

**COMMISSION OF INQUIRY OF THE PUBLIC INVESTMENT CORPORATION**

**HELD AT**

**TSHWANE, PRETORIA**

10

**27 MARCH 2019**

**DAY 21**

20

**PROCEEDINGS HELD ON 27 MARCH 2019**

**CHAIRPERSON:** Morning, morning everybody.

**ADV JANNIE LUBBE SC:** Good morning Mr Commissioner, members.

**CHAIRPERSON:** What do we have today Mr Lubbe?

**ADV JANNIE LUBBE SC:** Mr Commissioner I have Mr Mulaudzi who has come to this Commission voluntarily, he has prepared a written statement and it was prepared on the basis of questions posed to him by the legal and forensic team of this Commission. He also consulted with me and you will see from the structure of his statement that he is dealing with those topics that we have asked him to address in his statement. I have  
10 also discussed with him the manner in which we're going to present his evidence, it would be, we would prefer it with respect Mr Commissioner without limiting the Commission if he deals with Tosaco he deals with it and then he stops and the Commission will ask their questions before he goes onto the next topic, if that is acceptable to ... (intervention)

**CHAIRPERSON:** We'll do our best.

**ADV JANNIE LUBBE SC:** Thank you Mr Commissioner. He has also asked me to put on record that he's here to put his version to the Commission, there are the professional transactional life of Mr Mulaudzi, there is also unfortunately a bit of personal life involved but he's prepared to deal with that openly and honestly and he's  
20 asked me to put that on record, he's ready to take the but he's prepared to deal with that openly and honestly and he's asked me to put that on record, he's ready to take the oath.

**CHAIRPERSON:** Can you just stand up Mr Mulaudzi. Your full names are Lawrence Mulaudzi?

**MR LAWRENCE MULAUDZI:** Yes Shumani Lawrence Mulaudzi Commissioner.

**CHAIRPERSON:** I didn't hear the first one?

**MR LAWRENCE MULAUDZI:** Shumani Lawrence Mulaudzi.

**CHAIRPERSON:** Shumali?

**MR LAWRENCE MULAUDZI:** S-H-U-M-A-N-I.

**CHAIRPERSON:** N-I Shumani, yes do you have any objection to taking the prescribed oath?

**MR LAWRENCE MULAUDZI:** Not at all Commissioner.

**CHAIRPERSON:** Do you swear that the evidence you're about to give will be the truth, the whole truth, nothing but the truth, raise your right hand and say so help me God.

10 **MR LAWRENCE MULAUDZI:** Help me God.

**CHAIRPERSON:** Thank you.

**ADV JANNIE LUBBE SC:** Thank you Mr Commissioner. Mr Mulaudzi you have prepared a written presentation for the benefit of the Commission, can you start with paragraph 1 and tell the Commission who you are?

**MR LAWRENCE MULAUDZI:** Thank you Commissioner. Without waste of any time I will start by introduction. I Lawrence Mulaudzi an adult male age 41 do here confirm to the best of knowledge that the contents in these statements are true and accurate. I hold a National Diploma Information Technology as well as Postgraduate Diploma in Computer Auditing from Wits University. I was an international member of the  
20 Information Systems Audit and Control Authority ISACA body and was an Information and Communication Technology Specialist for the National Department of Communications Telecommunications and Postal Services formerly Department of Communications.

In 2003 I was appointed as Chief Technology Officer with the Presidential National Commission on Information Society and Development a commission which advises,

investigates and makes recommendation to the State President on ICT related issues. In 2004 I moved to Siemens Business Services as Systems Engineer for Southern Africa. In 2006 I left Siemens at the age of 28 years old to pursue entrepreneurial ventures.

I was requested to provide this statement to the Commission by Adv Lubbe SC and do so freely without any duress. I have prepared this statement acutely aware of my obligation to give this Commission a full account of what transpired in matters that were within my personal knowledge in relation to the Public Investment Corporation PIC in order to assist it in unearthing the truth. This statement deals with the questions posed  
10 to me by Adv Lubbe SC. I deal with each one of them in details hereunder.

**CHAIRPERSON:** I suppose in paragraph 4 that second line, full account of what transpired it matters that are within my knowledge, there's a word missing, there are.

**MR LAWRENCE MULAUDZI:** Correct, are within my knowledge.

**CHAIRPERSON:** Ja.

**MR LAWRENCE MULAUDZI:** Thank you Commissioner. I will first deal with the issue of Tosaco transaction. In 2015 our investment company Kilimanjaro Capital Propriety Limited KiliCap ... (intervention)

**MR EMMANUEL LEDIGA:** Just a quick one, can you give us the month for that time, in which month 2015 if you can recall?

20 **MR LAWRENCE MULAUDZI:** Ja it was a sublease sometime in January.

**MR EMMANUEL LEDIGA:** In January okay.

**MR LAWRENCE MULAUDZI:** Yes the concept was early January that's when we established the company called Kilimanjaro. Kilimanjaro ... (intervention)

**ADV JANNIE LUBBE SC:** I think there might be a misunderstanding, what the Commission wants to know is when in 2015 did you become aware of the project Atlas I

think that is what ... (intervention)

**MR EMMANUEL LEDIGA**: Yes, I just wanted the month that in a certain month 2015 you became aware, can you recall?

**MR LAWRENCE MULAUDZI**: Through you Commissioner, as I indicated I will deal with each, with the Tosaco process you will ask me questions because it might be covered later in the statement. Thank you, thank you Commissioner. In 2015 our investment company Kilimanjaro Capital Proprietary Limited KiliCap became aware of a transaction titled Project Atlas. This transaction was originated by the previous BEE shareholders in Total South Africa Proprietary Limited TSA who wanted to dispose of  
10 their investment as it had reached maturity. Tosaco was the original black economic empowerment BEE partner to TSA and held a 25% equity interest in TSA.

After assessing this transaction we as KiliCap resolved to make an unsolicited offer to Tosaco and its shareholders for 100% of its equity. We then identified financial institutions to approach in order to source their appetite for funding a transaction of this nature. As a company we formally requested a meeting with the then PIC CEO Dr Dan Matjila to introduce KiliCap as black owned investment holding company which was exploring this transaction. My role as a KiliCap director focuses on business growth and development and stakeholder relations. Our company includes individuals with experience in deal originations, advisory services and corporate finance, capital raising  
20 and private equity investment.

My role as a KiliCap director includes business growth and development and stakeholder relations. I attended the abovementioned meeting with Dr Matjila and it took place at PIC offices. I also used the meeting as an opportunity to better understand the PIC investment criteria and process in order to allow KiliCap to make funding applications with a good understanding of the requirements. Dr Matjila indeed

gave me an overview and it was a productive introductory engagement. He also indicated to me that once he has received our formal investment memorandum on the investment opportunities I had presented to him he will have sight of them then decide on the relevant PIC deal team to refer them to. I must mention that this was my very first interaction and meeting with Dr Matjila I had never met prayer to this.

KiliCap then prepared an investment consideration pack and funding support request to the PIC. This pack was forwarded to Dr Matjila on the 22<sup>nd</sup> May 2015. The funding application to the PIC incorporated an acquisition of the ultimate empowerment shareholding in TSA as well as a facility for the development of a network of retail  
10 service stations. Our strategy was to develop up to 20 new service stations which will be branded and supplied by TSA. This network of service stations will be run by new black entrepreneurs and could yield as much as 1 000 new permanent jobs.

Funding applications were also made to Standard Bank and Nedbank with similar investment consideration packs. KiliCap received an indicative nonbinding funding support letter from Nedbank on the 2<sup>nd</sup> June 2015. The PIC also formally gave us a nonbinding expression of interest in support of our unsolicited bid on 3<sup>rd</sup> June 2015. On the same day KiliCap forwarded a nonbinding expression of interest the EOI to Tosaco. Attached to the EOI was the PIC nonbinding expression of interest to fund the transaction. After receiving the nonbinding expression of interest from the PIC KiliCap  
20 provided input to the PIC transaction team in preparation for the first committee meeting where approval for a due diligence will be sought. This required the completion of a scoping report and KiliCap provided input to the report on 5<sup>th</sup> June 2015. We were then given feedback that the transaction had been approved by the PIC committee to go to due diligence.

We then requested Tosaco to give us a period of exclusivity so we could work on the

transaction. Tosaco formally responded to KiliCap on 11<sup>th</sup> June 2015 indicating that they will not be in a position to provide the required period of exclusivity as they had commenced a competitive bidding process and that KiliCap was encouraged to participate in this process. KiliCap was subsequently invited by Nedbank Corporate Finance on the 19<sup>th</sup> June 2015 to participate in Project Atlas 2 which was a competitive bidding process for 91.8% of Tosaco excluding the 8.2% equity held by the TSA employee shares trust which wanted to remain. KiliCap agreed to formally join the Project Atlas 2 process and we automatically advanced to the second phase of the process as we had already submitted a funding support letter from the PIC.

10 During our engagements with the PIC after the approval to commence due diligence was granted it was decided that KiliCap will appoint a transaction advisor nominated by the PIC as this will allow for better understanding of the PIC funding application process. BnP Capital was nominated by the PIC and formally engaged by KiliCap on 24<sup>th</sup> June 2015. In order to commence a funding application with the PIC given that the transaction had become a competitive bidding process KiliCap signed an engagement letter with the PIC on 30<sup>th</sup> June 2015 which included a commitment fee of 1.5% of the funding amount. KiliCap was then given access to the Project Atlas 2 Virtual Data Room VDR on 1<sup>st</sup> July 2015.

Over the course of July 2015 the KiliCap team worked closely with the PIC submitting  
20 comprehensive due diligence report including independent evaluations. KiliCap was required to submit a binding offer on 31<sup>st</sup> July 2015 which meant that the PIC funding support had to be unconditional. It was for this reason that the teams worked tirelessly to provide the PIC with all the necessary information in order to obtain such approval. A meeting was held with the Nedbank to give them progress on the funding process by PIC. It was at this meeting that we learnt that the PIC had issued funding support to

other bidders who were part of the Project Atlas 2 process. As KiliCap we found this to be strange because the PIC had signed a binding engagement letter with us which in our view implied exclusivity. I then requested a meeting with Dr Matjila to clear this confusion as the deadline for the binding funding offer was looming. Dr Matjila agreed to this meeting.

It was held at the PIC offices. In that meeting Dr Matjila told me that indeed he had another group which had interest in the transaction. He then told me that in order for him to proceed with issuing final approval I needed to urgently meet with Mr Siphon Mseleku of Sakhumnotho as the other interested party. He also told me that Mr Mseleku's company must match with our company to form one consortium and that we had to give Mr Mseleku 50% of the transaction and the fees that we will ultimately receive when the deal is approved. I enquired from Dr Matjila as to whether Sakumnotho had been through the same due diligence process as KiliCap, a response was not forthcoming in this regard. The reason why I asked this question was because by then KiliCap had concluded its due diligence process and we had been informed that this transaction had been approved by the management committee to go to the board approval committee.

We realised that if we did not merge into one consortium we will not obtain the required approval letter that had to be issued by Dr Matjila. KiliCap then made the difficult decision to rather match with Sakhumnotho as 50% of the transaction was better than the whole transaction being taken away from us. After briefing my partners who were very devastated about this directive from Dr Matjila they agreed under the circumstances that I contact Mr Siphon Mseleku and arrange to meet him. When we met it was clear that he was up to speed, I concluded that Dr Matjila had fully briefed him.

This was obviously also an introductory meeting because I did not know him and had

never met him before. Even his contact details were given to me by Dr Matjila. This meeting took place at Mr Mseleku's office. As a way forward we agreed to enter into an agreement that will reflect the merger and newly formed consortium. This agreement was signed on the 6<sup>th</sup> August 2015. We then informed the PIC and Nedbank in writing of this merger for the purpose of this transaction. The project from being KiliCap to KISACO meaning Kilimanjaro Sakhumnotho Consortium. The final binding offer was for an aggregate consideration of 1.7 billion and was informed by the independent valuation performed.

We were issued a final binding funding support letter. This was forwarded to Nedbank  
10 Corporate Finance. The approval was for an acquisition of 91.8% of Tosaco's interest in Main Street for an aggregate consideration of R1.7 billion and an approval for a development facility of R300 million for Tosaco Retail. KISACO was then recommended as preferred bidder and entered into a binding memorandum of understanding MOU with Tosaco. We also started the process of funding agreements with the PIC. The transaction ultimately concluded and reached financial close on 9<sup>th</sup> December 2015 after all condition precedents were met.

TSA has experienced strong growth in market share and profitability since our investment and we believe that a conservative estimate of the current valuation informs an increase in the share value of between 30% and 50%. The investment in Tosaco  
20 Retail has made no progress since the approval of the retail development facility. This we believe is in part due to the negative media articles which emanated in early 2016. While we appreciate that the negative publicity aimed at KISACO and the PIC at the time probably played a role in the process being halted it is unfortunate that this dynamic component of the Tosaco transaction did not come to fruition. This in our view has a potential of creating black entrepreneurs who will own and operate service

stations with the support and guidance from TSA. We are hopeful that this great opportunity that will also create jobs can still be resuscitated for the benefits of the PIC its client and aspiring business people. So I can pause there Commissioner so that I can take questions before I proceed to the next item.

**MS GILL MARCUS:** Thanks very much for that. If we can perhaps look at a couple of things, this initiative and your interactions with the PIC as you indicated was the first time you'd met Dr Matjila and could you give us some idea who the directors in KiliCap are and whether this, and as you've indicated that KiliCap was formed precisely for this, do you have other companies that you have set up that may be related to particular transactions or just companies that you have set up so that one can see whether this is, from what I could see this is set up for this purpose KiliCap?

**MR LAWRENCE MULAUDZI:** Yes so when we established Kilimanjaro Capital we were about five major founders of the company and the idea behind establishment of Kilimanjaro Capital was not really limited to one opportunity because it was formed and established prior to identifying any opportunities. We never thought we will come across this opportunity along the line. And those directors is myself, Lawrence Mulaudzi, Dr Kinesh Pather, Obayd Joseph, and Sizwe Shezi as well as Barry, we've got another director his name Barry Pulford.

**ADV JANNIE LUBBE SC:** It's P-U-L-F-O-R-D Mr Commissioner.

**MS GILL MARCUS:** So prior to this you had not created any companies and this was not specifically for this but it was for any opportunity that arose?

**MR LAWRENCE MULAUDZI:** What happened, through you Commissioner, we used to know each other as friends with those directors and everyone was doing his or his – was pursuing his own opportunities but then at some point actually we were in Cape Town on the 8<sup>th</sup> January 2015 where we convene and said apart from running around

as sole traders why don't we come together and formulate something lucrative, something big hence the name Kilimanjaro. That's where the name Kilimanjaro come from, we wanted to build something big and focus on certain, in order to focus on number of sectors not limited to oil and gas, pharmaceuticals, property and ja property development as well ja.

**MS GILL MARCUS:** BnP Capital had you worked with them before or did you know them before this was recommended by the PIC?

**MR LAWRENCE MULAUDZI:** To be frank with you Commissioner it was our first major transaction and we didn't know or I didn't know BnP Capital at that point.

10 **MS GILL MARCUS:** How did you find working with them?

**MR LAWRENCE MULAUDZI:** Well the relationship was very well, it went well because we, they took us through from the beginning of the transaction until the transactional closure and also they seems to be very knowledgeable and experienced in the advisory services, that's the experience we – that's what we have experienced.

**MS GILL MARCUS:** And perhaps just for record purposes Advocate if we could get the composition of BnP Capital and how many deals that they have been used for transactional purposes as recommended by the PIC?

**ADV JANNIE LUBBE SC:** It's already in the process, thank you Mr Commissioner.

20 **MS GILL MARCUS:** I'd like to come to this question of this amalgamation or partnership that was requested with Sakhumnotho. I would have assumed, and perhaps you could outline how you feel about it because what you've indicated you were five people who knew each other well, had common set of values, one would assume created a company that you would work together on, now you come to a deal and you have to partner in order to get the deal through with a company that you've not heard of or Mr Mseleku who you had not dealt with before this was in 2015, 2016 when

the deal was done, how has that worked out, is it an equal partnership where they pull their weight, where they play their own role, that you've worked well together because one would assume you've got a certain set of value systems, objectives and so on which is what you put KiliCap together for, how has that worked out in practice?

**MR LAWRENCE MULAUDZI:** Well when we initiated the process of the Tosaco transaction it was not really in the market by that time, we picked it up from one of our director who used to be a minority shareholder in Tosaco so that opportunity when it came to us we started to formulate the strategy on how we can take it to the next level hence we had a strategy for the further growth and development. So when we had to  
10 go through the process it was a bit surprising to us but obviously when the seller dictate the terms then we had to join the bidding process although initially when we started there was no bidding process. It was very much, we felt very much disappointed and very vindictive to be frank with you when all of a sudden after you have worked on the transaction for so long going through the due diligence tirelessly you know all of a sudden on the 11<sup>th</sup> hour someone comes in and had to be allocated 50% and without you know coming with us from the onset.

But then we had to – it was very difficult for us as the directors of Kilimanjaro to accept the decision and some of our guys, some of our directors they were so stressed some of the director was even disturbed where due to stress and he had to bleed, he was  
20 bleeding for almost two hours so it was very painful experience. But I had no option as you know we are in business, we had to say let's share the cake of this transaction, we are all BEE's we are informed that Sakhumnotho was in the process with the Nedbank whether he has gone through the due diligence with the PIC or not it's none of our business as long as we have gone through our processes, we complied, let's just sacrifice 'cause half of loaf it's better than no bread. So we had to merge and when we

merged obviously we didn't know each other from the bath of soap but we had to find a way of working together because also in Kilimanjaro Capital we were not born to be working together at this, what happened is that we met from Norway and then we introduced to each other and we found a common ground to work together.

Although even in Kilimanjaro Capital we'll even have tension as the company but we had to compromise to say let's work with Sakhumnotho they are also the BEE they have been in this space, their profile is good so why not, let's just forge ahead more so 'cause it was a bidding process. Bidding process it had its own timelines so if you don't align to those timelines you end up missing the boat. So it was painful but we had no  
10 option, we had to work together.

**MS GILL MARCUS:** I understand that and I mean that's obviously something that was from a pre-condition of proceeding with the PIC. Subsequent to that how has the work, first of all do you know now whether having worked with Sakhumnotho whether they actually did a due diligence with the PIC at all, whether they ever went through the due diligence process that you went through with the PIC?

**MR LAWRENCE MULAUDZI:** I think whether they went through the due diligence with the PIC or not I think that question could be answered better by the PIC because the deal team that we were working with at the PIC has taken us through the due diligence, I don't know with the other part with Sakhumnotho maybe they can give you the better  
20 answer on that one Commissioner so ... (intervention)

**MS GILL MARCUS:** But you've never discussed with them did they do the due diligence?

**MR LAWRENCE MULAUDZI:** Obviously we ask the leader of Sakhumnotho who's Mr Siphon Mseleku and he indicated that no he has gone through the due diligence, he has been through the VDR at Nedbank so who am I to question someone else business so

we did ask 'cause we were concerned but they said, hence I indicated in my statement when I was asking Dr Dan if Sakhumnotho has also gone through the vigorous due diligence that we have gone through 'cause we have gone through a vigorous due diligence that took some few months and you know, yes.

**MS GILL MARCUS:** And just then, the question of the working relationship between you and Sakamoto subsequent, from the time of now accepting and now ... (intervention)

**MR LAWRENCE MULAUDZI:** Ja. The relationship ... (intervention)

**MS GILL MARCUS:** Are they still...? Are you still a consortium together?

10 **MR LAWRENCE MULAUDZI:** The relationship was very good and is still healthy. I sit with him on the board of Total and we are also looking forward to explore other opportunities. With the relationship I would say it's healthy. We are working very well and we communicate almost now and then.

**MR EMMANUEL LEDIGA:** Just a few questions. Can you give us an idea of your funding structure, you know, the R1.7-billion?

**MR LAWRENCE MULAUDZI:** The R1.7-billion, actually what we applied from the PIC, the funding that we applied from the PIC was for, in total it was about R2.1-billion.

**MR EMMANUEL LEDIGA:** H'm?

20 **MR LAWRENCE MULAUDZI:** R1.7-billion was for the acquisition of the shares from the previous BEE and we had in our strategy, hence our bid, it was a bit unique to other bids, we had a gross strategy where we had to come up with a strategy to put together the retail component and of which we asked for funding for about 300-million to further develop new service stations for the young entrepreneurs in the market and about 50 000 was – sorry – about R50-million was for fees and how it was broken down, of which I will elaborate that in the next component, it was – our – the fee structure was –

the transactional fee structure was 38-million and then we anticipated that we still have to go through the Competition Commission's regulatory authorities for the sub-regions because we had to deal with the Competition Commission in Namibia and Swaziland and Lesotho and here in South Africa. So we then estimated around between 10-12-million – about 10-million, but then because we applied – had about R38-million that we were looking for to spend on the transactional fees we estimated extra R12-million to cover all the costs. So the other 50, I will explain it because it's just in the next component.

**MR EMMANUEL LEDIGA:** So the 1.7-billion, was it divided into debt and equity and  
10 all that?

**MR LAWRENCE MULAUDZI:** It was a senior debt, 10-year.

**MR EMMANUEL LEDIGA:** Ja.

**MR LAWRENCE MULAUDZI:** 10-year senior debt.

**MR EMMANUEL LEDIGA:** The full amount?

**MR LAWRENCE MULAUDZI:** Full amount.

**MR EMMANUEL LEDIGA:** The PIC didn't take an equity stake?

**MR LAWRENCE MULAUDZI:** No, no, no. The PIC didn't any interest in the transaction.

**MR EMMANUEL LEDIGA:** And what was the debt amount, the rate, the interest rate?

20 **MR LAWRENCE MULAUDZI:** The interests rate, we were working on the six-months JIVA (?) rate, of which that information, specific details, I can ... (intervention)

**MR EMMANUEL LEDIGA:** You can't ... (intervention)

**MR LAWRENCE MULAUDZI:** I can provide it to you so that I give the commission the relevant answer. (Indistinct)

**MR EMMANUEL LEDIGA:** And in terms... Okay, no, no, it's fine, fine. In terms of the

transaction, how is it going in terms of servicing that debt, you know, and all that? Because I know normally people use dividends and all that, but how is it going there?

**MR LAWRENCE MULAUDZI:** Okay. Ja. I think it's going – progressing very well because... Let me explain it in this way. After we realised that we – obviously we paid a little bit more we said to the PIC could we then...? Because we've got a structure in the transaction to in the dividends pay-out we – 80% we'll pay back the debt, the loan, 20% it's for the consortium. So... But up to date we are servicing our loan very well. I think currently we have already paid almost plus or minus about R350-million on dividends. It's performing very well. We don't fore... And it's growing very well  
10 exponentially and we don't foresee any, you know, any challenges. And also, our investment of 1.7-billion now, it has already grown up by about 30-50%, so the current valuation in our portion, our investment, it's sitting at about 2.8 to R3-billion. It's performing very well.

**MR EMMANUEL LEDIGA:** And in terms of that 300-million of retail units, was that money drawn ever? And if so, what has happened?

**MR LAWRENCE MULAUDZI:** Ja. So the money hasn't been drawn because actually we had to finalise the first component with Total, then we signed the MOU to support our growth strategy to roll out those service stations so aggressively. But while we were still busy with the MOU, finalising of the – finalisation of the MOU, we were hit by  
20 the media articles talking about the transactions and that also affected retail component because obviously we had to halt a bit and deal with the public spat with regards to the media with the transaction, so PIC at that point they said no, we must hold on a bit, deal with these media queries and then at a later stage then we can pursue it. The R300-million, it's still sitting there as a facility. We haven't drawn even a single cent, although the sites that we have identified are ready for the rollout.

**MR EMMANUEL LEDIGA:** And that amount, was it not part of the conditions precedent on the transaction?

**MR LAWRENCE MULAUDZI:** No.

**MR EMMANUEL LEDIGA:** That rollout of the units, of the retail units?

**MR LAWRENCE MULAUDZI:** It was not the conditions precedents. Actually it was just the cherry on top to us. We ask for more as compared to other bidders. Other bidders, they were bidding for... Most of the bidders, they were bidding to acquire. So with us, we were not bidding to acquire only. We bid to... We had to bid to acquire that interest and also come up with our own separate components to roll out the retail  
10 business so that we can generate more incomes to service quicker, much quicker, rather than to wait for dividends only.

**MR EMMANUEL LEDIGA:** And then the other question is on Sakhumnotho, the fee that they had. Would you know if they had advisers or not by the time you connected with them?

**MR LAWRENCE MULAUDZI:** Ja.

**MR EMMANUEL LEDIGA:** And also, what happened once you were in the KISACO consortium?

**MR LAWRENCE MULAUDZI:** Well, obviously after the merger we had to work closely to each other.

20 **MR EMMANUEL LEDIGA:** H'm?

**MR LAWRENCE MULAUDZI:** And we had a follow-up meeting with the PIC team, the deal team that was working in our transaction. And then Sakhumnotho brought their own advisers as well. So the head adviser called Sao Capital. (Indistinct)

**MR EMMANUEL LEDIGA:** It's in the statement, yes. Yes, I saw that, ja.

**MR LAWRENCE MULAUDZI:** It's spearheaded by the gentleman called Nana Sao.

So he was there at that meeting when we had to sit as two teams after the merger.

**MR EMMANUEL LEDIGA:** Oh, I see. And they got the fee? I mean, Sao Capital then got the – almost the similar fee as BnP Capital and all that?

**MR LAWRENCE MULAUDZI:** So what then happened is that obviously we had to split the fees 50/50.

**MR EMMANUEL LEDIGA:** Yes.

**MR LAWRENCE MULAUDZI:** Because our fees were sitting at about – were capped at about 50-million, but by bringing other components which had other commitments, because ours, they were working on risk basis ... (intervention)

10 **MR EMMANUEL LEDIGA:** Ja.

**MR LAWRENCE MULAUDZI:** So when we met with the other consortium they also indicated that they are on risk basis so they need to also service and they signed the mandate letter. Obviously that also impacted on the infiltration of the price – of the success – of the transaction fee by extra 50-million.

**MR EMMANUEL LEDIGA:** Ja. Ja. Alright. And then on paragraph 20 you mentioned, I think, in your last line on paragraph 20, that Dr Dan said – Dr Matjila, we call him Dr Dan – Dr Dan said, you know, there was another bidder and you found it quite strange that the PIC could have you on the one side and there could be another bidder. I mean, just elaborate further because I also find it quite strange that a funder  
20 can have two – can have one bidder and then put in another bidder.

**MR LAWRENCE MULAUDZI:** Look, Commissioner, when we were working on the deal obviously you interact with the deal team on a daily basis and obviously that deal team had to report to their senior – to the senior level of which I'm under the impression that they were doing so diligently, so when we were told that there's another bidder after we have signed the engagement letter... The engagement letter that we sign with

the PIC, it's like an exclusive... PIC... It's like the funder giving us exclusivity and it had the terms and conditions that if you don't successfully close this opportunity you have to pay. We are going to pay about 1.5% of the value of the transactions, which means the Kilimanjaro Capital directors, they were liable to pay the PIC the break fee. So it was a bit strange to us when you have that commitment and we had personal sureties that we pledged to the PIC, you know. So it was a bit surprising. How could it be...? How could we have another player on the same opportunity? It was a bit strange. But obviously we are not working for the PIC, we don't know the processes, and that is why we had to ask more questions, who are those other players, and I was  
10 introduced to those players and also asked a few questions if they have gone through the similar process that we went through. And that is the questions that needs to be posed to the deal team or to the PIC, if indeed they have gone through that processes and why we had to sign the engagement letter and commit our personal sureties. Is the other counterpart done so? It's not on our side, as the Kilimanjaro Capital.

**MR EMMANUEL LEDIGA:** The final question from me on this one. When you met Dr Matjila were you with somebody else? I mean the first meeting. Were you alone? Were you with somebody else? Did any person know him before then?

**MR LAWRENCE MULAUDZI:** Yes, I was with one of the directors from Kilimanjaro Capital. His name, is Sizwe Shezi. It's one of our directors if you look at the list of the  
20 directors that I've just mentioned just now.

**MR EMMANUEL LEDIGA:** Was he known to...? Were they knowing each other by any chance, Mr Shezi and Dr Dan?

**MR LAWRENCE MULAUDZI:** I'm not so sure if they've have been known to each other and how the meeting was set up.

**MR EMMANUEL LEDIGA:** H'm?

**MR LAWRENCE MULAUDZI:** Because we deliberated and we tasked one of our directors to facilitate that meeting and fortunately one – the director that we tasked to set up that meeting with the PIC was Sizwe Shezi. How he did it, how he got access there, I don't know.

**MR EMMANUEL LEDIGA:** I see also the meeting was not set up by you. It was set up by somebody ... (intervention)

**MR LAWRENCE MULAUDZI:** It was not really set up by me.

**MR EMMANUEL LEDIGA:** H'm.

**MR LAWRENCE MULAUDZI:** Because Kilimanjaro given responsibility to set up that  
10 appointment with the PIC to another director.

**MR EMMANUEL LEDIGA:** Yes. Yes. Alright. Okay. Thanks.

**MR LAWRENCE MULAUDZI:** Thank you.

**CHAIRPERSON:** Just one question relating to paragraph 28. In the middle of that paragraph, or the fourth line from the beginning of that paragraph, you say:

“It is unfortunate that this dynamic component of Tosaco – of the Tosaco transaction did not come to fruition. This, in our view, has a potential of creating black entrepreneurs who will own and operate service stations.”

Have you abandoned that idea?

20 **MR LAWRENCE MULAUDZI:** Ja, maybe just to elaborate on that one, Commissioner. The idea when we said we want to come up with new service stations, we wanted – our model was a bit different from other petroleum companies. We were saying we are going to identify, like, a group of young entrepreneurs, like 20, 20, 20 per service stations. Those who are their petrol attendants, we want those petrol attendants to – we wanted to turn the petrol attendants to become the shareholders of the service

station so that when they are working there, day and night shifts, they know that they are working for themselves, so we were going to assist them to identify those sites, give – set up the structure and we budgeted like 10 to R20-million per service station to say let's set up – we take them... Total was willing to take them through the training and everything so that they understand the business and we hand over that service station to that group of young entrepreneurs. For us, we are going to just share the proceeds with those petrol attendants in order to service the R300-million. That idea unfortunately is still on hold and as Kilimanjaro we are ready to hit the ground running because the MOU with the Total South Africa has been finalised. It's for... And there  
10 are sites that has been identified. Some are ready for rollout. So that idea is still on hold and we are still going to pursue it because that was part of the funding agreement that we requested from the PIC. Obviously it has gone past more than six months because I think if it's over six months it's just to go back to due diligence and go through that, of which we are not worried about that. We are more than welcome to go through that due diligence once more again in order to access that facility.

**CHAIRPERSON:** To me it's a great idea and I feel relieved that you say you haven't abandoned the idea. I hope you succeed.

**MR LAWRENCE MULAUDZI:** Much appreciated, Commissioner. Thank you.

**ADV JANNIE LUBBE:** Before we proceed to the next topic, Mr Commissioner, I have  
20 one question. Can you just have a look at paragraph 18 of your statement? And I want the commission to fully understand what is stated there. You had to sign an engagement letter which included a commitment fee of 1.5% of the funding amount. KiliCap was then given access to Project Atlas to virtual data room on 1 July 2015. Can you just explain to the commission, what is this virtual data room? Then... And then also, I think you've already stated that, but if the transaction was unsuccessful, if you

were unsuccessful in your bid you, as the directors, were committed to pay that 1.5% to the PIC. Can you just deal with that?

**MR LAWRENCE MULAUDZI:** Thank you. You see, PIC had to deploy resources to work with us and it's time-consuming because, you know, with our due diligence process it took about two to three months, and that resources, it put all the efforts in our opportunity transactions, so if we go back to PIC and play games with them to say that opportunity, this and that, and then we end up running away without valid reasons why are we walking away from the opportunity we would have wasted a lot of time for their resources. So they will ask you to make commitment, to say if you just walk away from  
10 this opportunity without valid reasons you will have to pay us 1.5% of the transaction value, which means Kilimanjaro Capital directors were liable to pay PIC R38-million if the deal collapsed unreasonably. That is that one. And then ... (intervention)

**ADV JANNIE LUBBE:** Can I stop you there? Can I take it a step further? If you didn't accede to form the consortium with the other party and you walked away you would have been in for that amount of money?

**MR LAWRENCE MULAUDZI:** That's correct, Commissioner. I would have been indebted. And that's where we were so worried and concerned.

**ADV JANNIE LUBBE:** So, to put it another way, there was a bit of a gun against your head?

20 **MR LAWRENCE MULAUDZI:** That's correct. And that's the industry standard, norm.

**ADV JANNIE LUBBE:** Then can you just explain to the commission: What is this virtual data room?

**MR LAWRENCE MULAUDZI:** The virtual ... (intervention)

**ADV JANNIE LUBBE:** Because it seems to me like a playroom or something that the kids go into.

**MR LAWRENCE MULAUDZI:** The virtual data room, Commissioner, in simple terms, it's a room where they come – I mean it's a room where Total, through Tosaco Consortium, unveil itself and put everything on the table to say I am dressing up, you can check anything about my company. So Total was exposed to the bidders so that we can go through and check if indeed it's a good investment or bad investment. So we were... It does... It's not open to everyone. So that is why, in the bidding process, you will go through the first stage where, like for instance, you will express interest and then you show commitment by submitting the potential supporting letters of funding, then they will open up to say, okay, we're opening up for only those ones who's got a non-  
10 binding offer. If who can go through my financial statements, my organogram, everything about Total and make commitment to say now I'm ready to buy or I'm ready to buy for this amount and then you negotiate a price from there. So we were given opportunity to do that could we walk away or could have known everything that has been going on with Total, and it's a high risk for that kind of a company. So it's given to listed few. So we were given that opportunity to go through it.

**ADV JANNIE LUBBE:** To put it in other terms, would it be correct to say that it's a modern way of doing a due diligence on that company?

**MR LAWRENCE MULAUDZI:** Yes. Yes, Commissioner. So we were doing the due diligence to check, indeed, the valuation is correct or incorrect. So indeed we came out  
20 positive and actually even the amount that you have paid, 1.7, it was a fair price. It never had premium because the valuation, independent valuation that was done by other independent valuer like PWC, it was sitting between about 1.650-billion to about 1.850-billion, the valuation, without premium. So we were not really worried. Actually we were very much happy that we managed to get it at that price.

**MS GILL MARCUS:** Judge – I mean evidence leader, if we could also just find out

whether there was such a commitment fee in place for Sakhumnotho?

**ADV JANNIE LUBBE:** We will do that.

**MS GILL MARCUS:** Okay.

**ADV JANNIE LUBBE:** Thank you, Mr Commissioner.

**MS GILL MARCUS:** And as I said earlier, the information on Sao Capital as well.

**ADV JANNIE LUBBE:** Mr Commissioner, before we proceed to the next topic is it convenient to take the tea adjournment now? Or must we proceed with the next topic?

**MR EMMANUEL LEDIGA:** In terms of that 1.5% break fee, did you – I mean, when you entered the contract to commit on this break fee didn't you sort of have an  
10 exclusive arrangement with the PIC that they cannot bring another consortium partner?

**MR LAWRENCE MULAUDZI:** That was our impression, Commissioner.

**MR EMMANUEL LEDIGA:** But it wasn't in writing in a contract? Or it was just ...  
(intervention)

**MR LAWRENCE MULAUDZI:** That engagement letter or agreement, Commissioner, it's written and I can provide a copy for it. It's written. It's an agreement, valid agreement, binding.

**ADV JANNIE LUBBE:** It will be provided, Mr Commissioner.

**MR EMMANUEL LEDIGA:** So... Yes. So basically this was like disregarded?

**MR LAWRENCE MULAUDZI:** For Kilimanjaro it was not disregarded. I don't know  
20 with the other parties, but we honoured that one, Commissioner. It still stands.

**MR EMMANUEL LEDIGA:** Ja. The PIC, ja.

**CHAIRPERSON:** I'm not sure if you're not speaking past each other. You might have been speaking past me, of course. I thought the question was wasn't there a written agreement that you have exclusivity, that another consortium won't be brought in?

**MR LAWRENCE MULAUDZI:** Thank you, Commissioner. That engagement letter, it

basically state that... I will have to go through and check one or two clauses and confirm with you, so I will provide the copy of engagement letter. Because once more you've entered into engagement letter on the transaction. I don't know if you can enter into another engagement letter on the same transaction, but... I don't know that part.

**CHAIRPERSON:** Yes, thank you.

**MR LAWRENCE MULAUDZI:** And for us, as Kilimanjaro, we honour it very well.

**CHAIRPERSON:** 15 minutes. Is that fine?

**ADV JANNIE LUBBE:** Thank you, Mr Commissioner.

**CHAIRPERSON:** We'll adjourn for 15 minutes.

10 **INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**ADV JANNIE LUBBE SC:** Thank you Mr Commissioner can we now proceed on the transaction fees?

**MR LAWRENCE MALAUDZI:** Thank you Commissioner. I now proceed to deal with the issue of Tosaco transaction fees.

“I was asked to address the Commission regarding the transaction fees of R100-million and the allegation that these fees were not approved by the PIC. It is indeed true that transaction fees of R100-million were paid relating to the Tosaco transaction. The fees are captured in the funding agreements in line with the approval resolution of board investment committee.”

20

**MS GILL MARCUS:** Sorry just on that and sorry to interrupt you. Can we ensure that we've got that board minute that reflects those fees?

**ADV JANNIE LUBBE SC:** Will do so Mr Commissioner.

**MR LAWRENCE MALAUDZI:** “At the outset I must state that the transaction fees are

unfortunately a direct consequence of the merger between KiliCap and Sakhumnotho. Prior to the merger KiliCap had engaged BNP Capital as transaction advisors on a risk based mandate. This mandate carried with it a success fee 2% excluding vat of the value of any funding provided by the PIC in relation to project Atlas 2. This practice is common in the investment space as the approved funding was for an amount of R1,7-billion. The advisory fees payable by KiliCap was approximately R38-million. In addition KiliCap anticipated that the legal fees incurred by the PIC will also need to be included in the transaction fees as well as the cost of preparing and submitting the relevant competition commission applications. KiliCap therefore estimated the transaction fees at R50-million.

After the merger with Sakhumnotho, KiliCap we were told that Sakhumnotho had similar risk based mandate with their transactional advisors. It was therefore agreed with the PIC that in order to allow the consortium members to meet their obligations to their professional advisors. Each of the consortium members will be allocated R50-million to cover transaction fees and that the consortium will be liable for the costs of the PIC legal representatives.”

I'll pause there Commissioner before I proceed to the next part.

20 **MR EMANUEL LEDIGA**: You are saying that the paragraph 31 that the fees were unfortunately a direct consequence of the merger. If you look sort of 100 million divided by 1,7 billion is about 5,8%, if I'm correct so you know. So it means that the PIC paid almost a 6% fee in total.

**MR LAWRENCE MALAUDZI**: Commissioner and I outlined there Commissioner. Our fee it was amounted to about R34-million, plus vat it went to about R38-million. So then

we estimated with regards to the regulatory authority in the Sadack region that we were dealing with, we just kept our fees at R50-million. That was before the merger.

**MR EMANUEL LEDIGA**: I agree with that one, so no it's fine, I'm clear, I'm clear there.

**MR LAWRENCE MALAUDZI**: Yes so obviously if we – if combined with the other party obviously it exceeds the figure – the expected figure of which I don't have the actual percentage how much ended up at the R100-million. But that was based on the merger.

**MR EMANUEL LEDIGA**: But to ask is that if we do the calculation and say this is a  
10 5% or 6% fee based on the transaction value wouldn't that be quite high to pay?

**MR LAWRENCE MALAUDZI**: I will agree with you Commissioner that that's not an industry standard for so much fees to be paid on a transaction. It's normally between 0,5% to about 2% if it's too high.

So more than 2% Commissioner I will regard it as high.

**MR EMANUEL LEDIGA**: So to add then, Sakhumnotho then seems it has really increased the fee quite a lot given your paragraph here – 31?

**MR LAWRENCE MALAUDZI**: That's correct Commissioner.

**MR EMANUEL LEDIGA**: Is that correct ja?

**MR LAWRENCE MALAUDZI**: That's correct Commissioner.

20 **MR EMANUEL LEDIGA**: Alright thank you.

**MS GILL MARCUS**: Can I just ask because my – your indication there is that it was 38 million for the transaction fee and around 12 million for legal, competition commission and other matters.

One would have assumed that both parties would not have had to do that, would they – Sakhumnotho also have had to do the same thing? I wouldn't have thought the legal

fees for the PIC would have been a duplicate. I would have thought that one of you doing it is sufficient?

**MR LAWRENCE MALAUDZI**: Yes Commissioner you'll bear in mind that these agreements and the fee structure was agreed prior to the merger. So when we merge obviously they were supposed to do their own processes but our process Commissioner was capped at R50-million. We never anticipated that there will be other components.

So we were only focussing on our own. So obviously because it's the same authority that we were undergoing then obviously it was supposed to be less. But due to the fact  
10 that the other component the other consortium also had their – they had committed to their advisors who were going to undergo that processes.

So obviously they were committed but as we were committed.

**MS GILL MARCUS**: Understand that the point I'm making is that the PIC or within that you had a legal fee to the PIC. Now the legal fee would have been – now you've got a consortium that is joined and therefore the legal fees should have been one thing for the two of you.

If you paid 10, 12 million I don't see why Sakhumnotho would have had to pay similarly for the same piece of work that you now want consortium in but perhaps the question then is not for you but for the team to look at and say exactly what was the fee paid to  
20 Sao Capital and how much was paid to the PIC. Because otherwise it looks out of the 100 million, 24 million went back to the PIC as legal fees. It doesn't seem to sit that well. But let's find out exactly what was paid there in that regard and I think your point about it being duplicate is a consequence of the consortium merging because both of you had obligations. That's clear.

But it just is – let's just clarify exactly who got what out of that 100 million, from both parties not just from KiliCap.

**ADV JANNIE LUBBE SC:** Just to make it also clear to the Commission. You talk about the success fee, it's a risk based mandate. So if it's not – if the deal doesn't come off they get nothing. But if the deal is done and it's successful there is a 2% success fee?

**MR LAWRENCE MALAUDZI:** That's correct Commissioner because we – when we appointed them – when we agreed to appoint BnP Capital we indicated to them that we have already committed through the engagement a letter with the PIC. So we don't  
10 have some more funds that we can commit to you.

Will you please - we had to plead with them to help us on a risk basis.

**ADV JANNIE LUBBE SC:** If I remember correctly BnP Capital was appointed on advice of Dr Matjila?

**MR LAWRENCE MALAUDZI:** Yes BnP was just the lead advisors. There were number of advisors below BnP.

**ADV JANNIE LUBBE SC:** Okay and we then proceed to the next topic Mr Commissioner, Ascendis Health transaction.

**MR LAWRENCE MALAUDZI:** Okay I will then proceed to the next item. The Ascendis Health transaction.

20 "In April 2015 Kilimanjaro was introduced to a company called Coast to Coast Capital – C to C by their then mandated advisors, Avior Capital Markets – Avior. Our understanding was that Avior was mandated that by C to C to find suitable investor to support the growth strategy and increase BEE participation in Ascendis Health Limited – Ascendis.

C to C were the founding shareholders in Ascendis and remain the largest shareholder in Ascendis after their listing on the Johannesburg Stock Exchange in 2013. KiliCap then attended a meeting with C to C and Avior in April 2015 where exploratory discussions were held about how a potential investment could be structured. It was decided that a new special purpose vehicle – an SPV will be incorporated as any potential funder will most likely insist that the investment be ring fenced. To this end a new company was incorporated to Sakara Health – Sakara. An investment consideration pack was then prepared for submission to the PIC for consideration and to test whether the PIC has an appetite for such a transaction.

10

This was sent to Dr Matjila on 28<sup>th</sup> May 2015. The proposed transaction at the time incorporated a direct investment in Ascendis through the issue of new shares resulting in an ultimate 10% to 15% shareholding and an investment in Bounty Brands. Another C to C company which had experienced impressive growth and had great potential. The transaction was structured as follows. The investment in Ascendis amounted to approximately R1-billion. The investment in Bounty Brands amounted to approximately R250-million. The PIC issued a non binding expression of interest to Sakara on 2 June 2015. This funding support remains subject to the PIC conditions including the outcomes from a due diligence exercise. An expression of interest letter together with the PIC's non binding funding support letter was forwarded to C to C on 4 June 2015.

20

On 16 June 2015 timesheets were received from C to C. The timesheets were shared with the PIC in preparation for a presentation at the PIC's management meeting for due diligence approval. On 17 June 2015 we were

also requested to provide full all the necessary information for the scoping report that was being prepared by the deal team. After reviewing the term sheets provided by C 2 C the PIC reverted to Sakara with a letter addressed to C 2 C indicating preferred structural changes to the term sheets in order to consider the investment. This letter also under scored the conditions of the PIC's potential funding including exclusivity, due diligence, regulatory approvals and the relevant approvals from the PIC's investment committees. It was after receiving the approval for due diligence to go ahead that an independent transaction advisor. BnP Capital was engaged with an engagement letter being signed on 30 June 2015. An engagement letter was also signed with the PIC. The due diligence on the investment commenced in early July 2015 with detailed analysis with all items included in the PIC's due diligence questionnaires. This was also challenging as the ultimate exposure was to a listed entity and as such the process continued for quite some time.

10

The formal due diligence exercise ultimately concluded with due diligence reports being finalised in September 2015 and the focus shifted to the PIC's review of their direct transaction agreement with C to C. The drafting on these agreements continued through towards the beginning of 2016. It was imperative that the PIC was completely comfortable with the transaction structure and the transaction agreements. However during that period the exclusivity Sakara had with C to C expired. When we approached them to grant an extension they indicated that they wanted to see Sakara's BEE more diversified and mainly limited to directors of KiliCap.

20

After some negotiations we agreed to broaden the BEE structure and this required us to amend agreements. We then went back to the PIC with a broader BEE consortium called Kifodile Health Investment Holdings – Kifodile. The PIC was formally approached again in June 2016 and we made all relevant submissions as required by the PIC deal team regarding the new consortium. Unlike the previous transaction Tosaco, this broadening of BEE was not a PIC instruction but we initiated it externally and informed the PIC. We also ensured that the PIC funding process is followed by taking the entire new consortium through the due diligence process again where the new structure had to be vetted by the PIC.

10

The transaction which was submitted for approval incorporated and investments in Ascendis of approximately R1,36-billion and an investment in Bounty of approximately R406-million. The UIF also took equity position in both transactions. 30% in the Ascendis transaction and 50% in the Bounty transaction. We were notified that this transaction was approved by the PIC at the end of June 2016. The PIC then appointed legal representatives to draft and negotiate the PIC's funding agreements. This agreement were concluded by the end of July 2016 with all conditions presidents fulfilled at that time and financial clause was reached.

20

At the time of concluding this transaction Ascendis had been experiencing acquisitive growth. As a business Ascendis has a healthy balance sheet. However despite the significant increase in the asset base earnings have not maintained the same growth pace. This is because the business is highly geared. Its current strategy now is to bring down total liabilities while also considering disposing some of its assets in line with the new strategic focus

communicated to the market last year. We believe that as the debt level is in the business are reduced and the new strategic focus is further implemented the share price will once again reflect investor confidence.”

I will pause there Commissioner so that I can take questions before I proceed to the next item.

**MS GILL MARCUS**: Thanks perhaps a couple of questions. You’ve again – first of all this was then in the situation with an overlap between the two funding submissions to the PIC because you had the Tosaco and you had this one which was roughly at the same time.

10 There was an overlap of time there?

**MR LAWRENCE MALAUDZI**: That’s correct Commissioner.

**MS GILL MARCUS**: So the PIC was quite comfortable with having two applications from you at the same time to consider? They didn’t raise oh we need to proceed with the one and then we can see at a due course. They were quite comfortable, they didn’t raise the question that there were two parallel submissions at the same time for funding.

**MR LAWRENCE MALAUDZI**: Commissioner I don’t – as far as I understand I don’t – I’m not sure if there is a limit of taking the transaction for investment to the PIC. So for us to put those transactions almost at the same time it was a none issue for us. I think  
20 ...[intervenes].

**MS GILL MARCUS**: It might have been a none issue for you but the question becomes you are a new entity, was there an added risk assessment from the PIC’s side because the exposure to you is not just 1,7 plus or 1,7 plus. It becomes double that with the two.

So the question for me would be not whether you've obeyed the application but whether there was an increased assessment of the risk profile given that you were a new company started at the beginning of 2015 and here these are huge, very big exposures that the PIC is considering.

So was there any discussion about risk and the question of both? Was there any time a discussion with you about both projects at the same time or not from the PIC's side?

**MR LAWRENCE MALAUDZI**: Well we never had that discussion and I think the PIC could be better off to explain the exposure on us.

**MS GILL MARCUS**: Sure no, I just wanted to know from your side if there was ever a  
10 discussion with you about these two entities at the same time?

**MR LAWRENCE MALAUDZI**: Ja also Commissioner as you had noted – maybe you noted in my statement that the target company at some point they were not comfortable to deal with only Kilimanjaro directors also. They wanted us to reconfigure the consortium.

Obviously the exposure or the risk on us it was not only in 1% but there were other new faces that were in the consortium although some of the directors are still there Commissioner.

**MS GILL MARCUS**: I think that if we could get the broad compassion of Kifodile.

**ADV JANNIE LUBBE SC**: It's noted.

20 **MS GILL MARCUS**: The second question for me again would be again, you used BnP as your transaction advisors. What fee were they paid and what was the legal fee to the PIC that was paid in this transaction of Ascendis?

**MR LAWRENCE MALAUDZI**: Ja it was also – it was on 2% fee, still on risk basis.

**MS GILL MARCUS**: Was the amount paid?

**MR LAWRENCE MALAUDZI**: The amount paid was about R19-million – plus minus R19-million for Ascendis and about R6-million for Bounty Brands. In total it was about 25 million.

**MS GILL MARCUS**: So about a two thirds of what the previous costs were?

**MR LAWRENCE MALAUDZI**: That's correct Commissioner.

**MS GILL MARCUS**: And legal fees to the PIC?

**MR LAWRENCE MALAUDZI**: The legal fees it was part of that R25-million combined because we had to pay for PIC legal fees on that amount.

**MS GILL MARCUS**: Okay so basically it was R25-million for what had cost you R15-  
10 million in relation to BnP – between BnP and legal fees?

**MR LAWRENCE MALAUDZI**: Yes Commissioner.

**MS GILL MARCUS**: So half.

**MR LAWRENCE MALAUDZI**: Yes, yes Commissioner.

**MS GILL MARCUS**: Okay and then I just wanted to ask – there was one other thing I want to ask you. Servicing of the loan?

**MR LAWRENCE MALAUDZI**: Yes we are servicing the loan Commissioner because what – how the transaction was structured. There was a direct investment of about R600-million and the debenture instrument that we structured in the transaction whereby the debenture instrument there is a convention for the next four years where  
20 we'll be paying plus or minus 200 000 per annum to increase our shareholding.

So the direct investment it was – we acquired roughly about 6% at the debenture instrument of about 800 million where it's going to convert on a yearly basis. So those funds that we had in a debenture instrument the interest has been serviced and immediately when we receive them then we push it to the PIC.

Ja whatever we receive from the – the interest we receive from that facility that is sitting there, we pass almost 90% of it to the PIC. Thank you Commissioner.

**MR EMANUEL LEDIGA**: Two questions from my side. In terms of your servicing of the debt or the company. Ascendis has been it – looking at the media report, it looks like it's got problems in terms of the share prices being down. As you say here debt has been higher.

So can you explain the performance of Ascendis Health in the past two years or so and whether they'd been able to pay dividends and all the issues there?

**MR LAWRENCE MALAUDZI**: I will partially answer that one because some of the  
10 information I will need to back it up. Maybe later on Commissioner. When we firstly approached Ascendis their market cap was sitting at about R4-billion sometime in 2015 and they were going through an aggressive merger and acquisition in the following two to three years.

Where the aggressive strategy at some point it pushed their investments at their market cap to about R13-billion. So when we did a deal by that time - when we reached financial closure sometime in 2016 it was sitting at about 8 to R10-billion market cap.

But in that structure for some of the assets that they were acquiring they realised that somewhere somehow they overpaid some transactions – some acquisitions they were not performing well.

20 But the enterprise – and then the share price drops – the share price dropped. But the enterprise value is still sitting at about – in the north of about 10 billion. Because I will tell you why – I will give you an explanation.

Of one of the assets that Ascendis has acquired is called Remedica. Remedica it's got prints in the European market. So the value it composed about 30% of Ascendis. The

valuation of the Remedica business on its own it's sitting at about R7-billion but when you look at the share price it doesn't match the value.

So and Remedica now if you have looked at the sense in the past few weeks, it's one of the assets that Ascendis is in the process of offloading it. Ascendis has received a non binding offer where currently they undergoing the due diligence.

That offer it's in the right price. I think it's in the right bracket of price of between close to about 400 to about 450-million Euros. So we strongly believe that offloading some of those assets it will obviously recapitalise the company because the company will be sitting with lot of cash in the balance sheet as compare to the status quo now where the  
10 balance sheet is highly geared with debt.

So I think after the restructuring process that we are going through it will definitely pick up the market.

**MR EMANUEL LEDIGA:** So meaning that there could be a chance that you will get the cash flow or special dividends to repay the PIC? Would that be correct?

**MR LAWRENCE MALAUDZI:** I think on that one Commissioner it also goes with the dividends policy of the company of which at the moment I don't really have the insights on it. But it could, it could be not.

**MR EMANUEL LEDIGA:** So are you saying that there is – I mean even though the share price has been down there is a chance that the PIC value you know that they've  
20 put in is still safe.

**MR LAWRENCE MALAUDZI:** Yes, yes, yes the value is still safe, ...[indistinct] is still down. Because you will understand Commissioner this sector it's one of the specialised sector. It's a pharmaceutical space and we've limited players in the pharmaceutical space. So we strongly believe that it will still come back.

**CHAIRPERSON:** Besides the debt that the PIC put in, the... Sorry. *Ja*. There was

some shareholding that the PIC took. So, there must be a hit there. Correct?

**MR LAWRENCE MULAUDZI:** Not... Yes. I will say... That is why I say, partially right, partially, you know. Because some of the funds are not yet utilised. It is – those funds are still sitting in the ...[indistinct] instrument. They have not converted yet and we are servicing those funds, even though we are – they are sitting in a ...[indistinct] instruments.

**CHAIRPERSON:** Yes, it is not looking as bad as I was thinking. So, thanks for...[intervenes].

**MR LAWRENCE MULAUDZI:** *Ja*, it is not as bad as you are thinking, because the  
10 share price can drop. Like, the share price can drop to less than R5,00 but the value of the assets that are sitting there, still maintain the good enterprise value.

**CHAIRPERSON:** *Ja, ja*. Let us talk about Bounty brands. Like, how is it going there, because we know the economy is terrible with retailers and consumer goods. How is it going? How is the evaluation going and the servicing there?

**MR LAWRENCE MULAUDZI:** You see, the Bounty brands, we do not have much of concern there. I think it is healthy. It is not over-performing, but it is just normal, because it focus on the FMCG. The First Moving Consumer Goods of which some of the products, you know, it is clothing, food. And you will always eat and you will always dress up and so forth and so forth.

20 So, currently, when we look at the value, market cap. It was sitting at about R5 billion and it is unlisted. And also, that shareholding that we are holding, it is very minimal. R406 million. I think we are sitting at about – I think it is about 10 percent or just below ten percent.

**CHAIRPERSON:** There is then a potential listing at some point in time, I guess.

**MR LAWRENCE MULAUDZI:** Yes, at some point we anticipating to list it on the

London Stock Exchange and also JSE, but that process is not moving as much, faster as we have thought. Maybe sometime at a later stage, but so far, that process is not really moving at the pace we expected that it will move at.

**CHAIRPERSON:** Just the final thing on the Kifodile Consortium. I am sure we will get, you know, the info. Who are the people there, roughly, just broadly? We know you, Shikara was key care people. Who are the people in Kifodile?

**MR LAWRENCE MULAUDZI:** We have got a couple of shareholders there. We have got Kinesh Pather. We have got Nklanipo(?) Group. We have got... But the list of the shareholders, I can provide. Because I will not be able to recap all of them now,  
10 because it is a bit... But it is not only the KiliCap directors. And some of the KiliCap directors, due to their BEE, they could not qualify. They were eliminated from the transaction.

**CHAIRPERSON:** Thanks. Thank you very much.

**MR MONNAHELA:** Thank you, Commissioner.

**MR LAWRENCE MULAUDZI:** Commissioner, I will then have to deal with the next component here. It is under relationship with Dr Matjila and Ms Pretty Louw. A few months after we have concluded the Ascendis transaction, I received a call from Dr Dan Matjila who wanted to introduce me to a lady by the name of Pretty Louw.  
He informed me that she was involved in the beauty sector. She owned a beauty salon  
20 and spa and requested that I source business opportunities and or participation for her in Ascendis as part of the company's enterprise development.

He also indicated that he felt that Ascendis will be more relevant as it was involved in the health, pharmaceutical and beauty space. I informed Dr Matjila that I was not aware of any such opportunities available in the business but will check and let him know.

A few months had passed without me getting back to Dr Matjila. I then received a call from Dr Matjila, requesting my urgent assistance. He advised that the same lady whom he had asked me to source a business opportunity for at Ascendis, was in financial trouble.

Her business had been attached by the sheriff of the court as she owed monies. He asked me to urgently come to her rescue by settling her debts. He also informed me that he was out of the country and he will send me the legal documents he had in his possession, that Ms Louw had sent to him.

He subsequently sent me the court documents served by the sheriff via Whatsapp application. On the very same day, I was contacted by Ms Louw who informed me that Dr Matjila had told her that I would urgently assist her.

I told her that I was uncomfortable with sending her cash directly and will be more comfortable paying the money to the sheriff for the intended purpose of rescuing her business.

We then agreed to meet the following day and went to the lawyers who had instituted an action against her business. She was with another lady, whose name I cannot recall, but I understood them to be friends and also work together.

I made an EFT payment of R150 000,00 to the lawyers' account. Ms Louw then contacted me the following day to advise me that the lawyers required the balance of the areas, before allowing them to go back to their business.

She told me that Dr Matjila had also informed them that I will settle the debt in full. I avoided her and delayed for a couple of days to make this payment, as I was hoping that she will get alternative assistance.

It became apparent that there was an expectation for me to settle the whole debt. It was then that I made the second payment to the same lawyers' account of R150 000,00

and I sent proof of payment thereof to Ms Louw. I also confirmed telephonically with Dr Matjila that I had done the payment as per his request.

At no point did I regard this as a loan. This was based on the request made by Dr Matjila. He had just asked me to urgently rescue Ms Louw. There was never any exchange about this being a loan or that I needed to discuss terms of such a loan with Ms Louw.

I also did not ask him too many questions, as he had informed me that he was abroad and this was an urgent matter. I wish to categorically state that I have never had a personal relationship with Dr Matjila.

- 10 I knew him as CEO of the PIC. So, when he made that request to me, it was only natural for me to comply with his request, as I have been funded by the PIC in my business ventures.

Although he did not force me to give the money to Ms Louw, there is no way I would have said no to the CEO of the PIC and it is also for this reason why I did not even question why he had chosen me to give money to Ms Louw.

In hindsight, I realised that I should have been bold enough to ask Dr Matjila why he solicited me to assist Ms Louw, given the negative, unfair and incorrect perception that this matter generated around me as a business man and the transactions I presented to the PIC for funding.

- 20 But truth be told as a business man. You never wanted to be ostracized by Dr Matjila. It is known in the investment space that his influence was significant. I am certain there are many people who can attest to this.

It must also be recorded that these payments did not come from Ascendis or Kifodile Health. They came directly from me. I further recorded that I did not do...Pardon me, Commissioner. I further recorded that I did not and do not have any relationship with Ms

Louw.

When we met after Dr Matjila's intervention, I recognised that I met her before her at a social environment. I did not have any other dealings with her. It was also not very clear to me what her relationship was with Dr Matjila and I never bothered to inquire, as I thought that will not be appropriate.

As set out herein, I do not have any other relationship with Dr Matjila and Ms Louw whatsoever. I will pause there, Commissioner to take some few questions, before I go to the last point.

**MS GILL MARCUS:** Can you just go back to paragraph 52? And is it possible for you  
10 to give us the date when that call from Dr Matjila came through? It does not have to be the exact day, but the month at least.

**MR LAWRENCE MULAUDZI:** Commissioner, if I can recall well it was sometime... I will say between the 12<sup>th</sup> until the 15<sup>th</sup>, when I made the payments, of October. It was around that time in 2016.

**MS GILL MARCUS:** I am talking about the first approach to give her business.

**MR LAWRENCE MULAUDZI:** Oh, the first approach to give her...[intervenes].

**MS GILL MARCUS:** To give her business. To say that Ascendis could... After you have concluded the Ascendis transaction on para 52, that you were requested to source business opportunities or her participation in Ascendis.

20 **MR LAWRENCE MULAUDZI:** My apologies, Commissioner. I cannot recall very well, but I think it was about – it was two or three months later. My apologies, Commissioner.

**MS GILL MARCUS:** That is not a problem, because the conclusion of Ascendis was... When did you conclude that deal? It would have been in the beginning of 2016.

**MR LAWRENCE MULAUDZI:** I think it was sometime in August. I mean, July/August

2016.

**MS GILL MARCUS**: 2016.

**MR LAWRENCE MULAUDZI**: Correct, Commissioner.

**MS GILL MARCUS**: So, roughly...[intervenes].

**MR LAWRENCE MULAUDZI**: Around October.

**MS GILL MARCUS**: October 2016.

**MR LAWRENCE MULAUDZI**: You mean the first...[intervenes].

**MS GILL MARCUS**: I am talking about para 52. The first time you were approached to get her...[intervenes]

10 **MR LAWRENCE MULAUDZI**: No, I think it was about a month later. It was sometime in July/August. I can double...[intervenes].

**MS GILL MARCUS**: Of 2016.

**MR LAWRENCE MULAUDZI**: Of 2016, Commissioner. I can double check and give that information.

**MS GILL MARCUS**: I think that just would be helpful in terms of the time line. How did you respond to this? I mean, you obviously did not respond immediately, but what – how did you interpret this call? Had you ever had a call like that from a funder before?

**MR LAWRENCE MULAUDZI**: I never had a similar call from a funder before.

20 **MS GILL MARCUS**: And how did you interpret that implication that Ascendis should find opportunities for a particular person? Would that have been acceptable to you?

**MR LAWRENCE MULAUDZI**: Well, I thought... Because, we as Kilimanjaro, we are very much aggressive on the enterprise development. If you can link to the previous transaction. So, I never thought it was – there was something really strange to go and ask for enterprise development because some of the conditions that we have given Ascendis, it is to get involved through enterprise development.

So, that is also in our ESG report to say that they must meet certain requirement targets within certain period. So, I never thought much about it.

**MS GILL MARCUS**: But this was the only instance that Dr Matjila raised with you to find that? It was not like he said: We have got all of these young entrepreneurs on our business and see how you can work with them. This was the only one.

**MR LAWRENCE MULAUDZI**: Yes, correct.

**MS GILL MARCUS**: Okay.

**MR LAWRENCE MULAUDZI**: *Ja*, she was the only one. Correct, Commissioner.

**MS GILL MARCUS**: Then the second question that I wanted to ask in that sense, is  
10 part of what you raised in para 61. That you felt... Did you feel...? Because you say you do not... No one who is a business man wants to ostracized by Dr Matjila.

Did you feel you could say no to this request to pay and was there at any point in time a suggestion that you assist in looking at the reasons why the business was failing, so that you are not just bailing out, but that you actually looking at whether this business is viable and what are the issues around it?

How do we make it sustainable? Was it simple the question of providing funding for it or assistance to a young entrepreneur to say: How can we help you with your business?

**MR LAWRENCE MULAUDZI**: *Ja*, it was the... For me, personally, because she was  
20 locked out. When I received a call, I had a meeting with her and then she explained to me in detail that some of her assets were locked in, that she was using them for her spa, for the beauty spa and the sheriff wanted the... I mean to.

She was in arrears. She was struggling to pay. So, for me, I was just doing it – for out of help. I was just assisting a young entrepreneur, so that she can get her goods. And the other thing that she told me, after she got the goods she was going to relocate to

get another space somewhere else, where she can pursue her business interest. I was just assisting to get her goods out of that premises and that was it.

**MS GILL MARCUS**: But the question is. You did not feel able to say no?

**MR LAWRENCE MULAUDZI**: No, no. I never thought of saying no. For me to receive a call from someone like Dr Matjila, by that time, it was a privilege and I had to honour the request.

**MS GILL MARCUS**: I would imagine there is going to be a lot privileges heading your way.

**MR MONNAHELA**: No, I have got a note next to paragraph 61 that says, it seems to  
10 me that you felt to be under pressure. Even though, you are saying, no, no, no. but it seems to me when you talk about you never want to be ostracized by Dr Dan and so forth, that you felt a bit pressured. That you have to help here. Am I wrong?

**MR LAWRENCE MULAUDZI**: Commissioner, you know, to be frank with you. R300 000,00 is not a small amount. More so, if you never budgeted for. You just receive a call to say: Will you please assist? And so forth and so forth. I felt a bit pressured, but then I had to stomach the pressure and live with it. He was not pushing me. I was never pushed, but I felt that I must go the extra mile.

More so, I could not be greedy after successfully being funded by such an institution. You know, to me it was... And I was able to assist. It is not like I could not afford. I  
20 could afford.

**CHAIRPERSON**: Question. You say that you do not have a relationship with Dr Dan. Dr Matjila. Or you never had it. Does any of your directors at KiliCap, did they have any relationship with Dr Matjila?

**MR LAWRENCE MULAUDZI**: Not that I am aware of.

**CHAIRPERSON**: Then the final one is on paragraph 62. You say that you did not meet

Ms Pretty Louw before or you did not realise that you have met her, but you say that you sort of realised later that you had met her before, all right. At some event. Maybe, can you tell us more about that? You know, was Dr Dan there or what?

**MR LAWRENCE MULAUDZI:** When Dr Matjila introduced me to her, I never thought... I did not know the lady. I thought... I never... Actually, I never met the lady at all. But when I met her, I realised that at some point I once went to a spa. You know, and I realised that I think I know this person. But not really, you know, just for social activities.

**CHAIRPERSON:** And at that spa, there was no meeting. There was no Dr Dan or  
10 other people.

**MR LAWRENCE MULAUDZI:** No, not at all, Commissioner.

**CHAIRPERSON:** Okay. No. You met her at the Durban July or whatever. It was a crowd.

**MR LAWRENCE MULAUDZI:** No, there was some few people there. Friends and so forth, *ja*.

**CHAIRPERSON:** All right. Okay, thanks.

**MR MONNAHELA:** You may proceed.

**MR LAWRENCE MULAUDZI:** Thank you, Commissioner. I will then proceed to my  
20 last topic which is the relationship with Ms Sibusisiwe Zulu. Another item I have been requested to deal with in my statement is my relationship with Ms Sibusisiwe Zulu.

This stems from an email that was circulated two months ago from an unknown source, James Noko. Making serious allegations about Ms Zulu. This was followed by various media articles which relied on this unknown source's email.

I can confirm that I have a love relationship with Mr Zulu. This is from my perspective, a serious and committed relationship and I consider Ms Zulu as my partner. It has

never been a secret and it is widely known that in 2018, Ms Zulu and I developed a close friendship that ultimately translated into a love relationship.

I connected with Ms Zulu at a social and personal level when I met her in Durban at a football game in November 2017. Before then, I had just known her as a reputable lawyer who was also a non-executive director at the PIC.

To my recollection, I had previously met Ms Zulu and introduced myself to her at the O.R. Tambo Airport sometime in 2016, but it was brief and we did not get an opportunity to engage further.

As a matter of fact, when I met her in Durban in November 2017, she did not have  
10 much recollection of us having previously met. It was at that football game in Durban that we discovered that we have common friends who were also in the football industry. Typically as a man who had developed interest in this very free spirited and vocally young lady, I started making follow ups and tried to connect with her. It was through our common friends that I managed to meet with her again at another social gathering. After that, I made it my mission to get to know her better as a woman. After a few dates, we discovered that we had common interest in doing community work. From there, we started planning activities together.

She even got involved in the community work that I do with my family for our village in Venda, which has namely indigenous residents. It ranges from taking care of orphans,  
20 empowering the youth and assisting adults to learn certain skills, so they can provide for their households.

When we solidified our love relationship later in 2018, we started attending public events together. We travelled together and spent a lot of time together, whether in public or in our private space. In essence, we do all activities that are done by a couple in a relationship.

This is known and there has been nothing untrue about it. I must be upfront and state that as a man I was chumped by meeting the young and more relaxed and not formal Ms Zulu.

To me, this was a completely different person to the reputation she holds in the professional circles. Ms Zulu is generally known as a no nonsense lawyer who is strict, formally independent, opinionated and not easily influenced.

I have observed and respect her professional attitudes and integrity, which inspires me as a man. But our relationship has been purely based on a personal level and I have not attempted to influence her professional views in any way and have never  
10 expected any undue influence from her through the position she holds, including at the PIC.

I also operate independently as a businessman. My deepest regret is that for the past two months she has had to face untruthful, baseless and fabricated allegations for an unknown source, called James Noko.

Her name as a professional has been unfairly tarnished. I wish to place on record and under oath that Ms Zulu has never influenced or benefited financially from me in the transactions concluded with the PIC.

To be specific. The allegation by the unknown source that I gave her R40 million from the R100 million which TOSACO receives in the Total deal is false. Simply arithmetic  
20 sequence says that if we as KiliCap paid about R38 million for fees and paid the other R50 million to Sakhumnotho.

There is no other party, including Ms Zulu that would have had received R40 million from us. Having dealt with the PIC, it is my understanding that it is the deal team that must find an investment proposal commercially viable in order for it to go through the approval processes.

I, therefore, find it difficult why anyone will think a non-executive director could have been part or influence such a process. In fact, I challenge anybody including James Noko to provide the commission with tangible information that shows Ms Zulu having influenced and financially benefited from the transaction that my company concluded with the PIC in 2015 and 2016, respectively.

In those years, I had not even dreamt of having a close relationship with Ms Zulu before we were in a love relationship with Ms Zulu. The unknown James Noko email creates an impression that Ms Zulu bought certain assets through money she got from me.

That is fabrication to the core and I am very disappointed to some of well respected  
10 citizens believing in such baseless information. I found Ms Zulu with an independent professional career and financially independent with her own assets.

As people who are openly in a relationship, she is entitled to drive my cars and come to my house anytime and I do the same with her. Insinuation that alleges that any undue influence and impropriety on her part in my interactions with the PIC, it is false fabrication.

From my assessment, it appears that there are faceless individuals who are trying to smear Ms Zulu's professional name by linking my business dealing with her, because of our personal relationship. Whilst I believe Ms Zulu is more than capable of defending herself and her reputation I want to state that it has been painful to see a young  
20 professional woman's name being unfairly dragged into the mud by unknown sources and my name being uses as a tool to do so. There is an effort to discredit her for having a relationship with me which only started in 2018. It is my hope that the work of the Commission will assist in clearing out this allegation so that people are not unfairly caused professional harm and are ultimately disabled from pursuing their careers because of the damage caused by these false allegations.

In my conclusion Commissioner I together with our company, Kilimanjaro Capital, remain committed to assisting the Commission with any other information that may be required. We also prepared to avail ourselves or supplement this statement should the need arise at any time, at any stage. I thank you Commissioner. Can I take your questions before we close?

**MS GILL MARCUS:** It's not as much a question but perhaps just for a point of emphasis that the Tosaco signoff was in December 2015 and the Ascender's signoff was in June 2016 is that correct from the PIC?

**MR LAWRENCE MULAUDZI:** Pardon the Tosaco, pardon me Commissioner?

10 **MS GILL MARCUS:** The Tosaco signoff the final signing off from the PIC was in December 2015?

**MR LAWRENCE MULAUDZI:** Correct.

**MS GILL MARCUS:** And that of Ascender Bounty was the signoff with the PIC was in June 2016 correct?

**MR LAWRENCE MULAUDZI:** Yes correct, correct.

**MS GILL MARCUS:** And you only started your relationship or getting to know Ms Zulu in November 2017 a full year and a half after those deals were closed?

**MR LAWRENCE MULAUDZI:** That's correct at a personal level Commissioner.

**MS GILL MARCUS:** At a personal level.

20 **MR LAWRENCE MULAUDZI:** At a personal level.

**MS GILL MARCUS:** No we're not talking about having met her, but at a personal level that began in 2017?

**MR LAWRENCE MULAUDZI:** Correct Commissioner.

**MS GILL MARCUS:** And your relationship in fact began in 2018?

**MR LAWRENCE MULAUDZI:** Yes that's correct Commissioner.

**MS GILL MARCUS:** I think that's really important because notwithstanding that allegations can be made about people's assumptions especially when they are anonymous as they have been through the James Nogu e-mails I think it behoves us as a society to respect the privacy of people and I think that your having come here and had to set this out for me is, you know I almost want to apologise to you for having to do it. There's a difference between an allegation that needs to be investigated about something that's wrong a targeting of people in their personal capacity and their personal relationships which is a private matter and should remain that and I think that you are owed an apology, certainly from people who have speculated about this

10 because as I say I'm drawing a distinction between allegations that need to be investigated and an invasion of privacy at a personal relationship level which to me is absolutely unacceptable and I think that there should be an apology to you and certainly on behalf of having to sit here and listen to this and commend you having raised it in the manner that you have, I would like to apologise to you for having to have to expose you to doing that.

**MR LAWRENCE MULAUDZI:** Apologies accepted Commissioner, unfortunately that's how the South African society work. If you remember Commissioner I never issue any statement, media statement before. I kept quiet, it has been going through hurting my name, tarnishing my future by the business information. So but I really appreciate

20 Commissioner that finally you called me upon so that I can clear my name, I really appreciate it, thank you Commissioner.

**CHAIRPERSON:** Yes thank you so much for your time Mr Mulaudzi and thank you too for your offer in your last paragraph that you are prepared to provide us with whatever information we may require from you in future, thank you for that offer.

**MR LAWRENCE MULAUDZI:** Thank you, you are welcome Commissioner.

**CHAIRPERSON:** Thank you so much.

**ADV JANNIE LUBBE SC:** Thank you. Mr Commissioner we have one more witness. Is it perhaps a convenient time to take the lunch adjournment now that we can start at one o'clock or quarter past one and finish the other witness or would you prefer for us to immediately carry on with the other witness?

**CHAIRPERSON:** Let's make it half past one, let's come back at half past one.

**ADV JANNIE LUBBE SC:** Thank you Mr Commissioner.

**CHAIRPERSON:** I'm sorry about that, we'll adjourn until half past one.

**INQUIRY ADJOURNS**

10 **INQUIRY RESUMES**

**CHAIRPERSON:** Yes, Mr Monnahela?

**ADVOCATE ISAAC MONNAHELA:** Thank you, Mr Commissioner. Mr Commissioner, our next witness is Mr Benedict Mongalo. He is here. If I may explain, Commissioner? We're... Today we're only calling him in respect of the Tosaco deal. We will call him in respect of the other deal at a later stage. He is ready to take the oath.

**CHAIRPERSON:** Ja. Sir, your full names?

**MR BENEDICT MONGALO:** Thipana Benedict Mongalo.

**CHAIRPERSON:** Benedict Mongalo?

**MR BENEDICT MONGALO:** That's correct, Commissioner.

20 **CHAIRPERSON:** Do you have any objections to taking the oath?

**MR BENEDICT MONGALO:** I have no objections, Commissioner.

**CHAIRPERSON:** Do you swear that the evidence you're about to give will be the truth, the whole truth and nothing but the truth? Raise your right hand and say 'so help me, God'.

**MR BENEDICT MONGALO:** So help me, God.

**CHAIRPERSON:** Thank you. You may be seated.

**ADVOCATE ISAAC MONNAHELA:** Mr Mongalo, you have made a statement which will form part of your evidence before this commission. Or before we even start with your evidence, can I ask you these questions: Did you make the statement voluntarily?

**MR BENEDICT MONGALO:** Yes, I did.

**ADVOCATE ISAAC MONNAHELA:** Did anyone force you to say things in your statement that you did not agree with?

**MR BENEDICT MONGALO:** No, Commissioner, it was voluntary.

**ADVOCATE ISAAC MONNAHELA:** Yes. May I then ask you to start with your  
10 statement at paragraph 1?

**MR BENEDICT MONGALO:** “I am an adult male, currently employed by the  
Public Investment Corporation SOC Ltd, PIC, as a Fund Principal  
in the Impact Investing Division. I have been employed by the PIC  
since September 2012 and have held various job titles and  
responsibilities in the Risk, Private Equity and Impact Investment  
Division. My qualifications include a Bachelor of Commerce  
accounting degree, a financial services diploma in credit risk and a  
Master of Business Administration, MBA, degree.

20 I have been requested by the staff members of the judicial  
commission of inquiry to provide a statement in respect of my role  
and/or involvement in the Total South Africa Consortium, or  
Tosaco, transaction that was approved by the relevant committee  
of the PIC. In providing the facts contained in this statement I  
have relied on certain email communication that was exchanged  
with the transaction sponsors, their advisers and the PIC

transaction team members. The facts contained herein are, to the best of my knowledge, belief and recollection, true and accurate and pertain solely to facts in respect of my involvement on the Tosaco transaction.”

**CHAIRPERSON:** You say in paragraph 4 that you have relied on certain email communication that was exchanged with the transaction sponsors. I assume it's between you and them.

**MR BENEDICT MONGALO:** That is correct, Commissioner.

**CHAIRPERSON:** Yes, okay.

- 10 **MR BENEDICT MONGALO:** My involvement in the Tosaco transaction commenced on the 30<sup>th</sup> of June 2015 when I received an email from Mr Ernest Nesane, who was then the Executive Head of Legal, which contained a letter of support issued to Sakhumnotho Group Holdings, or Sakhumnotho, in support of their intended bid for a 91.8% equity interest Tosaco. I have attached a copy of the letter of support and the email received marked as Annexure A for ease of reference. Two days later, on the 2<sup>nd</sup> of July, I received a further email from Mr Nesane, which contained a letter from Nedbank Capital, who I believe had been mandated as corporate
- 20 advisers on the Tosaco transaction, dated 1<sup>st</sup> July 2015, confirming the shortlisting of Sakhumnotho into phase 2 of the Tosaco sale process. On the 3<sup>rd</sup> of July 2015 the chairman of Sakhumnotho, Mr Siphon Mseleku, sent an email requesting a meeting with the PIC to discuss the way forward on the transaction and also indicated that he had appointed Mchunu Attorneys and

Sao Capital to assist Sakhumnotho with the legal and valuation due diligence exercises respectively. It was at this point that Mr Nesane responded on email, advising Sakhumnotho that I will henceforth be the responsible person for the transaction. I accordingly assumed the role of the lead transactor on the proposed transaction on that day. Between the 3<sup>rd</sup> of July and 31<sup>st</sup> of July 2015 I had various discussion with the members of the Sakhumnotho team as well as their advisers. My discussions, in particular, were with Sao Capital, who had prepared a valuation for Sakhumnotho which was to be used for the purpose of their final bid of Tosaco. To the best of my recollection the discussions with Sakhumnotho and Sao Capital centred around the following: One, valuation: Understand the assumed valuation versus the publicly-available intrinsic valuation of the asset, which was assumed by the JSE-listed Remgro Ltd in their annual report. Inter alia Remgro owned 25% of the asset at that time. The second thing was the due diligence, the due diligence information and the progress of their due diligence exercise, including scheduled meetings with management of Tosaco. And lastly, their bidding strategy, or the overall bidding strategy. Whereas the progress of their due diligence was of interest to me, given that if they were to be successful in the bidding process I would also require to look and satisfy my work in – myself into their work, it is worth noting that I did not participate in the due diligence process conducted by Sakhumnotho. The primary reason for our non-participation in

their due diligence process is that they were not yet awarded the preferred bidder status at that stage. And further, the Portfolio Management Committee, Unlisted Investments, PMC1, had not provided approval to participate in the due diligence process. On 30<sup>th</sup> July 2015 I received an email from Mr Nesane which contained a letter from a consortium which included Sakhumnotho and another entity named Kilimanjaro Consortium (Pty) Ltd, Kilimanjaro. The letter, which was addressed to the Chief Executive Officer of the PIC, indicated that the two companies, Sakhumnotho and Kilimanjaro had resolved to merged their consortia and had established a new consortium to bid for the acquisition of Tosaco. I attached a copy of the aforementioned letter marked as Annexure B for ease of reference. My understanding is that Kilimanjaro earlier also approached PIC with a proposal to fund their intended acquisition of Tosaco and that specific...”

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Just an insertion.

“...that specific proposal was under consideration by other colleagues in the Impact Investing Division, then called the Developmental Investment Division. Pursuant to receiving the aforementioned letter referred to in paragraph 11 I proposed that a meeting with the two companies, Sakhumnotho and Kilimanjaro, be convened together with the respective PIC representatives. The purpose of the meeting was primarily to discuss the way forward on the transaction in light of the newly-established

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consortium. The agenda that was proposed for the meeting included the following:

1. Introduction of the merged consortium to the PIC deal team.
2. Update by the consortium of its bid submission and key salient features of the consortium merger.

And lastly, the PIC approval process henceforth. The meeting was held on the 3<sup>rd</sup> of August. To my recollection, during the meeting the consortium advised us that the rationale for the measure was that the respective entities collectively believed that the merged consortium offered them better prospects of securing the Tosaco transaction in light of their BBBEE credentials in the merged entity. The entities were further of the view that their interests were aligned in respect of the Tosaco transaction. Following the meeting of the 3<sup>rd</sup> of August 2015 my involvement in the Tosaco transaction ceased and I was not required to proceed with an evaluation or assessment of the Tosaco transaction.

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So, Chair, in conclusion, the purpose of my statement is really to provide a detailed account of my role and/or involvement in the Tosaco transaction, and as can be gleaned from my statement contained herein, my role in respect thereof was primarily in respect of an initial assessment of the Sakhumnotho proposal, the exchange of the email communication and the attendance of meeting, which ceased upon the merging of the entities.”

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**ADVOCATE ISAAC MONNAHELA:** Okay. If I may ask you this question: Was it the first time that Sakhumnotho was approaching the PIC? Or was it the first time that

Sakhumnotho had a relationship with the PIC?

**MR BENEDICT MONGALO:** Through you, Commissioner. Sakhumnotho had an existing relationship with PIC emanating from a transaction that was concluded in 2012 wherein the PIC underwrote a call option agreement to Mpilo Financial Services, a subsidiary of Sakhumnotho.

**ADVOCATE ISAAC MONNAHELA:** Okay, what led to that call option? If maybe you could explain to the commission in detail about that relationship?

**MR BENEDICT MONGALO:** Okay. Commissioner, let me firstly qualify it by I was not intimately involved in the transaction that related to the call option, but my  
10 understanding is that PIC acquired an equity in Ecobank Transnational Incorporated ETI and as part of that transaction Mpilo Financial Services was given a call option for about 10% – or 50% of the shares that PIC had acquired in Ecobank.

**ADVOCATE ISAAC MONNAHELA:** Okay. Do you know how the PIC came to know about the Ecobank deal?

**MR BENEDICT MONGALO:** I am not sure, Commissioner. I do understand that Mr Mseleku was involved in that particular transaction and based on the call option that was concluded he may be the person that referred the transaction to PIC. But as I've said, I'm not quite intimately involved on that transaction so I'm not certain of the facts there.

20 **ADVOCATE ISAAC MONNAHELA:** Are you aware that Mr Siphon Mseleku was – or at one stage became a member of the board of Ecobank?

**MR BENEDICT MONGALO:** That is correct. I'm aware of that.

**ADVOCATE ISAAC MONNAHELA:** Do you perhaps know how – or do you perhaps know the basis of him becoming a member of the Ecobank board?

**MR BENEDICT MONGALO:** Through you, Commissioner, no. I must, however,

indicate that the structure wherein we have funded with – well, we have sold a call option to a sponsor in some instances the PIC does nominate those – that sponsor to sit on the board of that investee company. But I'm not sure if those are the facts in respect of the Ecobank transaction.

**ADVOCATE ISAAC MONNAHELA:** So the call option, in my understanding a company can choose to exercise the option or it can choose not to exercise the option.

**MR BENEDICT MONGALO:** Through you, Commissioner. That is correct. So the call option is essentially an agreement that affords a party to acquire the shareholding – or the instrument at a later stage at a predefined price, so it's a financial derivative instrument.

**ADVOCATE ISAAC MONNAHELA:** So even before the PIC knows whether a part – or a company will exercise the option it can still nominate a member of that company to the board of an investee company?

**MR BENEDICT MONGALO:** So, through you, Commissioner, I think the issue of the appointments on the board is the – ultimately the prerogative of the directors or Affairs Committee of the PIC, which is a subcommittee of the board, and if there is a view that a sponsor – or an individual should be nominated on a particular it will go through that process, which would include recommending that individual to the directors or first committee, taking into account whatever skills they have got. In this particular instance wherein an individual may have an interest it may also be a factor to be considered in nominating that person.

**ADVOCATE ISAAC MONNAHELA:** Let's move to the issue of the due diligence in respect of Sakhumnotho. I know you no longer took part on that transaction after the 3<sup>rd</sup> of August. Do you know if any due diligence was conducted in respect of Sakhumnotho at all?

**MR BENEDICT MONGALO:** Commissioner, I am not aware. I ceased being involved in the transaction on the 3<sup>rd</sup> of August and a separate transaction team proceeded with the transaction, which was ultimately approved and finalised, so I don't know what happened thereafter.

**ADVOCATE ISAAC MONNAHELA:** Mr Commissioner, if I may just bring this to the attention of the commission, there is an employee of the PIC who was involved after Mr Mongalo no longer became involved. We intend to call him to testify before this commission. Let's move to the issue of the transaction costs. According to the evidence placed before ... (intervention)

10 **MS GILL MARCUS:** Sorry, can I just ask an additional question when you – while you're looking at that? Because it would be, first of all, was a due diligence ever done? But, second of all, was the – what – the approval, was approval ever obtained from the PMC Unlisted Investments PMC1 for the involvement of Sakhumnotho? So if you are finding out about that, if we could add that in to the question?

**MR BENEDICT MONGALO:** Commissioner ... (intervention)

**CHAIRPERSON:** Did you want to answer?

**MR BENEDICT MONGALO:** Yes. I wanted to say that during my involvement, up until the merged consortium, we had never performed due diligence. As I've indicated, we had never gone to the stage where we would approach PMC1 to obtain approval to go  
20 to due diligence.

**MS GILL MARCUS:** Prior to the consortium coming together, the two, Kilimanjaro – or KiliCapital (*sic*) and Sakhumnotho, there had been no due diligence on this part of Sakhumnotho?

**MR BENEDICT MONGALO:** That is correct, Commissioner. We were afforded the access to the virtual data room but we did not do the due diligence. As I have indicated

in my statement, the due diligence was going to be of interest to us if they were to be awarded the preferred bidder, but we did not conduct the due diligence.

**MS GILL MARCUS:** And then what exactly was Sao Capital's role if it wasn't part of due diligence and so on? What were they paid to do if they were the transaction adviser for Sakhumnotho?

**MR BENEDICT MONGALO:** Commissioner, through you. I do not know. I do not have the details of the payment of their fees but I could talk about my engagement with them. They provided us with the valuation which they were – which they had prepared for Sakhumnotho, which was obviously of interest to us – or to me if I was to proceed with  
10 the transaction. So I am aware that they were the financial advisers to Sakhumnotho and, as I have indicated, they also had a law firm, Mchunu Attorneys, that was attending to their legal due diligence.

**ADVOCATE ISAAC MONNAHELA:** Okay, let's move to the issue of the transaction costs. According to Mr Mulaudzi the consortium, that is the Kilimanjaro/Sakhumnotho consortium, was granted a fee of R100-million as transaction costs. Do you have any view on the issue, whether the amount was correct or not? Or whether they should have...? We have heard that the industry norm is 1%. What is your view on the R100-million that was granted to the consortium?

**MR BENEDICT MONGALO:** Commissioner, the industry norm in relation to fees is  
20 generally between 1 and 2%. However, that fee tends to be negotiated on a downward scale in the event that the amount is higher. Now, from what I have heard, on an amount of R100-million on a R1.7-billion, it's roughly about 5.8% or close to 6%, so I guess my comment would simply be that it is higher than the market norm, but I don't know what were the reasons.

**CHAIRPERSON:** The market norm, you say, is between...?

**MR BENEDICT MONGALO:** Between 1 and 2%.

**ADVOCATE ISAAC MONNAHELA:** And what Mr Mulaudzi said also was that they shared – the two companies shared the R100-million. Now, if the norm is 1 – between 1 and 2% would the transaction fees be ... (indistinct) to each company – or granted to each company, especially after the merger? Or would the norm still be 1 to 2%?

**MR BENEDICT MONGALO:** Sir, Commissioner, let me, I mean, let me start by saying that the issue of fees, although it is 1 to 2%, the norm, the way we typically structure them is that it is part of your loan, so it's not like the PIC is paying it. So the PIC has got to – or the total amount that needs to be repaid to PIC is the principal loan, so it will  
10 be that 1.7 in this particular instance, plus the R100-million, so what the borrower needs to pay to PIC is a R1.8-million principal amount. However, I do think that it is still the responsibility of the lender to establish the reasonability thereof and in this particular instance, as I understand, there may well have been the reasons to pay the higher amount, but it will need to be repaid as R1.8-billion. So the loan is R1.8-billion.

**ADVOCATE ISAAC MONNAHELA:** Commissioner, I have no further questions.

**CHAIRPERSON:** The one question is on: You, what department were you in when you looked at the transaction? Because it seems there was another transaction, similar transactions, in the Impact Investing Division.

**MR BENEDICT MONGALO:** Through you, Commissioner. I was in the Impact  
20 Investment Division as well.

**CHAIRPERSON:** So one transaction being followed by two transaction teams within one division. Is that correct?

**MR BENEDICT MONGALO:** That is correct, Commissioner.

**CHAIRPERSON:** Is that how it's done? I mean, can you explain further how it arose and all that?

**MECHANICAL INTERFERENCE (00:24:35 – 00:26:55)**

**MR BENEDICT MONGALO:** So, Commissioner, I need to say that it's not an ideal situation, but it does happen that we do have the same transaction being pursued by one organisation, and it happens quite often in the banks. But it is important to create a virtual information barrier in that there may well be instances where one party know what the other party is bidding for and that obviously creates problems. In this particular instance myself and the transaction team that was looking at the Kilimanjaro transaction, we both reported to Mr Roy Rajdhar as the Executive Head of ... (indistinct) Developmental Investments at the time. But how the transaction came ... (indistinct) did not come through Mr Rajdhar, and as I understand, he wasn't aware of the transaction up until ... (indistinct) the consortium. The transaction, as I have indicated, came through Mr Nesane, who, at the time, had issued the expression of interest – or the lack of support through a different consortium to the Sakhumnotho consortium. I wasn't aware that, you know, the other team was taking on a separate consortium, but certainly when it came to merging the consortium I then handed it over to them given that they had – in terms of the process they were a bit ahead of us – or they were ahead of my ... (indistinct) team.

**CHAIRPERSON:** Does it happen that you would have the PIC looking at two consortiums, sort of two consortia to fund in one transaction? Is that right?

20 **MR BENEDICT MONGALO:** Through you, Commissioner. Yes, it does happen. So, as I've indicated, it also happens quite a lot in the banks, but what typically happens is that a transaction like Tosaco has a transaction that has been on the market, so we knew about it, and typically PIC gets approached by multiple sponsors looking at funding for that transaction. Now, at that point none of them has got exclusivity on the transaction so all of them are bidding for the action. I do know that it's the – it's not

policy, but I think the PIC committees, certainly the management teams, or the Portfolio Management Committee, always advises that we should only get involved as PIC once the sponsors have got the preferred bidder status. The challenge with that is that it creates a chicken and egg situation because the sponsors requires the letter of support for them to go into the bidding process. So there are instances where we do provide a letter of support to multiple parties with a view that should any of them be selected to the preferred bidder we will then continue with that consortium.

**CHAIRPERSON:** Alright. Okay. So that's the, you know, the answer we were looking for in terms of the rationale for talking to two consortiums. Ja?

10 **MR BENEDICT MONGALO:** That is correct. I think that's what we would typically do. I guess in addition to that we would put exclusivity – or to be afforded the exclusive status in the event that either of the parties gets awarded the preferred bidder status.

**CHAIRPERSON:** Is that it, Mr Monnahela?

**ADVOCATE ISAAC MONNAHELA:** Can I just ask one last question, Mr Commissioner? At paragraph 14 of your statement you say that you were advised that”

20 “The rationale for the merger was that the respective entities collectively believed that the merged consortium afford them better prospects of securing the Tosaco transaction in light of the BBBEE credentials in the merged entity.”

If I may ask you this question: Did Kilimanjaro, that is KiliCap, need to merge – or was there a BEE status such that they needed to merge with Sakhumnotho?

**MR BENEDICT MONGALO:** Commissioner, there was an improvement in the BBBEE credentials partly from an ownership perspective. So Sakhumnotho was a 100% black-owned company and Kilimanjaro wasn't. Now, to the extent that you merge both of

them you were getting a slightly higher BEE ownership. But I'm not certain that that is the reason enough to, you know, to warrant the merger. I think both of them were majority black-owned. So there was an improvement, but I'm not certain that it was improving it to that extent.

**ADV ISAAC MONNAHELA**: That's it from me Commissioner.

**MS GILL MARCUS**: I think that what I would ask you perhaps to do as part of the evidence team is to give us a profile of Ecobank. Exactly who had been involved? The question of Sekgoela being on the board. The arrangements to get the PIC involved in it.

10 Who else served on the board? What was the amount of the investment? How has that worked out? So we get a profile of Ecobank for ourselves and we can then decide what we want to do about that.

**ADV ISAAC MONNAHELA**: We will do so. We will do so Commissioner.

**MS GILL MARCUS**: Thank you.

**COMMISSIONER**: Or are you in a position to tell us Mr Mongalo?

**MR BENEDICT MONGALO**: No Commissioner as I've indicated I wasn't really involved in that transaction so I don't know much details.

**MR EMANUEL LEDIGA**: Commissioner if I may. There is a question that I forgot to ask. Apart from the Ecobank transaction and the Tosaco transaction is there any other  
20 transactions that you know about involving Sakhumnotho?

**MR BENEDICT MONGALO**: Yes Commissioner so I think the transaction for Ecobank essentially – the call option was never exercised and that effectively expired. So there is no exposure for PIC there. Then there was the Tosaco transaction and there is another properties transaction which was done with Sakhumnotho.

So those are the two transactions I'm aware of.

**MS GILL MARCUS**: Sorry what was the third one?

**MR BENEDICT MONGALO**: Sakhumnotho properties when they were funded to acquire properties.

**MS GILL MARCUS**: And what was the amount of that one?

**MR BENEDICT MONGALO**: It was R555-million.

**MR EMANUEL LEDIGA**: And the second one, the one before this one?

**MR BENEDICT MONGALO**: It was the Tosaco. So the first one was the Ecobank which never materialised given that it was ...[intervenes].

**MR EMANUEL LEDIGA**: [Indistinct].

10 **MR BENEDICT MONGALO**: And then I'm aware of the Tosaco transaction ...[intervenes].

**MR EMANUEL LEDIGA**: The Tosaco one, okay that's correct. This is the second one ja.

**COMMISSIONER**: What was that amount?

**ADV ISAAC MONNAHELA**: The properties 500 million hey?

**MR BENEDICT MONGALO**: [Indistinct] R555-million.

**MS GILL MARCUS**: Do you know when that was done?

**MR BENEDICT MONGALO**: Commissioner I'm not certain of the dates but I think it would have been immediately after the Tosaco transactions given that when we were  
20 dealing with the Tosaco transaction I was also talking to them on the properties transaction.

**MR EMANUEL LEDIGA**: And the properties what were they for? Was it new buildings or transfer, buying other buildings or purchasing a stake in a property company? What was the transaction?

**MR BENEDICT MONGALO**: So one of the subsidiaries of Sakhumnotho Group Holdings is Sakhumnotho Properties, a property investments company and we were funding them to acquire three properties – three existing properties.

**COMMISSIONER**: Well if that's it thank you very much Mr Mongalo, thanks for your time and thanks for the information that you've placed before us.

**MR BENEDICT MONGALO**: Thank you Commissioner.

**COMMISSIONER**: Okay.

**ADV ISAAC MONNAHELA**: Commissioner that concludes the business of the day.

**COMMISSIONER**: Does that mean we'll adjourn until Monday?

10 **ADV ISAAC MONNAHELA**: Yes Mr Commissioner.

**COMMISSIONER**: Okay what date is Monday?

**ADV ISAAC MONNAHELA**: I think it's the 1<sup>st</sup> Mr Commissioner.

**COMMISSIONER**: Yes. Should we be here? Yes we'll adjourn then for this week until Monday April 1 at 10:00.

**INQUIRY ADJOURNS TO 1 APRIL 2019**