chief – that's why the organisation says you are a chief  
 10 procurement officer, meaning you must wear the hat of  
 11 responsibility and you are empowered to be able to push  
 12 back. And I think some of the things that I've observed  
 13 are as a result of the fact that the, some of the people  
 14 that were running procurement were a little bit junior and  
 15 when they were supposed to push back they were not able to  
 16 push back accordingly in a –  
 17 COMMISSIONER: Especially if you fear the  
 18 train's going to come and ride over you. I mean you know  
 19 about people saying how that they're fearful here, from the  
 20 day the tribunal started here, are you not aware of that?  
 21 MR MAKHUBU: Sir, I think when I came to  
 22 procurement I heard a little bit about that but I think I  
 23 like more crisp and more tangible sets of information to  
 24 guide what the feeling is. So I say in my statement one of  
 25 the things that I did was I found out that there's a survey

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1 that gets run in the organisation. It's called a  
 2 connection survey. I was given that for my area because it  
 3 measures the pulse and the employees feel that it is run by  
 4 an independent organisation, and I went and looked at that  
 5 with a view of trying to find out in my area how does it  
 6 look like and I think, in fact I can confirm that one of  
 7 the first things that I was expected to do is to look at  
 8 the last engagement report and establish where the gaps  
 9 were and start to engage the employees in terms of what  
 10 they were feeling. Because I felt that that was more of a  
 11 sustainable way of basing your plans on –  
 12 COMMISSIONER: Rather than the evidence  
 13 we've heard here you mean?  
 14 MR MAKHUBU: Not necessarily, to perhaps  
 15 validate because I think as a leader yes you want to go  
 16 with your subjective view in terms of what you're hearing  
 17 but I also wanted to base it on some scientific basis and  
 18 of course when I engaged the employees, they told me, maybe  
 19 it's because I was new, they told me a few things to say  
 20 no, what's the issue of care and concern the issue of  
 21 favouritism, maybe the issue, a number of issues that they  
 22 raised with me and I then committed to implement a few  
 23 things within my procurement environment. But the basis I  
 24 must say for me coming in was to say is there any base that  
 25 has been done and when I found that survey it then allowed

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1 me to do a few things in my procurement environment.  
 2 MR KAHLA: But do you have appreciation  
 3 for what Mr Mavuso has just indicated when he suggested  
 4 that you strike the shepherd and the flock will run and  
 5 they, he says, that seen certain people leave they'd been  
 6 under pressure for certain activities to be done and they,  
 7 and of course you have already indicated their level of  
 8 seniority, they deemed themselves under an obligation to do  
 9 everything to meet what those expectations were. Would you  
 10 believe with that information that those individuals would  
 11 have been under some spirit of fear?  
 12 MR MAKHUBU: Certainly. I think, I've  
 13 spoken to people when I first came. One of the things I  
 14 needed to do is to establish with some of the – procurement  
 15 is a small world so you get to know people. So I wanted to  
 16 find out about those that have left. He mentioned for  
 17 instance Mr Mambani. Those are people I called to say you  
 18 were here before I was here, why did you leave. So I must  
 19 say I don't want to downplay the fact that colleagues were  
 20 junior and perhaps they were not really protected as much  
 21 as they should've been protected.  
 22 MR KAHLA: So that would pass your  
 23 tangibility test in relation to those individuals?  
 24 MR MAKHUBU: It will because I think in  
 25 the engagements that I started to have on one on one, I

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1 think I sat with everyone, almost everyone. I think 80%  
 2 when I joined. I sat 80%, with 80% of the staff in  
 3 procurement having one on ones on them. So I had  
 4 engagements to be able to understand where we were and  
 5 that's why one of the objectives we then crafted was to say  
 6 how do we make sure that governance is enhanced in the  
 7 process so that it's not the person that is talking but  
 8 it's the process that's talking. Because the process  
 9 protects the person to some extent, it should.  
 10 MS STEINBERG: Can I go back to where I  
 11 was, the minute of 21 January 2015? The next point that's  
 12 raised is this committee which is the Exco procurement  
 13 subcommittee, they raised the question "Were the BEC  
 14 members, the Bid Evaluation Committee members' experts in  
 15 the field" and it says "well not really. They were chosen  
 16 randomly". Right, so I would say that's the next red flag  
 17 that is raised. Now then most concerningly for me there's  
 18 a note, "did the BEC consider advisory and implementation  
 19 as phase 1 and phase 2 to be done by the same service  
 20 provider" and they said "they will appoint consultants to  
 21 do advisory and at a later stage go to market to appoint a  
 22 service provider to implement". It was also mentioned that  
 23 "the idea is that the appointed service provider must give  
 24 recommendations that can be implemented by any service  
 25 provider and not them alone". Now we saw that same logic

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1 with Gartner, but when we go just to the next meeting, the  
 2 4th of May 2015, 2 and a half months later. What we see is  
 3 this, this is the meeting of the bid adjudication committee  
 4 and it says "at the time of the appointment of the service  
 5 provider for phase 1 during January 2015 it was envisaged  
 6 that the same service provider will not be used for phase  
 7 2. The committee was satisfied that the decision was made  
 8 with good intent but did not consider matters of  
 9 confidentiality and business continuity at the time and  
 10 therefore that previous decision was overridden". Now this  
 11 happened twice. You expressed the view that when you have  
 12 a multi-phased contract you should look, you should tie the  
 13 consultant in at the beginning.

14 Now I would offer a different view of these  
 15 facts. If you ask a consultant to come in with them  
 16 knowing they'll be doing phase 2. Are you not  
 17 incentivising them to find as many problems as possible to  
 18 make the phase 2 contract as big as possible for  
 19 themselves? Isn't it against their interest to say you  
 20 know what, you've got a great IT infrastructure, you've got  
 21 great people here? You should go ahead as you're doing.  
 22 Here's the odd bit of advice or look your operating model  
 23 works very well. You've had accolades from all over the  
 24 world, we shouldn't really touch it. Maybe here around the  
 25 edges. It seems to me highly unlikely that a consultancy

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1 would come in and say no, we're going to make less work for  
 2 ourselves in phase 2 than more. Isn't it sensible for  
 3 someone to do a diagnostic and then knowing that it's going  
 4 to have to go out to market again?

5 PROF KATZ: Sorry, can I just ask counsel  
 6 -

7 MS STEINBERG: Ja.

8 PROF KATZ: - Counsel, are you saying  
 9 that the rule should be that if you get phase 1,  
 10 diagnostic, you must be disqualified from phase 2?

11 MS STEINBERG: Or at the very least have  
 12 to tender for it and let's look actually at what the  
 13 legislation says -

14 COMMISSIONER: Sorry, just before the two  
 15 of you engage in a long discussion, you asked Mr -

16 MS STEINBERG: Makhubu.

17 COMMISSIONER: - Mr Makhubu -

18 MS STEINBERG: I asked his opinion on  
 19 that.

20 COMMISSIONER: Can we just hear you and  
 21 then they can engage in a discussion?

22 MR MAKHUBU: So perhaps there's room to  
 23 have that approach because the challenge I have is that  
 24 whoever receives the work must have the competence to  
 25 assess what is being said. Because in any event even the

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1 second phase through the tender, open tender could come  
 2 back and say we've looked at your diagnostic and the work  
 3 is this massive. So the differentiator or is this small.  
 4 The differentiator is, is the requestor intimately  
 5 knowledge on what he's asking for to be able to gauge the  
 6 output that he's been given. So I can stand here today and  
 7 say if somebody tomorrow comes and says the diagnostic that  
 8 I did when I joined SARS has got flaws they must really  
 9 explain to me why they think that my diagnostic has got  
 10 flaws and I believe it's because I'm confident of that  
 11 environment and the work I've done in that environment. So  
 12 I think either way in my mind and I'm open to convincing,  
 13 either way whether you bundle it, you're still going to  
 14 have to apply your mind on the output of the first phase  
 15 before you continue. You can say you know what, what  
 16 you're telling me doesn't make sense and therefore I'm not  
 17 going on with the contract or you know what, my experts  
 18 have looked at this work and we are all in concurrence in  
 19 the organisation that this is the step we should be taking  
 20 and accordingly then you can say I'm now unleashing the  
 21 second part of the work. So whether you decouple it you're  
 22 going to still have be faced with a situation where you  
 23 need to determine whether what you have been told is -

24 MS STEINBERG: Yes.

25 COMMISSIONER: Well that's where my thing

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1 about rigour comes in. I'm not sure that you can give a  
 2 definitive answer one way or the other but you can't have  
 3 that kind of thing happening where phase 1 you say okay  
 4 that's fine, phase 2 change your mind.

5 PROF KATZ: Mr Makhubu, I'm sorry -

6 COMMISSIONER: - interrogated at all.

7 PROF KATZ: - just with respect I agree  
 8 with you that after phase 1 you're going to apply rigour  
 9 but what counsel is putting to you as I understand there is  
 10 a greater incentive to find faults and that in phase 1 if  
 11 you know you're going to do phase 2.

12 MR MAKHUBU: Similarly even if you are  
 13 given the diagnostic of phase 1 to be able to make a  
 14 proposal on, you can find faults in the diagnostic to  
 15 justify the size of your work. So I believe either way you  
 16 are correct but at least what I want to be able to do is to  
 17 say I know that this work is going to be huge enough. I've  
 18 got a view that it's going to be four phased and what I do  
 19 upfront getting to the procurement process is to diligent -

20 PROF KATZ: Ja.

21 MR MAKHUBU: - that if the four phases,  
 22 not to say if it's going to be one phase or not will be  
 23 less diligent but because I know that it's likely to be  
 24 continuous I'm then able to say upfront the person I am  
 25 engaging with must be able to withstand scrutiny and give

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1 me something that I can be able to modularise and move  
 2 forward with. That's my line of thought and I think me and  
 3 my team would want to pursue that rather so that when it's  
 4 clear, and again if it's not clear whether you're going to  
 5 do multiple phases and you give me a business requirement  
 6 specification that seems to suggest it's one phase my  
 7 attitude is going to be later on when you want to continue  
 8 and I've done this with proof of concept aside, if you do a  
 9 proof of concept today in IT and you go with this  
 10 particular service provider how are you going to procure  
 11 after? Because you would've done a proof of concept, this  
 12 entity would have gone in. Rather upfront have a  
 13 procurement vehicle that says I want somebody that I can do  
 14 a POC with. If the POC is successful then we move on to  
 15 the next work. It's transparent upfront and it's fair  
 16 upfront. Everybody that participates understands that  
 17 there could be knock on work that comes through at a later  
 18 stage.

19 MS STEINBERG: And let's factor in what  
 20 the Treasury say, instruction note 3 of 2003. "Consultants  
 21 are requested to provide professional, objective and  
 22 impartial advice at all times and at all times hold the  
 23 client's interest paramount without any consideration for  
 24 future work and strictly avoid conflicts with other  
 25 assignments on their own corporate interests". And it goes

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1 on to say "a firm which has been engaged by the accounting  
 2 officer authority to provide goods or works for a project  
 3 and any of its affiliates should be disqualified from  
 4 providing consulting services for the same project.  
 5 Similarly a firm hired to provide consulting services for  
 6 the preparation or implementation of the project should be  
 7 disqualified from subsequently providing goods and or works  
 8 and services related to the initial assignment unless the  
 9 various firms are performing the contractor's obligation  
 10 under a turnkey or a design and build contract". So  
 11 clearly Treasury has seen this problem before –

12 PROF KATZ: Ja, and Treasury believes  
 13 it's a disqualification –

14 MS STEINBERG: Yes.

15 PROF KATZ: - as I've mentioned.

16 MS STEINBERG: Yes. They go on in that  
 17 same instruction note "Consultants should not be hired for  
 18 any assignment which by its nature may be in conflict with  
 19 another assignment of the consultant. As an example  
 20 consultants hired to prepare an engineering design for an  
 21 infrastructure project should not be engaged to prepare an  
 22 independent environmental assessment for the same project  
 23 and consultants assisting a client of the, in the  
 24 privatisation of public assets should not purchase nor  
 25 advise purchasers of such assets".

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1 MR MAKHUBU: And I concur. It's a  
 2 conflict of interest. However, I think what I'm describing  
 3 is when you then talk to turnkey you put every requirement  
 4 into one work. Whether they decide subsequently to say you  
 5 know what, we've got weaknesses in what might come as  
 6 another phase. They sub-contract, they upfront say these  
 7 are our strengths but it's all bundled into a package and  
 8 you are treating it as a turnkey project. You hold one  
 9 service provider accountable for everything that is being  
 10 done. So if there's research work, that research work is  
 11 thumbed out to a research entity and they declare upfront  
 12 to say we are weak on research, we're going to get for  
 13 instance IPSOS to help us with this but the outcome of that  
 14 is going to feed into whatever work we'll be doing down the  
 15 line. So if you turnkey it like that, that's almost what  
 16 I'm proposing that upfront be clear but I must state and I  
 17 think it is a challenge that we face in an organisation.  
 18 [16:11] If a procurement professional doesn't get  
 19 requirements that are clear in terms of what he is expected  
 20 to do. It's either going to lead to very long lead times  
 21 and then the operational efficiency of the organisation is  
 22 going to be challenged but at the root cause is what  
 23 quality control mechanisms have come into place to make  
 24 sure that nothing that is of less quality lands on a  
 25 procurement professional's desk. My ethos is when I write

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1 as Finance and if I write a document to procurement that  
 2 document must be as crisp and as clear that the procurement  
 3 professional can look at it and say I'm very clear what my  
 4 customer is looking for. What happens in the organisation  
 5 currently, and I think we'll get somewhere, is that there  
 6 is toing and froing in terms of what are you really looking  
 7 for here.

8 Because if you issue that business requirement  
 9 specification to the market the market is going to come  
 10 back and say we don't know what you're looking for. And  
 11 when the market says we don't know what you're looking for  
 12 when I go to meet my colleagues elsewhere or meet my  
 13 suppliers they're going to say you're running a shop that  
 14 is suboptimal because you issue instructions that are not  
 15 clear. So I think it's important that we understand the  
 16 requirements so that we choose the right method of  
 17 procuring on the other end that is free of these  
 18 irregularities that sometimes creep up.

19 MS STEINBERG: Now, what's your view of  
 20 the propriety of Gartner and, well, Mr Willemse and Mr  
 21 Monyeke writing the terms of reference for the contract  
 22 they were then awarded?

23 MR MAKHUBU: I'm clear. It's irregular.  
 24 It's unethical especially in your questioning earlier on,  
 25 you made reference to the fact that there was already

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1 internal engagement between the accounting authority and  
 2 that particular Mr Monyeke. I don't know him. But either  
 3 way the fact that you've already gone to somebody and that  
 4 person is going to somebody else to write your  
 5 specification it goes to the point I was talking about.  
 6 You must know your requirements. If you can't pin down  
 7 your requirements then you don't have a need.  
 8 COMMISSIONER: But you don't have the  
 9 customer writing the specification.  
 10 MR MAKHUBU: We don't have that. So in  
 11 public procurement it's unheard of.  
 12 COMMISSIONER: Ja, well, it's not just a  
 13 matter of you must know your needs. You don't ask the  
 14 person you're going to sell the product from to write what  
 15 you should buy.  
 16 MR MAKHUBU: So I'm on record to say in  
 17 the current dispensation my procurement colleagues wouldn't  
 18 go to a supplier to say write something for me. It's  
 19 important that I also emphasise - that's why I think one of  
 20 the things that I developed when I came to SARS was this  
 21 book so that nobody can say I don't know what the  
 22 regulations say. That's why people were inducted in terms  
 23 of the rules so that nobody can say tomorrow I did not  
 24 know. Therefore business for me can't also go to service  
 25 providers and say write it for me. It negates the entire -

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1 MR KAHLA: I want, counsel, just to  
 2 understand the requirements from the Treasury that you were  
 3 reading out. Are those peremptory requirements or are they  
 4 just mere guidelines for procurement officials?  
 5 MS STEINBERG: I think that the Treasury  
 6 instructions have a similar weight to regulations as I  
 7 understand it. They're not regulations but - and perhaps  
 8 you can answer from your perspective. When procurement  
 9 officers get these Treasury instructions they are  
 10 instructions.  
 11 MR MAKHUBU: Yes, they find genesis from  
 12 section 76 of the PFMA. They hold the same weight.  
 13 MR KAHLA: So you wouldn't have to  
 14 actually comply with them. When you get what was read out  
 15 there you have to comply with it.  
 16 MR MAKHUBU: Indeed.  
 17 COMMISSIONER: Therefore with respect as  
 18 I understand it that's the minimum standards. If any  
 19 organisation wants to impose anything more burdensome they  
 20 can but that's the minimum. That's the floor.  
 21 MR MAKHUBU: Confirmed.  
 22 MR KAHLA: Were those requirements in  
 23 existence at the time of entering into the Bain phase 1?  
 24 MS STEINBERG: Yes, 2003.  
 25 MR KAHLA: So those express peremptory

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1 requirements were actually ignored.  
 2 MS STEINBERG: I mean, the judge has  
 3 pointed out the difficulty with writing more and more and  
 4 more rules because when you go through the Treasury  
 5 instructions you see that they're always trying to close  
 6 gaps that public entities find. So you say you can do a  
 7 deviation if there's, if it's impractical not to but then  
 8 they have to say no, no, we meant an emergency. Because we  
 9 see that every public entity in the country suddenly needed  
 10 to do that including SARS. And I guess that's when we're  
 11 talking about ethical leadership. Ja.  
 12 MR MAKHUBU: Certainly and I must state  
 13 that Treasury has gone to lengths in I think practice  
 14 number 3 of 16/17 to segregate under what circumstances we  
 15 deviate. I think they're trying to, they try to put  
 16 emphasis. So they say in 8.1 of the practice note  
 17 emergency conditions up to, they say sole supplier, and  
 18 then in 8.5 they go on to say if for any other reason it's  
 19 impractical, so clearly distinguishing emergency in the  
 20 latest, sole supplier and impracticality. Otherwise they  
 21 wouldn't write impracticality further down.  
 22 Then they are saying if it's not falling in those  
 23 two categories come to us at Treasury and I can be on  
 24 record here saying at least from August 2016 that  
 25 regulation, that instruction note came into effect 1st of

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1 May 2016. All our transactions that fall into that  
 2 impracticality we send them to Treasury and I engage the  
 3 Treasury in as far as that is concerned.  
 4 So I think the misunderstanding around emergency  
 5 and sole source has been clarified to any procurement  
 6 professional in the practice note to say it's - and they  
 7 tell you what is emergency. They tell you again what a  
 8 sole supplier is but they go on to say if you believe it's  
 9 impractical for any other reason let us be the judge of  
 10 that and that's why we write and apply to them so that they  
 11 can make that preapproval. And I've insisted in the  
 12 organisation that unless we've gotten that preapproval the  
 13 tender process cannot start or the adjudication process  
 14 cannot start because it's a control mechanism.  
 15 MR KAHLA: The impracticality would be  
 16 objectively set out. It's not purely my subjective feeling  
 17 that it's impractical. It's got to be objectively  
 18 impractical.  
 19 MR MAKHUBU: So in your application you  
 20 will state, you will state for instance to say I've been  
 21 building the Durban warehouse and for some reason I've not  
 22 been able to complete it on time and my contract is about  
 23 to come to an end and the contractor is on site and needs  
 24 to put on a roof and the trusses and the engineers are  
 25 there to do sign off on that. And these are not

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1 emergencies. These are not. So when the record is then  
 2 read back to you to say this is what you said on your  
 3 impracticality you then need to be able to stand up and  
 4 justify it.  
 5 And I think that legislation had helped us as  
 6 procurement professionals to be able to not be in the grey  
 7 area in terms of no, somebody says it's urgent because it  
 8 doesn't say urgent. It says emergency and it tells you  
 9 loss of life and a couple of other things that you should  
 10 consider. And then it says sole source. We all know what  
 11 a sole source is. You can't get the service from anyone  
 12 else. And then it goes on to say impractical. And I think  
 13 it was quite wise of the Treasury to say come to us, we  
 14 will engage you. And I must say I spent as head of  
 15 procurement at SARS quite a number of painful hours with  
 16 Solly and his colleagues trying to explain ourselves to say  
 17 why is it impractical.  
 18 COMMISSIONER: Because none of, I mean,  
 19 the book, the rulebook was thrown out as far as the Bain  
 20 contract was concerned so we needn't debate these fine  
 21 points as far as that contract is concerned. The rulebook  
 22 didn't exist it seems.  
 23 MS STEINBERG: Or Gartner.  
 24 COMMISSIONER: And the same with Gartner.  
 25 Do you agree with that?

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1 MR MAKHUBU: I think the application was  
 2 surely suboptimal of the -  
 3 COMMISSIONER: Suboptimal?  
 4 MR MAKHUBU: I think in some instances  
 5 maybe the rules were applied in a particular way because I  
 6 think there are instances where a deviation rule is there.  
 7 And it's there to be used but not to be abused. Now, if  
 8 you're saying was the rulebook thrown out and I'm under  
 9 oath I need to be very objective in my answer. Was there a  
 10 procurement vehicle? No. Was there dispensation in law?  
 11 Yes. Was that dispensation used? Yes. Was it used  
 12 wittingly? Perhaps no.  
 13 MR KAHLA: And if we take that point in  
 14 relation to those two contracts and you take phase 1 and  
 15 then you move onto the other phases if I understood the  
 16 peremptory requirements of those Treasury instructions  
 17 those parties that had been involved in that phase 1 in  
 18 terms of the peremptory requirements that were read out  
 19 should not have been in phase 2, let alone phase 3 or so.  
 20 So if indeed that's what it says the rulebook was thrown  
 21 out.  
 22 MR MAKHUBU: Let me acknowledge.  
 23 COMMISSIONER: Okay.  
 24 MS STEINBERG: Finally the one deviation  
 25 that was requested and I think we must be clear about it

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1 because you had written to the Commission to say that Solly  
 2 hadn't acknowledged that he had approved the deviation and  
 3 I put it to him. Now the deviation is dated 19 August 2016  
 4 and it says, "Previously a limited tender process was  
 5 followed which resulted in the appointment of Bain by Exco  
 6 on the 21st of January 2015 to review the SARS operating  
 7 model." I'm under paragraph 5. "On 25 May 2015 the  
 8 Commissioner approved SARS operating model review, phase 2  
 9 deviation and an agreement was entered into between SARS  
 10 and Bain. As the agreement signed allows an extension a  
 11 request was received for phase 3 for continuation of  
 12 implementation of operating model review and implementation  
 13 of customs and excise goods control initiative." What this  
 14 means is that the phase 2, R151 million deviation had  
 15 already happened by the 19th of August. So SARS was saying  
 16 basically, sorry, we forgot to ask for a deviation there  
 17 but we're now asking for a deviation for the additional 40  
 18 million that we spent, having skipped out the first and Mr  
 19 Tshitangano's evidence was, I had no choice at this stage.  
 20 They had entered into a closed bid improperly.  
 21 They had then spent R151 million deviation without asking  
 22 for approval and now they say we have to continue with that  
 23 151. Well, he said at that point it would have been  
 24 fruitless and wasteful for me to stop something that had  
 25 gone this far.

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1 MR MAKHUBU: Can I respond?  
 2 MS STEINBERG: Please.  
 3 MR MAKHUBU: So the view is in the letter  
 4 that goes to Treasury there is no mention of fruitless and  
 5 wasteful expenditure. This note is penned saying that, I'm  
 6 just trying to locate it. So the note to Treasury is to  
 7 the effect of, there is work that has been done. It is  
 8 goods control and it is done for one mode. There is  
 9 multiple modes. There is air. There is sea. There is  
 10 land and there is a pilot that has been done towards the  
 11 end of phase 1, - ag sorry, phase 2, and that was done and  
 12 dusted but it is for one mode of transportation which is  
 13 land and the new chief officer customs arrives towards the  
 14 close of that work and he makes a view to say, according to  
 15 my understanding, that he wants to have all modes of  
 16 transport piloted so that he can be able to then spread  
 17 that across his entire customs' environment. That is my  
 18 understanding, so when the note is penned to Treasury it  
 19 says, there is a continuation imperative. It does not say  
 20 that there is a wasteful and fruitless expenditure and  
 21 there is nothing in the letter written to Treasury, I'll  
 22 locate it just now, that says there is fruitless and  
 23 wasteful expenditure to be incurred. I must state and I  
 24 have raised this even at SCOPA to say, you see that 8.5  
 25 that says you must get prior approval from National

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1 Treasury, and I must address this because my employees in  
 2 procurement have been asking me this question.  
 3 That in a way takes the senior official at  
 4 Treasury and puts him into the fiduciary responsibility  
 5 line, because the board, we don't have a board but in any  
 6 organisation an accounting authority would not then make  
 7 that decision until the official at Treasury has said, go  
 8 ahead, it is green light. Therefore it places an impetus  
 9 on the one making that decision in my mind at least, to be  
 10 able to say, I apply the same duty of care as a board  
 11 member would and I expect that, and the reason why I wrote  
 12 to you was, I felt that the answer was rather escapist to  
 13 say, I was put under pressure and there was nothing I could  
 14 do. The least you could have done is to write back to the  
 15 accounting authority at SARS and say, this matter is  
 16 sitting before me and I'm not comfortable. That's what I  
 17 would do if I was sitting on the other side, because, and  
 18 this is very important, because there is a number of  
 19 procurement professionals throughout the country that act  
 20 on the basis of those letters. So if we get that letter  
 21 from that office it says, we have submitted, unless we  
 22 misrepresented ourselves going into them.  
 23 Now it is important that we establish this  
 24 relationship and I am not saying at all that our  
 25 relationship is acrimonious with the Treasury. I think I

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1 work well with my colleagues there. I've got access to the  
 2 chief procurement officer and to the gentleman in question.  
 3 All I'm saying is that when you get that to come back and  
 4 the colleagues before at Treasury have said, no, no, no, we  
 5 don't buy your explanation. Go out on open tender. I mean  
 6 there is a current case now on transfer pricing where we  
 7 need data from a database to pursue a case of about 3  
 8 billion and the OECB and everybody uses that particular  
 9 database and Treasury said, try and find a way of going out  
 10 on tender. I had to go back to them. There is a process  
 11 called an appeal to say, no, no, no, guys, you don't  
 12 understand. This means this and that. So I think I'm at  
 13 pains to say when you get that feedback from the Treasury  
 14 and you pass it on to your accounting authority, the  
 15 accounting authority takes comfort in that there is an  
 16 external party outside the organisation and I qualify this,  
 17 unless the procurement professional has grossly  
 18 misrepresented himself and misled that official, and in  
 19 this case I don't believe that was the case.  
 20 MS STEINBERG: Mr Makhubu, we might be  
 21 talking at cross purposes. As far as I can see from the  
 22 complete set of documents SARS never applied to Treasury  
 23 for the phase 2 deviation, the big one. Now that's the big  
 24 problem here. That's the elephant in the room, that the  
 25 biggest deviation was never applied for. In fact it is

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1 thrown in, in retrospect and I think that's what Mr  
 2 Tshitangano was responding to.  
 3 MR MAKHUBU: I think, as I indicated  
 4 earlier at SARS we started to go to Treasury for deviations  
 5 post the 1st May 2016 on the back of the instruction note 3  
 6 of 2016/2017. All, I mean we will talk first later on the  
 7 modernisation exemption, 550 million. That exemption which  
 8 is another word for a deviation never went to Treasury. It  
 9 went to Treasury for budget purposes, to allow it to come  
 10 into the budget, but not from a supply chain point of view.  
 11 So, I think it is important that, and I'm open to be proven  
 12 otherwise. The reason why today we go to Treasury for  
 13 deviations that we participate in, if they are impractical,  
 14 it is because of that instruction note that we rely upon  
 15 and as I said before we follow it to T. We will not –  
 16 MS STEINBERG: So is your evidence that  
 17 at the time that the second deviation was approved by SARS  
 18 there wasn't yet the instruction that you had to get  
 19 approval from Treasury?  
 20 MR MAKHUBU: For deviations, -  
 21 MS STEINBERG: Yes –  
 22 MR MAKHUBU: - that was my understanding.  
 23 That is my understanding in the evidence.  
 24 MS STEINBERG: I would have to check  
 25 that. I'm not sure, but ja.

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1 COMMISSIONER: Well, I mean accept that  
 2 that is so, the man is sitting at the end when he's got to  
 3 decide upon the last 40 000. It seems to me perfectly  
 4 logically. He says, what can I do now? If we don't  
 5 approve the 40 million they say it won't reach completion.  
 6 So he is in a very difficult position.  
 7 MR MAKHUBU: Judge, I can speak to what I  
 8 wrote to Treasury and maybe I should read it for the record  
 9 and, Advocate, maybe we can move on to another whilst I  
 10 find it. I'll read into the record what –  
 11 MS STEINBERG: Okay.  
 12 COMMISSIONER: Of course all of this  
 13 assumes, you see they're all assuming of course that this  
 14 is all just error and so forth, but I mean if there is  
 15 dishonesty in it, well, it changes the whole game, doesn't  
 16 it?  
 17 MR MAKHUBU: Certainly.  
 18 MS STEINBERG: Well, you know on that,  
 19 before the phase 2 deviation was entered into you brought  
 20 to my attention that SARS had asked for a legal opinion, an  
 21 internal legal opinion on whether off that R3 million  
 22 contract it was appropriate to deviate for R151 million  
 23 contract.  
 24 [16:31] And the internal legal opinion says yes it is  
 25 appropriate because we're preserving confidential

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1 information and we have the benefit of continuity and Bain  
 2 already understands the work. Do you think that's right?  
 3 MR MAKHUBU: Can I, I would like not to  
 4 opine on that, it's a legal colleague, it's an admitted  
 5 attorney that makes that legal opinion. All I'll say is  
 6 that as a procurement professional you are surrounded with  
 7 a number of other professionals that input into your  
 8 process and accordingly you accept their professional  
 9 competence to give the view. Having said that I've looked  
 10 at this legal opinion and I've looked at its structure. Of  
 11 course I was not here. So it comes and it says,  
 12 constitution, it sites practice note number 3 of 2003 that  
 13 you just read on the issue of continuation of work. So it  
 14 appears to me that logically it flows so from a lay person  
 15 point of view, in law I can't find, in fact I'm not even  
 16 qualified to say but you've cited wrong case law because  
 17 they use the APS case law to create substance and then they  
 18 move onto instruction notes, etcetera. I wouldn't want to  
 19 opine on it. What I would like to say is that a  
 20 procurement professional on the face of procurement takes  
 21 it that if I get a legal opinion from an admitted attorney,  
 22 we do this at SARS all the time, so if I get a legal  
 23 opinion on a tax matter I will test it with an internal  
 24 legal firm, legal colleagues. However, I am of the view  
 25 that procurement is not enabled to test a legal opinion

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1 that comes in to guide them. By the way that legal opinion  
 2 was asked by the chairperson of the Bid Adjudication  
 3 Committee because procurement had written and I think  
 4 procurement had done something that is unusual. They had  
 5 written and said we can't make a recommendation, we would  
 6 expect you as the committee to make the recommendation.  
 7 It's quite unusual. And for me there was, if I was a chair  
 8 I would have been quite worried to say why is procurement  
 9 not giving me an outright recommendation, because normally  
 10 we say where the comments apply (a) because we followed  
 11 this process. In this case they say here are the pros and  
 12 cons of an open tender, here are the pros and cons of a  
 13 deviation. Chair, take a decision. And the chair says,  
 14 I'm not qualified, I'd like to get a legal opinion from  
 15 elsewhere, from within the organisation. Within the  
 16 organisation I'm sure the process would be can we make this  
 17 legal opinion ourselves or do we need external counsel for  
 18 it? They decided to write the legal opinion themselves and  
 19 I saw that in the minute that served the chairperson and my  
 20 acceptance is that the chair would have had no grounds to  
 21 reject that legal opinion. And again I'm sitting  
 22 subjectively after the process and I've not had a chance to  
 23 ask the chair. But currently today if I was the chair, and  
 24 I sent the matter to corporate legal services to give me an  
 25 opinion, whether it's a contract, whether it's a dispute or

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1 it's a payment that is being argued, I would send it there  
 2 and I will most likely trust that the opinion that comes  
 3 back to me is prudent.  
 4 MS STEINBERG: Now Mr Makhubu, I want to  
 5 challenge that. I want to put to you two things. The  
 6 golden thread that runs from 217 of the Constitution,  
 7 through the PFMA, through every regulation is that  
 8 procurement must be competitive, fair, transparent and cost  
 9 effective. We see that phrase a thousand times. So just  
 10 starting at the broad level, as CFO of this organisation,  
 11 you see that Bain gets a contract through a closed tender  
 12 process which is questionable for 3 million and then you  
 13 want to deviate for 151 million. Where in this world does  
 14 that conform to that golden thread? Why do you need a  
 15 specialised lawyer to tell you well it would be nice to  
 16 have some continuity so we'll jump from 3 million to 151  
 17 million. That's question 1. Question 2, you have Treasury  
 18 note 3 of 2003. It says don't use the same consultants to  
 19 scope the project and then implement the project. I'm not  
 20 sure how you can say you must now trust this opinion and  
 21 not apply your procurement knowledge to this.  
 22 COMMISSIONER: Let me just add to that.  
 23 You know that opinion is not on what the law is. It's a  
 24 procurement decision it is saying, that he says that you  
 25 allow continuity. It's not a lawyer that, it's a

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1 procurement question. So anyway, but continue with what,  
 2 am I right that there's no law in that opinion?  
 3 MS STEINBERG: Well the quoting of this  
 4 case and that but in fact it's not about the law, it's  
 5 about procurement, it's about your field of speciality. So  
 6 I question why it was asked for and I very much question  
 7 why you say you shouldn't review this very critically when  
 8 it comes to you.  
 9 MR KAHLA: Are you questioning the  
 10 prudence of the chairman seeking legal advice from  
 11 internal, is that the point that's being raised?  
 12 MS STEINBERG: I'm asking Mr Makhubu in  
 13 his role as chief procurement officer, in his role as CFO  
 14 is it proper to ask for an opinion like this in the  
 15 circumstances of the case? And then when you get an  
 16 opinion that says yes, on the basis of continuity go ahead,  
 17 is it appropriate to say well the lawyer knows best?  
 18 MR MAKHUBU: So of course when the  
 19 opinion comes in the circumstances, obviously this opinion  
 20 would have come to the executive procurement at the time, I  
 21 would have, before even going to ask for the opinion I  
 22 would have interrogated whether I need an opinion.  
 23 MS STEINBERG: Ja.  
 24 MR MAKHUBU: So to honestly and frankly  
 25 speaking I would have wanted to put the gates at the

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1 recommendation that would have gone to the bid adjudication  
 2 committee to say this is my particular recommendation,  
 3 because remember the recommendation, the head of  
 4 procurement makes the recommendation after having satisfied  
 5 himself that the recommendation is within the provisions of  
 6 instruction notes, etcetera, etcetera. So I think at this  
 7 point in time I would have maybe investigated more, if it  
 8 came to my, at my time and I think there are instances,  
 9 I've given evidence where the Gartner contract needed to be  
 10 extended and I decided that I can't see why it need to be  
 11 extended and I did a market research through my team and I  
 12 sent it back to the requester and I said you might as well  
 13 let that contract end, and it ended I think 31st March 2017.  
 14 And again it was, because I looked at the time on that  
 15 particular transaction, I looked and I think this is  
 16 evidence of the fact that in the process you apply your  
 17 mind in terms of what is being asked. So on the Gartner  
 18 request that I think it's NJM31, I did indicate that I'm  
 19 not going to support this contract being extended further.  
 20 MS STEINBERG: I'll ask you about that  
 21 later. It's a really a narrow question. You sent me this  
 22 contract with a covering letter and your implication was  
 23 look, this contract indemnifies us. We had a lawyer who  
 24 said it was alright, so how can we now have known better?  
 25 I'm saying shouldn't procurement have known better at the

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1 time?  
 2 MR MAKHUBU: Perhaps we should have  
 3 reconsidered it at the time. The guys that were looking at  
 4 it perhaps should have questioned more what was coming from  
 5 legal. I must also state –  
 6 COMMISSIONER: Well coming from everyone.  
 7 MS STEINBERG: Ja.  
 8 MR MAKHUBU: Certainly. I must also  
 9 state, so the relationship, the procurement colleagues  
 10 generally, and I think it's important that I just put it  
 11 across, generally the procurement colleagues in this  
 12 organisation, when they get guidance from corporate legal,  
 13 they, and it's important I state it, they take it for the  
 14 fact and I think we would want to, amongst other things,  
 15 when we create the contracts management unit within the  
 16 organisation, empower it with a legal person to run the  
 17 contract management so that the legal person can be able to  
 18 have the necessary head-butting with the legal colleagues  
 19 whenever they put across certain legal opinions so other  
 20 organisations would generally have a contracts executive  
 21 that looks after contracts and amongst other things  
 22 establishing those contracts. So if in the procurement  
 23 process there is issues such as this it will be (inaudible)  
 24 there I must admit that perhaps in this particular instance  
 25 we should have looked at, the guys should have looked

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1 further into that legal opinion.  
 2 But I also want to state that practice would have  
 3 made them to accept. Today if I get a legal opinion, I ask  
 4 questions, where do you come from? Why is this like this?  
 5 Why are you allowing this to happen and not the other? And  
 6 in my capacity as the chief officer of Finance I'll ask  
 7 those questions if I'm given a legal opinion. And again as  
 8 a person who's practiced procurement you do to an extent  
 9 ask, where do you come from with this legal opinion? But I  
 10 must also state the number of procurement transactions that  
 11 have happened on the back of legal opinions.  
 12 COMMISSIONER: I'm sure that's correct  
 13 but one should always be a bit questioning of everything,  
 14 number 1. But secondly, there's an opinion that it wasn't  
 15 really a legal issue, it was an issue of whether, how one  
 16 should exercise your judgment on this because it wasn't  
 17 really a legal issue.  
 18 MS STEINBERG: I have one final question  
 19 on the Bain issue. We found an email in the many files  
 20 that Bain had sent us. It's written on the 10th November  
 21 2015. And this is all between various people within Bain.  
 22 And the first one says the data I have does not provide,  
 23 does not have a provider field but I found the following,  
 24 and then it lists what SARS has recently spent on  
 25 consultants. So it says Gartner 150 million committed, 3

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1 million spent so far, 55 million to be rolled to financial  
 2 year 16/17, implied financial year 15/17 spend of 95  
 3 million. Then it goes to Ernst & Young and IBM, KPMG and  
 4 it lists what SARS have spent on their different  
 5 consultants. And the man who gets it in Bain says, thank  
 6 you and anything on PWC, no, but I'm happy to dig further  
 7 if this is useful to you.  
 8 COMMISSIONER: Have we seen that email?  
 9 MS STEINBERG: I'll give you a copy. And  
 10 then we were alarmed to see that it appears that number 1,  
 11 Bain has information from inside SARS as to what they pay  
 12 their consultants, and that they were clearly benchmarking  
 13 what they were going to charge SARS off this. And you see  
 14 150 to Gartner well there's 150 then off to Bain, right?  
 15 Now the Judge wrote to Mr Min from Bain to ask him to  
 16 please explain this. Now his explanation is unsatisfactory  
 17 but the bit I'd like to put to you is this, he says to your  
 18 question of where the data came from, we believe it was  
 19 taken from a spreadsheet given to the team by one of the  
 20 contacts at SARS that was working with the team at the time  
 21 and he says it either would have been Ronald Makomba or  
 22 Jonas Makwakwa, probably Ronald. Now is it proper that  
 23 SARS hand –  
 24 COMMISSIONER: Well the first question,  
 25 there are a number of questions. First, is it true what

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1 they're saying, what Bain has said, Mr Min? Now you  
 2 wouldn't know that.  
 3 MS STEINBERG: Wouldn't know that.  
 4 COMMISSIONER: Now I can see you're  
 5 looking very confused and I'm not surprised if you haven't  
 6 seen this. I'm not, I'm being quite serious. It comes out  
 7 of the blue, it's something that I would imagine you would  
 8 wish to query and maybe you'd like to look at it. But do  
 9 we need to go down that route at the moment without him  
 10 looking at this and giving some thought to it?  
 11 MS STEINBERG: I just want to ask him the  
 12 question. I want to confirm is it allowed that a SARS  
 13 official would give a spreadsheet like this to a service  
 14 provider?  
 15 MR MAKHUBU: Categorically no.  
 16 COMMISSIONER: And even let's say if it  
 17 wasn't the SARS official that gave it to him, that he found  
 18 it himself?  
 19 MR MAKHUBU: So suppliers can do market  
 20 research whenever they tender. So we publish tenders and  
 21 prices we've awarded. So suppliers can go there and look  
 22 and say if this contract was awarded, at this much it was  
 23 this size, I can estimate, that's them doing their own  
 24 intelligence. But leaking information to a service  
 25 provider is highly prohibited. You can't. Whether you're

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1 in procurement or you are elsewhere in the organisation.  
 2 So my confusion is not the fact that I'm hearing this for  
 3 the first time, it's that at the dismay because this  
 4 certainly is not allowed. It shouldn't.  
 5 MS STEINBERG: Well it might be worth an  
 6 investigation.  
 7 MR MAKHUBU: Certainly. Certainly.  
 8 COMMISSIONER: Well I think you should  
 9 give him Mr Min's letter as well as that and you now gave  
 10 them that email last time they were here and I said go and  
 11 discuss it amongst yourselves and if you've got an  
 12 explanation give it to me. I've got a letter and they said  
 13 we don't want to come and appear here again. So that's  
 14 where we left. Anyway look at the letter and look at the  
 15 email and I think that it is worth an investigation myself.  
 16 MR MAKHUBU: I must be on the record  
 17 Judge saying on the 31st August I'd already asked before  
 18 Gartner did a few submissions here and before they issued  
 19 out their statement on the 9th September, I'd issued a  
 20 request already to corporate legal services and the head of  
 21 procurement acting to find whether there is grounds for us  
 22 to be able to collect monies because I was looking at what  
 23 was being said here and I was playing it against what I  
 24 know is an official in an organisation such as this would  
 25 be charged with. So from the 31st August I'd already

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1 initiated that process. Amongst others I asked them to  
 2 look at grounds on which we can look at probably  
 3 restricting from a National Treasury point of view. So  
 4 this certainly will form part, this revelation will form  
 5 part of that process.  
 6 COMMISSIONER: I think will you just add  
 7 that, I think, you'll consider that as well?  
 8 MS STEINBERG: I'll give you those  
 9 documents. Just a couple of issues from the statement that  
 10 you gave me on Monday, the, you mentioned that you had  
 11 stopped further contracting with Gartner, why had you done  
 12 so?  
 13 MR MAKHUBU: So I had, and again in the  
 14 documentary that I've provided, I had asked the question  
 15 around what was going to be delivered in the extended  
 16 period and I'd wanted specifics in terms of that. And I  
 17 couldn't get specifics around what exactly was going to be  
 18 delivered, but over and above that I'd asked the team in  
 19 procurement that the team called value delivery, they do  
 20 business intelligence gathering and I've submitted an  
 21 output of theirs in the file where they showed an  
 22 indication that there is other service providers that they  
 23 believe can be able to compete and I felt that, and as I  
 24 say in that note, the gentleman that had asked that perhaps  
 25 in view of the market intelligence there is competitors

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1 that are there and I had no reason to doubt my team in  
 2 terms of the report they put together. So it starts two  
 3 grounds. The fact that there was a market intelligence  
 4 report showing other competitors to Gartner and secondly,  
 5 the fact that there was no clarification in terms of what  
 6 is it that was being pursued in terms of firm milestones.  
 7 MS STEINBERG: Your annexure 32, it's  
 8 from your manager value delivery to you, 31 of the third  
 9 2017. That's when you were group executive procurement. I  
 10 tell you what caught my eye, Mr Makhubu, it says here that  
 11 SARS spend over 90% of their overall Gartner group spend on  
 12 Gartner Island Limited and under the tax status Gartner  
 13 Island Limited is non-compliant. I want to know what  
 14 you've done about that.  
 15 MR MAKHUBU: So on that particular  
 16 transaction, as head of procurement, because at that time  
 17 I'm head of procurement, I look at the provisions around  
 18 firstly when you register on the CSD and the tax compliance  
 19 and there is an instruction note – I'll cite it just now –  
 20 that talks to tax compliance. And it speaks to, amongst  
 21 other things, international service providers that if they  
 22 don't have ground and presence in the country and it's an  
 23 international entity, there's actually no transactions in  
 24 the country that would make them want to have a tax  
 25 compliance status. So I relied on that provision around

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1 tax certificates for international entities that don't have  
 2 a presence in the country and my understanding was that  
 3 Gartner Ireland was fully registered in Ireland and on the  
 4 basis of that that's what I had applied. I must say that  
 5 in the documents that I sent to you in terms of the  
 6 expenditure on Gartner I had included the accounts at the  
 7 bottom. I think that has since changed. I think they have  
 8 since – and I can verify this and make a written submission  
 9 – I think there is now a local bank account because I  
 10 recall that the Commissioner wanted to establish for Bain  
 11 and for Gartner what are the accounts that we pay to when  
 12 we make the payments.  
 13 [16:51] So I can verify that but at the time my  
 14 appreciation was that if in the public procurement space  
 15 you've got an entity that is located in Canada and sees the  
 16 tender in South Africa and would like to tender it's  
 17 impractical for them to have a tax status and tax  
 18 compliance because at that point in time they don't have  
 19 operations in the country. So the instruction note guides  
 20 us in terms of what we do on that, in fact there's been  
 21 quite, in the procurement circles there's been quite  
 22 vociferous views around that portion of expenditure being  
 23 regarded as irregular by the Auto General on the basis of  
 24 the fact that you didn't get a tax clearance certificate  
 25 and I remember Transnet writing to the Commissioner at SARS

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1 asking what do we do on this because these are  
 2 international entities, they don't have establishment in  
 3 the country. So there was once that grey space. So I'm  
 4 record saying we took, I took guidance from that  
 5 instruction note around international entities.  
 6 MR KAHLA: How would you now deal with,  
 7 would you simply just have a field which is not applicable  
 8 in relation to these companies that are domiciled outside  
 9 of South Africa?  
 10 MR MAKHUBU: Yes, we would not apply that  
 11 requirement.  
 12 COMMISSIONER: Ms Steinberg, how much  
 13 longer do you expect to be?  
 14 MS STEINBERG: I've only got a couple  
 15 more questions and then Mr Makhubu might have a few things  
 16 he wants to say.  
 17 COMMISSIONER: I just want to make a  
 18 remark about something we discussed earlier and that is  
 19 that email. You read out the letter from Bain and it  
 20 mentions names. I think you must just bear in mind that  
 21 what Bain says in a letter written from Boston is not  
 22 necessarily true. That's what they say, I don't, I've got  
 23 my own views on it. But one should not be left with the  
 24 impression that what Bain says in that letter is true.  
 25 Okay.

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1 MR MAKHUBU: Certainly, we take it  
 2 through due diligence before we ask for restriction because  
 3 we understand the impact on businesses if we decide to  
 4 restrict them.  
 5 MS STEINBERG: Okay. I want to ask you a  
 6 question about paragraph 39 of your statement.  
 7 MR MAKHUBU: Yes.  
 8 MS STEINBERG: You speak about Grant  
 9 Thornton was procured as part of the project dubbed Project  
 10 Lion on the 17th of November 2015. They were ultimately  
 11 paid almost 12 and a half million for that contract and the  
 12 scope was to conduct a preliminary forensic investigation  
 13 into the expenditure related to the procurement of goods  
 14 and services for the SARS modernisation and technology  
 15 projects over the period 2007 to 2014 to establishing  
 16 whether SARS modernisation programme has delivered value  
 17 for money. Isn't that exactly what Gartner had done?  
 18 MR MAKHUBU: So I, when this is issued  
 19 out my reading into it, post the fact as again I don't want  
 20 to be sound like a broken record. At that time I'm not  
 21 here, so I'm reviewing it later.  
 22 MS STEINBERG: Yes.  
 23 MR MAKHUBU: I'm understanding without  
 24 the reports of both Gartner and Bain and everybody else I'm  
 25 understanding that there appears to have been some,

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1 something that triggered from the Gartner report that this  
 2 investigation must be considered or this, the value for  
 3 money on modernisation should be reviewed. So I, that's  
 4 why I understand. So I understand in the document review  
 5 that there would have been a Gartner work that said  
 6 forensically, because we are not forensics, look at this.  
 7 That's my -  
 8 MS STEINBERG: No Gartner actually did  
 9 it. Gartner said there was value for money. So I'm just  
 10 intrigued to know why another 12 and a half million Rand  
 11 was spent trying again to find fault with the modernisation  
 12 procurement. I just wonder if you know.  
 13 MR MAKHUBU: I can't opine the genesis of  
 14 that transaction, it was before my time and I think if I  
 15 look at the documents that came out of that work, by the  
 16 way that report was kept under lock and key for quite some  
 17 time. I think I only got to see it when Commissioner  
 18 Kingon took office, when he brought it to my attention and  
 19 both of us studied it. It left, I had issues with it and  
 20 hence I've set up, I had set up a meeting together with  
 21 Commissioner Kingon with Grant Thornton to try and  
 22 understand is this how you package your work, what do you  
 23 want me to do with this because it does not point me to any  
 24 wrongdoing, it doesn't point, it doesn't point me anywhere  
 25 and we started that process and that process is still

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1 underway.

2 MS STEINBERG: But it seems like Gartner

3 didn't find wrongdoing and nor did Grant Thornton but do

4 you know that now that the Public Protector is having a

5 bash at the same issue.

6 MR MAKHUBU: So one of the reasons why

7 the phase 2 in my mind wouldn't have made sense, I would

8 have wanted at least, once I got a letter from the Public

9 Protector to say we are looking at the same thing I felt

10 that I would rather have it done for free then to pay an

11 additional amount of money and I think a couple of weeks

12 ago, last week actually we got a letter from the Public

13 Protector to the effect of where she is and what she thinks

14 around the transaction and we are on record saying, I think

15 it's important to say this, that the contracts that we were

16 not allowed to extend from that modernisation partners

17 we've been allowed to extend until end of 2019 and I was at

18 pains to push for this because I understand there is

19 critical work that needs to be delivered before the filing

20 season 2019 that would depend on those contracts.

21 MS STEINBERG: Now two final questions

22 from my side and this goes to the DIST evidence that we've

23 heard this week. The one is quite a specific question.

24 You mention at paragraph 58.11 on page 26 that part of the,

25 your, what your budget has to cover really is the SAP

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1 business warehouse to automate operational Finance

2 reporting etcetera. As I understand Gartner recommended

3 quite comprehensive use of SAP and buying a SAP licences at

4 some expense. Are you aware of the SIU investigation

5 that's going on at Water Affairs?

6 MR MAKHUBU: I'm not aware. All I'm

7 aware of are the issues that have been in the public domain

8 around SAP and SAP Global has issued a statement around,

9 for the lack of a better word bribes that were solicited in

10 some of the state owned entities in order to secure work

11 with SAP. So that's all I'm aware of. I'm not aware of

12 the SIU investigation.

13 MS STEINBERG: The Commission has now

14 written to the Department of Water and Sanitation to get a

15 preliminary report which I think Advocate Terry Motau did

16 which indicated, well there was enough concern in that

17 report for the President to appoint, instruct the SIU and

18 exactly the issue there is the proprietary of the SAP

19 licences and implementation. So I think it's worth drawing

20 your attention, SARS is planning to spend big amounts of

21 money as I understand and this is happening at the same

22 time and I don't have further information and I was

23 wondering if you do.

24 MR MAKHUBU: I don't, I'll consider that

25 and maybe let me put context to my paragraph. The

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1 paragraph is effectively saying currently we've got a

2 capability that is installed. All I'm saying is that

3 instead of my Finance resources extracting information and

4 running spreadsheets there's a business warehouse and in

5 the data age you want to leverage that. So I'm saying, I'm

6 using, I want what is currently installed to be fully

7 utilised going forward. To release capability from Finance

8 resources so they are able to move into strategic business

9 Finance more then operational Finance and capacitate

10 business to run their own reports to know whether they are

11 in variance, positive or negative within the funds that are

12 allocated to them. So I'm saying I would like to utilise

13 what is currently on the base but I take your point in as

14 far as those developments and the need for us to make sure

15 that whatever further commitments that we make is taken

16 into cognisance the fact that there is other investigations

17 that are underway.

18 MS STEINBERG: This morning when the

19 Chief Officer of DIST was testifying my colleague Advocate

20 Hobden had a spreadsheet which emanated from somewhere in

21 your office which was looking at DIST spend over I think

22 over the last five years, are you aware of that document?

23 Do you want to -

24 MR MAKHUBU: I think I am. Just a

25 second.

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1 MS STEINBERG: I believe you were copied

2 in on the email that was sent to us. So it's probably

3 crossed your desk.

4 MR MAKHUBU: Okay.

5 MS STEINBERG: I don't know if you can

6 answer this question without seeing it. But perhaps you

7 can. The question that arose was, for the current

8 financial year it showed the amount of money that was given

9 to DIST and how much was spent and the fact that there was

10 still I think 250 odd million that hadn't been spent. The

11 question that arose is was, the initial amount that was

12 allocated to DIST was that allocated at the beginning of

13 the financial year or has it increased over the financial

14 year?

15 MR MAKHUBU: So allocated, that it is

16 loaded on SAP system beginning of the year understanding

17 that going into the ENE we already are 1.5 billion short

18 and in the year we will optimise where we can and allocate

19 money to where, to where it's most needed and so, so in

20 here we then allocate money, there's money I've authorised

21 so as I've, in my statement stated we felt that there was a

22 need to take money from elsewhere in the business or in one

23 of the financial lines to shore up the replacement of or

24 refresh of infrastructure that was at 120 that we've signed

25 off and I think it's going to be loaded onto the budget

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1 this coming week for DIST.  
 2 MR KAHLA: How much was actually reserved  
 3 on the budget when the financial year started? What was  
 4 the amount granted to DIST?  
 5 MR MAKHUBU: I'll answer that shortly.  
 6 So year to date -  
 7 MR KAHLA: And I'm really looking for  
 8 just, if we start off on the 1st of April what is the budget  
 9 that had been reserved for DIST, it may have had a  
 10 shortfall.  
 11 MR MAKHUBU: So for 2018.  
 12 MR KAHLA: For 2018, yes.  
 13 MR MAKHUBU: Here they've got 1.4,  
 14 1.5 billion rounded.  
 15 MR KAHLA: 1.5 billion, yes.  
 16 MR MAKHUBU: And the 1.5 billion is a  
 17 number of things. It includes the operational budget, the  
 18 salaries as well as admin costs and it includes an amount  
 19 of 103 million in capital expenditure.  
 20 MR KAHLA: So they were given about a  
 21 103 million in respect of capital expenditure?  
 22 MR MAKHUBU: In the budget.  
 23 MR KAHLA: And all of these refreshers,  
 24 would fall under the (inaudible) budget would they not?  
 25 MR MAKHUBU: It would because it's an

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1 equipment that you have to capitalise in the organisation,  
 2 ja.  
 3 MR KAHLA: So they got a 103?  
 4 MR MAKHUBU: Yes.  
 5 MR KAHLA: And they're now getting an  
 6 additional 200 or so million?  
 7 MR MAKHUBU: Yes. Maybe I must, so I see  
 8 what you've given me as it came through my office. I must  
 9 be on the record that this document can't have come here  
 10 without me engaging the office of the Chief of DIST. In  
 11 fact I recall sometime before we responded myself and the  
 12 executive at the office of the chief going through this.  
 13 So I okayed this coming to you because we had consulted and  
 14 I think professional courtesy demanded that I consult with  
 15 the office at least. So I did consult with, and I think in  
 16 the email the Moyabo is mentioned there in terms of -  
 17 MS STEINBERG: Yes.  
 18 MR MAKHUBU: Of this document here.  
 19 MS STEINBERG: Yes. You see the  
 20 confusion we have, we have a contradiction in the evidence  
 21 that maybe you can help us resolve. On the one hand we're  
 22 told there's not enough money, for example to refresh the  
 23 IT infrastructure. On the other hand we see that money is  
 24 not spent in each financial year, and many financial years  
 25 and then actually goes back to National Treasury. Do you

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1 see the contradiction?  
 2 MR MAKHUBU: So, maybe let me answer it  
 3 this way. As an organisation we've faced with a few  
 4 things. So if you're going to be implementing multiyear IT  
 5 projects you need to be able to ask Treasury to ring fence  
 6 money for each year. So that you are not sitting with  
 7 milestones that are still in the future but you've got the  
 8 money for. So it's that discipline, I'm currently sitting  
 9 with around 200 million that I'm told from a forecast point  
 10 of view we might not be able to spend and I think towards  
 11 the end of this month my view is that, and it relates to  
 12 projects, so we might not be able to spend, and I think  
 13 it's a trend that's been happening in the organisation for  
 14 the past. So that money will find its way somewhere and  
 15 what I'm saying is when it becomes clear that capital  
 16 projects money can't be used the prudent thing is to do, is  
 17 to go to the allocator that money which is Treasury and say  
 18 this project is delayed, I can't consume this money can I  
 19 send it back to the fiscus but I need you to give me an  
 20 assurance that in the subsequent year I'll have it because  
 21 otherwise I'm going to sit with fruitless and wasteful  
 22 expenditure in terms of projects that are incomplete.  
 23 However I think in my observation and looking at the  
 24 numbers that I've become responsible for this, the chronic  
 25 problem is that money finds other things to do and then

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1 later on when you now have to account for certain things, I  
 2 mean I, this is the annual report that I had given it to  
 3 you. If you look at plant, property and equipment as part  
 4 of the balance sheet you would find appreciation and I'll  
 5 take you to the page as soon as I can find my marked one.  
 6 It's note number 5, it's on page number 142 of the report  
 7 and I think it's important that we state this. If you look  
 8 at for instance plant, property and equipment and we, maybe  
 9 let's go into page 144 and in that table you look at IT  
 10 equipment.  
 11 MS STEINBERG: Ja.  
 12 MR MAKHUBU: And you will find opening  
 13 balance of 206 billion and you will then find a closing  
 14 balance, sorry an addition, that 583 is IT equipment that  
 15 was added in that year. So the organisation spent in 2017  
 16 that amount of money in additions on IT equipment. Granted  
 17 if you look at the subsequent year and if I take you back  
 18 to the previous page, if you look at 2018 for the economic  
 19 entity which I accept excludes, includes our subsidiary but  
 20 that's a small amount. If you look again, IT equipment,  
 21 yes in 2018 we added less, it's 46 but it's at the back of  
 22 a 583 that we have spent trying to add equipment.  
 23 Now 2017 I'm not preparing this financials but  
 24 one thing that is key is to be able to say what is it that  
 25 is added here. What type of assets are these. So if you

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1 are adding equipment to the tune of, in 2017 of 583 it's  
 2 either you've added the wrong assets and you have then note  
 3 gone to add the proper assets that you have prioritised and  
 4 I'd like to then qualify this.  
 5 Generally in my experience procurement would get  
 6 a ten year, in any place, whether it's a manufacturing  
 7 plant or energy you'll get a ten year plan that says we've  
 8 got equipment and this equipment is aging in this way and  
 9 over ten years this is how we want to replace it. That  
 10 will be part of the road map in terms of the ICT strategy  
 11 that says we're going to replace this then, that then, that  
 12 then and the head of procurement gets this and he then  
 13 develops a five-year to ten year procurement plan. He  
 14 doesn't get surprised at the end just before the end of the  
 15 financial year to say you now need to procure certain  
 16 things. So it's perhaps at the back of what we as Exco  
 17 need to fix and I take this responsibility to say how do we  
 18 do integrated planning as an organisation proper integrated  
 19 planning where we hold the chief, all the chiefs to say  
 20 what do you want to do in your business over the next ten  
 21 years and why do you want to do it and then we start to say  
 22 in crafting our strategy going forwards it's informed by  
 23 that integrated planning. So that customs doesn't do  
 24 something that on its risk engine that is completely east  
 25 of what BAIT is doing on its risk engine in terms of the

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1 rules. So I'm saying if we've prioritised the 583 and  
 2 bought the wrong things it's probably because business  
 3 prioritised those things. Therefore we need to get to a  
 4 point, I must admit, I've looked at the depreciation  
 5 schedule. I've looked at the equipment there, yes we've  
 6 got equipment that is aging and I'm on record saying from a  
 7 depreciation schedule point of view we have got equipment  
 8 that is aging.  
 9 [17:11] And the numbers that I have looked at suggest  
 10 that if you were to replace everything, by the way it is  
 11 not possible, SARS does not have the capacity to replace  
 12 everything that is fully depreciated. My team and I have  
 13 come to around, over the next five years we're going to  
 14 have to probably spend around 950 million and I must  
 15 qualify this. This is based on taking the depreciation  
 16 schedule, looking at equipment that is beyond life and  
 17 saying the business wants to replace all of it. The  
 18 business might take a different strategy. They may say, we  
 19 are going Cloud and therefore we don't need, that's why as  
 20 head of Finance I'm reliant completely amongst others on  
 21 heads of business to say we are pursuing this following  
 22 strategy. If it is a Cloud strategy not only means my head  
 23 of Finance, my chief of procurement as well has got an  
 24 understanding to say we are going this particular way.  
 25 COMMISSIONER: But I think as I

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1 understand the point is this, you know one hears, well, we  
 2 haven't got enough money for it. That can often be an  
 3 excuse for simply saying I am not doing anything about it.  
 4 Are you with me, and the question really I think that I'm  
 5 interested in, certainly and my colleagues may not be, is  
 6 the things that are happening in DIST. Is it a matter  
 7 simply of a budgetary restraint or is it because, one,  
 8 there is no plan as to what to do with DIST. So I don't  
 9 think that you need to comment on DIST as it were, but the  
 10 real question is, is there money for it if there is a  
 11 proper plan?  
 12 MR MAKHUBU: So again I've submitted our  
 13 ENE allocation for the next three years. Over the three  
 14 years it is down by 5.22 billion, so SARS is poorer by 5.22  
 15 billion. Therefore there are things you are going to  
 16 allow. There are things you are not going to allow and I  
 17 think I'll be one of, maybe if not, unpopular because I  
 18 need to pull the purse string tightly because otherwise  
 19 you've got financial misconduct if you've allowed certain  
 20 things to go through. Now what I'm saying is, I can't  
 21 downplay the fact that this year, this financial year  
 22 versus what we had wanted to spend we're 1.5 billion down  
 23 and it is under a very tight fiscal environment and we must  
 24 understand that. Treasury has to find R57 billion this  
 25 year to fund other requirements and therefore all of us

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1 needed to tighten our belts. So we understand the external  
 2 factors but I must be on record as well to say, it is very  
 3 important for SARS as a profit centre to be funded  
 4 appropriately. You would have seen in my submission that a  
 5 cost to revenue ratio of .89 starts to worry me.  
 6 MS STEINBERG: Yes.  
 7 MR MAKHUBU: Because it assumes that if  
 8 we want to do for instance the large business centre we may  
 9 have to incur overheads. We may have to get into new  
 10 buildings. We may have to do certain things, hire  
 11 additional people if at all, elicit an economy unit. It is  
 12 important that when we make these decisions the funding  
 13 comes through to be able to execute on them. As things  
 14 stand now, indeed against what I had requested and I  
 15 perfectly understand where Treasury comes from, I'm R1.5  
 16 billion short. So there is going to be an element in the  
 17 business of, and I must state some of the things we've  
 18 decided to say we're going to cut our legal fees by 50% to  
 19 respond to the 1.5 billion. We're going to cut our  
 20 consulting to zero and we're going to cut travel  
 21 substantially. We're going to renegotiate some of our  
 22 contracts for our leases that we are currently sitting in.  
 23 So all these things we want to do. We're going to look at  
 24 our licences going forward. So all these things we are  
 25 doing because we want to come within that 1.5 billion cut,

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1 however considering that the other operational spend in  
 2 this organisation is only 30% of the budget. 70% of the  
 3 SARS budget is fixed human costs. You can only do so much  
 4 optimisation within the 30%. At some point you need to  
 5 fund this organisation back to around .93 to .5 of revenue  
 6 to, cost to revenue ratio and that is something that is  
 7 critical. To answer your question, Judge, I think I have  
 8 been turning people away saying I don't have money for it.  
 9 MS STEINBERG: But my question is simply,  
 10 it was backward looking. We have heard that infrastructure  
 11 has not been refreshed since 2014. My question is, is that  
 12 because there wasn't the money available to refresh it, or  
 13 because there was the money available but it wasn't used?  
 14 MR MAKHUBU: My view is that there was  
 15 money. That's why I took you to the balance sheet and  
 16 showed you 2017. I was trying to be effectual in my  
 17 answer, so there was money and the question will always  
 18 come up, I must also state. My colleagues, I was busy  
 19 earlier on other engagements with some taxpayers, so I  
 20 couldn't hear the other testimony. The fact of the matter  
 21 is if there is no plan, a long term plan you will come at  
 22 the last minute to procure things and if you're going to  
 23 follow for instance, I heard earlier on that there is the  
 24 view that you must procure in a month. The PFMA says if  
 25 you're going to do an open tender – unless you're going to

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1 do deviations which is something that we've been instructed  
 2 to move away from, in fact I am not in favour of, you're  
 3 going to have to spend 21 days in the market otherwise  
 4 Solly is going to have a problem with me.  
 5 MS STEINBERG: Now we heard there was a  
 6 comprehensive plan. Are you aware of that plan?  
 7 MR MAKHUBU: I'm not aware of it. It has  
 8 not been distilled into procurement requirements that I can  
 9 then fund of Finance. What I've asked is that if I am  
 10 going to release the 120 odd million I need to know what  
 11 exactly it is going to be replaced and the confidence  
 12 level, whether it is going to be replaced because you can't  
 13 give money if it is not going to actually flow.  
 14 MR KAHLA: I suppose we should take  
 15 comfort in the numbers that are set out in that balance  
 16 sheet as you've reflected, including in relation to PPE  
 17 because those numbers would have been audited.  
 18 MR MAKHUBU: It would have and I've only  
 19 touched on PPE. There is another table that talks to  
 20 intangible assets immediately after that to say what is  
 21 software, IT software that we've added over the two years.  
 22 Again, Colleagues, Judge, I think we can downplay that. My  
 23 own depreciation schedule tells me that I need to invest  
 24 money in replacement of equipment.  
 25 MS STEINBERG: Ja, I think we all accept

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1 that but what I understand you're saying is that  
 2 infrastructure has not been refreshed since 2014 but the  
 3 reason is not because there wasn't money. There was. As  
 4 we sit here today there aren't, you are not aware of  
 5 comprehensive plans to fix the problem from a procurement  
 6 perspective.  
 7 MR MAKHUBU: From a procurement point of  
 8 view, I can only speak to the following from a procurement  
 9 point of view. Treasury has put certain, about eight  
 10 framework agreements with OEMs that we would generally  
 11 utilise and that was communicated to Circular number 3 this  
 12 year to say, if you want to utilise these service  
 13 providers, some of the service providers that are there are  
 14 –  
 15 MS STEINBERG: But are there plans from  
 16 SARS, concrete plans to utilise it?  
 17 MR MAKHUBU: I've not seen –  
 18 MS STEINBERG: You have not seen, okay.  
 19 MR KAHLA: But who would be responsible  
 20 for getting that? There is always talk around the  
 21 procurement vehicles. Is it procurement who drives the  
 22 setting up of these procurement vehicles or is it the  
 23 client, the recipient of the service?  
 24 MR MAKHUBU: So for segregation of  
 25 responsibilities, procurement sets up those procurement

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1 vehicles and again I am saying, and maybe, because I don't  
 2 know whether I'll get a chance to come back here. I think  
 3 what is important is that Treasury and that's why in my  
 4 submission I am clear that we want to leverage  
 5 relationships with National Treasury, chief procurement  
 6 officers' office. As I indicated there are certain  
 7 framework agreements. We've just penned a contract with  
 8 IBM for 339 million. We don't have 339 million, but what  
 9 we've decided to do is that there needs to be a shift in  
 10 this organisation from budget based procurement to demand  
 11 based procurement and it has been a painful process for me  
 12 to convince even my own procurement colleagues that we are  
 13 not breaking a rule if you do demand analysis and you say  
 14 over the five years I am going to need 20 laptops, 2 000  
 15 laptops and you put a procurement vehicle for the full  
 16 demand and then you release as budget becomes available.  
 17 So that's the paradigm shift that needs to happen, so you  
 18 don't constrict business. You say to business, I've done  
 19 demand analysis and I've put the procurement vehicle in  
 20 place. You can use it as and when you require it, and then  
 21 you move away. All you do is to say if a service provider  
 22 doesn't perform through contract management processes  
 23 please raise that underperformance and non-conformance.  
 24 So, that shift is one of the things we are doing going  
 25 forward, because I think for me I'm at pains to say, yes,

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1 we've talked a great deal about the past. I think I am a  
 2 leader in this organisation and all I want to be able to,  
 3 yes, whilst taking responsibility for the past but take  
 4 more accountability towards what do we do going forward?  
 5 MS STEINBERG: I wasn't here on how you  
 6 had answered Mr Kahla. You said procurement is responsible  
 7 for the vehicles.  
 8 MR MAKHUBU: Yes.  
 9 MS STEINBERG: But presumably when it  
 10 comes to for example infrastructure refresh it is this that  
 11 must put the business case, is that the division of labour?  
 12 MR MAKHUBU: Certainly.  
 13 MS STEINBERG: I am asking if those  
 14 business cases have been put forward?  
 15 MR MAKHUBU: I am not aware of business  
 16 cases currently that speaks to the requirements they are  
 17 speaking to or they may have spoken to. What I know is  
 18 that this year we procured IBM at some point, either early  
 19 this year or late financial year. We procured those on the  
 20 back of a business case that business had developed. So  
 21 business came and said in the next five years, and again  
 22 the working relationship is good in as far, that is a  
 23 demonstration to say if you come to us and you say here is  
 24 the bill of quantities for the next five years procurement  
 25 will go and put a vehicle in place.

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1 COMMISSIONER: But it is what you said  
 2 earlier as I understand it, the type of money you are  
 3 talking about here, the type of infrastructure required a  
 4 long term plan. You don't do it year by year with a  
 5 business plan for this and a business plan for that. You  
 6 had a long term plan and you plan for ten years and in that  
 7 you build in your – is that right.  
 8 MR MAKHUBU: Certainly.  
 9 COMMISSIONER: And I don't hear anything  
 10 of such a long term plan. Are you aware of such a long  
 11 term plan to fix what's going on?  
 12 MR MAKHUBU: So in this account I am not,  
 13 I am advocating because I think again it is important that  
 14 we don't, I don't come across to say it is not there it is  
 15 never going to be there. My responsibility yes it is DIST  
 16 that is supposed to work with me my responsibility as a  
 17 leader because ultimately that money that doesn't flow  
 18 reflects on me as much as it reflects to everybody else.  
 19 The responsibility that I am willing to take is that going  
 20 forward we are starting to want to have that planning.  
 21 Give an example, so what's going to be in my ENE request to  
 22 Treasury next year when they ask me what capital projects  
 23 you want to fund. Yes, we have thought through this but we  
 24 need to get together at an organisational level, at least  
 25 at a GE level, get everybody together and say as early as

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1 November and say what is it that we want to be doing in the  
 2 next year and how do we extend it the ten years. That is  
 3 how you then start to function in a manner that is  
 4 proactive as compared to reactive. And when we are finding  
 5 ourselves in this quagmire or reactivity we ultimately  
 6 have to point fingers at each other. But leaders must take  
 7 accountability to say what do we then do. And I am saying  
 8 what I want to be able to be accountable for if somebody  
 9 comes and says what do you want to fix? I take  
 10 accountability to say let's have integrated planning and  
 11 let's put the resources of the organisation together so  
 12 that we are able to say from a procurement point of view it  
 13 is clear, our service providers understand what we are  
 14 going to be procuring, etcetera, etcetera.  
 15 MS STEINBERG: Your statement is, it is  
 16 very clear and forward looking and certainly comes from  
 17 someone who accepts the challenges and responsibilities of  
 18 leadership and we will study it. Just a final question,  
 19 you know when employees saw that you were coming today  
 20 people come to me to say we have got a question. And the  
 21 same question came up a few times to put to you. I haven't  
 22 had the time to research it, but perhaps you can help. The  
 23 perception within SARS is that since the end of 2014, the  
 24 beginning of 2015 there has been a shift in the way money  
 25 is spent. That the priority used to be on spending money

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1 for the taxpayer to improve service to make it easier to  
 2 comply. Now less money is being spent in that direction  
 3 and more money is being spent on SARS itself. On the  
 4 corporate business needs itself, more people in CEO's  
 5 offices, more protectors, more furniture, more niceties for  
 6 the inside and less for the taxpayer. Is that a correct  
 7 perception in your view?  
 8 MR MAKHUBU: So, again I go into the  
 9 numbers because the numbers must speak for themselves. The  
 10 view has been that, my view, my personal view is that there  
 11 are areas of our business that we can certainly optimise  
 12 where we have decided since 2014 to spend money on. And I  
 13 think I don't want to necessarily talk to those areas. But  
 14 I do think that a big chunk of our work goes, of our 2.7  
 15 spend a year goes towards ICT and the understanding is that  
 16 ICT is to (inaudible) up the capabilities of the  
 17 organisation. I must say that perhaps in this approach  
 18 that I am advocating for the question we need to be asking  
 19 and I am certainly asking it more, there are certain  
 20 requests that I have rejected to say I actually think you  
 21 should privatise other things other than this.  
 22 Yes, within that environment I will put a case in  
 23 point. There has been a request to say we lose computers  
 24 in this organisation and we want to procure some software  
 25 that will be embedded on the motherboard to be able to, to

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1 delete data on those machines should they get lost. And I  
 2 have said, you know I don't see the risk analysis, I don't  
 3 see why you want to do that and I have rejected it. So I  
 4 am trying to give you are assurance to say yes there could  
 5 be protectors, there could be support staff and we need to  
 6 look into that 70% of the expenditure in terms of capacity  
 7 enhancement. And that work has been done. We, I am sure  
 8 Mark will talk to that, the work has been done to say how  
 9 do we optimise, now that we see we have got 1.5 –  
 10 COMMISSIONER: The question was I mean,  
 11 the question was really quite a simple one. That she said  
 12 that there has been in the last two years a shift of  
 13 emphasis towards spending money on SARS as opposed to  
 14 spending money on, I mean it is either correct or it is not  
 15 correct. Is that your view or is it not your view?  
 16 MR MAKHUBU: I have not seen it in the  
 17 numbers.  
 18 MS STEINBERG: Thank you.  
 19 COMMISSIONER: Is that it. Is there  
 20 anything further you want to say, you have said quite a lot  
 21 already but –  
 22 MR MAKHUBU: Maybe a few things. I think  
 23 because I doubt I will get an opportunity again. If you  
 24 will just allow me a little bit of time. I must say that  
 25 in my submission, Advocate, I have touched on a few things

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1 that I think are critical to re-emphasise. 1, I do believe  
 2 that going forward in our organisation we need to emphasise  
 3 issues of leadership cohesion. And I think this leadership  
 4 cohesion must permeate from Exco to the next level of this  
 5 organisation. And its manifestation will come through  
 6 engagements that happen at GE level and at Exco level  
 7 because I think if you are not able to have that cohesion,  
 8 you are not able to pull that organisation up to whatever  
 9 mandate and vision and strategic direction you want to go.  
 10 And secondly I think the issues of trust will be  
 11 attended to when we start to interface at Exco level and at  
 12 least for now at a GE level. I have made that  
 13 recommendation so that the critical mass, top 6, top 30,  
 14 top 50 in this organisation sings from the proverbial same  
 15 hymn sheet. And it avoids a situation where the other  
 16 parts of the organisation gets left behind whereas the  
 17 other part of the organisation goes on elsewhere.  
 18 I am at pains to say leadership cohesion becomes  
 19 very important. I have touched on a few things that I  
 20 believe leadership should be able to do. And amongst other  
 21 things I have said in my submission that we need to be able  
 22 to voluntarily be able to as Exco members open ourselves up  
 23 to lifestyle audits and have an undertaking. Because I  
 24 think issues of tax morality can be directly linked to the  
 25 confidence that the taxpayers have on the leadership in the

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1 administration.  
 2 So one of the things and I am sure my Exco  
 3 colleagues wouldn't have a problem on it, we have  
 4 discussed it. We need to be able to open ourselves for  
 5 that. I believe that I should be, as an Exco member at  
 6 SARS, be able to have no issue if any entity that I account  
 7 to, whether it is scope on scope wants to have sight of my  
 8 tax affairs. I should have an undertaking annually to say  
 9 I will make myself open. In fact if at all because I earn  
 10 one income, I only earn my income from SARS. I should be  
 11 able to say you gave me this and it is in the annual report  
 12 and this is how I accounted for the tax of that.  
 13 I think that goes a long way in assuring the  
 14 taxpayers that as leadership we are doing certain things in  
 15 the right way. I move on to governance in my document, I  
 16 am quite brief, there are things I am not going to mention.  
 17 I believe and I submitted my documents on Monday, I believe  
 18 that certainly the appointment of our head is a critical  
 19 process and I have made certain assertions in terms of how  
 20 that I believe should be done going forward. I also  
 21 believe that an organisation such as ours is structured in  
 22 terms of SARS Acts and there is just challenges from a  
 23 governance point of view when you are going to have a  
 24 Commissioner sitting in his office, in his capacity as the  
 25 accounting authority by himself signing a tender of a

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1 billion rands. By virtue of the fact that his first line  
 2 of assurance and the fifth line of assurance something is  
 3 wrong there. Therefore it is important that we then create  
 4 probably a board and I have said that, to say let's  
 5 capacitate the board to be able to say yes up to this point  
 6 but further let's create that governance structure that  
 7 allows for that.  
 8 [17:31] Furthermore on issues of governance I've spoken  
 9 about in particular the fact that that board must have, it  
 10 shouldn't be that the issues of bonuses come up again in  
 11 the organisation. It's difficult to defend. A person like  
 12 me coming in, I can't defend some of the things. So it's  
 13 important that you have a Remco that will objectively  
 14 consider the organisation's performance and say no, you're  
 15 not going to get it, it's not going to happen. The  
 16 organisation's not getting the bonus, the Exco is not  
 17 getting a bonus and it's an objective view. And again I  
 18 think these are not new revelations, I think from a  
 19 governance point of view, I've looked for instance at the  
 20 CRA, the Canadian Revenue Authority, they do have a board  
 21 and they do make certain rulings and that board is  
 22 refreshed every three years in their case. So I'm of the  
 23 view that we need to fix that governance framework. It  
 24 makes for concentrated power and it may, if times are good,  
 25 work, but when times are not good it may not work.

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1 PROF KATZ: Could I ask one question,  
 2 sorry, an important –  
 3 MR MAKHUBU: Yes?  
 4 PROF KATZ: Mr Makhubu, on a board, I can  
 5 see a board for bonus purposes, you can't have an  
 6 organisation fixing its own bonuses. But on procurement  
 7 you say the Commissioner signing for a billion, an outside  
 8 board doesn't really have a good feel. Why can't Exco  
 9 decide on that, why does it need an outside board?  
 10 MR MAKHUBU: So –  
 11 PROF KATZ: If I was on that board,  
 12 someone came to me on procurement, I wouldn't have a good  
 13 feel of the priorities of the organisation. Exco would  
 14 have a much better feel.  
 15 MR MAKHUBU: Certainly, and I think  
 16 that's where the problems in public procurement lie is that  
 17 at least Exco must have a feel that there is a group of  
 18 competent people at board level that understand public  
 19 procurement to be able to tell them you can't do this, this  
 20 is – yes, you'll argue the needs of the business and if  
 21 you're an Exco you'll argue them to the T, but I think from  
 22 a governance point of view, you need to constitute a  
 23 procurement subcommittee at board level that is constituted  
 24 by amongst others, if you want you can invite the Treasury  
 25 to form part of that advisory capacity. So I have looked

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1 at various organisations. So it's either your Fincom or  
 2 Finance subcommittee plays that role or you've got a  
 3 dedicated procurement subcommittee of the board because  
 4 some transactions by value will warrant that and it also  
 5 deals with the issues of conflict of interest.  
 6 PROF KATZ: On bonuses, shouldn't the  
 7 Minister have to have a say in that? And why I say that,  
 8 this is something that should fall within government  
 9 policy, so with respect the bonus policy over SARS should  
 10 be consistent with the bonus policy at other state  
 11 organisations and the Minister of Finance responsible for  
 12 the country shouldn't that be the ultimate decision filter,  
 13 if not maker on bonuses to Commissioners and very senior  
 14 staff?  
 15 MR MAKHUBU: I do agree that that would  
 16 be the case. All I'm proposing is that you then put a  
 17 governance structure that would have people that would have  
 18 had the capacity to do benchmarking to see what is  
 19 happening in other organisations at that level so that when  
 20 they make then the recommendations to the Minister to say  
 21 as a board we do recommend or we don't recommend the  
 22 payment of bonuses. It has had that type of filtering on  
 23 its way to the Minister. I do concur with you that  
 24 ultimately the Minister would have to have comfort in as  
 25 far as that is concerned.

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1 COMMISSIONER: Right. There are two  
 2 things from what you've said that strike me and I'm not  
 3 going to take this further, just tell me if you agree.  
 4 Number 1, your top management can't be in little individual  
 5 pockets where they're only interested in their own affairs.  
 6 They've got to understand the organisation and know enough  
 7 about each other's portfolios, do you agree with that?  
 8 MR MAKHUBU: I full agree. It allows for  
 9 cross-accountability and again it's not interference, it's  
 10 just to –  
 11 COMMISSIONER: Exactly.  
 12 MR MAKHUBU: It's making sure that we are  
 13 all not thinking, we are rising.  
 14 COMMISSIONER: And the second thing is  
 15 you talk about going forward which I'm very interested in  
 16 going forward and it seems to me – and tell me if you agree  
 17 – the first thing to go forward is you need stability. Do  
 18 you agree?  
 19 MR MAKHUBU: Yes I do and I think I've  
 20 made that recommendation around –  
 21 COMMISSIONER: And you need stability  
 22 urgently here, do you agree with that?  
 23 MR MAKHUBU: I concur. I think in my  
 24 submission I've stated that from the head of the  
 25 organisation you need quick stability. We currently have

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1 acting colleagues on core parts of our business and I think  
 2 the sooner we can be able to bring some permanence on that,  
 3 you can start to form a team because teams take time to  
 4 form.  
 5 COMMISSIONER: I didn't want to have a  
 6 discussion, I just want you to agree with me that it's  
 7 urgent, it's not something we should leave over for months  
 8 on end, do you agree with me?  
 9 MR MAKHUBU: I concur.  
 10 COMMISSIONER: Thank you.  
 11 MS STEINBERG: That's all from me, Judge.  
 12 Thank you very much and thank you for your submission.  
 13 It's very helpful.  
 14 COMMISSIONER: Thank you very much and,  
 15 thank you very much indeed.  
 16 [INQUIRY ADJOURNED]  
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