

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 23

23 OCTOBER 2018

PAGES 3939 - 4173

HELD AT

The Auditorium, 2nd Floor Lifton House, Brooklyn Bridge, 570 Fehrsen Street,
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1 [PROCEEDINGS ON 23 OCTOBER 2018]
 2 [09:04] MS STEINBERG: Morning Judge, and panel.
 3 Judge, I think you have an announcement to make?
 4 COMMISSIONER: Yes. I just want to make
 5 one thing clear. You know we have a fair amount of
 6 material that gets dumped on us that is not material to our
 7 terms of reference. Well it doesn't matter, people must
 8 put whatever they want before us and we'll sift it and see
 9 what is relevant and what is not relevant and I think I
 10 must just make it clear that it applies as much to
 11 affidavits that are dumped on us. We receive, as you know
 12 from yesterday we received two affidavits. One should not
 13 assume that we regard those affidavits as containing
 14 material that is relevant to our inquiry. Certainly some
 15 of it as we see in these affidavits is certainly not and
 16 that will be ignored by us. We also don't put much store
 17 on affidavits that are dumped on us that the deponents are
 18 not willing to attempt to give evidence on if necessary.
 19 So one shouldn't assume that simply because affidavits are
 20 placed before us that we regard it all as relevant and part
 21 of the record. It's people who do that, they're welcome to
 22 give it to the press and the press will do with it as it
 23 wishes. I've said right from the outset that I'm not going
 24 to interfere at all with how the media goes about their
 25 work and we get on with ours. But I just want to make it

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1 clear that the affidavits given to us yesterday are not
 2 necessarily going to be given much weight.
 3 MS STEINBERG: Judge, just a matter of
 4 housekeeping -
 5 COMMISSIONER: Sorry, also I think you
 6 should bear in mind that people don't necessarily tell the
 7 truth when they depose to affidavits so one shouldn't
 8 assume as well that we accept the truth of what is said in
 9 those affidavits.
 10 MS STEINBERG: Thanks, Judge. Just a
 11 matter of housekeeping, Mr Hore wanted us to just correct a
 12 figure that he had given to put into the record.
 13 COMMISSIONER: Yes.
 14 MS STEINBERG: He had been talking about
 15 the BBD costs for movement control, the project with Home
 16 Affairs. He had said it was 5 million plus 27 million for
 17 live capture and the correct figure is 5 million plus
 18 25 million, not 27 for live.
 19 COMMISSIONER: Thank you.
 20 MS STEINBERG: Judge and panel today's
 21 session is dedicated to Gartner and if I can just tell you
 22 how we've, how we've divided it up. We have two witnesses
 23 from Gartner. The first is Mr Willemse who is here, the
 24 second is Mr Lithgow. I'm going to be dealing with the
 25 procurement side, particularly of phase 1 and primarily

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1 with Mr Willemse and to a lesser extent with Mr Lithgow.
 2 Advocate Hobden is going to be dealing with the merits of
 3 Gartner's work. So what we anticipate is that I will put
 4 some questions to Mr Willemse and then just a few questions
 5 to Mr Lithgow on procurement and then Advocate Hobden will
 6 pick up with Mr Lithgow. However we ask you not to release
 7 Mr Willemse immediately from his subpoena because if there
 8 are questions that Mr Lithgow can't answer from Advocate
 9 Hobden's point of view we'd like to then ask them to Mr
 10 Willemse. If that's in order.
 11 COMMISSIONER: Is that in order Mr
 12 Willemse?
 13 MR WILLEMSE: Yes, absolutely, Sir.
 14 COMMISSIONER: Thank you. Good morning,
 15 thank you for coming. Do you affirm the evidence you give
 16 will be the truth, the whole truth and nothing but the
 17 truth? If so will you say I do.
 18 MR WILLEMSE: I do.
 19 EVIDENCE OF MR WILLEMSE
 20 COMMISSIONER: Thank you.
 21 MS STEINBERG: Good morning.
 22 MR WILLEMSE: Good morning.
 23 MS STEINBERG: Mr Willemse, can you just
 24 begin by telling us the role you played in the contract
 25 with SARS?

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1 MR WILLEMSE: Yes, I can. Could I, I've
 2 got a slide that I'd like to take you through which gives a
 3 flow in terms of the sequence of events and the timelines
 4 which I think will be useful to use in taking you through
 5 exactly what happened.
 6 MS STEINBERG: You are going to tell me
 7 the role you played?
 8 MR WILLEMSE: Yes, yes I will. So the
 9 agenda I put forward is, was a follows, just to give you
 10 some background on myself and then just to talk about the
 11 operations of Gartner which are relevant to some of the
 12 answers I will provide and then take you through the
 13 timelines of what occurred in December 2014, January 2014
 14 and February 2015 up to the end of the initial IT
 15 assessment that took place. So perhaps just some
 16 background on myself. My name is Neville Willemse. I've
 17 just completed 50 years in the IT industry. I was with one
 18 of the major global IT vendors for a period of 29 years and
 19 over the last 13 and a half years I worked for the Gartner
 20 sales agent in South Africa who represented Gartner and for
 21 the last, since January 2017 directly with Gartner when
 22 they came into the country.
 23 MS STEINBERG: Which IT vendor were you
 24 with?
 25 MR WILLEMSE: IBM. So if I may, I'd like

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1 to just go back and talk kind of prior to me joining
 2 Gartner because it is important. So I joined Gartner in
 3 2005 and I'll explain how that happened. Prior to joining
 4 Gartner I was working with a company called Metagroup and
 5 Metagroup were Gartner's largest competitors in the
 6 information technology research and advisory services.
 7 Both Metagroup and Gartner did not have a South African
 8 presence, a direct presence and were represented by sales
 9 agents in the country. So while working for Metagroup many
 10 of our clients required a consulting service to complement
 11 the research services and that was often due to either not
 12 having sufficient capacity or the capability in their
 13 organisation to take the research and contextualise it for
 14 the organisation. The cost of bringing in international
 15 consulting resources was becoming prohibitive because of
 16 the exchange rate and so we started building a local
 17 consulting capability to assist the clients. In December
 18 2004 Gartner announced that they were acquiring Metagroup
 19 and in the early part of 2005 the transition of Metagroup
 20 across to Gartner took place. This left the transition of
 21 the two sales agents representing Metagroup and Gartner in
 22 the South African territory and we had a joint session
 23 where we talked about who would come across from Metagroup
 24 into the Gartner stable, the Gartner sales agent stable.
 25 One of the discussion points was around the consulting

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1 group and the local, the owner of the local sales agent for
 2 Gartner was concerned about taking on, we had four
 3 consultants at that stage, was concerned about taking on
 4 these four consultants in case we didn't have sufficient
 5 work for them and she would then financially potentially be
 6 under pressure paying for people that was sitting on the
 7 bench. So we had a lot of discussion around this and in
 8 the end the consultants came across to the Gartner's sale
 9 agent on a total risk basis. So no salary and they only
 10 got paid when they worked. The feeling was that, that the
 11 consulting service was something that was required by
 12 clients and they were prepared to take the risk in terms of
 13 adopting that model.
 14 That model existed from July 2005 through to end
 15 of December 2016 when Gartner came into the country
 16 directly and employed some of the consultants that were
 17 sort of long serving people. But throughout that period
 18 they worked on this risk basis. As you'll appreciate it
 19 it's extremely difficult to attract people to come and work
 20 for an organisation on that basis. You know typically
 21 people have financial commitments in terms of families,
 22 bonds to pay, etcetera and to come on a 100% risk basis is
 23 not the most attractive. So we typically found that we
 24 built a network of associates and they were generally
 25 people who had been in the corporate environment for some

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1 time and had decided to move out of the corporate
 2 environment and move into an independent consulting role
 3 and the reason for that is they had a lot of experience and
 4 they felt that they could give something back to the IT
 5 industry as a result.
 6 MS STEINBERG: Mr Willemse -
 7 MR WILLEMSE: Yes.
 8 MS STEINBERG: I think for our purposes
 9 am I correct to say that when SARS contracted with Gartner
 10 even though they had a string of contracts with Zimilelo,
 11 Zim what -
 12 MR WILLEMSE: Zimalayo.
 13 MS STEINBERG: Zimalayo, for all intents
 14 and purposes SARS contracted with Gartner and you were as
 15 good as being Gartner.
 16 MR WILLEMSE: That is correct, so the
 17 direct contractual relationship is between Gartner Island
 18 and SARS and the delivery was done by the local sales
 19 agent. But the important thing is that -
 20 MS STEINBERG: The local Gartner agent?
 21 MR WILLEMSE: The local, correct.
 22 MS STEINBERG: Yes.
 23 MR WILLEMSE: The local sales agent
 24 representing Gartner, correct, yes.
 25 MS STEINBERG: Yes.

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1 MR WILLEMSE: But the important point I
 2 want to make here is that there was not an abundance of
 3 resources available because of the model.
 4 MS STEINBERG: No I understand that. I
 5 understand that but I want the panel to understand that the
 6 contract was with Gartner and your resources from SARS
 7 perspective were Gartner resources?
 8 MR WILLEMSE: Correct.
 9 COMMISSIONER: Was Zimalayo the, what you
 10 call the sales agent?
 11 MR WILLEMSE: I don't fully understand
 12 the relationship but the direct agency relationship was
 13 with a company called IT management advisory services and
 14 they were the ones, that was the research advisory services
 15 relationship. Zimalayo was a company set up when the
 16 consulting team came across from Metagroup to, I guess
 17 handle the administration of the consulting work that was
 18 done.
 19 COMMISSIONER: Yes, but as counsel says
 20 the contract was with Gartner.
 21 MR WILLEMSE: Gartner Island.
 22 COMMISSIONER: The execution is Gartner's
 23 responsibility.
 24 MR WILLEMSE: Correct.
 25 COMMISSIONER: And we can proceed from

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1 that basis.

2 MR WILLEMSE: Yes, absolutely.

3 MR KAHLA: Just clarity, neither IT

4 management nor Zimalayo are part of the Gartner group,

5 they're just independent?

6 MR WILLEMSE: They were local, it was a

7 local organisation that was appointed as the sales agent

8 for Gartner.

9 MR KAHLA: For Gartner.

10 MR WILLEMSE: Representing Gartner, yes.

11 MR KAHLA: Gartner South Africa or

12 Gartner Island?

13 MR WILLEMSE: Gartner Island, there was

14 no Gartner South Africa at that point in time.

15 MS STEINBERG: Two more questions.

16 Zimalayo I read is, was a level one BEE company, is that

17 correct, at the time?

18 MR WILLEMSE: No, the company level 1 was

19 IT Management Advisory Services.

20 MS STEINBERG: Okay. The other question

21 is this, can you explain the difference between Gartner's

22 research and advisory services on the one hand and it's

23 consultancy service on the other hand?

24 MR WILLEMSE: Yes, I can. The research

25 and advisory services is a membership based service and

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1 it's pretty much a self-help type service although there

2 are support people that assist clients as well. But the

3 research is developed by the Gartner Research Analysts

4 around particular topics in the information technology area

5 and clients have access to that research which they can

6 then use to apply in their businesses. The consulting side

7 is, works very closely with research but provides an

8 additional service in that if a client does not have the

9 capacity or the capability or the desire to want to do the

10 piece of work themselves they can approach Gartner

11 Consulting to assist with a particular engagement, whatever

12 that engagement might be, across certain practice areas.

13 MS STEINBERG: So the consultancy would

14 help with the implementation of a project? Not

15 necessarily?

16 MR WILLEMSE: No.

17 MS STEINBERG: Ja.

18 MR WILLEMSE: So Gartner is an

19 independent organisation. So we have no product

20 affiliations. So the consulting has no product

21 affiliations either and therefore does not do

22 implementation in terms of products or solutions. What we

23 can assist with is developing an IT strategy, a digital

24 strategy, helping with sourcing engagements. Those types

25 of things but we don't do implementation of solutions.

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1 MS STEINBERG: I want to pause there a

2 moment. I think that Gartner's independence is important

3 here and I see from Gartner's documents it's often referred

4 to as the Gartner advantage. But Gartner is not affiliated

5 to any product out there. So that when you use Gartner's

6 advisory services or consultancy services you don't have to

7 worry that Gartner's actually punting a particular product,

8 is that right?

9 MR WILLEMSE: That is correct.

10 MS STEINBERG: And I see that in this

11 case it's a point made in all the phases of Gartner

12 contracting for this work but to quote for example in the

13 phase 2 proposal from Gartner to SARS Gartner says, "our

14 advice is trustworthy and credible because we maintain

15 strict objectivity and independence. Our strategic

16 recommendations are driven by what is best for our clients

17 and not for what is best for Gartner or any other company.

18 We have no preferred hardware or software we endorse. We

19 do not perform implementation work. So we are not

20 concerned with downstream opportunities."

21 MR WILLEMSE: That's correct.

22 MS STEINBERG: Okay. Carry on.

23 MR WILLEMSE: So just to get back so we

24 had this consulting model and the consulting model had was

25 a very passive one. So it was not one where we actively

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1 went out and looked for business. The business that came

2 to Gartner Consulting was in two forms. One where client's

3 approached us directly because they wanted to, they wanted

4 that independence and that objectively that Gartner

5 provides and the second was where our research sales people

6 might be visiting one of their client's and the clients

7 start talking about a specific initiative they would like

8 to embark and it, the research will not provide the full

9 capability that they're looking for and they're therefore

10 looking for some additional support. So those were where

11 the two, the opportunities came from typically to say

12 clients approaching us directly or through the sales team.

13 I think if there's no further questions, I'd like

14 to go onto the next point. Which is around the December

15 2014 what happened there and I'd just like to give some

16 background as well on that and I'd like to talk about

17 Patrick Monyeke because there's been a lot of discussion

18 around him and I'd just like to talk about my interaction

19 with Patrick Monyeke. So I met him for the first time on

20 the 7th of October 2010 when he was nominated for what was

21 then called the Computer Society of South Africa visionary

22 CIO of the year award and was one of the finalists

23 interviewed by a panel of seven judges of which I was one.

24 I've been a judge on this panel since 2007 and I've listed

25 some names of the judges that were on the panel. There was

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1 the previous, the 2009 winner which was a gentleman called
 2 Carl Louw. There's a very senior person from the IT web
 3 involved. There's some people from computer society that
 4 was called Computer Society of South Africa at that point
 5 in time. There's an academic from Wits University and also
 6 from Gibbs and a previous winner as well, well from one of
 7 the other awards. So there was seven people that were
 8 involved in this judging panel and that's the first time I
 9 met him and I'd like to just read a quick paragraph which
 10 supported his nomination as visionary CIO of the year and
 11 it says, Patrick Monyeke was appointed director to the De
 12 Beers group services board in February 2009. He's been at
 13 De Beers since 2002, first as CTO and then as CIO. From
 14 1997 to 2002 he was CIO and his responsibilities included
 15 IT leadership and strategy which provided enterprise level
 16 visioning, strategic planning, direction setting and
 17 governance across the De Beers family of companies. He
 18 facilitated the identification and establishment of
 19 internal structures and external partnerships that would
 20 deliver strategic advantage as well as facilitating the
 21 provision of appropriate commercial and mining technical
 22 business applications.
 23 [09:24] He has an MBA as well as a BSC Honours from the
 24 University of Witwatersrand and took part in the
 25 accelerated Development Programme at London Business

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1 School. He also has a BSC from the University of the
 2 North. Patrick did win the visionary CIO of the year in
 3 that particular year in 2010. On 20th of February 2011
 4 Patrick contacted Barbara Robertson. She was the –
 5 originally her relationship with Patrick was, he was a
 6 client when he was at De Beers of Gartner. He had a
 7 membership to the executive programme service, research
 8 service and Barbara Robertson has, was the sales person who
 9 was supporting him at that point in time. So he reached
 10 out to her and asked if she could set up a meeting with
 11 herself, myself and Patrick and the subject of the meeting
 12 and the meeting notice was to discuss possible
 13 collaboration.
 14 Patrick had left De Beers and told us that he was
 15 planning to set up a company mainly outside of IT but he
 16 was still looking to do some ad hoc work in the IT
 17 environment and spoke about what opportunities might exist
 18 at Gartner. We spoke about two things and the one was the,
 19 an executive partner role. So I mentioned the executive
 20 programmes research membership that our clients subscribe
 21 to. That's typically aimed at the CIO of the organisation
 22 and as part of that service Gartner appoints what we call
 23 an executive partner who is typically an ex-CIO who will
 24 provide support to the CIO member of the research service.
 25 And so we talked about that role and we also spoke about

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1 the consulting risk model that we had in place at that
 2 point in time. Nothing further came of that meeting.
 3 There was no follow up to it at all. I
 4 'd been working on an accelerated leadership
 5 development programme for government CIOs which I believed
 6 was a requirement in the public sector. In my dealings
 7 with public sector we found that a lot of people were being
 8 put into positions without the relevant background and
 9 skills and experience which was not fair on them because
 10 they were expected to deliver and quite often they would
 11 kind of see it out for a year and then become quite
 12 marketable to the private sector and they would leave the
 13 public sector. So there are two issues that I thought
 14 existed. One was they were not provided with the relevant
 15 amount of experience to be successful in their jobs and
 16 they also did not stay in them long enough and the churn
 17 within government CIOs was quite substantial. And one of
 18 my colleagues, Walter Longwe, who is, was one of our public
 19 sector sales people approached Julius Segoli who was the
 20 CIO at the Department of Social Development at that time
 21 and he was also chair of the Government Information
 22 Technology Council, commonly known as GITOC. And we met
 23 with Julius, Walter and myself, to discuss this potential
 24 programme and whether he believed it would be of benefit to
 25 government CIOs. He was quite excited about and committed

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1 to take it to a GITOC meeting where the other members would
 2 be and to talk to them about this particular programme
 3 which he did. And the feedback was there was definite
 4 support for such a programme but that GITOC had no
 5 authority to be able to make a decision on behalf of
 6 government. So it kind of went nowhere from there again.
 7 On the 16th of February 2011 Walter Longwe again and myself
 8 had a meeting with SETA, it was about a number of aspects
 9 but one of them was around talking about this accelerated
 10 leadership development programme again.
 11 MS STEINBERG: Sorry, Mr Willemse.
 12 MR WILLEMSE: Yes.
 13 MS STEINBERG: I'm not understanding the
 14 relevance of this background.
 15 MR WILLEMSE: I'm trying to just explain
 16 the interactions I had with Patrick and I'm getting to the
 17 next point as to where I will mention Patrick again. So
 18 it's just a bit of a lead in. There was this programme.
 19 We tried a number of different avenues and we then
 20 approached Patrick Monyeke. Our understanding at that
 21 point in time was that he was providing a fair amount of
 22 coaching to government CIOs unofficially and because of his
 23 success in both the public sector where he had been the CIO
 24 at the Department of Home Affairs prior to, during De Beers
 25 and also his success at De Beers.

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1 MS STEINBERG: So is your point that Mr
 2 Monyeke was well qualified – MR WILLEMSE: He was
 3 well qualified.
 4 MS STEINBERG: - and experienced.
 5 MR WILLEMSE: Yes.
 6 MS STEINBERG: We accept that, ja.
 7 MR WILLEMSE: So we did approach him and
 8 that was another interaction that I had with him. We were
 9 seeking some perhaps guidance from him based on his
 10 activities in government in terms of coaching CIOs as to
 11 where he thought we might be able to go and talk to someone
 12 about this programme. In January 2014 Patrick asked to
 13 meet me on the 29th of January and the topic was around a
 14 possible requirement at the South African Social Security
 15 Agency at SASSA for a sourcing strategy.
 16 MS STEINBERG: Mr Willemse, we don't need
 17 the detail –
 18 MR WILLEMSE: Okay.
 19 MS STEINBERG: - of that. I think if you
 20 could tell us about your engagements with Mr Monyeke as
 21 they relate to SARS.
 22 MR WILLEMSE: Ja, okay, fine. So that
 23 the January 2014 was the last time I had seen him prior to
 24 SARS. So there were a couple of interactions but that was
 25 about it. So on 10th of December Patrick asked me to meet

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1 with him and to discuss a requirement at SARS.
 2 MS STEINBERG: 10th of December 2014?
 3 MR WILLEMSE: Correct, 10th of December
 4 2014. So he'd met with SARS and they discussed a
 5 requirement from the Commissioner. So he first of all
 6 explained to me that there was a new Commissioner, that
 7 it's, who had started in September 2014 and had identified
 8 a couple of issues that he felt existed. The one was
 9 around IT strategy, as to whether that fully aligned and
 10 supported the business strategy and then also there was a
 11 concern as to whether the amount that had been invested in
 12 the modernisation programme which had started in 2007 had
 13 yielded the return on investment that SARS anticipated.
 14 MS STEINBERG: Mr Willemse, what was Mr
 15 Monyeke's relationship with SARS at that point?
 16 MR WILLEMSE: I don't know. I – when he
 17 came to me, he'd met with them. He'd taken some notes as a
 18 result of the meeting and my assumption was that because of
 19 his standing in government in terms of success and his, the
 20 fact that I think people looked up to him as a role model
 21 that he had been working with SARS to provide some
 22 assistance in that area as well.
 23 MS STEINBERG: But you don't know in what
 24 capacity?
 25 MR WILLEMSE: I don't know in what

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1 capacity, no.
 2 MS STEINBERG: Well nor do we because we,
 3 we're unable to find a contract between Mr Monyeke or his
 4 company and SARS. So it's somewhat of a mystery, the role
 5 he was playing for SARS at that point.
 6 MR WILLEMSE: In a situation like that
 7 where a new executive comes into an organisation and they
 8 have some concerns and they want to do an assessment it's
 9 not unusual for them to maybe look for someone outside of
 10 the organisation to assist them in terms of putting a,
 11 discussing the requirement.
 12 MS STEINBERG: Yes, we heard a lot about
 13 that from Bain. A lot of executive coaching. So I'm not
 14 asking you to speculate.
 15 MR WILLEMSE: No, I can't speculate.
 16 MS STEINBERG: At this stage we don't
 17 know what the –
 18 MR WILLEMSE: Correct.
 19 MS STEINBERG: - contractual basis was.
 20 MR WILLEMSE: Correct, I don't know.
 21 MR KAHLA: Sorry, Mr Willemse, pursuant
 22 to the establishment of this Commission you've not spoken
 23 to Mr Monyeke and sought to understand what was his status
 24 relative to SARS at the time he engaged going back to 19
 25 December 2014?

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1 MR WILLEMSE: Sorry, Sir, if you can just
 2 repeat? Is that since the Commission –
 3 MR KAHLA: Since the Commission, I mean
 4 we know that you may not have known, at least we hear that
 5 you may not have known on 10 December 2014 what his
 6 relationship with SARS was but pursuant to that have you
 7 sought to clarify that with him?
 8 MR WILLEMSE: I didn't think it was
 9 appropriate that I should talk to Patrick once this
 10 Commission was running.
 11 MS STEINBERG: Okay, please carry –
 12 COMMISSIONER: I don't think it's a
 13 criticism, just a question.
 14 MS STEINBERG: Ja.
 15 MR WILLEMSE: No, it's, and but that was
 16 –
 17 COMMISSIONER: Yes.
 18 MR WILLEMSE: - my concern is –
 19 MS STEINBERG: Please carry on.
 20 MR WILLEMSE: So Patrick had taken these
 21 notes from the meeting that he had and he said to me that
 22 SARS had identified Gartner as the organisation to assist
 23 them with this particular piece of work. So in my mind
 24 that was a sole source. This is not unusual. We get
 25 approached quite regularly by government departments and

<p style="text-align: right;">Page 3959</p> <p>1 I've got a number of examples where they come to us 2 directly. They have a fairly high level requirement. We 3 then start talking about the requirement and scoping it out 4 in more detail and there are quite often a few interactive 5 sessions where this occurs to get to the point where they 6 understand exactly the kinds of questions they should be 7 asking in order to provide the outcomes that would help 8 them in making decisions moving forward. So – 9 MS STEINBERG: On what basis would 10 Gartner be approached as a sole source contract? Meaning 11 that no tender process at all would be required, not even a 12 closed bid. What would be the basis for that? 13 MR WILLEMSE: Their independence and 14 objectivity again. So we find it quite often in assisting 15 departments when they are going out and looking for a 16 solution and or service provider to assist them through the 17 sourcing process. Because you often find in an 18 organisation there could be bias because of peoples' 19 technical backgrounds and the process we take them through 20 is to take out that bias and to ensure that the decision at 21 the end in terms of the solution of service provider they 22 select is the most appropriate one for the organisation and 23 will deliver the best value for the organisation. So 24 that's one of the areas that we particularly get engaged 25 on.</p>	<p style="text-align: right;">Page 3961</p> <p>1 by step basis but in terms of the people involved from a 2 SARS point of view there were three procurement people and 3 three legal people that were part of the process throughout 4 all the negotiations. 5 MS STEINBERG: No, we're aware of that. 6 MR WILLEMSE: Yes. 7 MS STEINBERG: I just wanted to probe 8 what you meant by procurement process in this case. I'm 9 not aware of one. 10 MR WILLEMSE: Well there is a deviation 11 process as I understand it. I'm not a procurement expert. 12 MS STEINBERG: For phase 1? 13 MR WILLEMSE: I'm just talking generally. 14 MS STEINBERG: No, I'm asking you 15 specifically phase 1, what the procurement process was 16 other than Gartner being identified. 17 MR WILLEMSE: I can go through on a step 18 by step basis. I don't know what the SARS process and the 19 background is but I can talk you through what was requested 20 of us in terms of the documentation, what we provided and 21 the flow of what happened as we went through all the 22 discussions. 23 MS STEINBERG: Well, carry on your story. 24 You said Mr Monyeke approached you. 25 MR WILLEMSE: Correct.</p>
<p style="text-align: right;">Page 3960</p> <p>1 MS STEINBERG: So you entered into this, 2 on this sole source basis of the contract for phase 1. 3 MR WILLEMSE: Yes. 4 MS STEINBERG: When you – can – I want 5 you to explain what you've said when you and Mr Monyeke, 6 when Mr Monyeke approached you he said Gartner had been 7 identified. 8 MR WILLEMSE: Correct. 9 MS STEINBERG: Because of its 10 independence, it was a sole source that was for phase 1. 11 MR WILLEMSE: Correct. 12 MS STEINBERG: Okay. 13 MR WILLEMSE: For the IT assessment, yes. 14 MS STEINBERG: For the IT assessment. 15 MR WILLEMSE: Yes. That is correct. 16 MS STEINBERG: Okay, carry on. 17 MR WILLEMSE: The – just in terms of that 18 sole source, we do get approached. However, there is a 19 procurement process that needs to take place and there is 20 no guarantee that the necessary procurement approvals will 21 be obtained for that sole source. 22 MS STEINBERG: So in SARS' case what was 23 the procurement process for phase 1? 24 MR WILLEMSE: I can't tell you the 25 internal process. I can go through what occurred on a step</p>	<p style="text-align: right;">Page 3962</p> <p>1 MS STEINBERG: He seemed to know what 2 SARS needs were at that stage and you had summarised it by 3 saying it was really looking at as to where the business 4 was aligned with IT and the, I suppose whether there had 5 been on return on investment in respect of the 6 modernisation process. 7 MR WILLEMSE: That's correct. 8 MS STEINBERG: Is that right? 9 MR WILLEMSE: Yes. 10 MS STEINBERG: So carry on. 11 MR WILLEMSE: So he asked me for some 12 input to the notes that he had taken in order to start 13 developing this terms of reference or scope for the IT 14 assessment that SARS wanted to embark on. 15 COMMISSIONER: Had you had any 16 interaction with SARS by that time? 17 MR WILLEMSE: No. 18 COMMISSIONER: So it was just you and 19 Monyeke talking about SARS business. 20 MR WILLEMSE: Correct. 21 MS STEINBERG: Just to refer you to a 22 couple of emails. I presume you have the emails that 23 Gartner gave us. 24 MR WILLEMSE: Yes. 25 MS STEINBERG: So the, you don't have to</p>

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1 go there right now –

2 MR WILLEMSE: Okay.

3 MS STEINBERG: - but we see that on the

4 Wednesday the 10th of December there was a meeting and it

5 was called TOR, terms of reference for Patrick. And there

6 is an email from Patrick Monyeke to you, Mr Willemse, on

7 that day saying "attached please find the thoughts I

8 captured when interacting with the client" that would be

9 SARS.

10 MR WILLEMSE: Correct.

11 MS STEINBERG: "Can we please try and

12 clean up and enhance these terms of reference so that we

13 can have a complete TOR for tomorrow's meeting with the

14 client". So it seems that Mr Monyeke had sent you some of

15 his thoughts for terms of reference for SARS and he had

16 asked for your input. Is that right?

17 MR WILLEMSE: Yes. So we met initially.

18 He spoke about the requirements that SARS had, the fact

19 that he'd taken these minutes and what he did in that email

20 is he sent them to me. The meeting notice you referred to

21 is just a place holder in my diary for myself to set time

22 aside to try and assist in terms of putting some, looking

23 at these terms of reference and providing some content for

24 it.

25 MS STEINBERG: Okay. Carry on.

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1 MR WILLEMSE: So I provided Patrick with

2 the, with some additional information. What I did then as

3 well is I set some more time aside in my diary and you

4 should have another meeting notice there and it's around, I

5 think it was called P Monyeke proposal. So typically what

6 I do in a situation like this is I go to our Gartner

7 consulting database.

8 COMMISSIONER: Sorry, I think instead of

9 telling us typically will you tell us what you did on this

10 occasion?

11 MR WILLEMSE: On this occasion what I did

12 was I went to the Gartner consulting database and I looked

13 for similar engagements that Gartner might have fulfilled

14 on around the world to try and get some ideas around what

15 other organisations might be asking and looking for. And

16 the reason behind that is to try enhance that terms of

17 reference to make sure that SARS asked the right questions

18 in order to get the outcomes to make the necessary

19 decisions moving forward.

20 MS STEINBERG: So, Mr Willemse, the long

21 and the short of it is that you and Mr Monyeke wrote the

22 terms of reference.

23 MR WILLEMSE: So it started with the

24 minutes or notes taken from a meeting with SARS. So they

25 had already spoken about –

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1 MS STEINBERG: Can you just answer my

2 question?

3 MR WILLEMSE: Yes.

4 MS STEINBERG: I had asked if you and Mr

5 Monyeke had written the terms of reference.

6 MR WILLEMSE: Yes.

7 MS STEINBERG: Do you know in South

8 African procurement law that that's illegal?

9 MR WILLEMSE: My understanding is if it's

10 –

11 COMMISSIONER: Sorry. You must just

12 answer the questions and the question was do you know that

13 it was illegal?

14 MR WILLEMSE: No, I don't know that.

15 MS STEINBERG: You don't know?

16 MR WILLEMSE: No.

17 MS STEINBERG: You know I find that

18 surprising because as Mr Tshitangano who was a senior

19 treasury official pointed out to us when Gartner gave its

20 reports to SARS it was very critical of their procurement

21 process during the modernisation process and actually

22 quoted procurement law, chapter and verse. So it's curious

23 to me that when you were contracting with SARS you appeared

24 ignorant of South African procurement regulation but you

25 knew about South African procurement regulation when it

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1 came to SARS contracts with other service providers.

2 [09:44] MR WILLEMSE: I think they were somewhat

3 different. As mentioned we had been engaged previously by

4 government departments on the same basis, on the sole

5 source basis where they I think in the background, I'm not

6 sure the process per se but I think they did a deviation

7 and that gets approved or not approved and that provides a

8 sole source option for them and I believe that was what was

9 done in our situation so I did not understand that that was

10 an issue.

11 MS STEINBERG: You know there's a

12 difference between the mechanism that allows for a sole

13 source and that sole source writing its own terms of

14 reference. Do you see the distinction?

15 MR WILLEMSE: I can't really because the

16 – if they are the sole source then to work with a client to

17 develop a scope makes a lot of sense. If it was something

18 that was going out to the market where multiple

19 organisations might be responding I can certainly

20 understand that. That makes absolute sense to me.

21 MR KAHLA: Just a quick clarity for me,

22 Mr Willemse. Is it your submission that objectively

23 Gartner is a sole source provider for the kind of services

24 that it was required to provide here? There's no other

25 entity in South Africa that could have provided those

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1 advisory services?
 2 MR WILLEMSE: In terms of our
 3 independence objectivity and research based consulting
 4 capability we are unique.
 5 MR KAHLA: I understand that you may be
 6 unique. I'm just simply trying to understand are you a
 7 sole source? I mean my understanding of a sole source and
 8 perhaps I may be wrong, there should not be any other
 9 person who renders that service for you to be a sole source
 10 and I don't know the others whether they're not as
 11 independent as you'd suggest Gartner is. I'm simply just
 12 trying to understand was it in any event correct to have
 13 characterised you as a sole source provider because I would
 14 expect that to be an objective assessment. It's wrong to
 15 see that as something they should be objectively assessed.
 16 MR WILLEMSE: I'm not sure I fully
 17 understand.
 18 MR KAHLA: Oh, okay. Sole source.
 19 MR WILLEMSE: Yes.
 20 MR KAHLA: I think we probably may have
 21 (inaudible) of sole source. There's only one service
 22 provider for that service and so you go on the sole source
 23 route. So I'm simply just trying to understand is it
 24 Gartner's submission that in respect to the services that
 25 were to be rendered only Gartner can provide those services

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1 in South Africa and that to me would characterise a sole
 2 source unless of course there's a different definition of
 3 what a sole source provider is.
 4 MR WILLEMSE: I think that's maybe where
 5 the issue is. So SARS had identified Gartner as the
 6 organisation they wanted to deliver this piece of –
 7 COMMISSIONER: No, that's a different
 8 thing from, you know –
 9 MR WILLEMSE: Yes.
 10 COMMISSIONER: SARS identifies you, it
 11 doesn't mean you are the sole source. Then you're just
 12 saying SARS said we want you. The question being asked is
 13 the services provided by Gartner that were required by
 14 SARS, is Gartner the only source in the country from which
 15 you could get those services? I thought it's quite
 16 straightforward.
 17 MR WILLEMSE: That's an extremely
 18 difficult question to answer.
 19 COMMISSIONER: Why is it difficult?
 20 Presumably you know your competitors in the field.
 21 MR WILLEMSE: Yes, so we don't have a
 22 competitor that provides the independence, objectivity and
 23 –
 24 COMMISSIONER: Well –
 25 MR WILLEMSE: And research.

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1 COMMISSIONER Well, I'm sure that whether that
 2 what you're talking about is independence and objectivity
 3 is a view that Gartner takes of itself. Are there no other
 4 consultants in this country who regard themselves as
 5 independent and objective, is that what you're saying?
 6 MR WILLEMSE: I think the majority of
 7 them have practices that are product or solution based
 8 which makes them not as independent as we are.
 9 COMMISSIONER: Well, that's the majority
 10 but are there no other consultants in this country who
 11 could provide the services that you are told SARS required
 12 who are not linked to other products, etcetera. Are there
 13 none?
 14 MR WILLEMSE: I don't think so.
 15 PROF KATZ: Sorry, just to follow up on
 16 this. I'm having the same difficulty as my colleagues.
 17 You're relying on a deviation which excludes a fundamental
 18 requirement of procurement, an open, competitive process.
 19 You're relying on that on the basis that there was a sole
 20 source. If there was a competitive process all of the
 21 tenderers would have had different attributes independence
 22 and that and some of the things you mentioned and that
 23 could have helped them in the process but that's very
 24 different from saying they are the only one who could have
 25 provided the service and that's what we are struggling

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1 with. Are you saying the service that Gartner provided to
 2 SARS, they were the only one who could have provided that?
 3 Not the best one, that's for a process to do. The only
 4 one.
 5 MR WILLEMSE: Just in – if I can back up
 6 and maybe it's the terminology of sole source which is –
 7 I've used incorrectly. We were identified by SARS as the
 8 organisation they wanted to do this piece of work. In the
 9 background the procurement process they followed, I am not
 10 sure exactly what that procurement process was. There were
 11 a number of people from procurement and a number of people
 12 from their legal that drove that process so I'm not sure
 13 exactly –
 14 COMMISSIONER: Mr Willemse, you're not
 15 really dealing with the issue and I think we should. It's
 16 quite important. We should get over it and move on to the
 17 next point. You're saying that you were the sole source.
 18 You knew that deviations required you to be the sole
 19 source. Now whether SARS chose you or not doesn't make you
 20 the sole source. But let's start with what was the job to
 21 be done? Can you put that in a nutshell for us? What was
 22 the job that was to be done?
 23 MR WILLEMSE: In a nutshell the main
 24 aspects were to do assessment around the IT strategy and
 25 all – whether that was aligned with business. There were a

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1 number of other sub-points related to that and then also to
 2 look at the modernisation programme.
 3 COMMISSIONER: Yes.
 4 MR WILLEMSE: And whether that had driven
 5 value. There was also, which came in later, an aspect of –
 6 COMMISSIONER: Well, we're talking about
 7 the initial phase. So it's two things.
 8 MR WILLEMSE: Well, this was still part
 9 of the initial phase –
 10 COMMISSIONER: So the initial phase –
 11 MR WILLEMSE: Requirements.
 12 COMMISSIONER: Three parts. One, to
 13 assess whether their IT systems were aligned with their
 14 business.
 15 MR WILLEMSE: Their IT strategy.
 16 COMMISSIONER: IT strategy was aligned
 17 with their business.
 18 MR WILLEMSE: Yes. Correct.
 19 COMMISSIONER: The second was to assess
 20 whether they got value for money I can call it on the
 21 modernisation process.
 22 MR WILLEMSE: Yes.
 23 COMMISSIONER: The third was?
 24 MR WILLEMSE: Then there were some
 25 aspects around the procurement that took place during

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1 modernisation.
 2 COMMISSIONER: In other words was there
 3 something funny with the procurement process? Something
 4 unusual? Would that be right?
 5 MR WILLEMSE: The assessment was to
 6 determine whether there had been.
 7 COMMISSIONER: Yes. Now is there no
 8 other consultancy in the country who can assess an IT
 9 strategy to see if it aligns with the business of a
 10 particular organisation? Is there no other IT company that
 11 can do that?
 12 MR WILLEMSE: Yes.
 13 COMMISSIONER: Or some other consultancy.
 14 MR WILLEMSE: Yes.
 15 COMMISSIONER: Are there others?
 16 MR WILLEMSE: Yes.
 17 COMMISSIONER: Are there other
 18 consultancies who are able to determine whether there has
 19 been value for money on a programme that has gone in the
 20 past? Are there other consultants or not?
 21 MR WILLEMSE: I would assume so, yes.
 22 COMMISSIONER: Yes. Are there other
 23 consultants who are able to determine whether there was
 24 something improper in their procurement process that had
 25 gone before? Are there other consultancies?

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1 MR WILLEMSE: Yes.
 2 COMMISSIONER: So there are other
 3 consultants in South Africa who are able to do what you
 4 were called upon to do? Correct?
 5 MR WILLEMSE: Correct.
 6 COMMISSIONER: Okay, then –
 7 MS STEINBERG: I think we can conclude
 8 that the sole source reason given was an improper one.
 9 COMMISSIONER: Yes.
 10 MS STEINBERG: But I was also putting my
 11 finger on the second problem. Even where a sole source
 12 might be proper our procurement law does not allow that
 13 sole source to write its own terms of reference.
 14 COMMISSIONER: Well, that I understand.
 15 We just wanted to get over whether -
 16 MS STEINBERG: Yes.
 17 COMMISSIONER: Whether there was a sole
 18 source in the first place.
 19 PROF KATZ: And sorry, the justification
 20 for the sole source being the deviation. Their third point
 21 which they had themselves to comment on, compliance with
 22 procurement.
 23 MS STEINBERG: Indeed.
 24 PROF KATZ: They would know in detail
 25 that this wasn't compliant with a sole source.

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1 MS STEINBERG: That is my point, Mr
 2 Willemse. That you were hired to actually assess a
 3 procurement process but you tell us in respect of your own
 4 procurement process you didn't have those assessment
 5 skills.
 6 MR WILLEMSE: I'm not a procurement
 7 specialist. One of our capabilities in resourcing
 8 environment is to be able to review contracts that
 9 organisations have embarked on, not from a legal
 10 perspective but just to have a look at the process that was
 11 followed.
 12 MS STEINBERG: And why didn't you do that
 13 in respect of your own process at SARS if you have that
 14 capability?
 15 MR WILLEMSE: I didn't understand it was
 16 a requirement. I understand – I understood that –
 17 MS STEINBERG: Sorry, you don't think
 18 it's a requirement that Gartner should make sure that a
 19 procurement process it's taking part of is proper?
 20 MR WILLEMSE: We certainly did make sure
 21 because we worked with the procurement and legal people so
 22 –
 23 MS STEINBERG: No, no, no. We know you
 24 worked with procurement people. I'm asking did you not
 25 take responsibility? Did you not ask a question to say is

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1 the process I'm engaging in, in accordance with South
 2 African law?
 3 MR WILLEMSE: The –
 4 COMMISSIONER: Sorry, I know you're going
 5 to get - let me just tell you the rules of the game here.
 6 MR WILLEMSE: Yes.
 7 COMMISSIONER: It will help you and it
 8 will help counsel. When counsel asks you a question which
 9 calls for a direct answer will you first give her the
 10 direct answer and if you want to explain it thereafter well
 11 then feel free to do so. But we must make sure that we are
 12 – that you and counsel are communicating properly.
 13 MR WILLEMSE: Sure.
 14 COMMISSIONER: And that is that we must
 15 know whether – what the answer is to the question. Would
 16 that be fair?
 17 MR WILLEMSE: That's fair, yes.
 18 COMMISSIONER: Will you ask again?
 19 MS STEINBERG: I asked you if – is it not
 20 proper for you as Gartner when you are yourselves engaging
 21 in a procurement process to assess whether that is a lawful
 22 procurement process?
 23 MR WILLEMSE: We're not a legal
 24 organisation so I can't say –
 25 MS STEINBERG: No, no, I'm not –

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1 MR WILLEMSE: A lawful –
 2 MS STEINBERG: I'm not asking you if
 3 you're a legal organisation. I'm asking if it's not proper
 4 when you're engaging in a procurement process to assess
 5 whether it's proper?
 6 MR WILLEMSE: Yes.
 7 MS STEINBERG: It would be appropriate?
 8 MR WILLEMSE: It would be appropriate.
 9 MS STEINBERG: But you didn't do so?
 10 MR WILLEMSE: We certainly, in terms of –
 11 once we had gone through this initial process and got to
 12 talk with SARS and worked with all the procurement and
 13 legal people who are responsible for ensuring the process
 14 takes place, that is where we determine whether it's being
 15 done correctly or not. Well, we can't determine it's being
 16 done correctly but we would understand that it's their
 17 responsibility to do that. If it's not appropriate they
 18 would come back to us and say to us that, you know, this
 19 has not been approved. It has not gone through the proper
 20 process.
 21 MS STEINBERG: But you made that -
 22 COMMISSIONER: Sorry, can I just get the
 23 answer myself? I need also to know –
 24 MS STEINBERG: Yes.
 25 COMMISSIONER: To know the answers.

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1 MS STEINBERG: Go ahead.
 2 COMMISSIONER: The questions were to –
 3 the first question you were actually asked is, is it proper
 4 for you to enquire into whether you are engaging in the
 5 correct process? You said yes. The second question was
 6 did you do that? The question is – the answer is either
 7 yes or no, then you can give your explanation.
 8 MR WILLEMSE: The answer is yes.
 9 COMMISSIONER: You did go through that
 10 and you did satisfy yourselves, is that correct?
 11 MR WILLEMSE: The answer is yes, because
 12 when we started working the procurement and legal folk we
 13 understood that they were going through the process so that
 14 satisfied us that the correct process was being followed.
 15 COMMISSIONER: So did they advise you
 16 that you had followed the correct process?
 17 MR WILLEMSE: I have –
 18 COMMISSIONER: Did they advise you that
 19 you had followed the correct process? It's a very simple
 20 question. You said you went to the other people to enquire
 21 into that. I want to know whether they reported back to
 22 you and said yes, you are following the correct process.
 23 MR WILLEMSE: There was no specific
 24 communication around that but what took place was the –
 25 them asking for documents from us in terms of how they

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1 would engage us.
 2 COMMISSIONER: Them being who?
 3 MR WILLEMSE: Procurement. SARS
 4 procurement and –
 5 COMMISSIONER: SARS procurement?
 6 MR WILLEMSE: Yes.
 7 COMMISSIONER: So they asked for
 8 documents, etcetera. The question is –
 9 MR WILLEMSE: Yes.
 10 COMMISSIONER: Did Gartner enquire into
 11 whether the process was the proper process or not? The
 12 question you answered yes. Now I want to know how did you
 13 do that? By asking SARS? And if you asked SARS did they
 14 come back and say yes, you are. I don't understand these
 15 answers.
 16 MR WILLEMSE: Yes, so in the discussion
 17 with SARS they told us what the process would be that – and
 18 they were looking to initially engage us through –
 19 potentially through a SETA contract and ultimately it ended
 20 up they didn't use that but they were then – so that was
 21 the initial request to us as do you have an existing
 22 agreement with SETA and that was the start of the process
 23 in terms of understanding that they were following a
 24 particular process to determine how they could engage us.
 25 COMMISSIONER: Yes. So you're talking

<p style="text-align: right;">Page 3979</p> <p>1 now, you're saying that SARS asked you questions because 2 they were engaging in a process and you answered the 3 question. The question still is and I don't think we're 4 getting closer to the answer – I might be wrong. Did you 5 satisfy yourself that the process that was being gone 6 through was a proper procurement process in accordance with 7 the requirements of Treasury, etcetera. Did you – did 8 Gartner ask that question or did they simply follow what 9 SARS was doing? And did Gartner – let me put it simply. 10 Did Gartner ask itself is this an appropriate and proper 11 procurement process? You say the answer is? Well, it's 12 yes or no, I would have thought.</p> <p>13 MR WILLEMSE: Yes. So the answer is yes, 14 we felt that the proper process was being followed.</p> <p>15 COMMISSIONER: But what made you think 16 so?</p> <p>17 MR WILLEMSE: The fact that they asked us 18 for a contract that we might have with SETA in order to 19 engage us through SETA. The fact that it was then decided 20 not to use the SETA contract. The fact that they then 21 asked us if we have a standard set of terms and conditions 22 we use which we provided. The fact that ultimately that 23 set of terms and conditions was modified based on some SARS 24 requests to modify them and a final agreement was put in 25 place direct between Gartner Island and SARS so it went</p>	<p style="text-align: right;">Page 3981</p> <p>1 engaging an organisation without having to go out on open 2 tender. I don't know if that was the process that was 3 followed.</p> <p>4 PROF KATZ: But then you accepted that 5 that was what opened the road and you also knew that you 6 weren't a sole supplier. So that couldn't have opened the 7 road.</p> <p>8 MS MASILO: Mr Willemse –</p> <p>9 COMMISSIONER: Sorry, just let him deal 10 with the question if he wishes to.</p> <p>11 MR WILLEMSE: I wasn't sure there was a 12 question. I thought –</p> <p>13 COMMISSIONER: Well, the question was you 14 knew you were not a sole supplier. You knew that 15 deviations required a sole supplier so you must have known 16 that the process that was being followed was not a 17 permitted process. That's I think what is being put to 18 you.</p> <p>19 MR WILLEMSE: I'm not a procurement 20 expert so I did not understand the process that – as to how 21 a deviation is actually done.</p> <p>22 [10:04] Now I've never been involved intimately with it. 23 I haven't understood that. My understand was that if a 24 government department engages us and they want to engage 25 only us or any other vendor that there is a process they</p>
<p style="text-align: right;">Page 3980</p> <p>1 through a number of negotiation stages to find a vehicle to 2 engage Gartner and then – sorry, sir.</p> <p>3 COMMISSIONER: No, you carry on.</p> <p>4 MR WILLEMSE: And then we have an email 5 from the acting group executive of corporate legal services 6 post the event when we get asked by a particular business 7 person as to whether Gartner has been authorised to do this 8 work, stating that there's a properly authorised contract 9 between SARS and Gartner to deliver this IT assessment and 10 related services.</p> <p>11 COMMISSIONER: From what you're saying it 12 seems to me that your answer is no, we did not make our own 13 assessment of whether this process being followed was in 14 accordance with the regulations. You simply did what – you 15 simply followed what SARS did. Would that be fair?</p> <p>16 MR WILLEMSE: That's right, yes.</p> <p>17 PROF KATZ: Sorry, but that with respect 18 doesn't reconcile. You said you relied on the deviation. 19 That's what you told us, because you're a sole supplier. 20 You also in answering questions conceded you weren't a sole 21 supplier. So therefore the deviation you relied on to 22 overcome the process to your knowledge, wasn't applicable. 23 You weren't a sole supplier.</p> <p>24 MR WILLEMSE: I – sorry, sir, I think 25 that I said I understand that a deviation is a way of</p>	<p style="text-align: right;">Page 3982</p> <p>1 need to follow to do that. And I've never been intimately 2 involved in the internal process as to how they do it</p> <p>3 COMMISSIONER: But we're not interested 4 in being involved in their internal process. We're 5 interested in what Gartner knew at the time that it was now 6 getting this contract. I thought you had said yes, I do 7 understand that and understand what, in what circumstances 8 a deviation is about which is a sole supplier. It's one of 9 them. I knew we were not a sole supplier which you have 10 acknowledged. But then if that is the case on what basis 11 did you think this was a proper process being followed? 12 And I think that's really where it's all going to.</p> <p>13 MR WILLEMSE: I'm not sure if a deviation 14 is the only way of engaging -</p> <p>15 PROF KATZ: But that is the way you 16 relied on.</p> <p>17 MR WILLEMSE: Sorry, sir?</p> <p>18 PROF KATZ: That's the one you told us 19 you relied on, the deviation based on sole supplier. 20 That's what satisfied you. And then you also knew that you 21 weren't a sole supplier so my question is how could it have 22 satisfied you?</p> <p>23 MR WILLEMSE: I understood that a 24 deviation is one of the ways of engaging an organisation. 25 I didn't know if that was the only one.</p>

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1 PROF KATZ: But that's the one you relied
 2 on.
 3 COMMISSIONER: You didn't know if it was
 4 the only way.
 5 MR WILLEMSE: Correct.
 6 COMMISSIONER: But you told us that you
 7 thought that they were relying on a deviation or am I
 8 wrong?
 9 MR WILLEMSE: I said my understanding is
 10 that a deviation is a way of doing it. I didn't say that
 11 we, it was, that was what the process was that was used for
 12 us.
 13 COMMISSIONER: Okay because you've
 14 mentioned that you didn't know whether, you didn't know
 15 whether they were relying on a deviation or not.
 16 MR WILLEMSE: Correct.
 17 COMMISSIONER: Is that correct?
 18 MS STEINBERG: Well, can -
 19 COMMISSIONER: Sorry, but you didn't know
 20 - are you saying that you didn't know whether they were
 21 relying on a deviation or not?
 22 MR WILLEMSE: Correct.
 23 MS STEINBERG: Well, let me read an email
 24 to you. This is Annelie Frost from Gartner to you among
 25 others, 19th December. She said, "SARS communicated that

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1 they are not engaging any other suppliers for this piece of
 2 work, only Gartner."
 3 MR WILLEMSE: Yes.
 4 MS STEINBERG: "We've been chosen for our
 5 objectivity." I think you were well aware that this was a
 6 sole supplier basis for procurement. It is all over the
 7 emails. You were aware they had chosen Gartner as a sole
 8 supplier.
 9 MR WILLEMSE: Yes, I was.
 10 MS STEINBERG: Mr -
 11 MS MASILO: Sorry, can I just ask one?
 12 The terms of reference that you, the terms of reference -
 13 MR WILLEMSE: Yes.
 14 MS MASILO: Yes, that you assisted Mr
 15 Monyeke to draft for SARS. Is it standard practice for
 16 Gartner whether in South Africa or globally to assist their
 17 clients with drafting the terms of reference whether in
 18 government or a private sector client?
 19 MR WILLEMSE: Yes, it is.
 20 MS MASILO: It is standard practice.
 21 MR WILLEMSE: I wouldn't say standard.
 22 So where that particular public sector client has
 23 approached Gartner as a, and wanting to use Gartner only
 24 then quite often we do get involved in building the scope
 25 in terms of what they are looking for. So they in most

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1 cases don't come with a formalised requirement
 2 specification. It's a fairly high level idea of what they
 3 want to do and through interactive sessions that scope gets
 4 built out.
 5 MS MASILO: Do you do the same for your
 6 private clients as well?
 7 MR WILLEMSE: In a lot of instances, yes.
 8 MR KAHLA: And is that considered the
 9 kind of stuff that an objective consultant ought to do,
 10 define its own mandate in relation to the services it's
 11 going to render to the client?
 12 MR WILLEMSE: It's not about defining its
 13 own mandate. It's about trying to ensure that the client,
 14 the scope that is ultimately defined will provide the
 15 client with the outcomes they need. In some situations if
 16 you get a terms of reference it doesn't necessarily provide
 17 everything they want because they don't necessarily fully
 18 understand the spectrum of what is possible and what -
 19 MR KAHLA: But you're not -
 20 MR WILLEMSE: How you could deliver the
 21 outcomes.
 22 MR KAHLA: Mr Willemse, you're not
 23 disputing that the terms of reference are effectively the
 24 definition of the mandate.
 25 MR WILLEMSE: Yes.

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1 MR KAHLA: Or are you?
 2 MR WILLEMSE: No, no.
 3 MR KAHLA: So effectively you defined the
 4 mandate of the work you were to render to SARS.
 5 MR WILLEMSE: We worked together on it,
 6 yes.
 7 MR KAHLA: Gartner together with Mr
 8 Monyeke defined the mandate of the work it was to render to
 9 SARS.
 10 MR WILLEMSE: Based on information
 11 provided to us by SARS.
 12 COMMISSIONER: Is your answer yes or no?
 13 The question is simple.
 14 MR WILLEMSE: Yes.
 15 COMMISSIONER: Yes?
 16 MR WILLEMSE: Yes, but it was based on
 17 information that was provided to us by SARS initially so it
 18 wasn't, it wasn't from absolute zero. There was a, already
 19 in SARS' mind certain questions they wanted to ask and we
 20 built out on that.
 21 MS STEINBERG: No, but, Mr Willemse, you
 22 don't know that because you spoke to Mr Monyeke, not to
 23 SARS.
 24 MR WILLEMSE: But he told me that he,
 25 the, he'd had the meeting with SARS and so, you know, it's

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1 not something I believe that he could suck out of his
 2 thumb. It must have come from a discussion with SARS.
 3 MS STEINBERG: Well, we don't know but we
 4 know that you and Mr Monyeke wrote the terms of reference.
 5 That's what we know.
 6 MR WILLEMSE: Ja.
 7 MS STEINBERG: But you already knew in
 8 December that there was going to be a much bigger phase 2,
 9 didn't you?
 10 MR WILLEMSE: No, we did not. Typically
 11 in an engagement like this where there's an assessment it
 12 can often lead onto additional work and the reason for it
 13 is that by the nature of an assessment there are certain
 14 findings and recommendations that come out and it's
 15 dependent on the client as to whether, what they decide to
 16 do with that. So they could actually take the assessment
 17 and decide to you nothing. They could take the assessment
 18 and implement some of the recommendations themselves or
 19 they could take the assessment and ask someone to assist
 20 them with it.
 21 MS STEINBERG: Well, if you look at the
 22 file, would you turn to page 33? It's marked 9, the email
 23 marked 9.
 24 MR WILLEMSE: Yes.
 25 MS STEINBERG: You see there's an email

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1 from yourself to Mr Monyeke on Thursday December the 11th.
 2 MR WILLEMSE: Correct.
 3 MS STEINBERG: And you say, "Hi Patrick,
 4 I've changed the outcomes slightly." That's the outcomes
 5 according to the terms of reference, yes?
 6 MR WILLEMSE: Ja.
 7 MS STEINBERG: "My suggestion would be
 8 that we, that the approach we follow is to," and then there
 9 were a number of bullet points, "Gartner strategic business
 10 requirements information, platform IT assessment, analyse
 11 current state findings, develop future state
 12 recommendations, develop roadmap and associated
 13 initiatives, deliver final report and presentation to the
 14 Commissioner." And then you say, "Coming out of the
 15 roadmap will be additional initiatives that we could assist
 16 them so far as the first phase is really the review and the
 17 recommendations via the roadmap." What does that mean?
 18 MR WILLEMSE: That means that was - often
 19 out of an project there is a requirement for additional
 20 work.
 21 MS STEINBERG: Yes.
 22 MR WILLEMSE: Yes.
 23 MS STEINBERG: Particularly when you
 24 write the terms of reference for the first phase, do the
 25 first phase and set up the second phase, isn't that so?

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1 MR WILLEMSE: I can't answer that just
 2 with a yes or no, Judge, because -
 3 COMMISSIONER: Okay, let's have a go
 4 without a yes or no and see where it gets and maybe we'll
 5 come back to the yes or no if necessary.
 6 MR WILLEMSE: Because the initial, as I
 7 understood it the initial notes that Patrick brought to me
 8 as a result of his meeting were from a meeting with SARS
 9 where they had expressed a requirement that they had. And
 10 if I looked at that requirement it specifically says
 11 there's a new Commissioner, these are some of the concerns,
 12 and they talk about the modernisation strategy. So that to
 13 me said it came from SARS. What we did then was help to
 14 enhance that terms of reference or those meeting notes to
 15 ensure that SARS got the outcomes that they were
 16 anticipating in order to make the necessary decisions.
 17 COMMISSIONER: Let's go back to the
 18 question now if you don't mind. Let's see if we can get
 19 something more clear.
 20 MS STEINBERG: The question is that what
 21 happened was that you wrote the terms of reference that led
 22 to phase 1. In phase 1 you identified a number of problems
 23 for SARS which led to phase 2. Is that right?
 24 MR WILLEMSE: Correct.
 25 MS STEINBERG: Mr Hore described that

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1 phase 1 as a burning platform, he said a consultancy comes
 2 in and in phase 1 in its diagnostic it manages to find
 3 sufficient problems to lead to a very big phase 2. Now
 4 that's exactly what happened, isn't it? You had phase 1
 5 for about 13 million and based off that diagnostic we
 6 entered into phase 2 for 151 million. That's what
 7 happened, isn't it?
 8 MR WILLEMSE: That's what happened but
 9 that was not the intention so the intention was to do the
 10 phase 1. There was no guarantee.
 11 MS STEINBERG: No, I'm not saying there
 12 was a guarantee.
 13 MR WILLEMSE: That we would get the phase
 14 2. It's also not - from the Gartner point of view we
 15 certainly cannot fabricate findings and recommendations in
 16 order to generate a second project for us. We just cannot
 17 do that. That is - it's against all business ethics that
 18 we have so that is not something that gets done. The,
 19 everything that was done in phase 1 was evidence-based so
 20 all the findings had to have supporting evidence on the
 21 findings which resulted in recommendations. Yes, it
 22 creates a decision for the client to make as to whether
 23 they move into a second phase to implement those
 24 recommendations or not.
 25 MS STEINBERG: Well, Advocate Hobden will

<p style="text-align: right;">Page 3991</p> <p>1 deal with whether or not it was evidence-based but I'm not 2 going to deal with that now.</p> <p>3 COMMISSIONER: May I just see the 4 document you are referring to please if it's not 5 inconvenient to you?</p> <p>6 MS MASILO: Mr Willemse, you said that 7 you enhanced the terms of reference so that SARS could get 8 the outcome that it anticipated. What outcome did they 9 anticipate at that stage?</p> <p>10 MR WILLEMSE: When I refer to that it's 11 just to make sure that they cover all the questions they 12 need to ask to unearth the potential findings so that 13 nothing is left out and is then at the end of the project 14 or the engagement, you realises that there's a section that 15 might have been important in terms of moving forward. So 16 to try and make sure that the scope is fully defined and 17 not just an initial, some initial thoughts that were put 18 together.</p> <p>19 COMMISSIONER: Can we just come back to 20 this document? I just don't quite understand it. You said 21 here coming out of the roadmap there will be additional 22 initiatives, not might be or possibly, there will be 23 additional initiatives that we could assist them with. So 24 that was your views that there will be a roadmap and from 25 the roadmap there will be additional initiatives.</p>	<p style="text-align: right;">Page 3993</p> <p>1 was urgency involved in this?</p> <p>2 MR WILLEMSE: The urgency we were told 3 was that the Commissioner wanted the project completed by 4 the end of March. I don't know why.</p> <p>5 MS STEINBERG: You don't know why.</p> <p>6 MR WILLEMSE: No.</p> <p>7 MS STEINBERG: You know that in your 8 critique of the modernisation procurement process Gartner 9 says in its phase 1 outcome, "procurement process only 10 allows for two deviation types, namely sole supplier and 11 emergency. However modernisation used 'impracticality' due 12 to time pressures as a third." Is that not what happened 13 here?</p> <p>14 MR WILLEMSE: I'm not sure. I can't 15 answer that.</p> <p>16 MS STEINBERG: Gartner said legal 17 negotiations were conducted and final contract clauses 18 agreed. Sometimes negotiations were only concluded and 19 signed even as late as Christmas Eve day. Is that not what 20 was happening here?</p> <p>21 MR WILLEMSE: I really can't say.</p> <p>22 MS STEINBERG: I think you can. Were you 23 not meeting around that period and racing to have this 24 contract signed early in the new year?</p> <p>25 MR WILLEMSE: If I work back my</p>
<p style="text-align: right;">Page 3992</p> <p>1 MR WILLEMSE: So based on experience that 2 happens, yes.</p> <p>3 COMMISSIONER: Yes, so that's what I 4 think counsel is getting at that at phase 1 you expected 5 that there would be a phase 2. Would that be right?</p> <p>6 MR WILLEMSE: There would be a 7 requirement to do some work, yes.</p> <p>8 MS STEINBERG: You see, that's the reason 9 why there is supposed to be a competitive process. What's 10 supposed to happen is SARS writes its own terms of 11 reference. It then usually would have some sort of 12 competitive process just to see who would do phase 1. But 13 then again for phase 2 a competitive process to see who 14 could do this implementation at the most, in the most cost 15 effective way. Then in this case we see two companies, 16 Gartner and Mr Monyeke's Rangewave, writing the terms of 17 reference, winning phase 1, setting up phase 2 and then 18 doing phase 2 and then phase 3. That is what happened, 19 yes?</p> <p>20 MR WILLEMSE: Yes.</p> <p>21 MS STEINBERG: Going back to December why 22 were the terms of reference and the negotiations happening 23 over the holiday period?</p> <p>24 MR WILLEMSE: I have no idea.</p> <p>25 MS STEINBERG: Were you told that there</p>	<p style="text-align: right;">Page 3994</p> <p>1 understanding was this had to be delivered before the end 2 of March.</p> <p>3 MS STEINBERG: Yes.</p> <p>4 MR WILLEMSE: It looked like about a ten- 5 week project which went - we would've had to start by the 6 middle of January in order to complete by the end of March.</p> <p>7 MS STEINBERG: Yes.</p> <p>8 MR WILLEMSE: That is not unusual for 9 clients to place time constraints on us in terms of 10 projects. So they had a deadline and they need to get 11 something done in that timeframe.</p> <p>12 MS STEINBERG: So then why did Gartner 13 criticise SARS for doing that previously?</p> <p>14 MR WILLEMSE: I'm sorry I didn't, I 15 didn't expect to cover that in this session so I haven't 16 looked at that documentation and that. I would need to 17 have a look and try and understand.</p> <p>18 COMMISSIONER: You know, I don't - I also 19 don't understand in this inquiry. People are called to 20 answer questions and then they say, well, I don't know, you 21 didn't tell me the question you were going to ask. There's 22 the document that is critical of the previous people. And 23 you've heard the criticism. The question really wasn't 24 exactly the same thing happening with Gartner and if so as 25 you will see the next question why criticise that one when</p>

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1 Gartner is doing the same. Do you understand that?
 2 Gartner is doing exactly what Gartner criticised. Is that
 3 right?
 4 MR WILLEMSE: If I could perhaps just
 5 have that read to me again please?
 6 COMMISSIONER: Show him the document,
 7 will you? So this is not a trial. It's an inquiry and if
 8 people have got knowledge then they don't need to be told
 9 in advance what the question is. If you don't know the
 10 answer then you say look, I don't know the answer. But if
 11 you, if it's within your knowledge just answer the question
 12 and then we move on. It's very simple.
 13 MS STEINBERG: So Mr Willemse, have a
 14 look at four and six. I've marked them there. That's an
 15 extract from Gartner's report to SARS. Can you read us
 16 what four and six say?
 17 MR WILLEMSE: So it says, four says,
 18 "Procurement process only allows for two deviation types,
 19 namely sole supplier and emergency. However modernisation
 20 often used impracticality due to time pressures as a
 21 third." And then six which says, "Legal negotiations were
 22 conducted and final contract clauses agreed. Sometimes
 23 negotiations were only concluded and signed even as late as
 24 Christmas Eve."
 25 MS STEINBERG: Is that not similar to

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1 what happened in your process with SARS?
 2 MR WILLEMSE: It could well be. We were
 3 under pressure to produce a proposal to be reviewed before
 4 Mr Zulu went on leave in early January.
 5 MS STEINBERG: So it was wrong when Mr
 6 Hore did it with BBD or whoever it was but it wasn't wrong
 7 when you did it with Mr Zulu?
 8 MR WILLEMSE: I'm not sure if you say
 9 it's wrong. It's a finding.
 10 MS STEINBERG: I think you're saying it's
 11 wrong.
 12 COMMISSIONER: I'm sorry, just finish the
 13 answer. You say you don't, you're not, don't know -
 14 MR WILLEMSE: So it is one of the
 15 findings.
 16 COMMISSIONER: Yes.
 17 [10:24] MR WILLEMSE: And ja I suppose it is
 18 pretty similar to what happened to us.
 19 MS STEINBERG: It is in the context of
 20 criticisms of modernisation procurement process. I want to
 21 move onto another aspect of the procurement. If we go to
 22 page 56, this is the email marked 15 and it's a long email
 23 chain. Again we have Ms Frost writing to you and others.
 24 If you look at page 56, as I understand it she's written
 25 what's in black and you have responded what's in red. Is

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1 that right?
 2 MR WILLEMSE: That's correct.
 3 MS STEINBERG: So if you look under
 4 background the second paragraph under background, are you
 5 with me?
 6 MR WILLEMSE: Yes.
 7 MS STEINBERG: She says they
 8 communicated, they being SARS, that they are not engaging
 9 any other suppliers for this piece of work only Gartner.
 10 We have been chosen for our objectivity. They want us to
 11 contract some companies from their preferred list to ensure
 12 adherence to their empowerment policies and you write, not
 13 sure what capabilities these companies will have and what
 14 role they will play but it can also potentially slow the
 15 project down. We had have had such an experience and the
 16 level of skills given to us leave a lot to be desired.
 17 If you then go to the last paragraph in that
 18 section under background she writes we should include CVs
 19 of the proposed consultants and they stressed that we
 20 should be sensitive to demographics and you write really
 21 concerned about this, our approach will be to use the best
 22 possible resources to ensure we meet SARS's expected
 23 outcomes. The team could be a mix of local and
 24 international skills and trying to adhere to demographic
 25 requirements might not allow for the best team to be put

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1 forward. So am I correct in my understanding that SARS
 2 were asking you to subcontract with a company from their
 3 preferred list, is that correct and you had expressed -
 4 COMMISSIONER: Sorry, is that correct,
 5 you, poor Norman there can't see the nods.
 6 MR WILLEMSE: That's correct.
 7 MS STEINBERG: And you were, you had
 8 raised some concerns about doing so?
 9 MR WILLEMSE: Correct.
 10 MS STEINBERG: Now if you turn to page
 11 64, Ms Frost writes to Mr Mavuso of SARS. In the first
 12 bullet point you see that she says Gartner has a level 1
 13 BBEEE rating. You see that?
 14 MR WILLEMSE: I do.
 15 MS STEINBERG: And then in the third
 16 bullet point she says complementing the team with people we
 17 have not worked with, we have not worked with us previously
 18 to deliver this high profile delivery in a short space of
 19 time is a high risk we are not comfortable to accept.
 20 MR WILLEMSE: Correct.
 21 MS STEINBERG: Gartner had a level one
 22 rating. Why were you required to bring on an empowerment
 23 partner?
 24 MR WILLEMSE: It was not Gartner that had
 25 the rating it was IT Management Advisory Services that had

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1 the level 1 rating. The contracting organisation was
 2 Gartner Island and they were not present in the country so
 3 they had no BEE certification at all. So my understanding
 4 was that we were required to use an empowerment partner to
 5 cover that.

6 MS STEINBERG: And did SARS show you a
 7 preferred list of partners?

8 MR WILLEMSE: No, they did not. Not that
 9 I can recall.

10 MS STEINBERG: So how did you then come
 11 to bring Mr Monyeke's Rangewave on board?

12 MR WILLEMSE: Let me just go back to some
 13 of the timelines. On the, what occurred initially is when
 14 we put the initial proposal together I could see already
 15 that in terms of my core group of people, I didn't have
 16 sufficient people. So I called on some of the people that
 17 I have in my network to assist and see if they are
 18 available to do such a project. So they were included in
 19 the initial proposal that we had. There was for instance
 20 an additional, a person who was the previous CIO of SAICA,
 21 who was an independent consultant at that stage and had
 22 approached me to do some consulting work with Gartner and I
 23 used him and a couple of others.

24 On the 9th of January I received, Annelie Frost
 25 received an email from Mr Mavuso from procurement at SARS

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1 saying that Mr Makwakwa had asked for additional
 2 requirements and can we consider them. I wrote back to Mr
 3 Mavuso and asked for some additional information but at
 4 that point in time I realised that to deliver that
 5 additional work we didn't have enough people. My network
 6 was exhausted at that point in time and I knew that Mr
 7 Monyeke's company Rangewave had people on contract so I
 8 approached him and I said to him this is the kind of person
 9 we're looking for, do you have some CVs that you can
 10 provide me to see if we can find some additional people
 11 which he did and the people that they provided were really
 12 good people and so that to me was the way of supplementing
 13 the team with the resources that I didn't have.

14 MS STEINBERG: And it appears that
 15 Rangewave ended up enjoying about 30 to 40% of the
 16 contract, is that right?

17 MR WILLEMSE: That is correct.

18 MS STEINBERG: Now Rangewave is a SAP
 19 South African partner, isn't it?

20 MR WILLEMSE: That's correct.

21 MS STEINBERG: Now Gartner's independence
 22 advantage is that it's not associated with any particular
 23 product, isn't it?

24 MR WILLEMSE: That's correct.

25 MS STEINBERG: But now the team that was

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1 given to SARS was a team that in fact was associated with a
 2 particular product, isn't it?

3 MR WILLEMSE: That's not quite correct.
 4 So Rangewave do have an SAP, they are an SAP certified
 5 partner. The people they have on their books do more than
 6 just SAP, they do lots of other different types of works.
 7 They're not all SAP type people. That is one of their
 8 offerings and, so the people we requested were people that
 9 focused in the area of governance, the areas of security
 10 and the areas of application development, etcetera. So a
 11 number of different types of resources and also the IT
 12 strategy environment if I remember correctly. So the CVs
 13 we got were of the kind of consulting people they used,
 14 there was one particular person who does have an SAP
 15 background. But that did not worry because of the way we
 16 put them together in the team under Gartner people so they
 17 never ever took a piece of work and did it themselves.
 18 They worked under a Gartner experienced person.

19 MS STEINBERG: Let me put it this way.
 20 SARS we see identified Gartner as the sole supplier based
 21 on Gartner's objectivity. That's correct?

22 MR WILLEMSE: Yes.

23 MS STEINBERG: Gartner then subcontracted
 24 for 40% of the contract with a company that does not have
 25 that independence. Is that Correct?

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1 MR WILLEMSE: Yes.

2 MS STEINBERG: So in fact the Gartner
 3 team that worked with SARS was not an independent team.

4 MR WILLEMSE: That is not quite correct.
 5 So the way we structure the team, and one the very first
 6 day that we got the team together the instruction was that
 7 you have no opinions. You will use the Gartner research so
 8 we gave everybody access to the Gartner research and that
 9 all opinions or any findings or recommendations or anything
 10 that came out had to be tested against Gartner research
 11 which is what we did. So they worked under a stream lead
 12 who was a Gartner experienced person.

13 MS STEINBERG: Now let's talk about that.
 14 Gartner's research that I have seen this magic quadrant.
 15 The Gartner magic quadrant in contact centre infrastructure
 16 doesn't recommend SAP. It's not in that, under leaders.
 17 You're aware of that?

18 MR WILLEMSE: I don't know all the magic
 19 quadrants but if, if you're reading from a document I'll
 20 assume that is correct, yes.

21 MS STEINBERG: And yet the recommendation
 22 that came out was for SARS to use SAP in the contact
 23 centre.

24 MR WILLEMSE: I cannot answer that right
 25 now because I can't remember, I thought it was something

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1 different. But I can't answer that right now.
 2 MS STEINBERG: Gartner's, I can tell you
 3 that is that case as far as I understand. By the end of
 4 Gartner's phase 2, Gartner had recommended the use of a lot
 5 of SAP products.
 6 MR WILLEMSE: That, I don't think we ever
 7 recommended SAP and this I think will be covered by the
 8 next speaker. So the, SARS had invested quite a lot of
 9 money in SAP and we found out that for instance for tax and
 10 revenue management they invested money in licenses for TRM
 11 but it never actually used them. There was a requirement
 12 further on which would be appropriate to use the TRM
 13 licences for but there was never ever a recommendation just
 14 to go direct to SAP but as I say I'm not fully versed with
 15 that at this point in time. I know that Mike Lithgow will
 16 cover that in his session.
 17 MS STEINBERG: I'll pick that up with
 18 him. At the moment my concern is this. That Gartner gets
 19 the job because of its independence. It on boards a
 20 company that is patently not independent and we see that
 21 the Rangewave resources are integrated into every major
 22 work stream. We know that Rangewave is an accredited SAP
 23 partner and some of the outcomes are to invest in SAP
 24 licenses and implementation along the line and the question
 25 I'd like to just flag now which I think that my colleague

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1 will explore more fully, is whether one can say there's a
 2 link between the fact that the advisory team as a whole had
 3 a relationship with SAP and a lot of the recommendations
 4 were to spend money on SAP.
 5 MR WILLEMSE: It was absolutely not
 6 right.
 7 COMMISSIONER: Can I just get clarity.
 8 Did Rangewave have a contract with SAP?
 9 MS STEINBERG: Yes.
 10 COMMISSIONER: And Rangewave when it
 11 comes on board employs individual consultants to assist it
 12 in its work. Is that right? But they are contracted to
 13 Rangewave, is that right?
 14 MR WILLEMSE: That's correct. We did
 15 interview all of them, all the people that were put forward
 16 before deciding as to whether they would be appropriate to
 17 use in the project or not.
 18 COMMISSIONER: No I understand that. But
 19 they have a contract with, they are contacted by Rangewave?
 20 MR WILLEMSE: It's one area of their
 21 business that has a SAP capability.
 22 COMMISSIONER: No I understand that but
 23 the individuals who then do the work for Rangewave they are
 24 contracted to Rangewave?
 25 MR WILLEMSE: Correct.

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1 COMMISSIONER: Yes.
 2 MR KAHLA: Did Rangewave do 40% of the
 3 work of or provide 40% of the resources to the assignment?
 4 I suppose I'm just, I'm trying to work that out based on
 5 the share of the revenue.
 6 MR WILLEMSE: It would be, it would
 7 pretty much match in terms of the revenue and the resources
 8 provided.
 9 MR KAHLA: It did.
 10 MR WILLEMSE: I would have to go and
 11 check. I, off the top of my head I can't remember exactly
 12 how many, we had about 17 or 18 people on site in total of
 13 which I think 8 were from Rangewave if I remember
 14 correctly. I can't remember the exact numbers, so I would
 15 need to just go and check that and I can confirm it with
 16 you, for you if you want.
 17 COMMISSIONER: Ms Steinberg, I'm not
 18 sure, you perhaps had covered it and I have missed it but
 19 how did Rangewave get chosen by Gartner? Why did,
 20 Rangewave is Mr Monyeke?
 21 MR WILLEMSE: Correct.
 22 COMMISSIONER: And presumably then
 23 Rangewave comes into the picture because Mr Monyeke had
 24 been the instrument for getting the contract for Gartner in
 25 the first place.

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1 MR WILLEMSE: That was not the reason.
 2 COMMISSIONER: How did Rangewave come
 3 into the picture?
 4 MR WILLEMSE: So if I can just explain
 5 again. In the, in the initial discussions where we
 6 actually are concerned about using a subcontractor I used
 7 the resources that I had access to in my network.
 8 COMMISSIONER: Yes.
 9 MR WILLEMSE: When the additional work
 10 was requested of us and we realised we needed additional
 11 resources there was no time for me to go out and start
 12 trying to find independent consultants that I could use.
 13 The obvious way for me was to speak to Mr Monyeke and ask
 14 him if he could provide me CVs to see if he had the type of
 15 resources that we believed we could use on the project.
 16 COMMISSIONER: The additional, sorry are
 17 you finished?
 18 MR WILLEMSE: Yes.
 19 COMMISSIONER: The additional work you
 20 were told comes, the source of that is Mr Makwakwa?
 21 MR WILLEMSE: Correct.
 22 COMMISSIONER: And is that reported to
 23 you through Mr Monyeke?
 24 MR WILLEMSE: No that's reported through
 25 Mr Mavuso who is SARS procurement acting senior manager ICT

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1 category.

2 COMMISSIONER: Did Rangewave or Mr

3 Monyeke have any part to play in that assignment?

4 MR WILLEMSE: No. The additional work

5 that was requested by Mr Makwakwa was the reason for me

6 looking for additional resources and going to Rangewave

7 about it.

8 COMMISSIONER: I understand.

9 MR WILLEMSE: Yes.

10 COMMISSIONER: But was the acquisition of

11 the, that additional work, was Mr Monyeke or Rangewave

12 involved in any way in the acquisition of that other, that

13 extra piece of work that Gartner took in?

14 MR WILLEMSE: I have no idea. The email

15 came to us from Mr Mavuso saying that Mr Makwakwa had

16 requested this be included in the proposal.

17 COMMISSIONER: Well then I don't, I'm not

18 sure that I quite understand. Why was Mr Monyeke wasting,

19 using his time in this whole project in the first place,

20 presumably he wanted work?

21 MR WILLEMSE: Sir, my understanding is

22 that he had, he was well thought of in government and that

23 he had been approached to assist them in terms of trying to

24 put the requirements together.

25 COMMISSIONER: Yes, but what was he going

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1 to get out of it?

2 MR WILLEMSE: At that point in time as

3 far as I was concerned nothing. So I, there's nothing to

4 say to me when he came to me to say I need some work out of

5 this or anything like that. In fact I pushed back on the

6 fact that we're concerned about using a subcontractor.

7 MR KAHLA: Mr Willemse, between about

8 let's say 1 November 2010 to let's say 9 December 2014 had

9 Gartner had any assignment that he worked on together with

10 Mr Monyeke or his company?

11 MR WILLEMSE: No, that's why I tried to

12 go into a lot of detail to specifically say that we had

13 absolutely no work that came from any interaction with Mr

14 Monyeke.

15 MR KAHLA: I'm asking really to

16 understand what was magical in his being picked in 2014

17 December for this assignment?

18 MR WILLEMSE: You mean?

19 MR KAHLA: I'm really following up on the

20 question that had been asked before. Why was Mr Monyeke

21 elected?

22 [10:44] So and then hence I wanted to understand whether

23 had you doing some work before with him or his company and

24 as I take the tracking let's say 1 November 2010 to 9

25 December 2014 and you're saying between that period you had

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1 never had any work arrangement with Mr Monyeke.

2 MR WILLEMSE: Correct.

3 MR KAHLA: Until this particular

4 assignment.

5 MR WILLEMSE: Correct.

6 PROF KATZ: Sorry, did Mr Monyeke have

7 any relationship with SARS or any people in SARS?

8 MR WILLEMSE: I have no idea. I can't

9 answer that.

10 COMMISSIONER: Did you never ask him?

11 What he was doing as it were the middleman here, why he was

12 -

13 MR WILLEMSE: I didn't ask him -

14 COMMISSIONER: - what connection he had

15 with SARS?

16 MR WILLEMSE: I didn't ask him because as

17 I say it gets around in the industry, I'd heard that he was

18 providing these coaching to certain CIOs and my assumption

19 was that was a good thing. He's experienced, he's well

20 thought of, he's a potential role model for government, so

21 that's a good thing and that's what I understood. So -

22 COMMISSIONER: But did you never ask him

23 -

24 MR WILLEMSE: I never asked him -

25 COMMISSIONER: You never asked him what

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1 relationship he had with SARS -

2 MR WILLEMSE: No, I didn't.

3 COMMISSIONER: - or anyone in SARS?

4 MR WILLEMSE: No.

5 COMMISSIONER: Throughout the whole

6 process, you never said well why are you involved in SARS?

7 MR WILLEMSE: No. You know, I mentioned

8 that our model, the consulting model is a very passive one

9 but most organisations if you, and this just goes back to

10 previous experience I had when I worked with IBM, if you

11 work with an organisation you try and go out there and

12 start building relationships with various people in the

13 organisation in order to start trying to unearth potential

14 opportunities for yourself.

15 COMMISSIONER: Yes.

16 MR WILLEMSE: Because it's all your

17 business and so that's fairly normal to do and if he was

18 trying to get business for his company here and in other

19 areas I'm not sure of it and I don't know about it -

20 COMMISSIONER: But that's not the

21 question.

22 MR WILLEMSE: - and I didn't ask - I

23 didn't ask him why he was here but my assumption was it was

24 because of his standing in government and this fact that

25 they saw him as a role model and the fact that there was a

<p style="text-align: right;">Page 4011</p> <p>1 new Commissioner who probably didn't want to go to his own 2 organisation to try and develop this terms of reference. 3 COMMISSIONER: No, I understand. You'd 4 explained that. I think the question was really this, I 5 mean, even over a cup of tea did you not just thought to 6 say to him what is your relationship with SARS? Never? 7 MR WILLEMSE: I didn't, no. 8 PROF KATZ: But you were going to be 9 investing a lot of resources doing terms of reference, 10 engagement, appointment, surely you would ask him. I mean 11 how authorised were you with SARS? How much do you, is 12 SARS really wanting you to get into this, get this project 13 going? I mean the fact that he had relationships in 14 government but what about SARS specifically, it never 15 arose? 16 MR WILLEMSE: I didn't ask him 17 specifically about his relationships within SARS. 18 PROF KATZ: And he was helping with terms 19 of engagement and – 20 MR WILLEMSE: So – 21 PROF KATZ: - on behalf of SARS. 22 MR WILLEMSE: So in the initial 23 interactions it certainly didn't crop up. Once we got 24 involved in the project and as he pretty much stepped back 25 and there was not much interaction with him at all. One of</p>	<p style="text-align: right;">Page 4013</p> <p>1 made reference to earlier? 2 MR WILLEMSE: No, I just didn't ask him. 3 I – if he knows people at SARS it wasn't for me to try and 4 dig deeper as to why, etcetera. He came to me and he said 5 he had a meeting at SARS and he wanted to discuss some of 6 the requirements that they'd discussed and – 7 PROF KATZ: But it must've been more than 8 knowing people at SARS. He was the source of what SARS' 9 requirements are in this whole project. So I mean it's not 10 just casually knowing people. 11 MR WILLEMSE: No – 12 PROF KATZ: He would've been deep into 13 SARS to be the source of their requirements on which you 14 based your terms of appointment. 15 MR WILLEMSE: And as I say for me that 16 was not unusual because I know when I worked for IBM as an 17 organisation I had similar fairly senior relationships with 18 people at clients where they trusted me and looked for 19 advice from me and for me to bring my organisation's 20 capability to assist them in their endeavours. So I didn't 21 see it as anything untoward. 22 COMMISSIONER: But this is a third party, 23 it's not the client. 24 MR WILLEMSE: I understand. So I didn't 25 ask him how he built his relationships with SARS.</p>
<p style="text-align: right;">Page 4012</p> <p>1 the people from Rangewave who was a senior person who kind 2 of became the point person for me in terms of the Rangewave 3 resources – 4 COMMISSIONER: No, but I mean you're 5 going, you're stepping down. Once we got involved in the 6 project but here you are, it does seem a bit odd to me. 7 Here you are discussing with a man, going into a project 8 with SARS. You never meet SARS yourself. All your 9 instructions are coming through this man who (inaudible) 10 with SARS and you never say to him, look, what are you 11 doing in this thing. I mean you didn't speak to SARS once 12 before this contract, before these terms of reference were 13 submitted and here you're dealing with the man that, if 14 you'd known that he's involved in government but you were 15 getting your instructions from him, you're drawing terms of 16 reference with him and you never say to him, Mr Monyeke, 17 what is your relationship with this matter or how do you 18 come here. You say well I assume because he does 19 management development etcetera, it's got nothing to do 20 with development. This has got to do with an assessment. 21 And you say you never said to him once, Mr Monyeke, why are 22 you involved in this. Is that your evidence? 23 MR WILLEMSE: I didn't ask him. 24 MR KAHLA: Is that because of the passive 25 mode that you had taken relation to engagements that you</p>	<p style="text-align: right;">Page 4014</p> <p>1 COMMISSIONER: Not how he built them, 2 what they were. 3 MR WILLEMSE: Or what they were. 4 COMMISSIONER: You were just happy to go 5 along, if you could get the business it really didn't 6 matter to you what his relationship was with SARS, is that 7 the point? 8 MR WILLEMSE: The point is he made the 9 initial contact and thereafter it was ourselves with SARS. 10 So – 11 COMMISSIONER: No, but you, you hadn't 12 even spoken to SARS by the time – 13 MR WILLEMSE: No. 14 COMMISSIONER: - the mandate had been put 15 together. 16 MR WILLEMSE: Correct. 17 COMMISSIONER: And you said well look 18 we'd like the business and we really don't mind what Mr 19 Monyeke is doing with SARS. That's really what it comes 20 down to. We don't ask him and we say well if that's where 21 the business comes from that's how it comes. Would that be 22 fair? 23 MR WILLEMSE: Yes. If SARS had decided 24 they wanted to use us and asked him to speak to us about it 25 or to get –</p>

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1 COMMISSIONER: No, but really we must
 2 stop this now. No, SARS hadn't said a word to you before
 3 the -
 4 MR WILLEMSE: No.
 5 COMMISSIONER: - mandate had been
 6 prepared. You didn't know if SARS was authorising him at
 7 all. You didn't know what SARS was up to. You had no
 8 idea. You had never spoken to them.
 9 MR WILLEMSE: Correct.
 10 COMMISSIONER: Yes. You just dealt with
 11 Mr Monyeke and you said well if business is going to come
 12 through Mr Monyeke well it doesn't matter to us as long as
 13 we get the business we don't - we're not interested in what
 14 his relationship is with SARS. That will be fair?
 15 MR WILLEMSE: We were not interested in
 16 his relationship with SARS, no.
 17 PROF KATZ: And that all the information
 18 on which you based everything did seem to presuppose some
 19 deeper relationship involvement between Mr Monyeke and
 20 SARS. Not?
 21 MR WILLEMSE: It could do.
 22 MR KAHLA: Sorry, I just want -
 23 MR WILLEMSE: No, there was nothing - I
 24 can't specifically say yes on that. I can't answer because
 25 I didn't know what was, what the relationship was in the

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1 background.
 2 MR KAHLA: Does Gartner comply or have
 3 any value statements or ethical statements that it complies
 4 with for the execution of its business?
 5 MR WILLEMSE: That it complies?
 6 MR KAHLA: With in the execution of its
 7 business. Are there sort of codes of ethics that it is
 8 subject to?
 9 MR WILLEMSE: It does.
 10 MR KAHLA: It does and did you find, was
 11 there any red flag in relation to those ethical values that
 12 a third party was presenting to you proposed terms of
 13 reference of an assignment you were to do with the client
 14 and the client had not been the one coming to you, would
 15 that have been consistent with the ethical values of your,
 16 of Gartner?
 17 MR WILLEMSE: It's not totally unusual
 18 for that to happen where a third party has been involved
 19 with the client, can't deliver the type of service
 20 themselves and they talk to us about it, having spoken to
 21 the client as well and they approach us and say there's an
 22 opportunity, would you like to talk to them. So -
 23 COMMISSIONER: I'm sorry, I've got to
 24 stop you. Talk to them? We're not talking about talking
 25 to them.

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1 MR WILLEMSE: Ja.
 2 COMMISSIONER: Sorry.
 3 MR KAHLA: Ja.
 4 COMMISSIONER: So you could deal with my
 5 colleague's question but just keep the facts correct. It
 6 wasn't about talking to SARS. That's what I think might be
 7 bothering us.
 8 MR KAHLA: You were having the third
 9 party.
 10 MR WILLEMSE: Yes.
 11 MR KAHLA: You didn't know what the third
 12 party's role was in this. The third party was drafting the
 13 terms of reference and proposing them to you and you never
 14 understood what the relationship was between the third
 15 party and the potential client and you're saying that that
 16 didn't raise any red flags from the values and ethics
 17 applicable to Gartner? Your internal values - do you have
 18 any statement that deals with the values and ethics of
 19 Gartner?
 20 MR WILLEMSE: I can't recall them off the
 21 top of my head I'm afraid but we do, Gartner does have an
 22 Ombudsman who ensures that we abide by these types of, by
 23 the ethics of the organisation.
 24 MR KAHLA: But let's forget about maybe
 25 whether there are no ethical statements relating to such

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1 matters but saying there was never a red flag raised with
 2 the kind of contracting and how it was triggered.
 3 MR WILLEMSE: I didn't see a red flag at
 4 the time, no.
 5 MS STEINBERG: I have a, something from
 6 the internet, Gartner's code of conduct. It's integrity,
 7 do the right thing, objectivity, be independent and
 8 unbiased in everything we do. And just to jump there are
 9 two that say "ignorance of the law is not a defence and but
 10 everyone does it is not an acceptable excuse". I think you
 11 were ignorant of the law at that point weren't you?
 12 MR WILLEMSE: Which law?
 13 COMMISSIONER: Procurement law.
 14 MS STEINBERG: South African procurement
 15 law.
 16 MR WILLEMSE: I certainly cannot say I am
 17 fully conversant in procurement law.
 18 PROF KATZ: Sorry, could I just try
 19 again, Mr Willemse, when you wanted to subcontract 40% of
 20 the engagement to Rangewave was SARS, is there no
 21 significant enquiries why Rangewave, what are their
 22 capacities, how did that process play out?
 23 MR WILLEMSE: It was communicated to a
 24 person in procurement. They asked the question about the
 25 sub-contracting, are we using an empowerment partner and

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1 there's an email which outlines exactly how many people
 2 we're going to use, who they're from and the amount that
 3 will be accredited to them, how it will work and who will
 4 actually be the contracting partner with SARS and how SARS
 5 will get billed. So there is an email that covers all of
 6 that and SARS were fully aware of it.
 7 MS STEINBERG: Judge, I'm a little
 8 concerned about time. This witness has taken longer than
 9 expected and I know that Gartner have ground they want to
 10 cover. Can I ask that we close, we end this witness and I
 11 would also suggest that I don't question Mr Lithgow on
 12 procurement but that we rather move to what he wants to
 13 tell us and then Advocate Hobden can question him? Could
 14 we take a very short comfort break? It's just before 11,
 15 could we try and get back at 10 past 11?
 16 COMMISSIONER: That would be fine.
 17 MS STEINBERG: Thanks.
 18 MR KAHLA: So is the objective to them
 19 call back Mr Willemse after –
 20 MS STEINBERG: Mr Kahla, only if
 21 necessary.
 22 COMMISSIONER: Well you'll stay for the
 23 day, won't you, Mr –
 24 MR WILLEMSE: I will stay. Yes.
 25 COMMISSIONER: Have a cup of tea, relax

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1 and watch your colleague.
 2 MR WILLEMSE: Thank you.
 3 [INQUIRY ADJOURNS INQUIRY RESUMES]
 4 [11:17] COMMISSIONER: Do you affirm that the
 5 evidence you give will be the truth, the whole truth and
 6 nothing but the truth? If so will you say I do?
 7 MR LITHGOW: I do.
 8 EVIDENCE OF MR LITHGOW
 9 COMMISSIONER: Mr Lithgow, just a little
 10 bit of guidance. Have you been here in the last -
 11 MR LITHGOW: I sat in for one day, yes.
 12 COMMISSIONER: So you haven't sat in the
 13 session this morning.
 14 MR LITHGOW: No.
 15 COMMISSIONER: Sometimes counsel asks
 16 very direct questions and, you know, I'm sure that you and
 17 we would like to get on. You're not constrained from
 18 giving a full answer but the secret I think for us is to
 19 give a direct answer first and then explain. It's very
 20 important that I should know and my colleagues should know
 21 what the answer is to the question. Otherwise quite
 22 frankly, you know, we might deal with you unfairly and we
 23 misinterpret the answer. So it's important for you and for
 24 us.
 25 MR LITHGOW: Thank you.

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1 COMMISSIONER: Thank you.
 2 MS HOBDEN: Mr Lithgow, Norman, can you
 3 check if the - thanks. Mr Lithgow, we chatted briefly and
 4 we've agreed that you will proceed to present evidence that
 5 Gartner would like to lead before the Commission and then
 6 we will address some issues that are of concern to us and
 7 ask you some questions so if you would like to proceed.
 8 MR LITHGOW: Thank you. I'm very
 9 conscious that time is of the essence so I will try and be
 10 as concise if I can and if you feel I'm dragging out a
 11 point I'm making and I need to stop please tell me that but
 12 clearly I'm keen to try and put forward the case for
 13 Gartner.
 14 COMMISSIONER: And may I just add that
 15 don't let time constrain you from saying everything Gartner
 16 would like to say.
 17 MR LITHGOW: Thank you. I think, so the
 18 second thing I'd like to say is there is PowerPoint. I
 19 will only ask you to look at the PowerPoint if it is
 20 relevant to you. But because there's such a lot of get
 21 through I've had to sort of structure it in my own mind and
 22 my of working is PowerPoint rather than notes. So if it's
 23 important I'll say please look at it. If it's not
 24 important don't worry.
 25 The first thing I'd like to cover is a little bit

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1 about my background because there have been questions as to
 2 whether either myself or Gartner have the competency to
 3 undertake both the phase 1 work and the phase 2 work. So
 4 for myself I am not a lifetime professional consultant. I
 5 came to this world relatively late in life having left home
 6 at 16, joined the army and then left the army at the age of
 7 49 whereupon I joined Gartner after buying six shirts and
 8 two suits and walking into an open-plan office.
 9 I have extensive experience within the
 10 communications arena. I've designed and oversaw the
 11 building of a global network primarily for the global war
 12 on terrorism. I've had procurement positions where I've
 13 also had to bring through from research and development at
 14 speed complex technology programs deployed into the field
 15 and again hampered by a governance system that sometimes
 16 doesn't help those that are trying to do things quickly.
 17 I've built education facilities. I've worked
 18 French programmes. I've been head of R&D. And in terms of
 19 professional qualifications I'm a chartered engineer and a
 20 chartered IT professional. I do a considerable amount of
 21 work within the security domain and that is one of the
 22 areas where I spent a lot of my time evaluating networks
 23 from a security perspective. My role on this engagement
 24 was really three-fold.
 25 First of all I was the senior executive

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1 accountable to SARS for the work that we did from both a
 2 timeliness, a cost and a delivery perspective. I was also
 3 the senior executive accountable to Gartner for running
 4 this programme in an ethical way in line with the
 5 contractual agreements that we had. And the third aspect I
 6 had was to be what is termed a sort of facilitator but to
 7 garner the wider knowledge over and above myself from those
 8 parts of the organisation that support the tax
 9 administrations.

10 If I pick out specifically those qualifications
 11 for this engagement I just finished running a three to
 12 four-year engagement with a national tax administration
 13 which was to replace their tax platform which was not SAP.
 14 I've overseen the work in three additional tax
 15 administrations. All of these were in Europe. But we also
 16 had a number, up to 16 tax engagements going globally
 17 across North America. I've also finished reviewing a very
 18 large-intergovernmental organisation build of a new
 19 headquarters total cost 1.4 billion.

20 Part of that was security and the result of my
 21 review that moving to the building was delayed for a period
 22 of time and I reported directly to the deputy head. From a
 23 Gartner perspective, and many of you may not be aware of
 24 Gartner, but we are recognised as the largest ossuary of
 25 knowledge and research pertaining to IT. So we're not a

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1 business, research or business consultancy.
 2 We're a technology research company that has a
 3 small component which is consultancy that aims to enable
 4 our clients to understand, operationalise and deploy the
 5 insight gained from research. One point I would like to
 6 make which is on the bottom is that Gartner has no
 7 affiliations with or promote any vendors product or
 8 services. We do not take, undertake service
 9 implementation.

10 When I talk about implementation in an IT
 11 environment I'm really talking about the build, install and
 12 run of hardware and software. Clearly we do have clients
 13 where we've made recommendations implement those
 14 recommendations in terms of policy, governance, vendor
 15 management, architecture design but we do not do what is
 16 termed downstream work.

17 We have no interest in the implementation in
 18 terms of build, install and run software and hardware. I
 19 want to make that point because it's one that's come out.
 20 What I'm going to try and do is structure this in a way
 21 that I hope conveys both what Gartner has done but also
 22 answers some of the questions that have been raised during
 23 the week. The phase 1, phase 2 GRAP, it's long and it's
 24 complicated so rather than taking you through 21 work
 25 streams one by one what I picked out is three vignettes

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1 that demonstrate what we did in phase 1 and how we took
 2 those recommendations into the work that we did in phase 2.
 3 And then there were two additional items of GRAP
 4 and Star. So the ones I've looked at are security posture
 5 at SARS which I think is important, how Gartner helped SARS
 6 use technology to improve efficiency so that effectively
 7 means reduce cost, and provide a better service to citizens
 8 and an example of how our recommendations helped change
 9 aspects of the procurement process to both reduce cost and
 10 upskill workforce.

11 Again I picked these to try and illustrate that
 12 Gartner didn't spend two years here producing shelf ware.
 13 There was quite a lot of deliverables as we went through.
 14 The shelf ware is a necessary outcome of the contractual
 15 arrangement so that there is an auditable trail of the work
 16 that is being completed. SAP has been a big topic so I
 17 will cover that and governance I will cover, what Gartner
 18 recommends SARS should do and why did it not happen and
 19 what were the barriers to change.

20 So that's the way I've structured it. If you
 21 want to deviate absolutely please feel free to. So if I do
 22 the overview of the programme of work and this is a little
 23 bit of a gritty side so I'll try and again keep it so -
 24 what has been known as phase 1 was not called phase 1. It
 25 was called the IT assessment. Subsequently when we go to

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1 phase 2 and other work for ease of reference we sort of
 2 renamed it phase 1.
 3 But again I would not like you to get the
 4 impression that it was assumed at the outset of the IT
 5 assessment that there would be a phase 2. That was not the
 6 case. The IT assessment is a very standard product. It's
 7 a standard set of tools with questionnaires with analysis
 8 that is undertaken on a large number of occasions. Now who
 9 uses it? In general the people who use it are going to be
 10 C level executives so that CEOs, COs, CFOs and CIOs
 11 generally upon taking appointment or when there has been a
 12 major breakdown in a transformation programme.

13 And at that point they pause and say what I would
 14 like to do is have somebody independent to review the work
 15 that we have done. It's not that I believe or disbelieve
 16 what has happened. I just need someone who is not involved
 17 in the fray to be able to step back and say, okay, let me
 18 have a look at me and let me compare and where you are
 19 compared to your peers. And therefore we have a standard
 20 questionnaire to do that.

21 Quite often the outcome of this is thank you,
 22 you've provided us with insight we didn't have. You
 23 provide us with recommendations that enables us to take
 24 this forward and we're very grateful for your involvement.
 25 Now, clearly as a consultancy who is in the business of

1 developing business there is always the hope that the
2 client will say that this is a fantastic piece of work. We
3 would love you to stay and help us run it further on.

4 But at the outset whilst we might have hoped
5 there was no indication certainly at my level or
6 expectation that that would occur. Now, did we ever ring
7 them, Mike, may be a great opportunity at the end of this
8 to do a piece of work, yes. Absolutely. It would've been,
9 it would be imprudent of us not to do some planning along
10 those lines which we did but the first time I personally
11 became aware that there was a definite interest directly in
12 the phase 2 was with my briefing to the Commissioner.

13 And I can't remember the exact date but I think
14 it might have been something like the 18th of April 2015
15 where the Commissioner specifically asked, Michael, if I
16 ask you to do this work what would it cost and I gave him a
17 ballpark figure that was associated with that. We were
18 then asked to take forward the recommendation we take
19 forward to help them implement it.

20 Now, this in Gartner terms is called phase 2 but
21 I think in the documentation there's a separation between
22 phase 2 and phase 3 and I'll talk specifically to phase 3
23 and this is really around taking the recommendations that
24 have come out and helping SARS to implement them and that
25 was across a broad range of subjects from architectural

1 design, vendor management, sourcing strategy, governance,
2 information security and a number of other ones.

3 During phase 1 we were clearly instructed, very
4 clearly instructed that whilst we could interact with the
5 remainder of SARS in terms of questionnaires and interviews
6 we were not allowed to discuss the outcome with them and we
7 were not allowed to distribute the report. So I think the
8 term that's being used is that this was operated in a
9 regime of secrecy.

10 Now, having heard some of the evidence I can
11 understand how that's - but without the benefit of
12 hindsight from my perspective did I see that as unusual?
13 Not particularly because generally the CEO or CIOs, CEO
14 wants to understand himself what have we found. He doesn't
15 want to be influenced by other people who are lobbying him
16 at that particular moment in time to say I agree or
17 disagree or what are you going to do about it.

18 Actually an outcome may be actually you're doing
19 very well. There are some recommendations but quite
20 frankly there is nothing more for you to do. Once we
21 started phase 2 that changed completely. So the work
22 stream leaders were instructed to share the outcome of the
23 IT assessment, the phase 1, with the SARS sponsors who we
24 were working with.

25 Now, that was necessary because first of all they

1 had to understand what we had uncovered and we then had to
2 work with them to say how do we take this forward. Up
3 until that point though as far as I'm aware, and I can't
4 swear to that but as far as I know I don't think the report
5 had been circulated outside a small group within SARS. I
6 think it did go to the SARS oversight committee and I'm
7 fairly confident it went to the audit committee where it
8 was discussed whether SARS should, that Gartner be engaged
9 in phase 3.

10 Phase 3 started in January 2017 and ended in
11 March 2017. And I'm picking out this because effectively
12 Gartner was expecting if you like a full phase 3 as opposed
13 to a short phase 3. It was made clear to us at that point
14 that it was not possible to ask for another deviation and
15 that the subsequent work for go for competition. So we
16 were quite happy with that but entirely your choice as
17 SARS. So I said what would be worthwhile in the phase 3 is
18 to create in effect a handover pack.

19 So a handover pack was for SARS and the handover
20 pack for the next consultancy if they chose one to come in.
21 Otherwise my big concern was that we'd spent a long time on
22 site, we gained a lot of knowledge and not all of that
23 knowledge maybe had been fully documented. So if they
24 brought somebody else in there will be quite a lag between
25 them understanding what we've done and what we'd

1 recommended and the being able to pick up the work.

2 So it was there to be a helpful process for
3 whoever came in next. As far as I'm aware I don't think
4 that ever happened but that was the point of that three-
5 month period. Simulate the tack and response I was going
6 to separately was the specific security and that is one of
7 the vignettes. I'll not cover that here. And the same
8 with the generally recognised accounting practice. As I'm
9 going to cover that later on I won't spend time doing this.
10 All I would say is these were two separate activities to
11 the phase 2 and phase 3.

12 Now, you don't need to read this at all. The
13 point I'm making on this is that - and it's unusual for
14 Gartner to have done this. For this engagement for phase 2
15 Gartner put in place a substantial oversight committee that
16 sat outside of South Africa. This oversight committee did
17 not bill on this engagement. And the purpose of the
18 oversight committee was to ensure that the work that we
19 were doing was in line with Gartner latest research and
20 best practice because we had a substantial number of
21 swingers from Rangewave which were a concern to us.

22 They had never seen Gartner research. They
23 didn't understand our templates and therefore I felt from a
24 quality perspective that needed to be put in place. With
25 effect from the 25th of June I think it was 2015 I also

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1 instructed the Gartner programme QA to approve every single
 2 document that was released to SARS. So the local team had
 3 no authority to release a deliverable, a contracted
 4 deliverable, without it first being reviewed by the
 5 programme QA reviews.
 6 Now, that cause delay so we had to sort of plan
 7 for that because these guys have a day job so we would
 8 allow three to four days for that review to take place. We
 9 also conducted satisfaction surveys which was done. It's a
 10 standard process that Gartner has. It's not overseen by
 11 me. It's taken completely separate both at the mid-point
 12 and the end which effectively said are you, SARS, satisfied
 13 with the work that we are undertaking.
 14 And I think somewhere in the mountain of
 15 information that you have this exists somewhere but I'm
 16 happy to dig them out if you like. Was there universal
 17 happiness with what we'd done? No, there wasn't. There
 18 were some people who were unhappy with it. Some people
 19 were happy with it. The majority would say we would highly
 20 recommend or recommend Gartner.
 21 Where people expressed they were dissatisfied
 22 then I brought that to the attention of the CEO and
 23 Commissioner and offered to have one to one discussions
 24 with them to try and understand their level of
 25 dissatisfaction. I was dissuaded from doing that so at no

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1 point did I actually speak to those individuals. Sorry,
 2 Judge, it looks as if you wanted to ask me a question.
 3 COMMISSIONER: No, I just, I didn't hear
 4 whether you said persuaded or dissuaded.
 5 MR LITHGOW: Dissuaded.
 6 COMMISSIONER: Dissuaded.
 7 MR LITHGOW: Yes, so I did not speak to
 8 any of those that expressed discontent with the Gartner
 9 work. I'll cover this quickly. If you look at the TADAT
 10 first the TADAT is a good tool and in the IT strategy
 11 document on page - and there's no need to look at it it's
 12 on page 6, we actually refer to it in our strategy
 13 document.
 14 [11:37] I will just spend a couple of minutes reading it.
 15 There are numerous other measures including the
 16 efficiencies gained and the return on the investment at the
 17 macro level. SARS has achieved awards and recognition
 18 testifying to the improvements made. World Bank Global
 19 Survey, a tax paying service since 2011 and positive tax
 20 administration diagnostic assessment tool TADAT, assessment
 21 more recently. So we were aware it had been an undertaking
 22 and we were aware that SARS had got a good rating from it.
 23 But the TADAT looks at the high level process of the tax.
 24 How people comply with pay tax. Is SARS, does SARS
 25 reimburse tax payers in a reasonable timeframe. What it

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1 doesn't look at is the underlying IT. Now equally our
 2 survey doesn't say what's the level of compliance with tax
 3 filing, have you refunded them. They are both of value to
 4 an organisation like this but they both look at different
 5 aspects of that organisation. And good rating on one
 6 doesn't mean a good rating on the other and a bad rating on
 7 one doesn't mean a good rating on the other. They're
 8 looking at different aspects of the business and they are
 9 both valuable which we recognised in our IT strategy.
 10 The other document that was used was the USA. I
 11 wasn't aware of this but subsequent to testimony that is
 12 proved as a given I did go back and look at that. This is
 13 a 2013 document. Its main focus was on start-up countries
 14 in central and southern America. Interesting which I'll
 15 cover later it actually says if you're a start-up tax
 16 administration, I'm abbreviating grossly, in a relatively
 17 immature environment you better building. If you are a
 18 complex tax administration you are better buying, what was
 19 called COTS, off the shelf purchase. Okay, what I'm now
 20 going to do is -
 21 COMMISSIONER: Sorry, that's for start-up
 22 though?
 23 MR LITHGOW: Start-up, build your own.
 24 COMMISSIONER: Ja.
 25 MR LITHGOW: or an established tax

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1 administration by COTS. I pull this out later on in the
 2 presentation. Now, sorry, let me be clear, Judge. I'm not
 3 making that statement because I necessarily agree with it -
 4 COMMISSIONER: No, I understand.
 5 MR LITHGOW: - I'm referencing because
 6 that was what was in the document. I'm about to go
 7 security and I'm going to keep this at a relatively high
 8 level. What I would like to ensure is that what I show
 9 does not cause alarm. What we found we would find in most
 10 organisations that we look at. So there's nothing here
 11 that says wow. The entire SARS network is open to attack
 12 of people stealing. That is a gross misrepresentation of
 13 what I'm about to say. We did identify areas which were
 14 unusual for what we would call a tier one organisation that
 15 has responsibility if you're looking after personal data, a
 16 sensitive economic data or data that pertains to the
 17 security of that nation or department. There we would
 18 expect them to have higher expectations, aspirations in
 19 terms of their security. So I can just say that first in
 20 case people - what I'm about to say is no garnish, SARS is
 21 a complete disaster anyone with a home laptop can hack into
 22 it. That is absolutely not true.
 23 Now this is a little bit of a diversion but a
 24 short one. These are the sort of questions that was sent
 25 out in phase 1. Now the phase 1 assessments were not a

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1 Gartner assessment. It used a Gartner tool. Now just as
 2 you've instructed me in a very nice and polite way but if I
 3 asked you a question you ought to say yes on though we're
 4 the same. Do you have a security policy? I just want to
 5 know yes or no, I don't want it, no, I've got half of one,
 6 it's not yet completed. I just want to know do you have
 7 one or do you not have one. So the accusation that some of
 8 these questions are binary, they are. They are standard to
 9 every single organisation we send this out to. Now in
 10 comparing the data what we're able to do is classify it by
 11 what we call industry. For these surveys they were
 12 classified by tax administrations, financial services
 13 institutions and government. So that was what we call the
 14 peer group to whom should we compare SARS performance
 15 against. Now in addition to that, what we also did in
 16 certain circumstances was to say okay, let's go back,
 17 having got the scores which SARS provided to us to in some
 18 cases test the responses. So I think one of the previous
 19 witnesses put up a slide that said Gartner stated on here
 20 that we should take this on trust and there was surprise
 21 expressed as to why that should occur. It was ineloquently
 22 written so I completely accept that but what we were saying
 23 was that actually you don't need to take these on trust
 24 because we haven't been able to verify them. This is what
 25 SARS is saying about themselves and this is the score that

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1 comes out of the answers that they have. Now the
 2 interviews added further enlightenment as to why those
 3 answers may have occurred. But the interviews did not
 4 influence the scores.
 5 Now there were areas where I felt that the view
 6 of SARS was perhaps higher than what we had seen or what we
 7 had heard from interviews. Now that didn't mean I changed
 8 the scores it just meant that I would put in a comment and
 9 say I haven't been able to really find evidence to back up
 10 what they've said but this is their score. I have, I'm not
 11 going to go through them, although my counsel will probably
 12 bollock me when I come out of here. Around the various
 13 interview notes we've got but there were a significant
 14 number of comments that said we were unhappy with the
 15 governance and the way SARS was run. Now there's equally a
 16 number of comments that said we're happy with how SARS is
 17 run and the governance. And it's beholden on us when we do
 18 an independent review to present a balanced view as to what
 19 we have found. So to have completely ignored all the bad
 20 comments or completely ignore all the good comments would
 21 be an unbalanced view. But clearly when we looked at some
 22 areas, where we felt that here was a significant amount of
 23 risk we would highlight and say these have been made by a
 24 number of senior people and again you will see, Judge, the
 25 comments from those senior individuals and we have to take

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1 these serious, we cannot ignore them. What – so this is a
 2 typical output from the phase 1. There's a massive deck,
 3 226 slides I think it is and I will absolutely not bore you
 4 with that. But what we did is we took the score and if you
 5 look in the top right-hand corner what I put I there is
 6 what was the score that this particular area got for this
 7 particular survey. These scores are out of five.
 8 And there we said actually we didn't really, you
 9 know, from the responses we got to the questions and having
 10 done an analysis on that we sort of didn't really see that
 11 there was any risk management. We didn't see any form of
 12 strategy for the management and protection of the networks
 13 to the level that we would have expected. We couldn't
 14 really find any form of strategy that existed and I'm still
 15 a cloud nip because by saying we didn't find we were
 16 responding to the scores that were given by SARS. Now the
 17 bottom what we say is if this is indeed the case what are
 18 the sort of things you should do as SARS. Now this comes
 19 at a point that why it is standalone because SARS could
 20 take this and say thank you, Mike. We will appoint a CSO,
 21 we will establish an effective security programme, we will
 22 define identity and access management and we'll establish a
 23 cyber security strategy. Actually you can write that
 24 yourselves if you so wish to and that's the point. The
 25 whole point of this is to say actually you as the client

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1 may not need this anymore. Absolutely delighted, if you do
 2 that's fantastic. But you don't have to.
 3 However, they did ask us to do some more work.
 4 So this is the linkage between phase 1, what did we find
 5 and what did we recommend and phase 2 what did we do to
 6 help them. Now on security Gartner does take a different
 7 approach to most other organisations. So most other
 8 organisations if I liken it to an estate with a fence
 9 around it, most other organisations will say what we have
 10 to do is police the fence. We have to make sure absolutely
 11 nobody can get through this fence and if there's a hole in
 12 the fence we're going to fix the hole. And in security
 13 terms you find that hole by what's called penetration
 14 testing, can it penetrate your network and vulnerability
 15 assessment, there's a hole there, please fix it. It's
 16 perfectly valid and SARS do that and I think they do it
 17 quite regularly and it is a standard practice.
 18 Gartner comes from the point that says that
 19 that's okay but how do you account for somebody who's
 20 tailgating you through the gate? How do you account for
 21 somebody that is using a drone to fly over the fence and
 22 look at what you're doing? So what Gartner says, that's
 23 great but let us understand is actually anybody interested
 24 in SARS? Are you so boring as an organisation that even if
 25 you don't have good security nobody will waste their breath

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1 trying to get into you because there's nothing there? So
 2 what we do is to say is there any interest in SARS, who is
 3 interested and why are they interested. Now do that, we do
 4 use a very specialist organisation which is regulated by
 5 the City of London that does this on global basis and it
 6 does an intelligence and threat assessment. So it says who
 7 do we know is operating in South Africa at three levels,
 8 state, organised crime and activists and of those groups
 9 who would have an interest in SARS, why would they have an
 10 interest in SARS and what capability do they have to get
 11 into SARS. So this was really what the Star programme was
 12 about, it was defining those threats. The first piece was
 13 to say are there any obvious vulnerabilities that we can
 14 identify. Now these vulnerabilities were not taken by
 15 Gartner attempting to monitor or gain access to the SARS
 16 network. This is drawn from what was available on the dark
 17 web. Now again it's a very regulated organisation. So
 18 this organisation is not allowed to buy information at all.
 19 So this is what was openly available that they could find.
 20 Now that in my mind would indicate looking at what is there
 21 that there is probably a considerable amount of more useful
 22 information that somebody who has less than benign interest
 23 in South Africa that they could use and exploit. But
 24 again, let me restate.
 25 If I went into another government department in

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1 UK, German or France, would I find this? Yes, I would.
 2 What I'm saying is that our job was to say to SARS let's
 3 take you to the next level of modernisation. Modernisation
 4 has got you to a level but you aspire to go to a level
 5 beyond that and if you aspire to go a level beyond that
 6 these are the sort of things we should not find in an
 7 organisation like yours. I think I've covered this. The
 8 only thing I cover it at the bottom is what we tried to
 9 describe to them is what does good look like for an
 10 organisation like yours and what we would've expected to
 11 find is something called a security operation centre and a
 12 cyber instant response team. They effectively monitor the
 13 activity that is happening either trying, people trying to
 14 get into the organisation or monitoring activity within the
 15 organisation and the cyber instant response team says now
 16 what do we do about that. Now I have been asked therefore
 17 as a result of this survey can you state categorically that
 18 SARS has been hacked and the categorical answer to that is
 19 no. But I will go back to the very large organisation that
 20 I worked with which had left it's, in effect, an open gate
 21 at the internet face for four weeks and they asked me will
 22 we have been penetrated and I said I cannot prove that but
 23 I said on the balance of probability and given the
 24 sensitivity of the information you have my advice would be
 25 that you should work on the assumption that have been

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1 because frankly given the level of interest in your
 2 organisation I feel it's inconceivable that somebody has
 3 not attempted that. So again there's (inaudible). So I
 4 say wow our networks are now infected and we've got people
 5 running all over. Well to be honest even the most secure
 6 organisation at some time, it's likely even the pentagon,
 7 is going to be penetrated at some time. That's not the
 8 point, the point is you change how you look at security
 9 from let me guard the fence to let me have patrols within
 10 the compound to see who is there and it's that change that
 11 we were recommending. Again, I won't go through this but
 12 again this is an excerpt from, this is actually a real
 13 organised crime organisation. The business club, I won't
 14 go through it but there's quite a lot of detail that we
 15 gave them and this detail is specific to South Africa and
 16 within South Africa we judge SARS to be of significant
 17 interest. Now again when people are interested it's not
 18 that they want to disrupt you, they just want to have
 19 information. You've got a lot of valuable economic
 20 information pertaining to South Africa in SARS. You've got
 21 a lot of personal data that's in SARS which is exploitable
 22 and useful. So you may never know that somebody is here,
 23 ever, but my view would be as a professional security
 24 person I think on the balance of probability you should
 25 assume that someone is there. Again, I don't sound alarms

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1 because most organisations – if I went to her Majesty's
 2 Revenue Customs I would say the same to them, that's okay.
 3 You just need to have a different security posture. Again,
 4 I'll not go through this but we recommended and a Gartner
 5 individual actually sat on the interview panel for the
 6 selection of the CSO and we then went on to develop a
 7 comprehensive plan for this which again I will not go
 8 through in detail.
 9 We also produced a programme of work that we
 10 recommended SARS undertake. Now this was done for every
 11 work stream. So you will see at the end what we did was to
 12 collate all of the individual outputs and say what would
 13 the total cost be to SARS of continuing the modernisation.
 14 What we also did was say you probably can't afford all this
 15 so what is the most important things that you should focus
 16 on and fund first. There have been questions which I will
 17 address now from the advocate that was given to me that
 18 said but okay, Mike, but Star was stopped halfway through,
 19 what did you do with the rest of the money. Now the reason
 20 that we're stopped was because having identified the
 21 threats, we create threat scenarios and we then asked SARS
 22 through a workshop do they agree with these threats, please
 23 choose one and we will replicate the tool's tactics and
 24 techniques that that uses and a test whether you're secure
 25 or not. At that point for understandable reasons both

1 Security Service and SARS said we do not wish a non-South
 2 African based entity to attempt to penetrate our networks
 3 which is a reasonable thing to do. So we stopped at that
 4 point. What we then did we say okay, what, is there
 5 anything else you would like us to do and if in effect
 6 there is we completed security strategies, business case
 7 preparation, organisational design. Effectively acting as
 8 the initial operating team for the newly appointed CSO.
 9 Now I do have, if they would like it, we have quite
 10 detailed what we called activity sheets that detail a lot
 11 of this work in quite a granular level. They're not
 12 complete but we're very happy to give you as much as we
 13 have on that. So that was the first thing here. The
 14 second thing here was to say how could we use technology to
 15 create greater efficiencies and savings. Now this thing
 16 here is around the contact centre which came up earlier
 17 this week I think or it might have been last week.
 18 [11:57] So what we said from the assessment was, actually
 19 you have a contact centre. I would mainly describe its
 20 purposes as really sort of a call centre supplemented with
 21 support for email and in that respect it was okay and it
 22 got an okay rating from us. But what we said was actually
 23 if you look at the demographics and the behaviours of the
 24 people who are most likely to be liable for tax they're
 25 going to want to interface with you in a different way.

1 They're not going to want to wait on a telephone for 15
 2 minutes for somebody to answer it and then be passed to
 3 somebody else. They're not going to want to send an email
 4 and it may or may not be responded to. They want to
 5 contact you in a different way. As you by mobile phone
 6 you'll browse through Vodacom's site and then this little
 7 box will come up and say Hi Judge can we help you, I see
 8 your phone is due for renewal have you given any thought to
 9 that and you may ignore it because you think actually I
 10 don't like to interface with Vodacom on that basis, I'd
 11 rather go to a shop, a branch office. Absolutely fine.
 12 Others will say this is fantastic, ja, I'd really like to
 13 renew my phone, how much is it going to cost. Sometimes
 14 that chat box is with a person, sometimes it's what, it's
 15 called an Avatar who actually isn't a person but it's a
 16 very, very clever piece of software that can interconnect
 17 with you. So what we said was if you're going to have a
 18 contact centre of the future you need to look at new
 19 technologies. So the answer will come back and say well
 20 that's great, so we're going to spend a shit load of cash
 21 just to get people a different choice of communicating with
 22 us. We said yes but there's benefit here. At the moment
 23 something like 70% of your contacts with citizens is via
 24 the branch office. So that's what we call direct channel
 25 and 30% is with the indirect channel, we call you.

1 Now there is massive savings to be made by
 2 shifting people from a contact, from direct contact, a
 3 branch into indirect because a lot of those interactions
 4 you can deal in an automated way and actually the person
 5 who is asking the question can ask it at 2 o'clock in the
 6 morning on a Sunday, 7 o'clock at night. So you've given
 7 them a choice so for them this is the better service but
 8 you are also able to reduce the staff in the branch office
 9 and there may also be able to some consolidation. Now
 10 again I don't want you to take away an Omni-channel
 11 strategies about stopping people having personal
 12 communication. It is not. One of the Omni channels is, I
 13 don't want to speak to a bot, I want to go into a Vodacom
 14 shop and have a conversation with someone. That is not
 15 true but what we're trying to do is to encourage people to
 16 do something differently.
 17 Again I'm going to use this as example of how did
 18 we sort of help SARS to do this. So what many, I'm going
 19 to say this and I'm going to come out wrong and my
 20 apologises if it does. I don't mean to demean or condemn
 21 how other consultancies may operate. But many consultants
 22 would come along and do a study, produce a business case
 23 and then place it on your desk and say I'll also give you a
 24 presentation around it and then the presentation is the way
 25 that they transfer the knowledge and insight that we have

1 to you. Gartner's aim is to enable an organisation to
 2 become more self-sufficient and by becoming more self-
 3 sufficient we have to ensure that there is sufficient
 4 knowledge transfer through this process. So this will be a
 5 good example where in August we invited the sponsor in SARS
 6 who had responsibility for Omni-channel to say come to
 7 workshop, we'll discuss phase 1, we'll discuss what we
 8 think we should do in phase 2, we'll agree with resources
 9 are needed by side in order to do this.
 10 What we then would do is over a period of time
 11 work with them. So initially it's more us. This is what
 12 modern technology can do for you, this is where you are,
 13 this is how we think you should go ahead. But increasingly
 14 we ask them to take the lead with us becoming the reviewers
 15 of what it is that they have done and you can see the
 16 progress here as we move from August 2015 to August 2016
 17 where the business case is submitted. Gartner did not
 18 write the business case. That was written by SARS, that
 19 was intentional. Did we review it, absolutely we reviewed.
 20 Did we provide some data and input to it, absolutely. What
 21 we wanted was SARS to understand not only why this was
 22 important but what was the underpinning logic to the
 23 argument that SARS should invest because only by
 24 understanding that underpinning logic can you then adapt
 25 and change. So what happens if I don't get all the budget

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1 I've got. What is important and what is not important.
 2 Again this is a bit - but this is to try and sort of give
 3 an idea that when we said there can be savings these were
 4 calculated. These were agreed with the SARS team and
 5 there's a lot of data that sits behind this. But we did
 6 actually cost this out and we worked very closely with the
 7 lead for the direct channel, branch offices and the
 8 indirect channel. Now the bottom one is something I'd like
 9 to address because it may well be a question that comes up.
 10 There was a statement that said Gartner recommended to us
 11 that we should spend X million ZAR on a specific product.
 12 So let me put that into context. What Gartner was asked to
 13 do was to go out in an anonymous way, so Gartner
 14 represented a financial services institution and ask the
 15 market what would it cost if we asked you to build a
 16 contact centre and from that we got either 4 or 5
 17 responses. The bottom table is one of them and the prices
 18 range from 95 million to 294 million. A huge spread but
 19 that's probably because people either didn't understand
 20 what's called an RFQ, request for information RFI, and our
 21 recommendation was for budgetary purposes we suggest you
 22 use the highest figure. So that you will be sure that you
 23 have sufficient funds if you go to the market because in
 24 our view it's unlikely it's going to be higher than that.
 25 So that's where that figure came from.

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1 Okay the last one I will do is challenging supply
 2 costs and up skilling people. Now I'm a little bit
 3 concerned I'm going to lose people here because it's a
 4 little bit of a technical area I would try not to but if I
 5 do rather than sit there thinking when is this bloke going
 6 to shut up, if you just look at me and I will move on.
 7 Right. One of the things we found in phase 1 was that the
 8 amount of money that SARS was spending as a proportion of
 9 overall cost was 22% higher than their peer group. That is
 10 quite significant. What we then said was why, why is SARS
 11 spending more money than anybody else. Now if you look
 12 down at the ringed circle at the bottom what we said was on
 13 application development you are spending 54% of your IT
 14 budget compared to a peer who is spending 33%. No,
 15 actually I bring that out not to say wow that's terrible.
 16 Actually that's a conscience decision and it's not for
 17 Gartner to say it's the wrong decision. The conscience
 18 decision was we are a build, we are not a buy organisation.
 19 So if you are going to build your own software you are
 20 going to have a higher application development cost
 21 associated with that. Again I'm not saying that's right or
 22 wrong. You, it's your choice as to which avenue you go
 23 down. So having said you have chosen to build and not buy,
 24 how can we help you drive down that cost associated with
 25 the application development? We're not saying change, it's

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1 your decision as an organisation but if you continue to do
 2 this how can we drive it down. Now this is going to be a
 3 little bit technical and I'm really sorry and I will brush
 4 off it if it's not clear.
 5 For application development traditionally and for
 6 years you go to market for an application development and
 7 say give me a cheap rate card, tell me how cheap your
 8 application development people are because if I get cheap
 9 application development people I am bound to get a lower
 10 cost for my application development. No, that's not a bad
 11 thing to do because unless you can sort of measure in some
 12 manner the complexity of an application you don't really
 13 have much choice. The problem is enterprise know that so
 14 they say you know do we know what our bid last time, well
 15 let's knock 15% off that and that gives them a good deal.
 16 The difficulty then is when you come along and say build me
 17 something, they will say this is really complex, this is
 18 really, really difficult. I think you're going to need a
 19 1 000, 2 000 (inaudible) and actually you know you can talk
 20 against that, you can say well I don't believe you and say
 21 well this is our job, we do this every day. That's the
 22 cost. We might give you special deal but that's the cost.
 23 What Gartner says is, actually there's another way of doing
 24 this. Now Gartner says it's actually you need a
 25 combination of both. You need to find a way to measure how

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1 complex a business case is for an application and quantify
 2 that complexity. The technical term for this is function
 3 points and the service associated with this is called fast
 4 function point analysis. Then you can say to a client I
 5 have an application requirement of this size. It consists
 6 of 630 000 function points. I know that your application
 7 developer cost this much and I know for his skills he can
 8 develop 30 function points per day and therefore this is
 9 the cost it should be. If the cost is going to be
 10 different please tell me why it should be different and you
 11 mandate on the suppliers, this process which we have done
 12 for another major tax administration. Used massively in
 13 the financial service sectors. We look at HSBC and their
 14 application development quantities just enormous.
 15 Now this saves you costs. In general we find
 16 where this is applicable it saves you 20% of your cost of
 17 application development compared to working from a man-hour
 18 day rate but importantly what we did was we trained 18 SARS
 19 people to do this work and the intention was that they
 20 would form what was called the value management centre. So
 21 if the business had an application development requirement
 22 it would be sent to these people. They would size it.
 23 They would do a cost and they would go to procurement to go
 24 to the market. The people who did this were hugely and we
 25 have turned them away, I think we can do it for 12 and

1 there were so many we said okay we'll up the class to 18.
 2 But this was never implemented. So it never went ahead,
 3 no. Again I can't confirm it doesn't exist today but at
 4 the time we left it didn't exist. So now you've made an
 5 investment in this, we've trained people, we've put in
 6 place the process for it to happen. That's wasted and
 7 because of the skill fit, unless you're using this, you
 8 can't do it 12 months ago and expect to be able to do it in
 9 12 months or six months' time. The understanding of doing
 10 it goes. But you've also got a very disappointed 18 people
 11 who felt wow this, SARS have invested in us as individuals,
 12 we're going to have this exciting new role and nothing. So
 13 it was quite demotivating for them but I think it was a
 14 missed opportunity given the proportion of spend in the
 15 application environment.

16 That now leads me onto GRAP and the question of
 17 why not SAP. So I've finished the vignettes and I hope
 18 those vignettes have given you an indication of how we link
 19 the phase 1 findings to the activities we undertook in
 20 phase 2. That was the purpose of them. If I failed to do
 21 that then let me know but I hope I've been able to convey
 22 that. Right the GRAP was quite a technical piece of work.
 23 It was effectively to look at the SAP installation which is
 24 your or is SARS's tax platform. You've bought the licences
 25 for this. You have bought the licences for this in

1 perpetuity. Forever. They are lifetime licenses that are
 2 not being used or were not being used when we were here.
 3 So you've now incurred a cost for a capability you didn't
 4 use. But I'll come back to that. What, and I'm not going
 5 to spend much time on this because to be frank this is
 6 beyond my technical comprehension in terms of general
 7 resource accounting. We have to use local accountants who
 8 are familiar with GRAP, we have to use an expert from SAP
 9 to help us understand whether the current SAP installation
 10 would be able to do this and we were directed to do that by
 11 SARS. We were very upfront and said we can add value to
 12 this, we do not have the legal accounting and technical
 13 knowledge to deliver this ourselves. But we're very happy
 14 to facilitate this for you. The problem that existed with
 15 SAP in SARS was not entirely of their own fault. SARS is
 16 what I would call an earlier adopter of SAP tax and revenue
 17 management. At the time it was procured it wasn't a great
 18 module and therefore for good reasons as HMRC did
 19 themselves, they said okay we're stuck let's use SAP for
 20 what we can't, but unfortunately we're going to have to
 21 build a load of custom applications because it doesn't do
 22 what we want to do.

23 The difficulty with this is that this, this now
 24 causes a problem with what I call time to market. So I'm
 25 going to introduce a new tax law. That's thrown over to

1 the IT team to say change SAP, you're not changing SAP
 2 you're changing the custom applications. So you've got to
 3 spent time rewriting code and that may impact more than one
 4 custom application. You've probably now also got to change
 5 the interface with SAP itself. It can all be done, it's at
 6 a cost. That's not the issue. The issue is it takes 10 to
 7 18 months. So now you have lost revenue from the point
 8 that you've made the change in tax law to the point at
 9 which you can collect it. Now the alternative, I've
 10 drifted, I've gone onto the next slide, apologises for
 11 this. The alternative is to say okay rather than using
 12 customs applications let's use what's called a rule engine.
 13 So we just change a rule in SAP that will take two to three
 14 weeks. Now there's a disadvantage to this which I will be
 15 open about but that means actually instead of losing 12 to
 16 18 months revenue you're now only going to lose two to
 17 three months revenue. Now those can be quite big sums of
 18 money. What's the disadvantage? The disadvantage is that
 19 if you go SAP and the tax and revenue model you've sort of
 20 got to modify how you collect and manage tax. So you do
 21 lose a degree of control. So there's a balance to be made
 22 here as to which you should do. Every tax administrator,
 23 every tax administrator just about except those that have
 24 moved to a Greenfield site are facing exactly this problem.
 25 What do we do. Do we continue with in effect a highly

1 customised, a highly modified SAP, Gen tax, Oracle Tax
 2 platform and continue to sink money into customer
 3 applications or do we have to say we have to stop. We have
 4 to take a strategic view as to what it is we want to do for
 5 the future.
 6 Now if I go back to my client which I had been
 7 working on for 2 to 4 years they make this decision. So
 8 they got rid of 64 custom applications and migrated across
 9 to a tax platform which we helped them select and it was
 10 not SAP. It was something called Gen tax. They have a
 11 higher degree of compliance, they have a higher tax revenue
 12 and citizens are either paying the same or less tax. But
 13 it's easy, actually the individual doesn't fill in the tax
 14 form. So they don't use big data to populate the
 15 statistics. They use big data to say actually we have one
 16 view of this individual, it's a private citizen, it's a
 17 businessman who somebody is working on the gig economy and
 18 we will populate the tax for them. We will send it to them
 19 and say do you agree with this or not and if you don't
 20 agree that's okay. You can come back and tell us you don't
 21 agree. If you do agree with us, actually please just tick
 22 the box below. Now this question came up to Gartner from
 23 the COO and COO effectively said I've got half the day
 24 people are coming in and saying why aren't you spending
 25 more on SAP and half the people are coming in and saying

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1 why you're wasting money on SAP. So Gartner go away and
 2 facilitate a series of workshops and meetings to help me
 3 understand what should we do.
 4 [12:17] And that's what we did. We set up one to one
 5 discussions with existing administrations, specifically
 6 those that we use in SCP and that included HMRC and I was
 7 on that call myself. We organised discussion with SAP
 8 Germany and that's important. The expertise for the tax
 9 and revenue management does not sit in SAP South Africa.
 10 It sits in SAP Germany, their workshops and include their
 11 business concerns. Now, this wasn't a contractible item
 12 under the work that we did but we were very happy to
 13 facilitate that.
 14 So given that we didn't make recommendations
 15 because we weren't asked to make recommendations what did
 16 Gartner highlight? So we said you've already spent money
 17 on these licenses. Even if you stop using them SAP are not
 18 going to give you any money back. It's some cost. It's
 19 done. If you simplify your environment we believe you will
 20 reduce the amount of spend on your customer applications.
 21 You'll get what we call a single view of the
 22 customer so rather than look at you as somebody's managing
 23 company and as a private citizen could create that single
 24 view. Time to market we've discussed. Now, the question
 25 is, okay, Gartner, well, you would say this because you

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1 contracted with Rangewave and Rangewave has an arrangement
 2 with SAP so it is absolutely in your interest to have gone
 3 down this route and I think that's a fair accusation to
 4 make, perhaps not accusation or statement to make back to
 5 us.
 6 There are two things I would say to that. One,
 7 we had an oversight committee that would prevent that
 8 happening but there's a more important reason. Who does
 9 tax platforms? To be honest there are only two. You've
 10 either got the choice of SAP or you've got Fast
 11 Enterprises. Now, you do have Oracle in the market. I
 12 have seen the Oracle installation and if you think SARS are
 13 in a bad way let me tell you, you are nowhere near, nowhere
 14 near the disaster that sits in one of the European tax
 15 administrations that's currently before parliament and it's
 16 every month in the news.
 17 The other sort of new entries, so again SARS has
 18 already been an earlier adopter and we recommend something
 19 as important as tax be an early adopter. You want to be
 20 not at the back end but once it's been proved elsewhere.
 21 SAP has 350 installations globally so it's big in providing
 22 this. Now, Fast Enterprise is great and Fast Enterprise
 23 are actually recommended for my other client.
 24 So why did I recommend Fast Enterprise rather
 25 than SAP? Nothing to do with functionality. There's

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1 virtually no difference in functionality but we do have a
 2 term when we look at these services called customer
 3 intimacy. Is the person/organisation that's providing you
 4 with the service near you? Does it have a presence in your
 5 country or region? Is there someone you can reach out to?
 6 Now, Fast Enterprise is fantastic but it's
 7 heavily North American based. It does have a presence in
 8 Europe and it's gaining a presence in Australia. SAP is
 9 here. The next factor is I would never unless it was a
 10 completely broken relationship recommend anybody moving off
 11 a large and what we call an ERP, a big platform
 12 installation, from that to another one. The risk and cost
 13 is huge.
 14 So my argument was whether you like it or not
 15 you're sort of stuck with SAP. I cannot find a logical
 16 reason why you would not use SAP. The question now you
 17 have to ask yourself is what do we want to use SAP for. Do
 18 we want to continue to use it for what we've always done
 19 and continue to build customer applications or do we want
 20 to take a strategic decisions that says SAP first?
 21 And that the background behind that sort of SAP
 22 story. Governance, I know you will want to come back and
 23 ask questions on this so I'm not going to spend too much
 24 time on it. If you look at the table on here there's two
 25 parts of the table, one that talks about IT governance

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1 capability and IT risk management which is the IT
 2 assessment that we undertook with the scores.
 3 The two beneath it is King III and public service
 4 IT governance framework. These scores were given by SARS
 5 personnel after a workshop we held with them to say do you
 6 think your current way of working is in line with the
 7 spirit of King III or public service IT governance? Now
 8 their view was that it was in line 50 to 40%. Now, I have
 9 no idea how we got to 51.67%. I wasn't at the workshop.
 10 To me it seems a rather precise, overly precise
 11 figure here, but I would've expected them to sort of say,
 12 ja, well, you know, around 50%, around 25%. So I don't
 13 really place much credence against the precision that's
 14 done here and as I say I'm not sure how the workshop was
 15 working. But I would take from this that people were not
 16 comfortable that they were wholly compliant.
 17 If we're going to create a governance structure
 18 it is beholden upon us in advising any government that what
 19 we device will be compliant with local regulation
 20 legislation. It is not for us to say actually you're
 21 right, King III is a pain in the arse and we should not
 22 comply with it, it really slows us down, we should go off
 23 and do something completely different. We cannot do that
 24 and we would not recommend that.
 25 We do absolutely recognise that when we are fully

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1 compliant with government regulation it does add process,
 2 it does add bureaucracy and it does add time.
 3 Unfortunately we have not found the magic bullet to get
 4 around that. However what helps greatly is that if all of
 5 those that are involved in the governance structure
 6 understand ultimately what are we trying to achieve and
 7 that which comes before me where does it fit into that
 8 overall plan.
 9 Now, then you're not putting something in front
 10 of them and they say well, where on earth did this business
 11 case come from, you know, why are you writing this, who has
 12 sponsored it. That's where the difficulty is. So the
 13 clients will come back to me and say, well, that's okay,
 14 Mike, you have forced us to go from two signatures to nine
 15 signatures I think is the accusation.
 16 To be honest we didn't specify how many
 17 signatures they went to but I am very confident it would've
 18 been more than two signatures. If I go back to my
 19 previous, where I have to work in a strict governance
 20 regime, I've had to gain authority to procure equipment
 21 that has saved hundreds of lives and I've been able to get
 22 those approved within two weeks.
 23 Those approvals went through seven or eight
 24 signatures, project manager, the head of procurement,
 25 finance. It would also have to go through air safety and

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1 regulation where it pertained to aircraft, the user, R&D
 2 and the capability, what we call the capability manager.
 3 The capability manager was the person or if you like the
 4 business user who eventually specified. And we could do
 5 that. Now, was it hard work? Yes, it was hard work.
 6 Did I need everybody in that governance exchange
 7 to cooperate and say this is important, I will stop doing
 8 what I'm doing and I will spend time to look at this? Yes.
 9 If you do not have that or if there is not a common
 10 understanding of what it is you're trying to do people will
 11 ask questions because you're asking them to sign on a line
 12 that says we are agreeing to the expenditure of public
 13 money. So governance is difficult and there is constant
 14 tension between it.
 15 Roadmap for taking modernisation forward, so
 16 (inaudible) go forward because the other question was,
 17 Gartner, you stated that you found no evidence of business
 18 benefit that was delivered by modernisation. I think in
 19 phase 1 what we said was we believe benefit - it was said
 20 but we can't qualify it. And we believe that you may have
 21 spent more than you should've spent on it.
 22 I absolutely stand by that at the end of phase 1.
 23 Because at the end of phase 1 we had eight weeks and
 24 actually the ability to get that detail even if it was
 25 available, we didn't find. I'm not arguing that it wasn't

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1 there. We could not find it. We could only state and make
 2 an evaluation on that which we found. However in phase 2
 3 we did find evidence and we stated it clearly in the IT
 4 strategy.
 5 We stated the IT department's contribution to
 6 SARS' business effectiveness over the last seven years has
 7 been immense and can be expressed in improved performance
 8 metrics measured between 2006 and 2014, abridged list
 9 below, electronic submissions, 8 to 96%, electronic
 10 payments, 13 to 93%, taxpayer and trader accounts grown
 11 from 8 million to more than 20 million, decrease of 1.04%
 12 of the cost to tax revenue ratio, personal income tax
 13 assessment turnaround time went from 180 days to three
 14 seconds.
 15 This is in a Gartner document. We have
 16 ultimately acknowledged that but we could not find that in
 17 phase 1. So Gartner in terms of the accusation, what
 18 Gartner came to do was tear down the towers, destroy
 19 everything that modernisation did so that's a complete load
 20 of rubbish. What we're going to do is create you a new
 21 nirvana in which you've now got to pay in billions of rand
 22 to do. That's not what we're doing and actually that was
 23 not what we were asked to do. What we were asked to do is
 24 to say modernisation has got us to this point. What do we
 25 need to do to get beyond this point? And that was our

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1 starting point. Now, I'm nearly finished you'll be pretty
 2 pleased -
 3 COMMISSIONER: No.
 4 MR LITHGOW: Where we captured this was
 5 in the IT stratagem. Again there's no need to look at it.
 6 The main point was that what we wanted to do was to create
 7 a direct linkage between what were the SARS strategic
 8 objectives and how does that impact IT. So we went from
 9 three objectives to broad business requirements, to what
 10 would be the success criteria for IT. Now, you'll notice
 11 that success criteria don't list 30 to 70 projects.
 12 What we want to say is what does success look
 13 like. The next stage you say okay, if that's what success
 14 looks like for IT what is it we must do to enable that to
 15 happen. Again do not read this but we try to sort of, this
 16 gives you a sort of view as to the areas that we covered
 17 and how we tried to communicate this to people. And, you
 18 know, I accept we completely failed because from what we've
 19 heard this week, you know, nothing any longer exists of
 20 what we'd done and nothing has been implemented which to me
 21 professionally is genuinely distressing.
 22 We have a vast repository of the work that we
 23 have done. My confidence that even 10% of that can now be
 24 found is low. Now, do you blame us or do you blame
 25 somebody else? I don't know who you blame but what I am

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1 saying is that we have, I've had a team of - I had people
 2 crying on the phone having been contacted not about this
 3 Commission but now having an understanding that the amount
 4 of effort and commitment that they made and generally with
 5 the people in SARS and I know we've heard a lot of people
 6 who say we weren't happy with Gartner, etcetera and
 7 everybody has their own right and I'm sure there's a lot of
 8 people along those lines.
 9 All I can say is the people that we worked with
 10 were desperate to make things better. They were proud of
 11 the organisation they were part of and they
 12 enthusiastically wanted to embrace change. And there is a
 13 sense that that has not happened. So you could say so
 14 okay, Mike, so this R200 million that we spent on you is
 15 completely wasted. You know or you haven't delivered us
 16 value for money whichever way you term it. And I'd answer
 17 in two ways.
 18 Can I justify the money that we spent? Yes, I
 19 can justify that and I think we did do that through various
 20 avenues. Has it delivered value for money to SARS? And my
 21 answer in a very clear manner is no, because we have not
 22 seen any evidence or significant evidence of the work that
 23 we've done has now occurred. Now, there may be bits and
 24 pieces in place.
 25 In some ways that's even worse because what's

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1 happened is bits of the organisation have moved forward but
 2 other bits have not so actually you've now got a really
 3 confused situation because now nobody knows what is
 4 happening. You know, have we changed or have we not
 5 changed. Are we going to change? Are we not going to
 6 change? So yes, as a professional I am upset but the
 7 effort that we put into this may not have delivered what
 8 all parties had hoped for.
 9 Now, again I suppose I'm getting a bit emotional.
 10 I should pull myself back a little bit. I haven't visited
 11 or been in SARS since we left which I think is March 2017
 12 so the viewpoint I'm giving is from what we saw in 2017 and
 13 the viewpoint I'm giving is from what we've heard this week
 14 which is really all I can go on. Now, what we've heard
 15 this week may not be representative of what has occurred
 16 and what has happened and my emotional outburst may be
 17 completely and utterly unwarranted.
 18 So I accept that. And if that's the case I'll
 19 withdraw those statements and apologise to those whom I've
 20 offended. Again don't, because this will drive you mad -
 21 what we tried to do is to in the strategy say what's the
 22 linkages between the different programmes. We were very
 23 keen that they had a multi-year view of what was happening,
 24 that there was an understanding of where the linkages
 25 existed but at this point we had handed it over to SARS.

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1 So I sat in on the presentation of the IT
 2 strategy to the business leaders. Gartner didn't do that
 3 presentation. I was very happy to be invited to observe
 4 that together with Neville Willemse. That was presented by
 5 SARS themselves and that's what we wanted. They had now
 6 take ownership of this and if they say it isn't any good,
 7 we want to move this or that that's absolutely fine.
 8 But they had an understanding of what those
 9 implications may be. We also created a budget and I know a
 10 question has come up to say this budget is different from a
 11 budget that was presented. I think this one was April or
 12 May or September. I can't remember. And there's another
 13 spreadsheet that's floating around. That's January. That
 14 has a different figure to this. It does.
 15 That spreadsheet in January was requested by
 16 Bain. We said we haven't finished the work because the IT
 17 strategy hadn't been finished. So here is what we've got.
 18 I think, and I don't have the spreadsheets in front of me
 19 but I think the eventual cost was lower than the one that
 20 was given to Bain and that was partly because there was
 21 some reduction in scope.
 22 So part of you may say, wow, this is a big
 23 figure, Mike. Are you really recommending that we do all
 24 this? Well, this is the full programme of work. Whether
 25 this all needed to be done or not that was really for SARS

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1 to sign, to decide. Do I think it's a huge number? For
 2 the amount of work that needs to be done in SARS I do not
 3 think it is a huge number.
 4 Now, I am absolutely terrible at converting into
 5 the rand and I always get the decimal point in the wrong
 6 way so I will talk in pounds, sterling pounds, and pre-
 7 Brexit but we don't go there. If I look at HMR revenue
 8 service, their operating cost roughly is about £3 billion
 9 per year. Their spend on IT per year is just over
 10 £1 billion per year but they are going through a major
 11 transformation. Now, unfortunately for the leap in
 12 technology you're taking there's no alternative to making
 13 investment but I'll pull back from that.
 14 There's no alternative to making that investment
 15 if you want to get yourself to that world class standard.
 16 Now again the question that's being asked of me is yeah,
 17 but Mike, what you've produced here is something that is
 18 utterly unattainable within SARS. It's the Rolls Royce.
 19 We don't need a Rolls Royce. We don't need a Ferrari. It
 20 would be really nice to sort of have a Ford Mondeo and
 21 that's really all we need because we just need to get
 22 around the place.
 23 And I would say that this is not the Rolls Royce
 24 but I would say that we have stretched the aspirations of
 25 SARS and that goes back to the remit that I was given at

1 the very outset of this engagement which was to say,
 2 Michael, I would like help, I would like Gartner to help me
 3 to make SARS a world class tax administration. So having
 4 been given that as a direct challenge that's what we
 5 attempted to do. Now there are areas which I won't go
 6 through which indicate that securities, well, you said
 7 actually you're not going to reach gold class. The amount
 8 of work you need to do - we can get you to a better
 9 position but this is a multi-year journey. So I accept the
 10 comment and the observation but as a personal observation I
 11 don't think that is what we did.
 12 [12:37] (Inaudible). So why did not SARS not do this and
 13 SARS will have the wrong view. So these are outside-in
 14 observations from me and if you said, you know, show me a
 15 piece of paper where you can evidence this I'm going to be
 16 a little pushed to do that, so these are my observations.
 17 There was a vast amount of turbulence in SARS during the
 18 period of time we were doing this engagement. Nobody knew
 19 if they had a job. If they did have a job nobody knew what
 20 it was. A large number of people had to reapply for their
 21 position so they - some of them may say, Mike, we'd really
 22 like to engage with you but frankly I don't know whether
 23 I'm going to be in this post next week or next month so
 24 I'll come along but let me just warn you I may not be here
 25 at the next workshop.

1 Dropping to the bottom one before we go to the
 2 middle one, there was a lack of - I don't know whether they
 3 use the right term here. It's not that leadership wasn't
 4 committed. I think the leadership was committed to
 5 different outcomes so you didn't have a set of leadership
 6 that were all on the same page that wanted the same thing
 7 so again you will come back to well, how do you know that,
 8 Mike? So again I'm going to be open. Part of this is my
 9 observation from what I saw over a two-year period. Part
 10 of it is drawn from the interview notes that we had. I'm
 11 happy to be challenged to say Mike, we think you are
 12 fundamentally wrong and I'll accept that but I'm giving you
 13 my opinion and my observation around that.
 14 Now I was concerned with this and I raised it in
 15 both a letter to the Commissioner and I asked to have a one
 16 to one VTC with him and I made it clear that unless you've
 17 got a strong committed leadership this transformation is
 18 not going to work. It's not going to happen. And this
 19 strong leadership isn't about one man, whoever that
 20 individual is. You are not going to drive this change
 21 through an organisation that is so large and complex as
 22 SARS. You need a team of committed people who are all on
 23 the same page, who are all working towards the same goal
 24 and that isn't here and for me that is a big problem.
 25 There was resistance to change within SARS and

1 not - and this resistant change was not just to Gartner,
 2 there were different fiefdoms that existed, that inter-
 3 faction of discussion and fighting. Now sometimes it
 4 erupted and people would just not cooperate with us. We
 5 did have an instance which I can talk about, an instance
 6 which I can't talk about but which I did speak to the
 7 advocate about yesterday.
 8 We had an instance where the team leader, Johan
 9 Jacobs' Facebook page was hacked in a very sophisticated
 10 manner and on his Facebook page was posted anti-President
 11 Zuma pictures or cartoons. Now the sophistication of this
 12 was somebody didn't hack his Facebook page and post a
 13 picture. They hacked his Facebook page and went back a
 14 number of years and posted the picture and then a report
 15 was made to SARS to say do you know you are employing -
 16 somebody from Gartner is a racist who is posting anti-Zuma
 17 pictures? Now I then immediately spent my - I'll go into
 18 that in a minute. My question has always been who, even if
 19 you look on somebody's Facebook page, how many people scan
 20 back through a number of years to find a specific series of
 21 posts? To me that did not seem credible.
 22 I wrote to the Commissioner, apologised. I
 23 immediately suspended Johan. I put in place Neville
 24 Willemse because I needed to have a project leader, so all
 25 my other business in South Africa stopped outside of SARS

1 because without Neville there was nobody else to run that
 2 business. I paid for - Gartner paid for a forensic
 3 investigation. An affidavit was produced that indicated it
 4 had been hacked. The point where it had been hacked in
 5 terms of the IP address, it was definitively proved that
 6 Johan was not there during that period of time.
 7 I went to see the Commissioner and gave him a
 8 copy of the report and said I'm very happy, Commissioner,
 9 that even though I proved this, if you do not wish Johan to
 10 come back I will accept, he will not return and I will
 11 respect that and I can understand why you make that
 12 decision. He said no, I'm happy for Johan to come back and
 13 we reinstated him. Why do I think that happened? Again
 14 I'm speculating because I have no evidential proof of this
 15 but Johan was a strong individual. Even I had difficulty
 16 controlling Johan on occasion but I needed that.
 17 He was running an 18 man team, he had 21 work
 18 streams. He was having to manage the budget, the
 19 milestones, the reports, the quality control and in that
 20 position you need somebody who is quite strong and
 21 sometimes be a little bit abrasive. I sort of accepted
 22 that. Did a written communication but nevertheless he was
 23 a good strong leader and my only reason - the only reason I
 24 can come to is people did want him removed. He was too
 25 strong and he would stand up to people and as there's the

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1 series of emails which we may well come to later which
 2 gives you an indication of the character of Johan and if he
 3 felt something was wrong and he disagreed he would tell you
 4 it's wrong and he disagrees. He may have upset people and
 5 on all occasions that may not necessarily have been the
 6 right character to have but he was someone who was able to
 7 drive this programme.
 8 And modernisation. Okay, sorry, modernisation.
 9 So this, I think this is probably one of the most
 10 contentious slides that we produced out of phase 1 and it's
 11 contentious because people said well, you have created this
 12 slide because you have been influenced by either the
 13 Commissioner or COO to say that the head of modernisation
 14 was acting and created this fiefdom that he personally ran
 15 and personally directed. Well, they did say that. I must
 16 have heard they said something different. Actually to us
 17 they didn't make any difference. Our job was to restore
 18 site and make a judgment. This was a lot of money that was
 19 spent on modernisation and I would expect particularly in a
 20 government organisation to be able to find evidence of
 21 business cases, approvals, sign-offs, linkages to business
 22 and benefit outcomes and I couldn't really find those.
 23 Now again, go back to what I've said in here.
 24 Actually at the end I did say yes, there were and to say we
 25 were very happy to acknowledge that and put that in the

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1 stocking. But at that time we couldn't find it. There
 2 were contracts that we looked at and we were surprised at
 3 the volume of work that had gone through those as an
 4 exception. Now I was asked a specific question therefore,
 5 Mike, was it illegal? I said I cannot make a judgment on
 6 that but what I can say is for a government organisation
 7 these were quite large sums of money that were on
 8 exception. I'm neither an accountant nor am I a legal
 9 person. If you want to investigate that then you need to
 10 go and find somebody to investigate that and in effect I
 11 think they did and I think that was the Grant Thornton work
 12 which we did not participate in and I never saw the output
 13 of.
 14 But I didn't feel we could do that but I did feel
 15 and I did feel it was my duty to say I look at a lot of
 16 organisations, I look at a lot of big programs and what I
 17 see doesn't quite ring right. The next accusation is that,
 18 you know, there was no governance. Well, there was
 19 governance and again I'm not qualified to say whether that
 20 governance was compliant with King III or not. The problem
 21 was that the way it was executed would depend upon one
 22 person and again I'm not saying that's good or bad. The
 23 problem is if you've got no understood and documented
 24 processes when that person leaves a vacuum is created and
 25 having had a strong leader people then say so what do we do

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1 now, even more so because the programme that he worked on
 2 had stopped. It stopped before we arrived. We were not
 3 involved in that.
 4 So there was this complete vacuum and people now
 5 thought well actually we normally go to this person. This
 6 person tells us what to do or this person ensures the sign-
 7 off. Again I'm not saying whether that's right or wrong
 8 I'm just explaining, which he himself said. You know, he
 9 said actually we have these meetings. I'm the CEO. I do
 10 represent the business. I am able to make that judgment
 11 and actually he probably could so I'm absolutely not
 12 arguing with that. The problem is when it's organised at –
 13 that governance is organised in that way if you take off
 14 the head you have a problem and there was a problem when we
 15 came up with a lack of documented processes and governance
 16 that we could discover.
 17 I – yes, I think I've already sort of covered
 18 this. This is again sort of us sort of saying we're really
 19 concerned about where is all this money going, so software
 20 costs for SARS of 37% compared to peer group of 8%. I mean
 21 they – the worst significant discrepancy we saw, again
 22 phase 1 wasn't about so therefore what's the root cause of
 23 this? What do we do to fix it? It was tell us what you
 24 find and we told them what we found. Could this be wrong?
 25 Yes, it could be, yes. I don't think it was wide enough

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1 but yes, because we had network time periods. We were
 2 operating to a certain degree with a hand behind our back
 3 in terms of how much we could say to people and whom we
 4 could engage with but I am broadly comfortable with the
 5 observations that came out of phase 1 that influenced phase
 6 2. And that's it. Sorry, I've taken up a really large
 7 part of your time and my apologies for that.
 8 COMMISSIONER: No, it was helpful. What
 9 is the time now?
 10 PROF KATZ: The time is quarter to one.
 11 COMMISSIONER: Would you like to start
 12 after – do you want a break, Ms Hobden and then we can go
 13 on?
 14 MS STEINBERG: Judge we would propose
 15 that we come back at half past one to start because we're
 16 going to need the time this afternoon if that's all right?
 17 COMMISSIONER: Yes, it's fine. Okay,
 18 thank you, Mr Lithgow.
 19 [INQUIRY ADJOURNS INQUIRY RESUMES]
 20 [13:34] COMMISSIONER: Are you ready?
 21 MR LITHGOW: No, I will be fine.
 22 COMMISSIONER: Thank you. Let's go.
 23 MS HOBDEN: Thank you, Mr Lithgow. We
 24 have a few issues from our side where we'd like some
 25 clarity and a few questions. Firstly from the side of the

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1 evidence leaders we'd like to express our thanks to Gartner
 2 for their cooperation with the Commission and the many
 3 documents we've been provided by Gartner under time
 4 pressure and we appreciate that has helped us immensely.
 5 I'd like to deal with the topics broadly in the same order
 6 that you did but starting at phase 1 moving to the link
 7 between phase 1 and phase 2. Then dealing with some of the
 8 projects in phase 2 and value for SARS and then looking at
 9 phase 3 and some issues.

10 MR LITHGOW: Ja.
 11 MS HOBDEN: And we'll see how we proceed.
 12 I'd like to start right at the beginning. We've dealt with
 13 some of the procurement issues and we know that Gartner
 14 was, ultimately signed a contract with SARS and arrived on
 15 site at SARS around the 5th of February 2015. Now at that
 16 stage did you know that Barry Hore had recently resigned?

17 MR LITHGOW: No. So the answer is no.
 18 If you step back from that, on a monthly basis I manage
 19 what's called a pipeline of projects that's around 30 to 35
 20 million. So, sorry, I speak in Dollars as opposed to Rand.
 21 So yes, I was aware there was an opportunity at SARS,
 22 Neville had spoken to me about it sort of mid-January and
 23 to be honest my experience the speed at which government
 24 departments operate it was not front of mind for me. So I
 25 knew who SARS was, I don't think, I don't remember knowing

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1 anybody in SARS, it's not, I don't spend a lot of time in
 2 South Africa. So no.

3 MS HOBDEN: Did you know that the
 4 Commissioner was recently appointed?

5 MR LITHGOW: I probably did. I mean
 6 it'll be unusual for me if we're going to get a large
 7 engagement to do a little bit of background, who's in
 8 charge. I mean generally what I ask is how senior is the
 9 person we're working for, for two reasons. One if he's not
 10 a particularly senior person then that lowers my
 11 expectation of we're going to get this signed because
 12 generally they don't have the power authority and if it's
 13 quite a big programme then I want to understand that we're
 14 going to deliver it to somebody who's in a position to do
 15 something with that output.

16 MS HOBDEN: And did you know that the
 17 current SARS Exco had been suspended?

18 MR LITHGOW: No.
 19 MS HOBDEN: Did anyone at Gartner know
 20 any of these facts?

21 MR LITHGOW: If you're including Gartner
 22 South Africa I'm sure Neville did. If you mean Gartner New
 23 York, probably not.

24 MS HOBDEN: When did you become aware of
 25 those facts?

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1 MR LITHGOW: I started to take a closer
 2 interest as I'm, I'm just trying to think back through my
 3 memory for the four years ago. I probably started to take
 4 a greater interest probably mid-February, perhaps the end
 5 of February. I knew that from Neville that we were doing
 6 it at senior level, a Commissioner, a CEO level. So for me
 7 that was great. Who they were, what their background was,
 8 not a lot. I was aware that politics in South Africa can
 9 sometimes be challenging. So I would've done some
 10 background research to say who are these people. I don't
 11 have a huge amount of memory but I seem to remember the
 12 time that the Commissioner had been newly appointed, from
 13 the limited amount of (inaudible) looked up the press
 14 seemed to have given him a relatively warm welcome into
 15 that post. So if the questions lean to did I know that
 16 there were concerns, if I put it like that, around this
 17 appointment, I didn't. There was nothing that caused me
 18 concern that I was walking into the environment which it
 19 has turned out to be.

20 MS HOBDEN: That wasn't the question.
 21 The question is really around the environment and
 22 atmosphere at SARS at the time and what we do know is that
 23 from the initial briefing that Gartner received these facts
 24 were put before the Gartner representatives in South
 25 Africa. We see in the briefing that was since, when

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1 Anneline Frost met with SARS and then sent an email to
 2 Neville Willemse and others that Gartner she says "the new
 3 Commissioner is Tom Moyane". She says "in the news two of
 4 the Commissioner's management team have been suspended,
 5 acting Commissioner Ivan Pillay and Pieter Richer strategy
 6 enablement and communications which suspensions were
 7 overturned by the labour court. Barry Hore, COO resigned
 8 with a disciplinary pending and then she attaches some
 9 links. So this was information that was known to the
 10 Gartner representatives in South Africa from the very
 11 beginning of this project. Is that right?

12 MR LITHGOW: If it's an email yes, it
 13 will be correct.

14 MS HOBDEN: But it was something that
 15 only came to your attention later, you say, when you were
 16 on the ground mid-February.

17 MR LITHGOW: Probably but if it had come
 18 to my attention earlier I'm not sure it would've influenced
 19 anything I would do differently.

20 COMMISSIONER: Well perhaps just stick to
 21 the questions and we'll –

22 MR LITHGOW: Sorry.
 23 COMMISSIONER: - see if they go anywhere.
 24 MR LITHGOW: Okay. From memory I can't
 25 recall that but I cannot rule out that somebody may have

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1 told me in a telephone call or an email but I don't recall
 2 that.
 3 MS HOBDEN: And what did you understand
 4 when you arrived at SARS about the modernisation programme
 5 and its plans and initiatives?
 6 MR LITHGOW: Sorry, can I ask for
 7 clarification? By arrived at SARS do you mean starting, or
 8 when personally came across to SARS?
 9 MS HOBDEN: I'm asking your experience
 10 because that's all you can talk to and we'll move to what
 11 other representatives Gartner knew but I'm asking you as
 12 the project lead what were you aware of, of the
 13 modernisation programme.
 14 MR LITHGOW: Okay, but just to clear I
 15 was not project lead.
 16 MS HOBDEN: Well the oversight –
 17 MR LITHGOW: Yes.
 18 MS HOBDEN: Sorry.
 19 MR LITHGOW: Thank you.
 20 MS HOBDEN: I apologise.
 21 MR LITHGOW: Again there was nothing in
 22 my memory that struck me as unusual. So yes, a client is
 23 not going to ask us in unless there's a problem. So I
 24 would've realised there was a problem. In the manner in
 25 which we've been undertaking it I would've realised that

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1 executives were asking for an investigation, a baselining
 2 that which to me sort of demonstrate the lack of confidence
 3 in the leadership team at some level within SARS. But
 4 specifically did I know the environment I was stepping into
 5 in detail, did I know the individuals, no.
 6 MS HOBDEN: And did you take any steps to
 7 find about that environment and the individuals?
 8 MR LITHGOW: No and I'll be very clear as
 9 to why. We were offering in the IT assessment a very
 10 standardised product. There was no customisation of that
 11 product. We ran it many times. If a client asks us to run
 12 it we will run it. So no.
 13 MS HOBDEN: And by the time you provided
 14 the proposal for phase 2 and contracted for phase 2 did you
 15 know those facts?
 16 MR LITHGOW: I knew there were
 17 significant disruption within SARS, that the modernisation
 18 programme had been stopped. That Barry Hore was a
 19 contentious figure that had been in SARS. That there were
 20 people who felt that he had been perhaps mistreated or not
 21 given due credit for the work that he'd done and that there
 22 were other people who were pleased to have seen him gone.
 23 So yes, I did know that.
 24 MS HOBDEN: So in those circumstances was
 25 it appropriate to embark on a phase 2 journey if we can

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1 call it that for the amount of money that SARS paid in this
 2 time of what seemed like huge change and turmoil?
 3 MR LITHGOW: I wouldn't describe, ja, it
 4 clearly was huge turmoil. Compared to other organisations
 5 where I've gone into they have been in similar situations.
 6 Again nobody's going to pay Gartner or any other
 7 consultancy a lot of money unless there is a very big
 8 problem to solve which they have been unable to do
 9 themselves. So yes, it was challenging but all of the
 10 engagements I undertake are of that manner or the majority
 11 of them.
 12 MS HOBDEN: So you were comfortable that
 13 it was an appropriate time for SARS to engage Gartner to
 14 embark on the phase 2 work?
 15 MR LITHGOW: Right. Okay, so to be fair
 16 to the judge, yes, I felt it was appropriate at that time
 17 to do it. Do I feel with the benefit of hindsight two
 18 years into the programme, I might have been more cautious.
 19 COMMISSIONER: Well I hope you would've
 20 said would've been more cautious, not might have been.
 21 MR LITHGOW: Yes. I would've been, yes.
 22 I'll have, and it's inappropriate but there has been a
 23 recent example of a piece of work that I've done in South
 24 Africa where I refused to undertake that work until certain
 25 conditions were met which were not commercial but again it

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1 was around disputed (inaudible).
 2 MS HOBDEN: Why would you have been more
 3 cautious in hindsight?
 4 MR LITHGOW: The questions I would've
 5 asked, again, what I've done to give the impression of that
 6 this is something that Gartner should not have done. At
 7 the time with the knowledge and information I had I was
 8 very comfortable undertaking the work that was done. So I
 9 do not move away from that. I'm very comfortable –
 10 MS HOBDEN: I understand that answer.
 11 MR LITHGOW: - with that. The challenge
 12 I got is it, as it became clear the challenges within SARS
 13 was not confined to a very small number of people at the
 14 top and if it's a very small number people, 5, 6 people,
 15 then actually if you've got sufficient (inaudible) now you
 16 can move people out and move people to other duties. But
 17 it was clear that there was significant disquiet almost at
 18 every level within SARS. But until you've lived and
 19 breathed it and we did, we didn't do this work off site, we
 20 did this work from the building next door and when you live
 21 and breathe it, when you go to the canteen, when you speak
 22 and see people you clearly get a different perspective on
 23 what is happening. Now we tried to mitigate that. We held
 24 an extraordinary number of workshops, more than we would
 25 normally hold. We spent more time with people to try and

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1 facilitate and sometimes that did work. We did have
 2 positive outcomes from that and sometimes unfortunately it
 3 didn't.

4 MS HOBDEN: The reason I raise it is that
 5 one of the issues you raised as a barrier to the
 6 implementation of the work Gartner produced, was that SARS
 7 for a large portion of the time Gartner was here was an
 8 institution in turmoil. That people were unhappy, there
 9 was huge uncertainty and there was a leadership problem
 10 which we've heard extensive evidence. Now I understand
 11 your evidence to be that that was not something you were
 12 aware of the day you set foot in SARS.

13 MR LITHGOW: Actually, I would say I was
 14 not aware of it even by the end of phase 1.

15 MS HOBDEN: And by the beginning of phase
 16 2 –

17 MR LITHGOW: No.

18 MS HOBDEN: - you were not aware of what
 19 was happening on the ground?

20 MR LITHGOW: Not to the extent that –

21 MS HOBDEN: What were you aware of?

22 MR LITHGOW: Sorry?

23 MS HOBDEN: What were you aware of?

24 MR LITHGOW: Only that - and what I was
 25 aware of is that there were challenges at the leadership

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1 level, that this was going to be a difficult engagement but
 2 the breadth of that disquiet was not obvious to me at the
 3 beginning of phase 2.

4 MS HOBDEN: And in those circumstances
 5 who did you approach to get the information you needed to
 6 conduct the work in an appropriate way?

7 MR LITHGOW: Sorry, I'm not sure –

8 MS HOBDEN: Sorry, maybe I should ask the
 9 question this way. Where did you get your information in
 10 order to understand your mandate and what was happening on
 11 the ground if when you began at SARS you didn't know?

12 COMMISSIONER: Who was your main contact
 13 in SARS?

14 MR LITHGOW: It was the COO.

15 COMMISSIONER: Sorry?

16 MR LITHGOW: COO, Dan Zulu and the
 17 Commissioner at my level. They are different than
 18 Neville's level. At my level they were primarily the three
 19 I dealt with.

20 MS HOBDEN: And did anyone from Gartner
 21 speak with Barry Hore?

22 MR LITHGOW: I would doubt it and I would
 23 say the reason for that is that he was no longer an
 24 employee of SARS. All of us had to sign the secrecy oath
 25 which was quite constraining in terms of how we operated

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1 and who we could speak to. So it would have been unusual
 2 for us to speak without approval to someone who was no
 3 longer there.

4 COMMISSIONER: No, you weren't asked
 5 about whether you, why you didn't speak to him, yet. But
 6 did you not hear of the man Barry Hore who had been
 7 instrumental in building the whole modernisation programme?

8 MR LITHGOW: Yes.

9 COMMISSIONER: You had heard of him.

10 MR LITHGOW: Yes.

11 MS HOBDEN: And were you aware that Barry
 12 Hore had left an extensive handover pack when he left at
 13 the end of 2014?

14 MR LITHGOW: Personally no.

15 MS HOBDEN: Do you know if anyone at
 16 Gartner was aware of that?

17 MR LITHGOW: Not that I'm aware of. But
 18 there could've been.

19 MS HOBDEN: You don't know –

20 MR LITHGOW: Sorry, it sounds as if I'm
 21 avoiding the question which I no intend avoid the question.
 22 I did not look at that level of detail and I'm not saying
 23 that is being irresponsible, it was not something that was
 24 brought to my attention and if it did exist I would've
 25 expected the team to have had it and made use of it.

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1 MS HOBDEN: But you don't know if they
 2 did.

3 MR LITHGOW: No, that's correct. I do
 4 not know whether they did, yes.

5 MS HOBDEN: We've seen that handover pack
 6 and we've studied it and it provides a very comprehensive
 7 and detailed set of documents showing the modernisation
 8 journey from its start and showing where the modernisation
 9 journey was at the end of 2014 and most importantly it
 10 shows where modernisation was going, the projects on the
 11 horizon so to speak. And your evidence is that you weren't
 12 aware of that information and you don't know if the Gartner
 13 team was aware of it.

14 MR LITHGOW: That is correct.

15 MS HOBDEN: Moving – I don't know if
 16 there are question from the panel on Gartner's initial
 17 engagement.

18 COMMISSIONER: Just one question and that
 19 is if you had heard of Mr Barry Hore and I don't think for
 20 the moment anyone coming into SARS at that time would not
 21 have heard of Mr Barry Hore who had been very instrumental,
 22 forget about powerful, instrumental in the modernisation
 23 programme, did you, wouldn't you ask to speak to him to ask
 24 him about his modernisation programme, where it was going
 25 and so forth? Would that be an unusual to ask to speak to

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1 him?

2 MR LITHGOW: It wouldn't be unusual. No,

3 so to answer your question, no, it would not be unusual

4 COMMISSIONER: And well why didn't you?

5 MR LITHGOW: I don't know why we didn't

6 and I don't know whether we asked whether we could speak to

7 him but given my level of knowledge at that time it wasn't

8 something that was at the forefront of my mind.

9 COMMISSIONER: Well the question is why

10 not? I mean I would've thought he's an obvious person to

11 speak to, to say what is this all about? We're starting on

12 a programme, we've been asked to review your whole

13 modernisation programme. Could you tell us something about

14 it? You hadn't seen the handover pack, you knew Barry Hore

15 had done all this. Perhaps it doesn't happen in the, you

16 know, you must educate me but I would've thought one would

17 say can I speak to the man who built this.

18 MR LITHGOW: All the IT assessment we

19 were given instructions that were not to discuss what we

20 were doing widely and we were limited as far as I'm aware

21 to interacting with those who would receive the IT

22 assessment from us. So it was to baseline. Again I come

23 back to phase 1 was a delivery of a defined product to

24 people that were already in post to ask them a specific set

25 of questions to baseline where they felt they were as an

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1 organisation. It will be highly unusual and I cannot think

2 of an occurrence where we have delivered that service of

3 product to have sent it to someone who is no longer an

4 employee of that organisation.

5 COMMISSIONER: That wasn't a – I'm not

6 suggesting you would've sent it to someone else. My

7 question was why didn't you say I would like to talk to the

8 man so that I can inform myself, not send it to someone

9 else. That was what I'm concerned about. Can you tell me

10 why you didn't ask to see him?

11 MR LITHGOW: No, I can't because I was

12 not running the project at that level. Again, I'm not

13 trying to get off the hook, this was a standard service

14 project that was more than capable of being run by the

15 South African team. It did not require any input from me

16 and my only input came at the end when I asked to look at

17 what were the results.

18 COMMISSIONER: Would it not have been

19 informative though to have spoken to Barry Hore who had set

20 the whole thing up?

21 MR LITHGOW: It may well have been if

22 we'd been allowed to.

23 COMMISSIONER: No, my question was would

24 it not have been informative.

25 MR LITHGOW: Yes, of course. It would've

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1 been informative, yes.

2 COMMISSIONER: Well then why didn't you

3 ask to see him? That's all the question, I'm not being

4 critical, I'm just trying to –

5 MR LITHGOW: Because I was not running

6 the project.

7 COMMISSIONER: And what about the people

8 who were running the project, did you not suggest to them

9 that maybe they should ask to see him?

10 MR LITHGOW: At that stage I had no idea

11 who Mr Barry Hore was, what he'd done, what he'd left

12 behind or where he'd gone.

13 COMMISSIONER: I thought we'd overcome

14 that. I'd thought that you did know who Barry Hore was and

15 that you did know that he had been the –

16 MR LITHGOW: Not at the beginning of

17 phase 1.

18 PROF KATZ: I think we've heard abundant

19 evidence that SARS was a highly successful organisation on

20 any measure, the OECD, various. You then get a new

21 Commissioner whose background was not IT tax at all.

22 [13:54] You are then appointed to do a major evaluation

23 and overhaul. Wouldn't it be fundamental to find out what

24 problem did he see? You know, you made various statements.

25 There was that blatant statement about an economist. Yes,

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1 this is working in practice but it's not good in theory.

2 This was working in practice when you came to evaluate.

3 Shouldn't Bain, forgive me, shouldn't -

4 MR LITHGOW: I hope I am not in that

5 bracket but there's no need to ask that.

6 PROF KATZ: I ask for your forgiveness.

7 Shouldn't Gartner have really questioned what is the new

8 Commissioner's objective, what's his vision, what are we

9 being asked to remould? I'm not talking about you, the

10 Gartner team.

11 MR LITHGOW: We were not being asked to

12 remould anything. We were asked by the Commissioner to

13 provide a standard service to baseline where SARS was.

14 That in my mind was not connected with anything that I was

15 aware of, with anything else that was going on. That IT

16 assessment could've come out and said no, it's fantastic.

17 There's absolutely nothing to worry about. We could've

18 come out and said you're okay, there's a couple of things.

19 At that stage it was a standard product which we delivered.

20 We were not asked to fix anything. We were asked to

21 measure where is SARS.

22 COMMISSIONER: I want to ask you another

23 question and that is this. If you're going to, proposing

24 to work for Her Majesty's Revenue Service would it come,

25 could it come about as follows that a third party would to

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1 say to you look, let's devise some terms of reference. We
 2 haven't spoken to Her Majesty's service at all. We've
 3 spoken only to a third party. And you devise terms of
 4 reference and those terms of reference are devised with in
 5 mind that there would be a second phase. Does that, would
 6 that happen with Her Majesty's Revenue Service?
 7 MR LITHGOW: I would say, look, you're
 8 asking me for a yes or no answer.
 9 COMMISSIONER: I am, yes.
 10 MR LITHGOW: What I can say -
 11 COMMISSIONER: Can we have first the yes
 12 or no?
 13 MR LITHGOW: Well, the answer is no. But
 14 if I'm allowed to follow that.
 15 COMMISSIONER: No, you know, please, the
 16 rules were simple. Yes or no if it requires a yes or no
 17 and then you are free to -
 18 MR LITHGOW: So no, but well, let me
 19 explain because it's ongoing presently an example of where
 20 from what I understand to have happened. So a government
 21 department has asked a consultancy who is not Gartner to
 22 undertake a piece of work. They have asked that
 23 consultancy to work with Gartner who was mandated to
 24 undertake a specific benchmarking aspect.
 25 They have asked both of us to help them write the

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1 terms of reference in order to ensure that they understand
 2 first of all what we are providing them and that way they
 3 can ask the right question of us. And the reason that they
 4 have done that is to save both time and money. If they
 5 provide us with a requirement where there has been no
 6 consultation it may or may not be right. If it is not
 7 right then we incur cost because we're going to put in a
 8 request for change. And it also has a time implication.
 9 So it is not unusual for government clients to ask me to
 10 help them frame the terms of reference and it is not
 11 unusual for clients to ask me either to work with someone
 12 or for me to work with someone else.
 13 MS HOBDEN: Mr Lithgow -
 14 COMMISSIONER: No, that's correct but
 15 you've said that's when the client asks you. Is it not
 16 unusual when you haven't even spoken to the client and then
 17 you draw the terms of reference, you and a third party
 18 together with Gartner having even spoken to the client? Is
 19 that unusual?
 20 MR LITHGOW: Yes, it is unusual when it's
 21 terms of reference. No, it's not unusual if a third party
 22 and Gartner get together and say let us propose what we
 23 would call a point of view that this may be of value to
 24 you.
 25 COMMISSIONER: No, but I understand but

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1 the two of you get together as it were as a consortium.
 2 MR LITHGOW: Yes.
 3 COMMISSIONER: Let's put together
 4 something and offer it to them.
 5 MR LITHGOW: Yes.
 6 COMMISSIONER: So can we keep to the
 7 facts of this matter though which is that there was no
 8 talking to the client, number 1, and there is no - it
 9 wasn't a matter of two parties getting together to form as
 10 it were a consortium to offer something. It was someone
 11 speaking apparently or purporting to speak for SARS and
 12 then discussing it with Gartner and saying I am the conduit
 13 through which this is coming to Gartner. That's what
 14 happened here. And that wouldn't happen in Her Majesty's
 15 service I'm sure?
 16 MR LITHGOW: No, but no, to answer your
 17 question but I don't know whether that's happened or not.
 18 COMMISSIONER: Well, we heard it this
 19 morning. That's what happened. We heard the evidence.
 20 MR LITHGOW: Well, I wasn't here, Judge,
 21 so I can't -
 22 COMMISSIONER: No, I'm sorry, I didn't
 23 realise you weren't here.
 24 MR LITHGOW: No, I deliberately was not
 25 here this morning.

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1 COMMISSIONER: But the fact is that's the
 2 evidence we heard this morning that Mr Monyeke spoke to Mr
 3 Willemse and said now this is what we're going to do. This
 4 is what is coming from SARS. Gartner then settles terms of
 5 reference in consultation with Monyeke and has never spoke
 6 to the client at all. And by the way has no idea what
 7 Mr Monyeke's relationship is with the client. Is that the
 8 kind of thing Gartner normally does in England for example?
 9 MR LITHGOW: No, but I feel I'm being
 10 pushed into a corner here and I'm sure that's not
 11 intentional. If a client says we're going to undertake
 12 some sole source work, I would like you to help us draw up
 13 a terms of reference then that is absolutely fine. If it's
 14 going to be competitive that is not allowed.
 15 COMMISSIONER: Mr - I don't like, please
 16 don't feel I'm pushing you into a corner. I just would
 17 like an answer and I'm not getting the answer because
 18 you're changing the question all the time if you don't mind
 19 my saying so. I've given you the facts. Mr Monyeke
 20 approaches Gartner, says I am now talking for SARS. We
 21 must settle terms of reference and Gartner has never spoken
 22 to SARS and has never asked Mr Monyeke what his
 23 relationship is with SARS. Would that be unusual?
 24 MR LITHGOW: Well, I feel you are pushing
 25 me into a corner and I believe -

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1 COMMISSIONER: Whether I'm pushing you
 2 into a corner or not doesn't bother me. I would like to
 3 have an answer to the question.
 4 MR LITHGOW: The answer is no, but again
 5 I come back, I was not here this morning so I don't know
 6 what was said. And I know you're getting irritated with me
 7 but -
 8 COMMISSIONER: I'm not getting irritated.
 9 I never get irritated. I really don't. I've been sitting
 10 in courts for 25 years. I've heard it all and I don't get
 11 irritated anymore. I used to when I was young.
 12 MR LITHGOW: Well, I'm young if that's
 13 the problem.
 14 COMMISSIONER: So let's not worry about
 15 my irritation. Let's not worry about your corner. Let's
 16 just get an answer to the question.
 17 MR LITHGOW: If the client has said we -
 18 COMMISSIONER: No, no, not if the client
 19 has said. You had never spoken to the client. That's the
 20 point I'm making. You have never spoken to the client.
 21 You don't know who this person is, you know who he is but
 22 you have no idea what his relationship is to the client.
 23 And now Gartner agrees with him that we will settle terms
 24 of reference. That would be unusual you say. You wouldn't
 25 do it when you're dealing with Her Majesty's Revenue

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1 Service.
 2 MR LITHGOW: Sorry, I'm just making sure
 3 I really understand your question because clearly it
 4 appears to be a legal, has a legal ramification. If there
 5 is - let me just make sure I'm answering the right
 6 question. I have come across occasions where the client
 7 has said we intend to do a piece of sole source work,
 8 please go away and speak with somebody, draw up the terms
 9 of reference.
 10 COMMISSIONER: Well, now can we get to my
 11 question and I'll put it again? You've put to me when the
 12 client has said that. I'm not - and I'm going to continue
 13 until I get an answer and if you don't understand the
 14 question you're welcome to say I don't understand it.
 15 Gartner has not spoken to the client. The client has said
 16 nothing. Gartner has not even met anyone from the client.
 17 They have spoken to no one in the client.
 18 They have spoken to Mr Monyeke. Mr Monyeke has
 19 come and said to them we will draw terms of reference.
 20 Gartner has not even asked on what basis Monyeke is
 21 purporting to speak for SARS and it then sets about drawing
 22 terms of reference with Mr Monyeke, the third party,
 23 without having spoken to the client, with having no
 24 instructions from the client and not even knowing what Mr
 25 Monyeke's relationship is with the client. Do you get the

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1 question?
 2 MR LITHGOW: Yes, I understand the
 3 circumstance is very unusual.
 4 COMMISSIONER: Well, does it happen at
 5 all outside Africa?
 6 MR LITHGOW: I don't think Africa is any
 7 different to any -
 8 COMMISSIONER: Well, I'm asking. That's
 9 what I'd like to know. Is that what happens in Europe?
 10 MR LITHGOW: Well -
 11 COMMISSIONER: Or America for that
 12 matter.
 13 MR LITHGOW: I would say no, but I'm not
 14 sure I really do understand the question and I -
 15 COMMISSIONER: So let's get it correct
 16 then. What is it you don't understand about the question?
 17 MR LITHGOW: If a client has spoken to Mr
 18 Monyeke which I understand he has -
 19 COMMISSIONER: Well, I don't know. We
 20 don't - Gartner didn't know. They didn't know what, they
 21 didn't know what relationship if any existed between Mr
 22 Monyeke and SARS.
 23 MR LITHGOW: But if I'm going to spend
 24 time and effort drawing up a terms of reference I would
 25 only do so if I had the knowledge that the client wanted

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1 that.
 2 COMMISSIONER: Well, that's the point is
 3 that you didn't have the knowledge, not you, Mr Willemse
 4 didn't have that knowledge.
 5 MR LITHGOW: Well I am presuming.
 6 COMMISSIONER: No, I'm telling you now he
 7 didn't. That's what he told us.
 8 MR LITHGOW: I can't speak on his behalf.
 9 COMMISSIONER: I'm not asking you to.
 10 I'm asking whether Gartner does business in that way in
 11 Europe.
 12 MR LITHGOW: If you're implying there's
 13 something illegal there - I have come across occasions
 14 where people have come to me and said the client has spoken
 15 to me, we're going to have a single source, will you draw
 16 up a terms of reference.
 17 COMMISSIONER: And you don't ask what the
 18 relationship is between that client, that person and the
 19 client you mean? You've had it happening before.
 20 MR LITHGOW: I would establish do you
 21 know the client, who has asked you, what, why has he asked
 22 you, is he serious about this, does he have the funding to
 23 do it? And if he answers to that a yes then I'd say yes,
 24 I'm quite happy.
 25 COMMISSIONER: Well, then let's go back

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1 to my question and that is that didn't happen in this case.
 2 No one asked what the relationship was if any between
 3 Monyeke and SARS. That is what, those are the facts that
 4 we heard from Mr Willemse this morning.
 5 MR LITHGOW: I would find that unusual.
 6 COMMISSIONER: Well, has it happened
 7 before in -
 8 MR LITHGOW: It hasn't happened to me
 9 personally. I cannot confirm that it hasn't happened at
 10 all.
 11 COMMISSIONER: Gartner would not normally
 12 do business in that way.
 13 MR LITHGOW: Correct.
 14 COMMISSIONER: Would that be right?
 15 MR LITHGOW: Yes.
 16 COMMISSIONER: Why do they do business in
 17 that way here?
 18 MR LITHGOW: I have no idea. You're
 19 speaking about a period of time where I have no knowledge
 20 of. Again I'm not avoiding the question. I don't know.
 21 COMMISSIONER: Well, that's fine if you
 22 don't know. Don't you think it's a question you ought to
 23 ask within Gartner? Is it a worthwhile question to ask?
 24 MR LITHGOW: I did ask the question as to
 25 where had this come from, who had you spoken to and the

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1 email that was produced was from Annelie Frost which you've
 2 just read out.
 3 PROF KATZ: Sorry, can I just ask is it
 4 usual to subcontract 40% of the contract?
 5 MR LITHGOW: Yes, that's - sometimes I've
 6 been the recipient of that 40%. Sometimes I've given the
 7 40% away. In this particular case what I quizzed Mr
 8 Willemse on this, what resources are going to be required
 9 to undertake this work. It was clear that we did not have
 10 sufficient resources in country to undertake this work. I
 11 said do you have a third party who is able to undertake
 12 this work. What's the quality of that third party? What
 13 are the CVs, the associates like? He confirmed that in his
 14 view they're a bona fide organisation. He'd seen the CVs.
 15 So I said okay, that's absolutely fine. And then we'd then
 16 go into discussion of what proportion of work are we going
 17 to give them and that portion of work was based upon the
 18 gap between the resources I had in country and the
 19 resources required to undertake the engagement.
 20 PROF KATZ: Just one last question on
 21 this, sorry, counsel, just one more. You described very
 22 admirably what sophisticated processes Gartner has, how
 23 they execute the work. How is the performance of the work
 24 on this contract allocated between Gartner and Rangewave?
 25 What did Rangewave factually do?

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1 MR LITHGOW: They undertook a number of
 2 the IT scores and conducted interviews and I presume
 3 undertook some workshops.
 4 PROF KATZ: 40% of the value of the total
 5 contract?
 6 MR LITHGOW: Ja, I mean, I have a very
 7 small team down here. And the alternative option I had was
 8 to say, okay, we will not use a subcontractor because a
 9 subcontractor for Gartner is not advantageous because
 10 effectively they're an expense on the engagement. We have
 11 to pay them and then receive money from them. The
 12 alternative would be to use people from Europe but that
 13 would've incurred significantly additional cost and I
 14 didn't have them available. This came at short notice.
 15 They needed to be full time for eight weeks and I didn't
 16 have them.
 17 PROF KATZ: So when SARS appointed
 18 Gartner for all the attributes Gartner has would they have
 19 known that 40% of it wouldn't be performed by Gartner?
 20 MR LITHGOW: I can't answer that question
 21 because I don't know. It was a standard product and Mr
 22 Willemse who is my representative down here would've had
 23 those commercial discussions.
 24 PROF KATZ: On this leg, nothing more.
 25 MR KAHLA: Was it known by yourself that

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1 the third party that was suggested to do, to be part of the
 2 subcontract and in fact the party that had brought this
 3 assignment to yourselves and made the first proposal on the
 4 terms of reference?
 5 MR LITHGOW: No.
 6 MR KAHLA: Would it have changed anything
 7 in relation to your conduct from a procurement perspective
 8 if you had known that information?
 9 MR LITHGOW: I would've been cautious and
 10 I would've asked more questions, yes.
 11 MR KAHLA: Questions?
 12 MR LITHGOW: In terms of the relationship
 13 between Gartner and Rangewave and SARS.
 14 MS HOBDEN: Mr Lithgow, it seems that
 15 from the evidence that we've heard that it wasn't an
 16 election of Gartner to use a partner to assist it in the
 17 contract but that it was a condition of getting the
 18 contract with SARS that it used this partner.
 19 MR LITHGOW: Okay, so you're referring to
 20 an email that I wrote on 15th January I think. I can't
 21 remember the exact date. And in that email which was
 22 (inaudible) sent from me to ops in North America, George
 23 Muller, I think there were a couple of those people on
 24 that. And in that email I stated from memory that we have
 25 an opportunity in South Africa. The client has directed

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1 that we use a third party and that third party is to be
 2 Rangewave. I think that's what you're referring to.
 3 MS HOBDEN: Yes.
 4 MR LITHGOW: Clearly I remember the
 5 email. Yes, I did write that email and that is the phrase
 6 that I used. That email was written probably within 30/40
 7 minutes of a telephone conversation with Neville where
 8 Neville gave me, Mr Willemse gave me that information. I
 9 do recall that he said we're direct to use a third party.
 10 He then started to talk about BEE which at that stage was a
 11 foreign language to me and that we said we're going to use
 12 Rangewave.
 13 I cannot recall a statement ever being made that
 14 SARS directed that Rangewave be used either for phase 1 or
 15 for phase 2. Now, I know you're going to say but that's
 16 not what you stated in the email and I absolutely accept
 17 that. Even if they had stated you are to use Rangewave
 18 that would not have caused any concern to me because that
 19 occurs frequently that a client will say we're going to use
 20 you but we would like you to use the following
 21 subcontractor. That is not unusual. I ask why but it's
 22 not unusual.
 23 MS HOBDEN: So you understood that it was
 24 a condition of Gartner getting this contract with SARS that
 25 it would use a company from its preferred list and your

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1 evidence is that although you said in that email that that
 2 company would be Rangewave you didn't understand the
 3 condition to be that it must be Rangewave.
 4 MR LITHGOW: That is correct. And I know
 5 that contradicts the statement I made in my email. I
 6 accept that.
 7 COMMISSIONER: Do we have that email? Do
 8 you have it with you by any chance?
 9 MR LITHGOW: I probably do because I knew
 10 it was going to come out.
 11 MS HOBDEN: It's not quite to hand
 12 because it's part of the procurement issues.
 13 COMMISSIONER: No, that's fine, I thought
 14 it was convenient don't worry.
 15 MR LITHGOW: I'm sure it will, Judge.
 16 Here it is.
 17 COMMISSIONER: I'm sorry, could someone -
 18 yes, carry on.
 19 MS HOBDEN: Judge, would you like to ask
 20 questions about the email? Would you like us to -
 21 COMMISSIONER: If I may.
 22 MS HOBDEN: We can't rule that out.
 23 [14:14] Perhaps just to note to the panel and one of the
 24 difficulties the Commission will have and the evidence
 25 leaders has experienced is that Gartner has chosen to send

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1 a representative that wasn't on the ground, that wasn't the
 2 person managing the project day to day and wasn't the
 3 person doing these negotiations. So it's correct that Mr
 4 Lithgow doesn't have personal knowledge of this but that is
 5 the election has Gartner had decided to make.
 6 COMMISSIONER: Who was the project
 7 manager, leader?
 8 MR LITHGOW: Mr Neville Willemse.
 9 COMMISSIONER: Mr Neville?
 10 MR LITHGOW: Yes.
 11 COMMISSIONER: Well I'm not quite sure
 12 why you say they haven't sent anyone, Mr Neville Willemse
 13 was here.
 14 MS HOBDEN: Mr Willemse was subpoenaed by
 15 the Commission.
 16 COMMISSIONER: Sorry.
 17 MS HOBDEN: Mr Willemse -
 18 COMMISSIONER: Oh subpoenaed.
 19 MS HOBDEN: Subpoenaed to appear. He was
 20 not sent as a Gartner representative.
 21 COMMISSIONER: Okay.
 22 MR KAHLA: Could I just ask a question.
 23 Just going back to this procurement process and the fact
 24 that it was not through any competitive bidding process.
 25 Did you raise any questions about that, did you find that

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1 unusual?
 2 MR LITHGOW: No, not for the service we
 3 were offering which is one of our benchmarking services.
 4 So it's a specific project that only Gartner had, a bit
 5 like TADAT, I suspect there wasn't a competition for TADAT,
 6 it's a specific service or product that Gartner has. It's
 7 a proprietary toolkit and it's supported by quite an
 8 extensive database of response that you can divide by
 9 industry. So for many clients there would not have been
 10 meaningful competition because actually there wasn't
 11 anybody else in the market that could provide that IT
 12 score, that proprietary toolkit and data other than
 13 Gartner. So in my mind that was not unusual. Now what
 14 might have been unusual is if they said Gartner can you
 15 write an IT strategy. Well many organisations can write an
 16 IT strategy so that would have been more unusual because
 17 there clearly would have been a meaningful competition for
 18 that service.
 19 MR KAHLA: But in relation to the
 20 proprietary tools that Gartner would have used I supposed
 21 that would simply follow on what the terms of reference are
 22 in relations to what needed to be done. That would give us
 23 a sense around what tools need to be used.
 24 MR LITHGOW: Yes, so my assumption
 25 without knowledge is that part of the work to write the

<p style="text-align: right;">Page 4107</p> <p>1 terms of reference was to make sure that there was an 2 understanding what the two was capable of and how many 3 areas of IT, it needed to be applied to. So that could be 4 very clear in the requirement. 5 MR KAHLA: But the key point I'm trying 6 to get an understanding of is the IT assessment itself 7 could have been dealt with by many other people. Whether 8 those people would have, would use your proprietary tools 9 for that is as different story and I'm just trying to 10 understand. 11 MR LITHGOW: Okay. 12 MR KAHLA: Before you move into what 13 tools would have been used the question around what was the 14 work to be done it seems to me from the, it was to be an IT 15 assessment. Is it the submission of Gartner that nobody 16 else could have done an IT assessment except for Gartner? 17 MR LITHGOW: Not an IT assessment that 18 was benchmarked against peers, yes many people could have 19 done an IT assessment. But they would not have had the 20 peer group that we would have had to compare them against 21 best practice. 22 MR KAHLA: But what influence would your 23 drafting the terms of reference have on your appointment in 24 relation to the proprietary tools that you would use? 25 MR LITHGOW: You're now speaking about a</p>	<p style="text-align: right;">Page 4109</p> <p>1 spoken to Neville by then? 2 MR LITHGOW: It was telephone call an 3 hour or so beforehand. 4 COMMISSIONER: You had spoken to Neville 5 by then? 6 MR LITHGOW: Yes. 7 COMMISSIONER: Yes and you said this 8 email is as you said in contradiction to what you had said 9 earlier. It contradicted you say in the sense that this 10 says the client has proposed where you say the client 11 hadn't proposed. 12 MR LITHGOW: The client, my contradiction 13 is that I cannot confirm that the client directly proposed 14 that we should use Rangewave. 15 COMMISSIONER: Well then why is there the 16 contradiction? In other words why did you say it? 17 MR LITHGOW: My apologies. 18 COMMISSIONER: No, no it is not a matter 19 of apologising - 20 MR LITHGOW: I cannot explain that 21 contradiction. 22 COMMISSIONER: Well is it not because 23 Neville told you? It seems the obvious thing. You've had 24 a chat with Neville about this, Neville would say to you - 25 MR LITHGOW: It could well be. It could</p>
<p style="text-align: right;">Page 4108</p> <p>1 period I'm not involved in so I'm now falling back on where 2 we have done this before. In those particular instances we 3 would want to have defined IT areas you want to look at, 4 what you want to do with the output, what is the timeframe 5 in which you need this to be conducted and the client would 6 have quizzed us to say does your tool do what I want it to 7 do. 8 MR KAHLA: But this did happen in this 9 instance? 10 MR LITHGOW: I don't know, I was not, 11 sorry I'm not avoiding, I wasn't involved in those 12 negotiations. 13 MR KAHLA: So you have no knowledge 14 whether there had been any adequate needs assessed, 15 analysis around the requirements by the client? 16 MR LITHGOW: Correct. 17 MS HOBDEN: Mr Lithgow, do you know if 18 that happened for phase 2? 19 COMMISSIONER: I have now read the email, 20 can I just go back for a moment. 21 MS HOBDEN: Yes, Judge. 22 COMMISSIONER: The email. This is by you 23 on the 13th of January. 24 MR LITHGOW: That is correct. 25 COMMISSIONER: And no doubt you had</p>	<p style="text-align: right;">Page 4110</p> <p>1 well be I misunderstood Neville because either way it was 2 not contentious to me. I may well have been careless, the 3 key points I'm putting across is we've now got to use a 4 third party and I think I go on to describe what the impact 5 of that might be and that the timeframe is short. 6 COMMISSIONER: And you know who the third 7 party is going to be? 8 MR LITHGOW: Yes. Yes. 9 COMMISSIONER: Neville has told you, he 10 said I know this third party. 11 MR LITHGOW: Neville did say I know 12 Rangewave yes. 13 COMMISSIONER: Well he said whom Neville 14 knows, yes. 15 MR LITHGOW: Yes. 16 COMMISSIONER: So, and that was, that 17 was, what's it called? What's the company, this is 18 Rangewave? 19 MR LITHGOW: Yes. 20 COMMISSIONER: And you say this would add 21 a, the necessary proportion of black empowerment, the 22 impact would be 70/30 split. 23 MR LITHGOW: Yes. 24 COMMISSIONER: But you didn't know who 25 was going to do what amount of work yet.</p>

<p style="text-align: right;">Page 4111</p> <p>1 MR LITHGOW: Correct. I asked Neville 2 for an estimate and said what is your gut feel. 3 COMMISSIONER: So at this stage you don't 4 know what work they're going to do but you've agreed a 5 70/30 split with them. 6 MR LITHGOW: I have not agreed to 70/30 7 split with them, I've informed Stanford that there is a 8 probability that it could be 70/30. 9 COMMISSIONER: No you say the impact on 10 us would be a 70/30 which you had got from Neville no 11 doubt. 12 MR LITHGOW: Yes. 13 COMMISSIONER: So it was going to be a 14 70/30 split. 15 MR LITHGOW: No, at that time that was 16 the estimate that was given to me by Neville. 17 COMMISSIONER: And you told your other 18 fellows that that was what the impact would be, you'd get 19 70, he'd get 30. 20 MR LITHGOW: That was my estimate. That 21 was the estimate by Neville but that again is not unusual. 22 If I ask, if we're going to use a third party my first 23 question well how much is this work is going to them 24 because this is not advantageous to me. 25 COMMISSIONER: Well the question I'm</p>	<p style="text-align: right;">Page 4113</p> <p>1 understand it. 2 COMMISSIONER: And that was long beyond 3 January or was it? Is it at the time in January? 4 MS HOBDEN: It was at the same time as I 5 understand it. 6 COMMISSIONER: Okay thank you. 7 MR LITHGOW: Sorry do you have - 8 MR KAHLA: Yes, I wanted just to go back 9 to that question, was your answer that you weren't aware of 10 whether there had been adequate needs assessments, 11 assessment by the client at the time of your engagement? 12 MR LITHGOW: Correct. 13 MR KAHLA: You also weren't aware that 14 there had been the influence of an external actor in the 15 decisions of the client in relation to what was being 16 brought to you? 17 MR LITHGOW: Correct. 18 MS HOBDEN: And were you aware of those 19 in respect of phase 2? 20 MR LITHGOW: Sorry was I aware of? 21 MS HOBDEN: That there had been a needs 22 assessment that SARS understood it's requirement in respect 23 of phase 2? 24 MR LITHGOW: No I'm not familiar what the 25 needs assessment is in South Africa but it wasn't something</p>
<p style="text-align: right;">Page 4112</p> <p>1 asking and how did you know how much work would be done by 2 them and how much work would be done by you. 3 MR LITHGOW: Because I asked Neville for 4 an estimate. 5 COMMISSIONER: Did he tell you what work 6 they were going to do? 7 MR LITHGOW: No, I didn't ask at that 8 time. 9 MS HOBDEN: Mr Lithgow, is it unusual for 10 that split not to be reflected in the contractual document 11 between you and the client? 12 MR LITHGOW: It would be unusual. I 13 can't recall one instance where it was but in general no. 14 The client simplifies it, I mean the client may ask please 15 declare if you're going to use subcontractors, that's not 16 unusual for that to happen. I can't think of any client 17 that I've dealt with recently that says please tell me what 18 the work share is. 19 MS HOBDEN: But there will be a share? 20 COMMISSIONER: Please remind me of the 21 evidence that we heard from Mr Willemse. Am I right to say 22 that Mr Willemse said that Mr Makwakwa allocated more work 23 to them and Mr Willemse then went out and said who should 24 do this work for us and he thought about Rangewave. 25 MS HOBDEN: That's the evidence as I</p>	<p style="text-align: right;">Page 4114</p> <p>1 I asked for or saw. 2 MS HOBDEN: It's a point we'll come to 3 but perhaps moving to a follow on question from another 4 question Mr Kahla asked. With respect to Gartner's unique 5 ability to use its toolkit to provide the scores, as I 6 understand it that was not applicable for phase 2? 7 MR LITHGOW: That is correct. 8 MS HOBDEN: And there are other companies 9 that could do the work that Gartner undertook in phase 2? 10 MR LITHGOW: Correct. 11 MS HOBDEN: But phase 2 did not go to 12 market? 13 MR LITHGOW: Correct. 14 MR KAHLA: Was that a red flag for you? 15 MR LITHGOW: I was surprised given the 16 size of the phase 2. But again it's not unknown for that 17 to happen. So a client may do it for a number of reasons. 18 Time, we've got to go out on contract and I want this done 19 quickly. They may feel we've invested quite a sum of money 20 in this case Gartner, we don't want to have to pay another 21 company to get up to speed and learn what we're doing. So 22 a company this size it's quite large and I did say to 23 Neville this is quite usual, are you sure this is okay and 24 he said yes. 25 MR KAHLA: Does Gartner have any sense of</p>

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1 public procurement red flags, issues that when you're
 2 dealing with the public sector you would look at and
 3 probably they would raise up questions for you and you
 4 would want to dig deeper on? Particularly on the
 5 procurement side.
 6 MR LITHGOW: For phase 2, so yes we do.
 7 For phase 2 my understanding was that the request for
 8 Gartner had gone through the Commissioner, had gone to the
 9 steering committee and had gone to the audit committee. So
 10 in my mind I felt that this had had internal examination
 11 and therefore I did not in this case because of what had
 12 occurred feel that this was a red card, no. I was
 13 surprised that it was single sourced to Gartner.
 14 COMMISSIONER: Did you ask why?
 15 MR KAHLA: Sorry. Please help me just
 16 get a sense around matters you've, in your experience of
 17 doing procurement within the public sector.
 18 MR LITHGOW: Yes.
 19 MR KAHLA: What are factors that would
 20 normally just stand out for you and probably, I'm saying
 21 you as Gartner and probably require further assessment. I
 22 mean you've made reference around a number of governance
 23 structures it may have gone through. Did you ever get any
 24 confirmation that they had gone through that?
 25 MR LITHGOW: The confirmation I had in

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1 this particular case was the email that stated that this
 2 had been reviewed by the steering committee and the audit
 3 committee and therefore for me that did not raise concerns.
 4 MR KAHLA: Email from who?
 5 MR LITHGOW: Do I need, I might need to
 6 ask one of my colleagues to dig it, in fact I do have,
 7 sorry if you, I'm using my mobile phone. Let me confirm
 8 when it was. It was an email sent on the 7th of May, I'm
 9 sorry I've only got it as a photograph. 7th of May 2015
 10 from Neville to Johan Jacobs and myself. Johan Jacobs was
 11 the (inaudible) so he was the day to day lead and I'll read
 12 it out. It's not a very long email. "Hi, Dan Zulu just
 13 called me and he said he has had a discussion with Jonas
 14 and the audit committee and, sorry put the pause in the
 15 wrong place, Hi Dan Zulu just called me and says he had a
 16 discussion with Jonas and the audit committee asking about
 17 now moving to the next phase. SARS wants us to present to
 18 the board on the 2nd of June regarding the plan to implement
 19 the recommendations we made in our report. I would like to
 20 set up a call between Johan, Mike and myself and Annelie
 21 you are most welcome to join to discuss what we need to put
 22 together for this presentation. Dan, as in Dan Zulu would
 23 like us to meet with him to run through the presentation
 24 during the week 18th of May which would give us sufficient
 25 time to fine tune it. Mike, 2nd of June would be

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1 appropriate for you to be here if that was at all
 2 possible".
 3 MR KAHLA: And that's May, you said May
 4 2015?
 5 MR LITHGOW: 7th of May 2015.
 6 PROF KATZ: Sorry, you say that gave you
 7 comfort?
 8 MR LITHGOW: yes.
 9 PROF KATZ: But isn't the very purpose of
 10 the normal procurement processes to protect the
 11 organisation when their own personnel want to have an
 12 appointment without procurement. That's the very reason
 13 for the procurement requirement.
 14 MR LITHGOW: Yes.
 15 PROF KATZ: So why would that give you
 16 comfort?
 17 MR LITHGOW: Because of the seniority and
 18 the fact that it had gone to the audit committee. I would
 19 have thought the audit committee would have had overseen,
 20 I'm not familiar with the audit committee.
 21 PROF KATZ: Yes, but generally on public
 22 procurement you want the processes, the competitive
 23 processes that protect against personnel of a company
 24 wanting to employ friends or people they'd like. That
 25 ordinarily wouldn't give comfort.

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1 MR LITHGOW: Having looked at the way
 2 procurement had been run in phase 1 where there was a
 3 significant number of exceptions which were the rule this
 4 didn't stand out and there was the reference to the audit
 5 committee. So no this didn't raise a red flag to me.
 6 MR KAHLA: Could I go back just again
 7 what issues ordinarily would raise red flags for you as
 8 Gartner in relation to public sector procurement?
 9 MR LITHGOW: Right so some routine ones,
 10 does the client pay. Is, what is our history with the
 11 client, how is the client engaged with this and do we in
 12 our view, view that as ethical or not ethical. So if it is
 13 a competition that's straightforward. If it's single
 14 source, we would expect to engage with legal and
 15 procurement. But ultimately it's the client's choice as to
 16 whether they make use of Gartner or not. We're not
 17 irresponsible but if a client comes to us and says we would
 18 like to use you, coupled with this email, coupled with the
 19 use of exceptions within SARS this did not raise any red
 20 flags to me.
 21 MR KAHLA: But from what you've said and
 22 taken into account the code of ethics of Gartner would you
 23 have inquired more around all of those things that you seem
 24 to be making assumptions on?
 25 MR LITHGOW: I don't think I'm making

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1 assumptions, I have an email that says this occurred. Okay
 2 it came from Neville Willemse, it didn't come direct from
 3 the client but we were going out to see the client. So no,
 4 I don't feel, I don't feel it's perhaps this is contentious
 5 to everybody, I don't feel it's our job to police how a
 6 government department operates. That is the responsibility
 7 of the government department.
 8 MR KAHLA: But isn't it your job to -
 9 COMMISSIONER: Sorry.
 10 MR KAHLA: Isn't it your job to ensure
 11 that the procurement you're entering into with the public
 12 sector is above reproach? As the service provider.
 13 MR LITHGOW: Yes, but that is managed by
 14 the legal and contractual arrangements. If somebody, if
 15 you came to me and said I'm not going to speak to
 16 procurement or legal please sign this contract and I'll
 17 make sure it's all right, I'm not going to do that.
 18 MR KAHLA: I ask these questions, I'm
 19 just going to point out some few things from a document
 20 titled preventing corruption in public procurement by the
 21 OECD and firstly it identifies about four areas of
 22 procurement in the public sector. That it considers to
 23 constitute two thirds of foreign bribery cases and of
 24 course the space you are in ICT is one of those, of that
 25 two thirds. Then it identifies a number of integrity risk

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1 areas that have to be assessed. One of them is lack of
 2 adequate needs assessment, of course you have indicated
 3 that you had no knowledge whether there had been adequate
 4 needs assessment in relation to SARS.
 5 [14:34] Lack of proper justification for the use of non-
 6 competitive procedures, absence of public notice for the
 7 invitation of these and I'm just trying to understand with
 8 - in light of those matters being identified as normally
 9 pointers to potential public procurement improprieties it
 10 was never - you never considered it your job to assess all
 11 of those exceptions, are they properly done, are they risk
 12 areas and of course we've now established amongst other
 13 things that an external actor contracted you relating to
 14 the terms of reference, not the client.
 15 MR LITHGOW: But not me.
 16 MR KAHLA: I'm talking about Gartner.
 17 MR LITHGOW: They contact me
 18 individually, yes.
 19 MR KAHLA: An individual who is an
 20 executive of Gartner?
 21 MR LITHGOW: Yes, he does work for
 22 Gartner, yes, which I did not -
 23 MR KAHLA: Are you trying to distance
 24 yourself from this individual?
 25 MR LITHGOW: No. What I'm saying is I

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1 have no knowledge of the facts that you have discovered
 2 this morning and therefore in my mind phase 1 was single
 3 source for reasons that I could understand. There are in
 4 your own regulations provisions for exceptions to extend
 5 single source. 60% of my engagements are single source so
 6 I'm to have an e-mail here that seems to indicate that it
 7 has been examined internally. I'm not sure what else I
 8 could have done.
 9 MR KAHLA: Would your compliance team,
 10 assuming that a big company like Gartner would have looked
 11 into what are the factors that must exist for single source
 12 in the public sector, particularly in this - in South
 13 Africa?
 14 MR LITHGOW: Well, our knowledge of South
 15 Africa is limited but if this had happened in Europe then
 16 no, the compliance team would not have looked at this.
 17 Sorry, Judge.
 18 PROF KATZ: Yes, no, well, I was saying
 19 with respect, I understand on contractual authority all of
 20 that.
 21 MR LITHGOW: Yes.
 22 PROF KATZ: You rely on auditor, but on
 23 procurement in a public organisation there are legal
 24 requirements and with respect I think we went through with
 25 Mr Willemse this morning on phase 1, I think the evidence

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1 was on all three of the requirements of your contract for
 2 phase 1 you weren't a single source. But I don't want to
 3 go back on what we discussed this morning. Okay. Yes, Ms
 4 Hobden.
 5 MS HOBDEN: I'm ready to move on from
 6 the procurement issues raised by the panel. Is that all
 7 right? Mr Lithgow, what we - we know Gartner is ultimately
 8 an expert in ITT and would you say that Gartner would be
 9 very aware and sensitive to issues arriving from a complete
 10 halt on any digital transformation in an organisation?
 11 MR LITHGOW: Any major transformation
 12 programme that stopped will have implications, yes.
 13 MS HOBDEN: What kind of implications?
 14 MR LITHGOW: You lose momentum and there
 15 is a sense of uncertainty in the organisation as to what
 16 happens next. Again it's not unusual for a transformation
 17 programme that is spending large amounts of money to be
 18 frozen or go on hold, so that's not an issue particularly
 19 if you have a new leadership team that comes in place, that
 20 says you may well be doing things that are right but
 21 actually I would just like to pause and understand what has
 22 happened. I'm not aware of the reasons why the
 23 organisation was stopped. I've heard various reasons from
 24 they didn't deliver anything to Treasury won't give us any
 25 more money so I don't know why it was stopped but I did

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1 know it was stopped, yes.
 2 MS HOBDEN: Would it be unusual for a
 3 digital transformation programme to be stopped without any
 4 consultation with the people on the ground and the
 5 leadership in the IT space?
 6 MR LITHGOW: Yes, I have seen that
 7 happen. Again I'm not saying it's usual but I have seen
 8 that happen.
 9 MS HOBDEN: So it's unusual but you have
 10 seen it happen?
 11 MR LITHGOW: Yes.
 12 MS HOBDEN: When Gartner arrived at SARS
 13 they were aware that the modernisation programme had been
 14 frozen, is that right?
 15 MR LITHGOW: Well, it had stopped, yes.
 16 MS HOBDEN: And in the documents Gartner
 17 has provided in a number of interviews SARS employees
 18 explained to Gartner the impact that they fear of the
 19 freeze on modernisation. Are you aware of those fears?
 20 MR LITHGOW: Yes, I'm not aware but I'm
 21 very confident that those comments will exist.
 22 MS HOBDEN: It would be expected? And
 23 in those circumstances Gartner proposed a two-year project
 24 under phase 2, is that correct?
 25 MR LITHGOW: We proposed a two-year

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1 project but if the implication of that question is and
 2 therefore we propose that nothing happened for that two
 3 years, no, that is not the case.
 4 MS HOBDEN: As I see it there's nothing
 5 in phase 2 that seeks to ensure a continued or a new kind
 6 of digital transformation strategy in SARS.
 7 MR LITHGOW: I would disagree with that.
 8 I think there were – so separate out what Gartner was doing
 9 during this two years from what SARS were doing so first
 10 thing is Gartner was not running SARS.
 11 MS HOBDEN: Yes.
 12 MR LITHGOW: We were employed to do a
 13 specific piece of work and out of that work came a number
 14 of business cases, appointment overseas on the CIO,
 15 empowering individuals and up skilling them, so there were
 16 a number of outputs that occurred during that period.
 17 Within SARS I was not aware that there was no procurement.
 18 I'm pretty certain there was procurement. Money was still
 19 going to the apps development team. I'm sure there are
 20 other programs that were going through that were being
 21 funded. You were still expending money on licenses and
 22 applications so I was not aware at any time that SARS had
 23 ceased to function or operate.
 24 MS HOBDEN: I'm speaking more
 25 specifically about modernisation as we call it or a digital

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1 – I mean I have an article written by someone from Gartner
 2 where they talk about the importance of that. They say
 3 digital business transformation is not one thing that
 4 happens at one particular moment. There's a continuous
 5 process that explores and improves new business models as
 6 well as exploits new technology. I'm sure you will agree
 7 with that.
 8 MR LITHGOW: Yes.
 9 MS HOBDEN: The question I'm asking or
 10 the proposition I'm putting to you is that modernisation at
 11 SARS was frozen. Gartner was aware of that. Gartner
 12 proposed a number of work streams none of which appear to
 13 reignite digital transformation in SARS.
 14 MR LITHGOW: And I would disagree with
 15 you. I think if you looked at the 21 work streams and some
 16 of the output that we provided today that they are
 17 components of building upon the modernisation work that had
 18 been done.
 19 COMMISSIONER: I understand the question
 20 and I'm not sure – counsel will correct me. We've had –
 21 you were proposing things that should be done, that's fair
 22 enough, but they weren't being done and you, I presume
 23 observed that they weren't being done.
 24 MR LITHGOW: Yes, but place the – yes.
 25 COMMISSIONER: So, you know, Mr Lithgow,

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1 there was no real criticism of you, but you seem to be more
 2 concerned of where the question is going than with the
 3 questions.
 4 MR LITHGOW: Yes, of course I'm
 5 concerned.
 6 COMMISSIONER: Well, it is - yes. Well,
 7 I'll tell you what. The thing to do is to wait for the
 8 next question. Not try and answer it in advance. It's a
 9 lot easier. Then you can concentrate on the question being
 10 asked.
 11 MR LITHGOW: Thank you.
 12 COMMISSIONER: And so you were proposing
 13 things and you're here for two years and saw that nothing
 14 was happening now.
 15 MR LITHGOW: I think it's unfair to say
 16 nothing happened. We did create business cases. Were
 17 those business cases for instance for the contact centre
 18 signed off and put in? I've no idea but I'm not absolving
 19 ourselves. That was not our responsibility to drive them
 20 through the procurement process.
 21 COMMISSIONER: That I understand
 22 entirely. That's why I say don't worry about the next
 23 question. You might misinterpret if you think that there
 24 is a next question and there isn't one.
 25 MR LITHGOW: Right. Thank you.

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1 COMMISSIONER: So I understand that that
 2 wasn't your job. You weren't there to suggest to SARS what
 3 they should do, but the point is nothing substantial was
 4 happening as a result of this as I understand it.
 5 MR LITHGOW: The answer is I'm not sure
 6 because I wasn't on the ground long enough.
 7 COMMISSIONER: Yes.
 8 MR LITHGOW: That may well have been the
 9 case but I was more concerned with the work that we were
 10 doing than what else was happening in SARS so I can't say
 11 that for certain.
 12 COMMISSIONER: Well, you must understand,
 13 forgive me for asking the questions because you're the only
 14 person put up by Gartner for me to ask the questions of.
 15 MR LITHGOW: Yes, no, I'm very happy for
 16 you to ask questions.
 17 COMMISSIONER: So the question I would
 18 ask and it's only from a layman's point of view, if you're
 19 making recommendations and nothing much is happening,
 20 doesn't there come a time that you say well, why am I here?
 21 They're not doing anything. What do I do? Should – what
 22 am I doing here? Just making recommendations in the air,
 23 earning a lot of money and that's it.
 24 MR LITHGOW: Obviously earning a lot of
 25 money but put that to one side. I did raise my concerns to

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1 the Commissioner both in writing and on a VTC and said
 2 look, I'm feeling very uncomfortable that this is not
 3 moving forward, so I did –
 4 COMMISSIONER: What – sorry, carry on?
 5 MR LITHGOW: So I did voice my concerns.
 6 COMMISSIONER: Did he come back to you
 7 and explain why nothing was moving forward?
 8 MR LITHGOW: He said I will sort it out.
 9 I mean I'm massively paraphrasing what was a sort of 30 or
 10 40 minute VTC but he said I will sort it out. Don't worry.
 11 COMMISSIONER: Yes. And still nothing
 12 happened?
 13 MR LITHGOW: Correct.
 14 COMMISSIONER: Did you raise it again?
 15 MR LITHGOW: I may have done but I have
 16 no formal record of that. I have a formal record of both
 17 the VTC and the letter.
 18 COMMISSIONER: But ought you not to have
 19 been a bit concerned that –
 20 MR LITHGOW: We were concerned, yes –
 21 COMMISSIONER: A lot of money was being
 22 spent and nothing was – not from your side. Perhaps it
 23 might be that things were coming from your side but
 24 actually nothing was coming out of value to SARS in the
 25 sense that it wasn't being used and as you have said I

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1 think at the end of the day you look back and you say,
 2 well, we gave it all and it was wasted.
 3 MR LITHGOW: Yes. And -
 4 COMMISSIONER: Did it not strike you do
 5 in the two years.
 6 MR LITHGOW: Well, we did sign between
 7 the two years but we were under contract, and I'm not using
 8 that as an excuse, we were being asked to do this work.
 9 The work streams to be continuing. We were producing
 10 output to that. I did raise concerns to the Commissioner
 11 round the pace, cooperation and take-up of the work that
 12 we're doing but I don't think –
 13 COMMISSIONER: No, well, I know, I've
 14 heard you say it's not my responsibility –
 15 MR LITHGOW: It sounds as if I'm on the
 16 job and myself –
 17 COMMISSIONER: It wasn't your
 18 responsibility to do the work. I understand that. My
 19 concern was just continuing with work that was becoming
 20 wasteful as you went along.
 21 MR LITHGOW: Well, we didn't know it
 22 would be wholly wasteful. I mean as I said this morning
 23 these were my views and my perceptions and particularly
 24 looking back on what has occurred, was I – did I have such
 25 conviction that I expressed this morning at the time and I

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1 didn't have such conviction at that time, but I was
 2 worried, yes.
 3 PROF KATZ: Sorry, can I just get clarity
 4 on – what I understand counsel's question to have been,
 5 there was a freezing of the programme and Gartner didn't
 6 give a substitute programme. It was just add-ons and that.
 7 What I'm understanding you to have asked – if one was
 8 frozen didn't it need to be substituted in total by
 9 something else?
 10 MS HOBDEN: That is the question, or at
 11 least unfrozen –
 12 PROF KATZ: Yes, that's what I understood
 13 you to ask.
 14 MR LITHGOW: Well it – sorry, is that
 15 question – is it a question? Is it a question to me,
 16 sorry?
 17 COMMISSIONER: Yes, well, I think Prof
 18 Katz – if you understood it will you answer it? He didn't
 19 ask what -
 20 MR LITHGOW: Yes, I mean moving on the
 21 position to unfreeze the organisation, well, we did build
 22 and deliver as we went along is how do you continue to
 23 build upon where you have got to. Now coming in from
 24 outside then we look at it from not just the perspective of
 25 SARS but what do we see, other tax administration equipment

<p style="text-align: right;">Page 4131</p> <p>1 and yes, at the end there was a programme which I put up 2 but that creates the impression that Gartner suggested and 3 recommended nothing and provided no outputs for two years 4 and that is not something I agree with. Whether SARS did 5 anything with them, that is a different question. 6 MR KAHLA: Just coming back to the only 7 channel business case that you make reference to. 8 MR LITHGOW: Yes. 9 MR KAHLA: Was it ever brought to your 10 attention that the people who were involved in the 11 modernisation process had in fact had that as part of their 12 plans, focusing on the Omni-channel business? 13 MR LITHGOW: From my perspective, no. 14 MR KAHLA: We are talking about Omni- 15 channel – 16 MR LITHGOW: I was not aware of that. 17 MS HOBDEN: I'd like to go to the email 18 that Mr Lithgow sent the Commissioner on the 10th of June 19 2016 and this is about a year after – a year into phase 2 20 and I'd like to read it into the record because it does 21 show some of Mr Lithgow's concerns even at that stage. He 22 says he would like to have an engagement with the 23 Commissioner and he says there are three issues. The first 24 is making change stick. I have some concerns that there's 25 not the traction or commitment to ensure that all the</p>	<p style="text-align: right;">Page 4133</p> <p>1 you're suggesting in this first paragraph, the 90-day 2 plans, that would be what Gartner contracted in phase 3? 3 MR LITHGOW: Yes, so the answer is yes. 4 What I was thinking through - Yes, so yes, the answer was 5 that needs to work within phase 3. That's the simple 6 answer, yes. 7 MS HOBDEN: So in June 2016 you're 8 raising the red flag. You're saying I see that the work 9 we're doing may not be used. There's a potential that SARS 10 will not get value for money from this work and what you 11 suggest is the work Gartner subsequently did in phase 3? 12 MR LITHGOW: Yes, and that morphed a 13 little bit in that at that stage we were not aware that our 14 work would be stopped which it was eventually I think. 15 Well, it would have finished in March and I think we were 16 given notice in January or February. I can't remember the 17 exact date. So there was an additional purpose to those 18 plans which were not in that area which is to say if you're 19 going to bring somebody else in let's ensure there's a 20 comprehensive handover pack that is available to them for 21 them to use, provide to your purpose, yes. 22 MS HOBDEN: And the price quoted for 23 phase 3 by Gartner and I know you find the Rand/Pound 24 difficult, was about R63-million? 25 MR LITHGOW: The answer is I don't know.</p>
<p style="text-align: right;">Page 4132</p> <p>1 action plans we are producing are being wholly owned on the 2 SARS side. There is full cooperation. That is not the 3 concern. It is the ability or willingness to take forward 4 post our departure. I am discussing with Neville and Johan 5 the practicality of putting together a 90-day plan for each 6 of the 21 projects that kicks in when we leave. This 7 incorporates the immediate actions that need to be taken 8 and checkpoints to monitor and assess progress. Our TD is 9 being brought together into an overall plan of action which 10 you can use to ensure that the investment made is not lost, 11 holding your leaders to account. 12 Point 2, mid-point review. By the time I arrive 13 we will have a large percentage of the mid-point reviews 14 completed. I have asked my quality assurance team to draw 15 together the overall results and undertake some analysis. 16 It will be useful to review these with you and number 3, 17 security update. Review progress and next steps for the 18 SARS programme. We'll get to that point but these were 19 your concerns in June 2016 and what was the Commissioner's 20 response? 21 MR LITHGOW: If I take the (inaudible) 22 he provided me reassurance that he would ensure that there 23 was no obstacle to the work that Gartner was undertaking 24 and that he would resolve the issues that I raised. 25 MS HOBDEN: And am I correct that what</p>	<p style="text-align: right;">Page 4134</p> <p>1 I mean I have the figure. I'm sure you're absolutely 2 correct. 3 MS HOBDEN: And that was to ensure that 4 the Gartner projects stuck as you said? 5 MR LITHGOW: Sorry, excuse me while I 6 just – 7 MS HOBDEN: Yes, I can draw your – show 8 it to you in the project charter. 9 MR LITHGOW: I mean I have to take your 10 word for it so I – 11 MS HOBDEN: If we look at the project 12 charter for phase 3 for the first period it's R11-million, 13 for the second period it's R53-million. 14 MR LITHGOW: Yes. 15 MS HOBDEN: And as you've said that 16 second period never came about. 17 MR LITHGOW: Yes. 18 MS HOBDEN: So it will – but the 19 proposed amount in order to undertake phase 3 was about 20 R63-million and that arose – and that was foreseen in that 21 email that you write to the Commissioner here. 22 MR LITHGOW: I definitely foresaw the 23 need for – to ensure some momentum, to create some momentum 24 by that lack of momentum that existed and that was one of 25 the suggestions that I have seen being successful in</p>

<p style="text-align: right;">Page 4135</p> <p>1 previous organisations that I've worked in so yes, that was 2 the suggestion that I made. I would have to go back to 3 notes because I just don't have the details to hand to say 4 – which I think is what you're suggesting, so you paid R66- 5 million or whatever it was to write 15 pieces of paper. I 6 think there was significantly more work and effort put into 7 it than that.</p> <p>8 MS HOBDEN: I'm not implying the – I'm 9 not implying that.</p> <p>10 MR LITHGOW: But it was an attempt by me 11 to say how do you – how do you break this cycle? 12 [14:54] How do you sort of find the mechanism, that both 13 helps people to understand what they do and to hold them to 14 account for what it is they need to do and again I'm not 15 familiar with the performance evaluation but I know that 16 certainly there in SARS and probably other government 17 departments there is a strong element of performance 18 management providing people with targets of certain 19 description. So if we got very sophisticated and I think I 20 did have this verbal discussion was to say why don't you 21 build some of these metrics and performance into the 22 individual leaders' performance plan? So it now becomes 23 something that's not just a charter but is actually in 24 effect they are contracted to deliver via the annual 25 requirement. I've no idea whether that was done.</p>	<p style="text-align: right;">Page 4137</p> <p>1 leadership –</p> <p>2 MR LITHGOW: Yes, correct, yes.</p> <p>3 MS HOBDEN: And did you raise the issue 4 of the freeze of modernisation with the Commissioner at any 5 point?</p> <p>6 MR LITHGOW: No and you're going to say 7 well why didn't you, shouldn't you have done that. My view 8 has been that the specific amount of money that was being 9 asked for whatever modernisation was asking for which was 10 frozen. Our work was to say okay, how do you take forward 11 what you've achieved. So I didn't see this as let's 12 unfreeze some fund and that note accurately describes. 13 Modernisation should've been routine business. It should 14 not necessarily be a specific programme. I think the 15 achievement of modernisation was to create that specific 16 achievement that created that momentum and clearly as I 17 alluded to in the IT strategy, resulted in tangible 18 benefits. But I think there does come a point where you 19 say a modernisation programme that's running for 10 or 15 20 years sort of loses that marketing appeal for want of a 21 better word and actually it should become routine. 22 Technology changes at such a fast pace it has to be inbuilt 23 into all of the work that you do. So I wouldn't have asked 24 for the modernisation to be unfrozen because in my mind 25 that's what model we're looking at, that we were making</p>
<p style="text-align: right;">Page 4136</p> <p>1 MS HOBDEN: I understand your proposal 2 but your evidence has also been that at that time in SARS 3 it was an institution in turmoil with no uncertainty with 4 people not sure if they would have a job from one day to 5 the next, with people in jobs who weren't even sure what 6 the scope of that job was. Was any of that addressed in 7 your discussions with the Commissioner?</p> <p>8 MR LITHGOW: No, I think I brought it up 9 verbally in the BTC, I can't remember at what point the new 10 leadership were being confirmed in their appointments but 11 people were being confirmed in their new appointments 12 before we had departed but I don't have the timeline for 13 that.</p> <p>14 MS HOBDEN: What we do know at that time 15 when you raised that concern there was still no chief 16 officer for DIST appointed, she was only appointed at the 17 beginning of 2017.</p> <p>18 MR LITHGOW: That's correct, yes.</p> <p>19 MS HOBDEN: So there was no leadership at 20 all in DIST, well there was a –</p> <p>21 MR LITHGOW: I think –</p> <p>22 MS HOBDEN: Sorry, I retract that, there 23 was an acting position.</p> <p>24 MR LITHGOW: Yes.</p> <p>25 MS HOBDEN: There was no permanent</p>	<p style="text-align: right;">Page 4138</p> <p>1 suggestions for investment. Where that money came from, 2 whether it was a specialist fund, whether it was out of 3 normal work, a capital, that was SARS decision.</p> <p>4 COMMISSIONER: But did you have in mind 5 that what you were doing was building on what had already 6 been put in place? In other words what had been put in 7 place and stopped would be restarted again and developed 8 along your lines. Is that what you had in mind or am I 9 wrong?</p> <p>10 MR LITHGOW: Yes. I absolutely agree we 11 were building on what was there and things had been 12 delivered.</p> <p>13 COMMISSIONER: Yes.</p> <p>14 MR LITHGOW: So it wasn't, again I'm not 15 aware of the detail, I wasn't aware of a specific programme 16 that had been stopped which should now start again.</p> <p>17 COMMISSIONER: Sorry, I thought you, I 18 thought it's all, everyone agreed that modernisation had 19 been suspended, stopped.</p> <p>20 MR LITHGOW: Yes.</p> <p>21 COMMISSIONER: Yes.</p> <p>22 MR LITHGOW: Correct but I don't know 23 whether that involved, there are 15 business cases that we 24 now no longer going to push through and now we're going to 25 make a decision that they will be pushed through. I'm not</p>

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1 aware of those.

2 MS HOBDEN: Well Ms Sue Burger – sorry,

3 Judge.

4 COMMISSIONER: You see we're just going

5 back for a moment. They get cross when I go back but I

6 understood that the evidence to be along the following

7 lines. I didn't understand people to say you didn't do any

8 work here. I understood them to say look the work you did

9 here we could've done ourselves. In other words had this

10 whole thing not been stopped, had one been able to continue

11 with our plans that we had of which no one asked us, we had

12 the expertise here to continue developing. And in that

13 sense they say it was a waste of money because they

14 could've done it. What do you say to that?

15 MR LITHGOW: I think any organisation has

16 got the ability if they want to, to run it themselves. Why

17 do people use consultants? Generally because they haven't

18 got the bandwidth or capability to undertake the work

19 without disrupting business as usual. That is one reason.

20 The second reason is that the consultants may bring a depth

21 of knowledge and experience that does not exist within that

22 organisation. There's probably a couple of other reasons.

23 So can any organisation do it to themselves? To a greater

24 or lesser extent they might be able to. I can't make a

25 judgment on the capabilities that were within SARS. But in

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1 my experience people call us in because they don't have the

2 capability, don't have the bandwidth or don't have the

3 experience for a variety of reasons.

4 COMMISSIONER: But you see SARS was

5 already contracted in with Gartner to have access to its

6 research, etcetera.

7 MR LITHGOW: Absolutely.

8 COMMISSIONER: And that gives you the new

9 ideas, etcetera.

10 MR LITHGOW: Absolutely.

11 COMMISSIONER: Implementing that they say

12 they had lots of capacity, they had very good capacity,

13 they could've proceeded with their programme taking into

14 account Gartner's research and advice as contained in their

15 access contract. And so they say it wasn't worth R200

16 million but I don't think that they're saying nothing was

17 given by Gartner. They just say it wasn't worth R200

18 million.

19 MR LITHGOW: Well everyone's allowed to

20 have their perception.

21 COMMISSIONER: Ja.

22 MR LITHGOW: I can't comment whether they

23 could've done it themselves –

24 COMMISSIONER: Yes.

25 MR LITHGOW: - or not.

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1 COMMISSIONER: Ja.

2 MR LITHGOW: All I can comment on is that

3 we were asked to do it –

4 COMMISSIONER: Yes.

5 MR LITHGOW: - and the reasons generally

6 we were asked to do those things for the reasons I've

7 outlined.

8 COMMISSIONER: Have you worked in South

9 Africa before this? You personally?

10 MR LITHGOW: I haven't worked on a, prior

11 to the SARS engagement, no I haven't don't anything –

12 COMMISSIONER: And are you aware that

13 people are concerned about corruption here? In public

14 procurement.

15 MR LITHGOW: Yes.

16 COMMISSIONER: That's perhaps the red

17 flag should go up more easily here than they would in –

18 MR LITHGOW: Well it –

19 COMMISSIONER: - England.

20 MR LITHGOW: - it certainly will now.

21 COMMISSIONER: Well not now, I mean then.

22 MR LITHGOW: At that time I don't walk

23 into a client and think in South Africa that that person is

24 corrupt.

25 COMMISSIONER: No, but you know that

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1 corruption is quite rife in public procurement at that

2 time.

3 MR LITHGOW: I did not get that

4 impression from the interactions. Yes, so I know there is

5 corruption in South Africa, that's –

6 COMMISSIONER: In public procurement.

7 Particularly -

8 MR LITHGOW: Yes, inevitably, yes.

9 COMMISSIONER: Ja and I think that's the

10 concern you see, people get a bit concerned about

11 consultants too easily and they question why they just

12 enter into this contracts knowing that there are red flags

13 that you should look out for. That's the concern and

14 that's why some of the questions that have been put to you.

15 MR LITHGOW: No, that's absolutely and

16 I'm very happy that but at that time I didn't see any red

17 flags or anything unusual. With the benefit of hindsight

18 should I have done, yes, perhaps I should've done but at

19 that time with the knowledge I had –

20 COMMISSIONER: Yes.

21 MR LITHGOW: - I didn't see anything that

22 concerned me.

23 COMMISSIONER: You weren't as close to it

24 of course as Neville was.

25 MR LITHGOW: Correct, yes.

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1 COMMISSIONER: It might be that Neville
 2 should have seen bigger red flags than you. Would you say
 3 – he was closer to it.
 4 MR LITHGOW: He must've been thrown under
 5 the bus.
 6 COMMISSIONER: No not at all. I'm just
 7 saying that the, you were far more distant from –
 8 MR LITHGOW: I am reliant upon local
 9 advice.
 10 COMMISSIONER: You see that emails that
 11 you were relying on what Neville tells you.
 12 MR LITHGOW: Yes, I am reliant on –
 13 COMMISSIONER: Neville's talking to Mr
 14 Monyeke, etcetera, you're not talking to him. You're just
 15 listening to what Neville tells you.
 16 MR LITHGOW: Ja, that sort of says I'm
 17 naïve and –
 18 COMMISSIONER: No, it's not – you know
 19 really you mustn't think of where I'm going. I'm going
 20 nowhere, I'm just asking a question. He was closer to it
 21 than you were.
 22 MR LITHGOW: Yes, he was. Yes.
 23 MS HOBDEN: Mr Lithgow, when you talk
 24 about Gartner's desire to build and the intention to build
 25 on what had happened in modernisation, how did Gartner

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1 intend on doing that when there was very little
 2 understanding about what modernisation was, where
 3 modernisation was going and what projects had been frozen?
 4 How can you build on something when you don't fully
 5 understand it and when it's been completely stopped in its
 6 tracks?
 7 MR LITHGOW: Because modernisation had
 8 already delivered quite, it delivered the e-filing system.
 9 There were a number of projects that had been delivered.
 10 So I didn't sort of say (inaudible) rubbish, stop it and
 11 bin it or, there was stuff that had been delivered that we
 12 would continue to build on.
 13 MS HOBDEN: This – well Ms Sue Burger
 14 gave evidence that there were about R66 million worth of
 15 projects that were frozen in December 2014. Your evidence
 16 is that you weren't aware of those, is that right?
 17 MR LITHGOW: I personally was not, no.
 18 MS HOBDEN: You know, now I see in the
 19 phase 1 assessment Gartner perpetuates something you've
 20 just said which is that modernisation was the creation of
 21 e-filing. It says under the topic "has modernisation
 22 delivered impact and value for money. The modernisation
 23 programme that started in 2007 has created an electronic
 24 platform for tax administration in an accelerated timeframe
 25 so some value has been delivered". What we heard from Mr

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1 Hore and what we've heard from many of the witnesses last
 2 week is that modernisation covered a wide range of projects
 3 across SARS' business, particularly in the customs area and
 4 in all business areas. Why then does Gartner make this
 5 quite narrow statement about modernisation in its
 6 assessment?
 7 MR LITHGOW: Because at the time of the
 8 engagement that was the information that was made available
 9 to us.
 10 MS HOBDEN: Who – sorry, continue.
 11 MR LITHGOW: I didn't undertake
 12 personally those engagements but I know the team would have
 13 looked for material, documentation, evidence on the
 14 questions that they were asking. If that had been given to
 15 them they we would've been able to reflect upon that. The
 16 assessments, I come back to the assessments, were not
 17 Gartner assessments. They were the assessments of the SARS
 18 people, of the SARS employees. So if the information was
 19 there we would've seen it and we would've recorded it. If
 20 the information was not there, not made available to us and
 21 we were unable to discover it in that time period then
 22 clearly it's not there.
 23 MS HOBDEN: So I'm trying to understand
 24 your answer when you say this information was not Gartner's
 25 information it was from the people at SARS.

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1 MR LITHGOW: Yes, because we didn't go in
 2 and say please open your cupboards and let us look in to
 3 see what documents you've got. We provided a questionnaire
 4 for them to complete. We supplemented that we required
 5 with interviews and workshops and we would've asked them to
 6 put forward what strategies, what plans, what exists. If
 7 that was not given to us then we could not reflect it in
 8 the report.
 9 MS HOBDEN: So is your evidence that any
 10 inaccuracies in the assessment arose out of the fact that
 11 SARS employees didn't give you the information?
 12 MR LITHGOW: Well if we weren't given the
 13 information we can only make the assessment based on what
 14 we have. We can't create stuff.
 15 MS HOBDEN: surely that's information
 16 that would've been requested.
 17 MR LITHGOW: Yes.
 18 MS HOBDEN: All the information about –
 19 MR LITHGOW: Yes.
 20 MS HOBDEN: - modernisation.
 21 MR LITHGOW: Yes.
 22 MS HOBDEN: Do you know if it was
 23 requested?
 24 MR LITHGOW: I can't say definitely but,
 25 because I didn't ask the question. I would be surprised if

<p style="text-align: right;">Page 4147</p> <p>1 it hadn't been requested.</p> <p>2 MS HOBDEN: Do you think this statement a</p> <p>3 simplistic statement about the value impact and the nature</p> <p>4 of the modernisation programme?</p> <p>5 MR LITHGOW: Can you refer me to where</p> <p>6 you are looking?</p> <p>7 MS HOBDEN: Sure, it's page 13 of the</p> <p>8 Gartner assessment.</p> <p>9 MR LITHGOW: Which version are you</p> <p>10 looking at? Sorry, is that the large 200 -</p> <p>11 MS HOBDEN: Yes, it's the big one. It's</p> <p>12 the 10th of April.</p> <p>13 MR LITHGOW: You're looking at the</p> <p>14 executive summary, so I'm just scanning down the rest of</p> <p>15 the deck to see whether there was anything else if you</p> <p>16 allow me the time to do that.</p> <p>17 MS HOBDEN: No, I know there are other</p> <p>18 slides that deal with modernisation, I am just looking at</p> <p>19 the executive summary and I'd like us just to focus there</p> <p>20 because the other slides support that.</p> <p>21 MR LITHGOW: Yes, they do. Yes. I can't</p> <p>22 answer the question because I haven't got that level of</p> <p>23 detail knowledge with me at this moment.</p> <p>24 MS HOBDEN: Okay. The second point on</p> <p>25 that slide that I'd just like to go to is a statement by</p>	<p style="text-align: right;">Page 4149</p> <p>1 that. If you look at the part that's in, I think there's a</p> <p>2 briefing pack.</p> <p>3 PROF KATZ: Thanks.</p> <p>4 COMMISSIONER: Page?</p> <p>5 MR LITHGOW: It – just the first page,</p> <p>6 start with how did SARS business ensure that their ICT</p> <p>7 needs are there, is that the title of the first page? Yes,</p> <p>8 I think it is. Looking across there. These before I take</p> <p>9 you through these, these are a set of interview notes which</p> <p>10 are not complete as most of the material had to be</p> <p>11 destroyed after the engagements. So I have a complete list</p> <p>12 of contracts, charters, etcetera available to me but I</p> <p>13 don't have a complete list of interview notes. But some of</p> <p>14 these are anonymous and they are anonymous because the</p> <p>15 individuals did not wish their names to be known and some</p> <p>16 of them are not anonymous. So if we look at the top of the</p> <p>17 first page, the belief is that one needed to, needed the</p> <p>18 backing if Intikhab Shaik or Marius Papenfus for one of ICT</p> <p>19 needs to go into the modernisation memo for Exco approval.</p> <p>20 The next line down, the first case involves one GO,</p> <p>21 proposes system solution or enhancement to his or her</p> <p>22 working environment and never managed to get them onto the</p> <p>23 modernisation memo for Exco approval. Further down near</p> <p>24 the bottom, in a nutshell, there was no formal process</p> <p>25 around change requests. If you go to the bottom of page 2</p>
<p style="text-align: right;">Page 4148</p> <p>1 Gartner and we see it across a number of Gartner documents</p> <p>2 but particularly in phase 1 and coming into the beginning</p> <p>3 of phase 2. It says "Modernisation's agenda was driven by</p> <p>4 a single individual whose objectives were not 100% aligned</p> <p>5 with the business requirements at all times". What we see</p> <p>6 in the initial briefing of Gartner is a statement that IT</p> <p>7 is not happy with, that business is not happy with IT and</p> <p>8 that there is a misalignment between the IT strategy and</p> <p>9 the business strategy. The SARS employees who we've spoken</p> <p>10 to say that the words and the phrase you used was that the</p> <p>11 tail is wagging the dog. This appears to be a statement</p> <p>12 that aligns with that. Did you know SARS' business</p> <p>13 strategy at that time?</p> <p>14 MR LITHGOW: Personally no, because I</p> <p>15 didn't undertake phase 1.</p> <p>16 MS HOBDEN: But the Gartner employees</p> <p>17 would've also been aware about the multiple governance</p> <p>18 meetings that we've heard about during the course of the</p> <p>19 week, the DIST ops, Manco meetings, Megawatt Park meetings,</p> <p>20 is that right?</p> <p>21 MR LITHGOW: Yes. So you're asking me</p> <p>22 why did we make that statement, is that correct?</p> <p>23 MS HOBDEN: I hadn't quite got there but</p> <p>24 that's part of the question I'm asking.</p> <p>25 MR LITHGOW: Okay, no I'm happy to answer</p>	<p style="text-align: right;">Page 4150</p> <p>1 at the end of the day it was – sorry, I wasn't near the</p> <p>2 microphone. At the end of the day it was one person's</p> <p>3 decision whether requests made it onto the modernisation</p> <p>4 memo or not as the requests had to fit in with his plans.</p> <p>5 On page 3 –</p> <p>6 MR KAHLA: And who is this one person?</p> <p>7 Sorry.</p> <p>8 MR LITHGOW: This was a group of people</p> <p>9 that wished to remain anonymous.</p> <p>10 MR KAHLA: Yes, I – okay. Is there a lot</p> <p>11 of weight placed on this one person because I know</p> <p>12 somewhere in your report there's reference to the one</p> <p>13 person and I'm trying to figure out this is –</p> <p>14 MR LITHGOW: No, I believe –</p> <p>15 MR KAHLA: - this must be seen as I must</p> <p>16 disconnect it to where there's reference to Mr Intikhab</p> <p>17 Shaik and Marius Papenfus.</p> <p>18 MR LITHGOW: Yes.</p> <p>19 MR KAHLA: That statement must be – these</p> <p>20 are just sets of statements.</p> <p>21 MR LITHGOW: Yes.</p> <p>22 MR KAHLA: They're not connected to each</p> <p>23 other.</p> <p>24 MR LITHGOW: Ja, correct. I haven't read</p> <p>25 out the whole list.</p>

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1 MR KAHLA: Okay, so I must just take that
 2 one on its own and the next one, there's no connection on
 3 the statements.
 4 MR LITHGOW: No, these are notes from the
 5 meeting that was held.
 6 MR KAHLA: Okay.
 7 MR LITHGOW: That was we had a Gartner
 8 scribe in that meeting that took these notes. But I'm
 9 going to take you to some of the others which have names on
 10 them.
 11 MS HOBDEN: Mr Lithgow, can I – I'm here.
 12 Can I ask who gave Gartner the list of people to be
 13 interviewed?
 14 MR LITHGOW: We asked SARS, I'm not sure
 15 who exactly, we asked them for each of the areas we covered
 16 to give us a list of names for the questionnaire and then
 17 from the questionnaire I'm not sure what process of
 18 identification was made as to the individuals whom we would
 19 interview. You'd have to ask Mr Neville Willemse that.
 20 [15:14] MS HOBDEN: So I would like to come to
 21 the question because that is another indication of the
 22 views of –
 23 MR LITHGOW: Sorry do you mind if I
 24 finish this because it appears that I'm using anonymous
 25 notes and taking comments at random which is not the case.

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1 MS HOBDEN: That's not my understanding
 2 of what you're doing. I'm concerned about using the names
 3 -
 4 COMMISSIONER: I'm not concerned about
 5 that. I don't think we're concerned about that so I don't
 6 think you need to be concerned. Are you concerned? Is
 7 this something that's bothering you at the moment?
 8 MR LITHGOW: What's bothering me is that
 9 if I've understood the implication that Gartner merely
 10 mouthed the view of certain people within SARS, within SARS
 11 and did not take time to test that assertion. I think
 12 that's what's been accused of, we've been accused of.
 13 MS HOBDEN: I'm not making an accusation.
 14 I was just asking the questions.
 15 COMMISSIONER: I really think you're far
 16 too sensitive, Mr Lithgow.
 17 MR LITHGOW: Well, after this week I'm
 18 feeling slightly bruised.
 19 COMMISSIONER: Could we break for 15
 20 minutes? Would that be okay?
 21 MR LITHGOW: That's absolutely fine.
 22 MS HOBDEN: Can we resume at 3:30?
 23 COMMISSIONER: Thank you very much.
 24 [INQUIRY ADJOURNS INQUIRY RESUMES]
 25 [15:34] COMMISSIONER: Yes Ms Hobden.

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1 MS HOBDEN: Thank you Judge.
 2 MR LITHGOW: Do mind if I make a couple
 3 of statements first?
 4 MS HOBDEN: Sure.
 5 COMMISSIONER: That's fine, go ahead.
 6 MR LITHGOW: Very quickly. You asked
 7 whether we sought to speak to Barry Hore and the answer is
 8 yes we did and we were told to speak to Jerome Fry instead.
 9 COMMISSIONER: Where's your, because it
 10 seems you relied on everyone else. Ask the person who told
 11 you that you did ask. Just come and talk to Mr Lithgow,
 12 will you?
 13 MR LITHGOW: I don't have that. The
 14 second point to clarify we were handed the handover park at
 15 the beginning of day 4, the team did receive that in the
 16 documents left behind by Barry Hore.
 17 COMMISSIONER: You see the difficulty, as
 18 my colleague says, this difficulty is that Gartner says
 19 speak to Mr Lithgow and Mr Lithgow says I don't know much
 20 about this, I wasn't there. You understand the difficulty?
 21 Well I don't think that we created that difficulty.
 22 Gartner created that difficulty.
 23 MR LITHGOW: No, no, what I've tried to
 24 do is to go back and try and get that information.
 25 COMMISSIONER: No I understand. I'm not

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1 being critical of you, don't worry Mr Lithgow. I'm just
 2 telling you that the difficulty is that Gartner says speak
 3 to Mr Lithgow, if you speak to Mr Lithgow he says I don't
 4 know, wasn't there. Carry on.
 5 MS HOBDEN: Thank you Judge. Mr Lithgow,
 6 back on the same slide we were before the break, and now
 7 with the knowledge that the Gartner consultants did have
 8 the modernisation handover pack, we find the statement
 9 under issues. Gartner found it impossible to quantify the
 10 value delivered by modernisation and could not calculate a
 11 return on investment as achievements were never mapped
 12 against actual business benefits delivered and costs
 13 incurred were not linked to benefits realised. Now Mr
 14 Barry Hore testified that this statement confounded him and
 15 that Gartner failed to use the correct measure of
 16 effectiveness when considering return on investment for IT
 17 projects for a revenue collector. What is your response to
 18 his comment?
 19 MR LITHGOW: I would disagree with him.
 20 In the IT structure we clearly did quantify them. During
 21 the time that was available in phase 1 what we would
 22 traditionally look for is where the business case is.
 23 Where is the overall plan? And what are the benefits that
 24 are going to accrue from that? They were not visible.
 25 MS HOBDEN: But they weren't in a

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1 document?

2 MR LITHGOW: No.

3 MS HOBDEN: But they were visible?

4 MR LITHGOW: No what was going to happen

5 – I'm now speaking about a document I haven't seen, so, my

6 apologies for this. So going on what I saw from Barry Hall

7 during the presentation which is the only information I've

8 got, he did put up two slides which were prepared by SARS

9 that sort of said our e-Filing has reached this percentage

10 and our revenue has gone up by X amount. I remember the

11 diagrams, I can't remember the detail.

12 MS HOBDEN: That was a slide from

13 Gartner's presentation that Barry Hore had taken in and put

14 –

15 MR LITHGOW: Yes from phase 2, not from

16 phase 1, as far as I recall.

17 MS HOBDEN: I don't have the -

18 MR LITHGOW: No I don't. The difficulty

19 is that if you're asked to validate a direct connection

20 between that and the modernisation programme with no

21 documentation that demonstrate that linkage, the linkage to

22 increasing tax revenue was based upon the following

23 programs, that was a business outcome, an output from that

24 investment, then we are not able to verify that when we

25 look at those documents. I come back to if we're looking

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1 at the top performing organisation, whether that is

2 government or the commercial sector, there is generally

3 some form of portfolio programmes that lays down what the

4 overall objectives, what are the business needs? Which of

5 these projects support the output of those? What is going

6 to be the investment required to produce that and what is

7 going to be the return on that investment? Looking for

8 that information, despite the handover pack we had, we did

9 not feel that we had sufficient evidence to make that

10 statement.

11 MS HOBDEN: So the Exco minutes provided

12 annually, the Exco memos provided annually that set out on

13 my reading of it, all of the information you've just set

14 out, Gartner did not consider those satisfactory?

15 MR LITHGOW: I don't know whether we

16 looked and if you can show me an Exco minute I can look at

17 it.

18 COMMISSIONER: Well if you didn't look at

19 it, that's the problem we go back to. We've got a witness

20 here who says I don't know, I wasn't there, didn't do it.

21 So it's very difficult for us to assess. Do you understand

22 that? Anyway the witness says he doesn't know. You see

23 Barry Hore also said, you know it's a very simplistic view

24 to take of investment in a revenue authority. There are

25 many intangibles that you gain as well in a tax authority.

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1 You don't just, this is not just a commercial enterprise

2 where you measure how many more sales you did because of X.

3 Do you accept that? He says there are a lot of

4 intangibles, the benefits.

5 MR LITHGOW: Yes.

6 COMMISSIONER: Compliance for example,

7 you're making it easier for people, you get better

8 compliance. You can't measure that.

9 PROF KATZ: Is it quicker refunds? Money

10 gets back into the economy.

11 MR LITHGOW: I'd agree, but I would also

12 say that in the IT structure we did acknowledge that there

13 were benefits and we listed a shortened list of them. At

14 the time of phase 1, which was an eight week period where

15 we were looking at most with the information we had

16 available, we were not able to make that statement.

17 COMMISSIONER: Okay, do we, can we –

18 MS HOBDEN: I just want to make one –

19 COMMISSIONER: Sorry.

20 MS HOBDEN: Judge can I make one more

21 statement from that? Mr Lithgow, the direct recommendation

22 arising from that finding by Gartner which is that we

23 cannot determine return on investment, was that a forensic

24 audit be conducted to examine all the money spent on

25 modernisation, a detailed functional point analysis

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1 investigation and cost and price benchmark be conducted to

2 link money spent on modernisation to deliverable than value

3 produced by the respective vendors as well as by SARS

4 themselves, is that correct?

5 MR LITHGOW: I don't have it in front of

6 me. I do recall that we were asked to make a judgment on

7 whether I think it was the BBD.

8 MS HOBDEN: I'm asking a more specific

9 question. Directly out of the issue that Gartner found

10 which was that they could not calculate return on

11 investment, the recommendation in the IT assessment was

12 that various other work be done, forensic audit, the

13 benchmarks and the function point analysis.

14 MR LITHGOW: Yes, I'm picking up on the

15 forensic audit because that was a specific issue.

16 MS HOBDEN: And that was part of phase 2,

17 am I right?

18 MR LITHGOW: No. We were asked to make a

19 judgment whether the BB&D contract with the extensions that

20 was on there was legal or not legal. We said we are not in

21 a position to make that judgment. If you need to make that

22 judgment you need to get somebody in who is qualified to

23 examine that contract.

24 MS HOBDEN: If we look at the project

25 charter for phase 2 the final work stream is benchmarking,

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1 it's benchmark, internal IP cost, benchmark external
 2 service provider, conductor fast function point analysis to
 3 benchmark cost of application development in the
 4 modernisation project. That's the outcome that I'm talking
 5 about that arises from Gartner saying we cannot determine -
 6 MR LITHGOW: Yes, and I accept that but
 7 what I was making clear to you was that that forensic, a
 8 separate item in there, was not, was a recommendation by us
 9 because we had been pushed to take a legal judgment on some
 10 of the contracts. The recommendation for benchmarking and
 11 fast function point analysis, yes, we did make and that is
 12 good best practice.
 13 MS HOBDEN: And what we know the outcome
 14 of those benchmarking and IT costs was that ultimately
 15 Gartner found that all the IT spend by SARS was cost
 16 effective and fair value at the end of phase 2.
 17 MR LITHGOW: I would need you to
 18 reference me to that but I do not believe that was the
 19 case. I do believe that in some of the fast function point
 20 analysis we said there is evidence of value for money and
 21 some of it we said no. In some of the benchmarking we have
 22 made statements that it was not value for money. We can
 23 give the document to the Commission to analyse more closely
 24 but on my reading of it all of the external suppliers got a
 25 fair value for money with maybe one or two projects as

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1 concerns. My point is just that ultimately although this
 2 was a concern raised in the beginning and a concern that
 3 led to Gartner saying we can't calculate this and it then
 4 led to work, more work done by Gartner. In the end the
 5 answer was SARS is overall getting fair value for money on
 6 its projects and on the modernisation project.
 7 MR LITHGOW: No, I would disagree that
 8 where we put up the figures comparing SARS across state and
 9 90 service decks in the remainder you are not in line with
 10 your peers. And the, you are spending more.
 11 MS HOBDEN: I'm talking about the outcome
 12 of phase 2, the benchmarking process which was to, which
 13 arose out of the recommendation to determine return on
 14 investment, and there the answer was there was -
 15 MR LITHGOW: No I'm not disagreeing with
 16 you but it's going to take me a while to find the
 17 documents. If you'd like me to submit them separate, I
 18 will but having reviewed them there were specific
 19 statements in there that said this does not represent value
 20 for money. Yes, there are statements that also said they
 21 suspect does represent value for money. We did not
 22 benchmark the entire estate.
 23 MS HOBDEN: It was a sample.
 24 MR LITHGOW: It was a sample, yes.
 25 MS HOBDEN: We'll give those documents

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1 for the panel to analyse.
 2 COMMISSIONER: It seems to me from what
 3 I've heard from you, and I think you've actually said it
 4 earlier, look, when you look back on it, a lot of the work
 5 that Gartner did was a waste because it wasn't implemented.
 6 Is that fair?
 7 MR LITHGOW: I believe -
 8 COMMISSIONER: I'm not blaming Gartner
 9 for it, I'm saying that Gartner did work but you don't
 10 implement it, it's not worth anything.
 11 MR LITHGOW: If a client doesn't
 12 implement it, yes they have not gained value from the
 13 investment that they have -
 14 COMMISSIONER: And a lot of your work
 15 fell into that category, they didn't get value for it, not
 16 from your, because you didn't do the work but because it
 17 wasn't used.
 18 MR LITHGOW: Yes, my judgment is that as
 19 of March 2017 when I left I have not seen evidence of large
 20 tranches of that work have been stuck, as I would say,
 21 having been implemented.
 22 COMMISSIONER: And so to put it - and
 23 this is not a criticism of Bain, of Gartner, it's not a
 24 criticism of Gartner, so I'm just, don't anticipate where
 25 it's going, it's not a criticism, have you got that, Mr

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1 Lithgow?
 2 MR LITHGOW: I have indeed, Judge.
 3 COMMISSIONER: What it would be fair to
 4 say a lot of that money that was spent was wasted money.
 5 MR LITHGOW: I think if you were a
 6 taxpayer you would take that view.
 7 COMMISSIONER: Well I am a taxpayer.
 8 Tell me should I, is it okay for me to take that view?
 9 MR LITHGOW: Yes, I think I've made it
 10 clear that I think that the work we did has not been taken
 11 forward and has not been implemented.
 12 COMMISSIONER: I just want to put to you
 13 that this, one thing that you didn't hear this morning is
 14 here is an email written by Neville to Patrick Monyeke and
 15 which they are now formulating the terms of reference. And
 16 he says, "Hi Patrick, I've changed the outcome slightly."
 17 By the way very often outcomes will depend upon what the
 18 initial brief is, isn't it?
 19 MR LITHGOW: Yes.
 20 COMMISSIONER: "My suggestion would be
 21 that we approach it as follows, gather strategic and
 22 business requirements information" - that's fair enough,
 23 that's what you do. "Perform an IT assessment" - that's
 24 fair enough. "Analyse current state findings" - fair
 25 enough. "Develop future state recommendations. Develop a

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1 roadmap and associated initiatives, and then deliver a
 2 final report." Those last two seem to me to be looking at
 3 what will go beyond the diagnostic at it were. Develop
 4 future state recommendations. Let me take you to the last
 5 sentence. "Coming out of the roadmap will be additional
 6 initiatives." That says to me, and I think Mr Willemse
 7 accepted that, that you're saying right at the outset,
 8 we'll do the diagnostic and there will be further
 9 initiatives that we could assist with. What do you think
 10 of that? Is that the way one should do a diagnostic?
 11 MR LITHGOW: No. No okay, no. But from
 12 my perspective I did not enter into this engagement.
 13 COMMISSIONER: I know. You say you don't
 14 know? But the point is that this says we will do the
 15 assessment from which there will be further work we can
 16 get. It's not –
 17 MR LITHGOW: I haven't got it in front of
 18 me but there will absolutely be further work that comes out
 19 of this assessment. Whether it came to Gartner or not I
 20 don't know.
 21 COMMISSIONER: No, no. He says that
 22 there will be additional initiatives that we could assist
 23 with, i.e. do you approve of that, that you do an
 24 assessment, you write terms of reference which are these
 25 terms of reference will produce additional initiatives for

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1 us. Do you think that's a, do you accept that that's the
 2 way it should work.
 3 MR LITHGOW: No. We would, Gartner would
 4 not enter into a piece of work with the sole objective of
 5 creating a set of recommendations that may be real or
 6 unreal in order to capture more work.
 7 COMMISSIONER: Would you be happy if this
 8 Commission said that this is not the way that one should be
 9 going about work, if you're a major consultant? I think
 10 the answer must be yes. It's obviously not the way you
 11 should do things. You've told us that.
 12 MR LITHGOW: Yes. Yes, sorry but I was
 13 thinking rather than responding. If your interpretation of
 14 that email is –
 15 COMMISSIONER: It's not mine, it's Mr
 16 Willemse's.
 17 MR LITHGOW: No, but you have, again I –
 18 COMMISSIONER: I'm putting to you what Mr
 19 Willemse says which is what this –
 20 MR LITHGOW: So I could, I could –
 21 COMMISSIONER: Do you agree with me that
 22 one should not be producing terms of reference that are
 23 designed to produce further work?
 24 MR LITHGOW: Correct.
 25 COMMISSIONER: Okay.

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1 MR LITHGOW: Yes.
 2 COMMISSIONER: Thank you very much. Is
 3 there anything more, anything more?
 4 PROF KATZ: Could I just ask one, one of
 5 the complaints we heard from many of the witnesses was that
 6 they weren't adequately consulted by Gartner. What I
 7 understood from you is because you had an instruction that
 8 it's a secret, you couldn't talk.
 9 MR LITHGOW: For phase 1 that is correct.
 10 PROF KATZ: Is that an effective method
 11 of working?
 12 MR LITHGOW: That is not how I would run
 13 it but I have come across circumstances where a new CIO –
 14 and CIO is CEO or a CEO – has operated in that manner, but
 15 that's not how I would have done it personally if I was in
 16 that position.
 17 PROF KATZ: That doesn't give rise to an
 18 effective result.
 19 MR LITHGOW: I think it causes problems
 20 because by undertaking in secrecy clearly we have to
 21 communicate with people, have to ask them for their views
 22 and naturally they say why are you doing this? What is
 23 going to be the result of this report that is being
 24 provided? So it can absolutely cause greater uncertainty
 25 within an organisation.

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1 PROF KATZ: Uncertainty and resistance to
 2 it afterwards. I wasn't involved in it, I wasn't –
 3 MR LITHGOW: I think that is a fair
 4 comment, yes.
 5 MS MASILO: You told us that you've
 6 worked with other major revenue authorities around the
 7 world and when you raised the concerns with Mr Moyane on
 8 the failure to implement the work that you had done and
 9 being aware that modernisation had stopped, did you explain
 10 to him or did you thought it prudent to advise him or
 11 explain of the impact that this would have on SARS, you
 12 know, on the efficiency on the part of SARS to deliver on
 13 its mandate? Because IT is an enabler and it's very
 14 critical.
 15 MR LITHGOW: Yes I think I, I think
 16 that's a very good point. I'm not sure I was, I was more
 17 concerned with the IT, and I think it's a very good
 18 observation made than the next. The deduction from that is
 19 that it would have an impact on their operational
 20 effectiveness as their customs and revenue organisation. I
 21 don't think I was as strong as that or made that direct
 22 connection. You're quite correct to say that there is a
 23 consequence to an IT organisation that is disrupted.
 24 MR KAHLA: I just want to go back, Mr
 25 Lithgow, to that point you had raised in relation to the

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1 comparison aspect of ICT spend, relative to the peer group
 2 and then the financial services.
 3 MR LITHGOW: Yes.
 4 MR KAHLA: Did I understand you right in
 5 saying that of course what, the numbers that you bring they
 6 don't tell you whether the complexity of the work that's
 7 been done, whether there's been a build or is it a courts
 8 process or do they?
 9 MR LITHGOW: No I think you're absolutely
 10 right. When you look at the, if there's a difference in
 11 the figures the first question you ask is why is there
 12 difference in the figure? So if an organisation is just
 13 making a major investment in an SAP platform it's probably
 14 going to have a spike in its spend for the next two to
 15 three years, whereas if you'd examined it a year before you
 16 might have a different result. So that's why in looking at
 17 the results we tried to understand where was the big
 18 difference between SARS and other revenue organisations in
 19 that was in the application development space.
 20 [15:54] Then ask the question why is there that big
 21 difference and the reason for that big difference which was
 22 our deduction was because it was a heavily build rather
 23 than buy organisation. Now we don't say that's wrong, that
 24 is a conscious choice that SARS has made. But, and that
 25 was reflected in the profile.

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1 MR KAHLA: But did your report set out
 2 all of those factors so that when the reader reads it
 3 doesn't really simply say these guys are simply spending so
 4 much more the their peers without factoring in for example
 5 what are they doing if one looks into what was the
 6 modernisation programme, would it, when one looks into the
 7 scale of what was going to be done would that be a factor
 8 to look into for purposes of ensuring that there's
 9 reasonableness in the peer assessment?
 10 MR LITHGOW: We're going back a long time
 11 but I do seem to recall that one of the facts we pulled out
 12 for this discrepancy was essentially based around build v
 13 buy. I think most of the organisations I look at, coming
 14 back to the point that was made earlier by the advocate.
 15 There are going to be very few financial institutions or
 16 indeed tax administrations that are not going through some
 17 form of transformation although we use that word
 18 transformation, we use it to the modernisation, to sort of
 19 try and describe a discreet piece of activity that is
 20 bounded in time. The reality is that is not the case. All
 21 of the organisations at different pace in the commercial
 22 market, they probably push quicker than in the government
 23 market are spending very large sums of money on technology.
 24 So I don't think that the higher spend of SARS necessarily
 25 reflects the activity that they had been undertaken.

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1 MS HOBDEN: May I interject there, Mr
 2 Kahla. What we do see from the SARS assessment is a table
 3 prepared by Gartner putting, setting out overall SARS
 4 positioning and there are four quadrants and SARS falls
 5 into the quadrant that says doing a lot with a lot and as
 6 opposed to its peers in the financial services industry
 7 which do a lot with a little. Obviously because they are
 8 profit driven and the statement Gartner makes on the slide
 9 is this. "SARS IT maturity level is higher than the peers,
 10 especially in the areas of enterprise architecture. This
 11 favourable comparison is negated by the higher IT spend and
 12 SARS's overall position is low on the bottom right quadrant
 13 of the comparison". They're saying you fall where high
 14 spend. They go on to say "SARS however, SARS does however
 15 have a higher ratio of spend and transformation in line
 16 with the modernisation programme. But the study was too
 17 high level to determine whether SARS are spending their IT
 18 budget effectively on the right areas". My understanding
 19 of these statements is that yes SARS is spending a lot of
 20 money that is because it has gone through and is going
 21 through a modernisation programme. It also appears to
 22 accept that SARS is using that money effectively. It is
 23 doing a lot. But Gartner says we cannot determine finally
 24 and what they propose is the further benchmark and analysis
 25 that we've spoken about earlier.

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1 COMMISSIONER: Is that a fair comment?
 2 MR LITHGOW: I mean that's a lot to take
 3 in.
 4 COMMISSIONER: Anyway I don't think,
 5 that's what your report says.
 6 MR LITHGOW: yes.
 7 COMMISSIONER: That's fine. Is there
 8 anything further?
 9 MR KAHLA: Nothing.
 10 COMMISSIONER: Good. Is that it Ms
 11 Hobden? Thank you very much, Mr Lithgow. You can go on
 12 your way.
 13 MR LITHGOW: Thank you and thank you for
 14 your time.
 15 COMMISSIONER: I don't know who we speak
 16 to for Gartner, is your attorney present, your local
 17 attorney?
 18 [NO FURTHER QUESTIONS - WITNESS EXCUSED]
 19 COMMISSIONER: Is there anything more
 20 that Gartner wants to tell us? Does Mr Willemse want to
 21 say anything arising from what we've heard?
 22 SPEAKER: I'll say a quick word on behalf
 23 of Gartner.
 24 COMMISSIONER: Well just let me talk to
 25 your local attorney first, if you don't mind and perhaps

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1 you could convey it through him, I think it would be more
 2 appropriate. Your American counterpart would like to give
 3 you some instructions, I think, is that right? Well we
 4 talk to your attorney, he's not keeping you quiet. It's
 5 just that he's the man to talk to.
 6 SPEAKER: I agree.
 7 COMMISSIONER: Nothing further from
 8 Gartner. Thank you very much.
 9 MR LITHGOW: If I could just say thank
 10 you. I'm sure you're aware that it can be quite a
 11 stressful time for those that are sitting in this side of
 12 the table.
 13 COMMISSIONER: Yes.
 14 MR LITHGOW: But thank you for your
 15 patience and consideration. Thank you.
 16 MS HOBDEN: Thank you.
 17 COMMISSIONER: That's it, is it?
 18 MS STEINBERG: Yes, Judge, we're going to
 19 reconvene in early November and I think we'll publish the
 20 dates a little bit closer to the time.
 21 COMMISSIONER: Well as I understand it,
 22 there are some days set aside but we have no present
 23 intention of hearing any further evidence. There's nothing
 24 particular that we, is available to us to hear and no one
 25 in particular who wants to produce anything.

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1 MS STEINBERG: There's a witness who
 2 might want to appear, we're still talking to her and her
 3 lawyer.
 4 COMMISSIONER: Yes. But that depends,
 5 ja, that's the one witness, the one who is under
 6 suspension, that one?
 7 MS STEINBERG: Yes. Yes.
 8 COMMISSIONER: Well, yes, if there is a
 9 need for further evidence we'll hear it and if there isn't
 10 this is about the end of the show. Is that right?
 11 MS STEINBERG: But I believe we'll have a
 12 wrap up session.
 13 COMMISSIONER: Yes.
 14 MS STEINBERG: Yes.
 15 COMMISSIONER: Counsel will have a day in
 16 which to address us on what the counsel thinks that are
 17 important things we should put into our report and you'll
 18 announce that date but, but for that witness we have no
 19 knowledge at the moment of any other witness who will be
 20 coming forward.
 21 MS STEINBERG: No.
 22 COMMISSIONER: It may still happen of
 23 course.
 24 MS STEINBERG: Judge we've really
 25 reserved those days, you've repeatedly offered for people

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1 to come -
 2 COMMISSIONER: Yes.
 3 MS STEINBERG: And rebut evidence.
 4 COMMISSIONER: Ja.
 5 MS STEINBERG: Or add to it. So we've
 6 reserved days in case that happens.
 7 COMMISSIONER: Ja. I understand. Thank
 8 you very much.
 9 [INQUIRY ADJOURNED]
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