

COMMISSION OF INQUIRY OF THE PUBLIC INVESTMENT

CORPORATION

HELD AT

TSHWANE, PRETORIA

10

17 APRIL 2019

DAY 30

20

PROCEEDINGS HELD ON 17 APRIL 2019

CHAIRPERSON: Good morning, everybody.

ADV JANNIE LUBBE SC: Good morning, Mr Commissioner and members. Mr Commissioner, we are ready to proceed. Our witness is Mrs Nahied Gamaldien. She is represented by Mr John Riley, who can perhaps just place himself on record.

MR JOHN RILEY: I confirm that I appear for Ms Gamaldien.

CHAIRPERSON: Can I just get your name again?

MR JOHN RILEY: John Riley.

CHAIRPERSON: John Riley. As in R-i-l-e-y?

MR JOHN RILEY: That is correct.

ADV JANNIE LUBBE SC: We have been presented by a written statement by the witness, Mr Commissioner that has been prepared by Mr Riley and the witness. She is ready to take the prescribed oath.

CHAIRPERSON: Do you have the signed version?

ADV JANNIE LUBBE SC: Yes, we do have, Mr Commissioner.

CHAIRPERSON: Morning, Ms Gamaldien.

MS NAHIED GAMALDIEN: Morning, Mr Commissioner.

CHAIRPERSON: Do you have any objection taking the oath or affirmation?

MS NAHIED GAMALDIEN: No objection, Mr Commissioner.

CHAIRPERSON: Well, which one shall it be?

ADV JANNIE LUBBE SC: The oath? Do you want to take the oath?

MS NAHIED GAMALDIEN: I will take the oath.

CHAIRPERSON: Thank you. Do you swear then that the evidence you shall give, will be the truth, the whole truth and nothing but the truth?

Raise your right hand and say, so help me God.

MS NAHIED GAMALDIEN: So help me God.

NAHIED GAMALDIEN: (d.s.s.)

CHAIRPERSON: Thank you. You may be seated.

ADV JANNIE LUBBE SC: Thank you. Ms Gamaldien, just for the record. You are still in the employ of AYO Technologies?

MS NAHIED GAMALDIEN: That is correct.

ADV JANNIE LUBBE SC: What is the position that you presently hold in that company?

MS NAHIED GAMALDIEN: I am the executive, responsible for business transformation.

ADV JANNIE LUBBE SC: Is it correct that you were the chief financial officer of this entity?

MS NAHIED GAMALDIEN: That is correct.

ADV JANNIE LUBBE SC: Until when?

MS NAHIED GAMALDIEN: Up until January 2019.

ADV JANNIE LUBBE SC: After the departure of Mr Hardy, the former CEO, were you appointed as the acting CEO?

MS NAHIED GAMALDIEN: I was.

ADV JANNIE LUBBE SC: When?

MS NAHIED GAMALDIEN: I was appointed on the 23rd August 2018 up until December 2018. I am not sure of the correct date.

ADV JANNIE LUBBE SC: And then you resigned as the acting CEO and the CFO.

MS NAHIED GAMALDIEN: That is correct.

ADV JANNIE LUBBE SC: Well will come to that. For the record

further. You are here testifying under the subpoena from this Commission of Inquiry.

MS NAHIED GAMALDIEN: That is correct.

ADV JANNIE LUBBE SC: And you represented by your attorney, Mr John Riley from Cape Town.

MS NAHIED GAMALDIEN: That is correct.

ADV JANNIE LUBBE SC: Now before we start. Can you please tell the Commission about yourself. Where you were born? Where did you study?

MS NAHIED GAMALDIEN: I was born in Port Elizabeth. I completed my BCom at the Nelson Mandela University in 2001 and thereafter obtained my Honours from UNISA in 2002. I commenced my articles with PricewaterhouseCoopers in Port Elizabeth in 2002 and completed that in 2005.

ADV JANNIE LUBBE SC: Thank you. You can then proceed to – with your statement from paragraph 2.

MS NAHIED GAMALDIEN: Thank you.

“I have been subpoenaed to testify at the Commission of Inquiry into allegations of impropriety into the Public Investment Corporation. I understand that the Commission is mandated to look inter alia into alleged impropriety regarding investments decisions by the PIC in media reports in 2017 and 2018, contravened any legislation, PIC policy or contractual obligations and resulted in undue benefit for any PIC director or employee or any associate or family member of any of

PIC director or employee, at the time a director or employee of the PIC.

I have been requested to produce all financial records, in particular, payments made to third parties from the funds invested by the PIC.

After I have received the subpoena, I instructed my attorneys of record to request the evidence leader of the Commission to provide me with further details about what precisely I was required to testify about.

My attorney of record was then provided with a list of questions that I was required to respond to.

For the sake of convenience, I do not propose to respond to the questions in any particular order and I deem it necessary to provide some background in an attempt to place the events in a chronological order as they occurred up, leading up to the listing AYO and certain events which occurred thereafter.

Although I have been requested to produce all financial records, in particular, payments made to third parties from the funds invested by the PIC, I am unable to produce such financial records, due to the fact that I no longer have access to such records.

I will, nevertheless, attempt to provide such detail as is in my personal knowledge.

I moved to Cape Town in 2006 and joined Sekunjalo Investments Limited which later became African

Equity Empowerment Investments, AEEI in 2007 as the group financial accountant and was subsequently promoted to group financial manager where I reported to Khalid Abdullah who was the chief financial officer.

In 2009 I joined Health System Technologies as their financial manager.

In about 2011 I took on the role of group financial manager at Sekunjalo Technology Solutions Limited which subsequently became AYO Technology Solutions Limited.

I was appointed to the AYO board in 2014 and was thereafter appointed in 2017 as the chief financial officer prior to the listing.

I was appointed as acting chief executive officer after the resignation of Kevin Hardy in August 2018 whilst at the same time performing my role as CFO. I stepped down as CEO in December 2018 and as CFO in January 2019. At the same time, I also resigned from the AYO Board.

I currently hold the position of executive business transformation within AYO.

AEEI was the majority shareholder of AYO, immediately prior to the issue of the BEE consortium shares and listing, holding 80.03%. Sekunjalo Investments Holdings Limited, Sekunjalo, is the majority shareholder of AEEI.

AEEI holds a 30% stake in British Telecom South Africa and has representation of the board of BTSA...”

ADV JANNIE LUBBE SC: Sorry, to interrupt you there. Who are the representatives on the board of BTSA? Or can I...? Who were the representatives?

MS NAHIED GAMALDIEN: Ja, I am not sure who are the representatives, but to my knowledge Khalid Abdullah and Dr Iqbal Survé were previously on the board of BTSA.

ADV JANNIE LUBBE SC: Thank you.

MS NAHIED GAMALDIEN:

“HST is a wholly owned subsidiary of AYO...[intervenues]

MS GILL MARCUS: Sorry. Can I ask there and it is perhaps to you, Advocate Lubbe. This again reflects the different entities within the group and at Dr Survé’s appearance before the Commission, we had requested a full organogram of tall the entire group entities, related parties, ownerships and PIC flows of money. As far as I am aware, we have not received that yet.

ADV JANNIE LUBBE SC: Through you, Commissioner. It is absolutely correct. I have also sent the follow up email AYO and Dr Survé, requesting this information and if we do not receive it by the end of business tomorrow, I will have no other option but to subpoena the CEO to come and present that evidence.

MS NAHIED GAMALDIEN:

“HST is a wholly owned subsidiary of AYO. AEEI had for a few years prior to listing, intended to list AYO

separately on the JSE and this had been communicated to the market.

In 2016 AYO had acquired business at good multiples, owing to the new BEE ITC Sector Codes, but sourcing bank funding was challenging...”

ADV JANNIE LUBBE SC: Can you just explain for the benefit of the Commission, what exactly is meant by acquiring businesses at good multiples?

MS NAHIED GAMALDIEN: Acquiring business at good multiples, the multiple referred to is basically a multiple of profit. So, a good multiple would mean that you are buying it at a low multiple, essentially.

ADV JANNIE LUBBE SC: Thank you.

MS NAHIED GAMALDIEN: “In November 2016...[intervenes]

MR EMANUEL LEDIGA: Sorry, sorry. Just a question, Ms Gamaldien.

MS NAHIED GAMALDIEN: That is correct.

MR EMANUEL LEDIGA: Yes. Good multiples, would that be PE's?

MS NAHIED GAMALDIEN: That is correct.

MR EMANUEL LEDIGA: Like, PE's of three or PE of four. Somewhere there. Were those kind of multiples that the businesses were bought at?

MS NAHIED GAMALDIEN: I understand, Mr Commissioner. I am not sure which multiples those were specifically bought at, but generally between four and six.

MR EMANUEL LEDIGA: Ja, thank you.

MS NAHIED GAMALDIEN:

“In November 2016 the amended BEE ICT Sector Codes were issued, which encourages procurement from black owned business, where black ownership is at least 51% and black female ownership is at least 30%.

This provided AYO with a competitive advantage over other similar companies in the ICT Sector.

In order for AYO to reach the scale required, it would however need to acquire businesses with existing capability and intellectual property.

At this time, SASOL was a client of BTSA and SASOL had been negatively impacted by the change in the BEE Codes, referred to above.

At that time, Hardy held the position of CEO at BTSA. It is my understanding that SASOL had requested their ICT providers to relook their ownership models, in order to maximise their preferential procurement scores on the BEE Score Card.

BTSA then commenced discussions with AEEI to develop a structure that would service these clients. AYO was selected as the vehicle which would be used for this purpose.

AYO would market and sell the products and services offered by BTSA and all other companies in which AYO had a shareholding and procure from such ICT

companies.

The idea was that AYO would operate as an independent entity with its own resources but would need funding. This funding was to be obtained by listing on the JSE.

BTSA obtained a legal opinion from the law firm Edward Nathan Sonnenberg on this issue to ensure that there was no risk of fronting.

I am advised that ENS concluded that the proposed transaction, as I understood it at that stage, did not constitute a fronting practice as contemplated in the BBBEE Act and or did not contravene the BBBEE Act, the BEE Codes or the ICT Code, provided that certain of the recommendations made them in their opinion are implemented. This opinion is available for inspection, should it be required...”

ADV JANNIE LUBBE SC: Can I just...? Mr Commissioner, will the Commission advise whether that opinion is necessary, but it is available.

MS NAHIED GAMALDIEN:

“My understanding was that the alliance agreement by AYO and BTSA was intended to be the basis for the terms of the agreement, in terms of which BTSA would become a sub-contractor to AYO in servicing SASOL. It is necessary to point that this alliance agreement must be distinguished from the prescription of shares

by AYO in Kilo Maxx which holds a 30% in BTSA....”

MS GILL MARCUS: Sorry, Ms Gamaldien. If I could just ask you to expand on that last point about the alliance agreement and the stake in Kilo Max as to what their current status is? Are they in play? Are they enforce? What exactly is the position as far as you are aware?

MS NAHIED GAMALDIEN: Thank you. As far as I am aware, the alliance agreement is still in play. So, AYO is currently servicing SASOL as customer and BTSA is still a sub-contractor to AYO in terms of this alliance - as set out in this alliance agreement.

MS GILL MARCUS: And the Kilo max? Is that still at the 30% as it was in...[intervenes]?

MS NAHIED GAMALDIEN: It is still as it was, Mr Commissioner. The shares are still held via Kilo Max by AEEI. So, AYO did not purchase the stake in BTSA.

“I started to attend listing meetings around May 2017. The purpose of the meetings was to achieve the listings of AYO on the JSE by the end of 2017.

Thereafter, as time went by, the listing team would meet on a weekly basis and this included members of AEEI Corporate Finance, Webber Wentzel, PGS and BDO.

My involvement in the listing process was mainly to coordinate the input from the respective parties for inclusion in the prelisting statement.

The rational for the listing is set out in the PLS and can be summarised as follows:

- Raised capital in order to fund the roll out of the BTSA strategic relationship;
- Raised capital in order to fund the BTSA prescription of shares;
- Raised capital in order to fund the AYO acquisition pipeline; and
- Allow AYO to use listed strip to fund future acquisitions...”

MS GILL MARCUS: Sorry. In relation to that rational, which of those four elements, if any, were given effect to after the listing?

MS NAHIED GAMALDIEN: So, the first one. The BT strategic relationship. As explained, BT is a sub-contractor to AYO on the SASOL contract and the third one, the AYO acquisition pipeline.

MS GILL MARCUS: Both... Is BTSA is fulfilling that function as a sub-contractor to anything else, other than SASOL?

MS NAHIED GAMALDIEN: Not at this stage, no.

MS GILL MARCUS: Not at this stage. And then the question of the fund acquisition pipeline. You referred to some of those acquisitions later in your statement. Is that what you are referring to here?

MS NAHIED GAMALDIEN: That is correct, Mr Commissioner.

MS GILL MARCUS: Okay thank you.

MS NAHIED GAMALDIEN:

“To the best of my knowledge, the BTSA Team were already in discussion with SASOL in 2017 and a request for proposal was to be submitted in January 2018, hence the urgency to obtain funding to ramp for

this and future projects.

PSG Capital:

PSG was engaged by Abdullah to draft an or comment on the listing documents, project manage the listing, advise on the JSE Listing Requirements and submit all documentation in relation to the listing to the JSE...”

ADV JANNIE LUBBE SC: Can you just again, tell the Commission who exactly is Abdullah?

MS NAHIED GAMALDIEN: Khalid Abdullah is the CEO of AEEI, but at the time, he was also a board member of AYO.

ADV JANNIE LUBBE SC: Thank you.

“As appears from the PLS, the fees payable to PSG for their services amounts to 14.5 million. I attached the letter of appointment, dated 29 September 2017, which sets out the four detail of PSG’s mandate, as well as how their fee of 14.5 million is made up and arrived at.

So, this is attached as NG1.

MR EMANUEL LEDIGA: Just a question here. In terms of PSG and AEEI, who was supposed to do the capital raising? Were they both supposed to do it or one or the other? The actual, you know, capital raising. Going to roadshows and, you know.

MS NAHIED GAMALDIEN: Mr Commissioner, it was my understanding at that point, both of them would be involved in capital raising.

MR EMANUEL LEDIGA: And who finally raise the capital, the 4.3 or

the capital raised?

MS NAHIED GAMALDIEN: Mr Commissioner, that came via AEEI Corporate Finance.

“As it appears from the letter, I was not involved in these negotiations. I did, however, independently compare this fee against the fee charged to Premier Fishing and accordingly, formed the view that the fee charged by PSG was not unreasonable, considering the amount of capital to be raised...”

ADV JANNIE LUBBE SC: I am sorry to interrupt again. There are reference to Premier Fishing, was that also a listing that was done previously?

MS NAHIED GAMALDIEN: Yes, Mr Commissioner. Premier Fishing is part of the AEEI Group of Companies and that entity was listed earlier, the same year.

ADV JANNIE LUBBE SC: Thank you.

MS NAHIED GAMALDIEN:

“AEEI Corporate Finance was mandated to act as AYO project manager, corporate advisor and ...[indistinct] to AYO in relation to the listing, because the AYO executives were advised by Abdullah that AEEI Corporate Finance was best suited to deal with this issue because of their experience in these matters. AYO Corporate Finance was also responsible for preparing the share valuation...”

MS GILL MARCUS: Sorry, can I just ask in relation to that. When they

are referring to their experience, would that be referring to Premier Fishing?

MS NAHIED GAMALDIEN: Yes, Mr Commissioner.

MS GILL MARCUS: And would that be their only experience of listing?

MS NAHIED GAMALDIEN: Yes, Mr Commissioner. To my knowledge, that would be their only experience with listing.

MS GILL MARCUS: And AEEI Corporate Finance, obviously is part of the related party entities within the Sekunjalo Grouping?

MS NAHIED GAMALDIEN: That is correct, Mr Commissioner.

‘As appears from the PLS, AEEI Corporate Finance would earn a fee of 57.7 million for their services. I was not involved in the determination of the fee.

Malick Salie as the Head of AEEI Corporate Finance was responsible for...[intervenes] ...”

MR EMANUEL LEDIGA: Can I ask something and if you can answer, please do. If not, I mean, it is fine. I mean, AEEI Corporate Finance negotiates with AEEI Group Company. I mean, surely, sort of really, like, one company took into one another. Is there no way in which there could have been some Chinese at all about that negotiation?

MS NAHIED GAMALDIEN: I am not in a position to really comment on that, Mr Commissioner because I was not involved in the determination at the time. In the negotiation at the time.

MR EMANUEL LEDIGA: Okay. All right.

MS GILL MARCUS: But I think for reference again, Advocate Lubbe. It might be useful to know whether this was a reasonable fee and whether there is a related party issue here, about independence of advise of

fund raising, of fees charged and whether, in fact, this would not be a breach of governance and perhaps any other rules about who advises whom, in the listing.

ADV JANNIE LUBBE SC: Notes, Mr Commissioner.

MS NAHIED GAMALDIEN:

“Malick Salie as the Head of AEEI Corporate Finance, who was responsible for preparing the forecast which was presented in the PLS and this was reviewed by myself.

The revenue was projected to increase by 825% and this was premised on the following assumptions which is clearly documented in the PLS.

The main driver for this increase was the existing BTSA customers which would transition across to AYO.

AYO was targeting an increasing market share of between 1% and 2% for the periods forecasted, owing to its superior BEE credentials and the existing AYO subsidiaries would achieve organic growth due to the working capital funding which AYO would provide.

It is necessary to mention in this regard...[intervenes]...”

MR EMANNUEL LEDIGA: Just a question again here. Please, if you can answer, answer. You know I asked this question before. Growing revenue by this amount within a year, I mean, that is a tall order, you know. What were you thinking then when you saw this kind of

projections?

MS NAHIED GAMALDIEN: Okay. Thank you, Mr Commissioner. I think the next paragraph answers that question. Can I read it first?

MR EMANNUEL LEDIGA: [No audible reply]

MS NAHIED GAMALDIEN: Thank you.

“It is necessary to mention in this regard that Hardy provided us with the BTSA customer information and market data and the forecast were based on this information.

He also provided a list of customers which was to be targeted for acquisition purposes. The details of which are contained in the PLS.

The fact that Hardy was prepared to leave BTSA and join AYO as CEO gave me great comfort, as I understood that he had longstanding and good relationships with the BTSA customers and extensive experience and respect in the ICT section.

We were all excited about the opportunity to build the largest black ICT company listed on the JSE...”

ADV JANNIE LUBBE SC: If I can interrupt you here? I am sorry. Do you have read the statement of Mr Hardy? Is that correct?

MS NAHIED GAMALDIEN: I have, Mr Commissioner.

ADV JANNIE LUBBE SC: And I supposed you have also listened to his testimony before this Commission?

MS NAHIED GAMALDIEN: I have, Mr Commissioner.

ADV JANNIE LUBBE SC: As I understand and if I remember correctly.

His evidence was that it was a very high target, but he was also optimistic that it could be achieved.

MS NAHIED GAMALDIEN: That is correct, Mr Commissioner. We were all optimistic that it would be achieved. From my perspective, the comfort came from Mr Hardy, providing us with the customer information that would transition across into AYO, etcetera, etcetera.

ADV JANNIE LUBBE SC: But crucial and central to this high expectations, was the successful bringing onboard BTSA?

MS NAHIED GAMALDIEN: That is correct, Mr Commissioner.

MR EMANUEL LEDIGA: Just a question there. I can understand that, but you know to buy a company takes six to twelve months. You know, valuations and negotiations, show the agreements. I mean, and you are buying many companies. I mean, surely, could you do this in one year? I mean, this sounds like blue sky to many of us, you know.

MS NAHIED GAMALDIEN: Mr Commissioner, important to note is this. Those acquisitions were never factored into our forecasts. Our forecasts were mainly capturing market share and the BTSA customers which would transition across. So, those acquisitions were never factored into those numbers.

MR EMANUEL LEDIGA: But even, I mean, capturing market share, it is a very difficult thing. I mean, in terms of meeting customers. They must agree to these things. Even that, is quite difficult to do it within a year. Would you comment on that, if you want?

MS NAHIED GAMALDIEN: Other than to say: Noted, Mr Commissioner. It was a difficult task and we knew that. But we were optimistic that we would be able to achieve it.

MR EMANUEL LEDIGA: Yes.

MS NAHIED GAMALDIEN: At the time.

MR EMANUEL LEDIGA: Which in some ways, the optimism might mean blue sky thinking, you know.

MS NAHIED GAMALDIEN: Perhaps.

MR EMANUEL LEDIGA: Ja, ja. All right. Let us leave it. It is fine.

MS GILL MARCUS: Can I just ask you? In the last point under 24: The existing AYO's subsidiaries would achieve organic growth due to the working capital funding. That is assuming the working capital funding came from the listing?

MS NAHIED GAMALDIEN: That is correct, Mr Commissioner.

MS GILL MARCUS: And the existing AYO's subsidiaries, can you identify or indicate which those were?

MS NAHIED GAMALDIEN: Certainly, Mr Commissioner. At the time of listing the subsidiaries were Health System Technologies, which is HST, Puleng, Headset Solutions, Afrozaar, Digital Matter.

MS GILL MARCUS: Can you just repeat that again? AYO's subsidiaries...[intervenes]

MS NAHIED GAMALDIEN: Subsidiaries at the time...[intervenes]

MS GILL MARCUS: HST, Puleng...

MS NAHIED GAMALDIEN: Headset Solutions or Kalula Communications. It is the legal name of the entity.

MS GILL MARCUS: Sorry. Can you just spell that for me?

MS NAHIED GAMALDIEN: Kulula. K-a...[intervenes]

MS GILL MARCUS: Okay.

MS NAHIED GAMALDIEN: Ja. Kalula Communications. Afrozaar and

Digital Matter.

MS GILL MARCUS: Digital...?

MS NAHIED GAMALDIEN: Digital Matter. Matter.

MS GILL MARCUS: Okay. And what has happened to those entities subsequently?

MS NAHIED GAMALDIEN: They are still part of the AYO Group of Companies, Mr Commissioner.

MS GILL MARCUS: And functioning well?

MS NAHIED GAMALDIEN: Yes, Mr Commissioner.

“These revenue targets were not achieved, due to a breakdown in the relationship with BTSA, negative media reports about AYO, negatively impacted on our ability to attract new customers or generated any additional businesses from SASOL, and the reputational damage to AYO had a further negative impact on the ability to successfully make the attended acquisitions...”

MS GILL MARCUS: Are you aware of what caused or do you have a view on what caused the breakdown of the relationship with BTSA, given the point made above, that the projected revenues were dependent on an amicable working relationship of whatever form with BTSA? Because then you have only got the alliance agreement in place. If you could just comment on the breakdown.

MS NAHIED GAMALDIEN: Certainly, Mr Commissioner. It is my understanding that the reason why the relationship broke down is because there were certain information related to BTSA which we had

disclosed in our PLS without the consent of BTSA.

MR EMANUEL LEDIGA: Before you move. Two questions here. Mr Hardy, if I can recall, he actually said, without BTSA there is no AYO. You know, do you think so or do you not think so about that?

MS NAHIED GAMALDIEN: It is difficult to answer that one, Mr Commissioner because initially we would have needed BTSA in order to fulfil the SASOL contract and certainly, we would have needed BTSA for all the other customers that were to transition across.

But the intention was to acquire other businesses and we had businesses in our pipeline and those businesses could also be used to service respective clients, but obviously, that would take time.

MR EMANUEL LEDIGA: And then the other one is. The PIC, I think it was Victor Seanie. They were struggling to get the BTSA financials. Do you know why that was so? What was the issue there? Why could the PIC not get the financials?

MS NAHIED GAMALDIEN: Yes, Mr Commissioner. My understanding is that, the reason why we could not disclose the financials to them was because of confidentiality. We needed BTSA's consent before we could release the information. That was my understanding but I was not directly involved in the issues.

MR EMANUEL LEDIGA: And why could you not get the consent, do you know?

MS NAHIED GAMALDIEN: ...involved in that at the time.

CHAIRPERSON: Okay.

ADV JANNIE LUBBE SC: You were – you heard the evidence of Mr Hardy in this regard and also in his statement, that is that there was a

breakdown in the relationship with BT-SA and Ayo, is that correct?

MS NAHIED GAMALDIEN: That's correct, Mr Commissioner.

ADV JANNIE LUBBE SC: Is that perhaps the reason why you couldn't obtain the permission from BT-SA to disclose the financials?

MS NAHIED GAMALDIEN: I'm not sure, Mr Commissioner.

“Abdullah was responsible for the BEE consortium share issue between 20 and 27 November. Abdullah provided me with a list of entities that would potentially participate in the BEE consortium share issue. He advised that the rationale was to ensure the retention of broad based black ownership within Ayo.”

MS GILL MARCUS: Adv Lubbe, I think we had asked for that list before as well and I don't think that we have received that.

ADV JANNIE LUBBE SC: That is absolutely correct, Commissioner

MS GILL MARCUS: Can we follow up on that as well?

ADV JANNIE LUBBE SC: We do.

MS NAHIED GAMALDIEN: “On the 27 November 2017 I was informed by Abdullah that our attorneys for listing purposes had changed due to the fact that we wanted to give a smaller black firm exposure. TGR Attorneys was appointed and I was requested to update the PLS accordingly.”

MS GILL MARCUS: Sorry, just on that matter, had TGR Attorneys been used by any of the Sekunjalo Group before and was there any related party connection there?

MS NAHIED GAMALDIEN: Yes, Mr Commissioner. To my knowledge I don't – well, I don't really have knowledge on that issue, it was the first time that I heard of TGR Attorneys and to my knowledge they are not a

related party but I don't have access to all the information in the broader Sekunjalo Group.

ADV JANNIE LUBBE SC: My information, Ms Gamaldien is that notwithstanding this appointment of TGR Attorneys, Webber Wentzel carried on doing the work for the listing. Do you know anything about that?

MS NAHIED GAMALDIEN: I'm not aware, Mr Commissioner.

ADV JANNIE LUBBE SC: Are they still – is TGR still used by Ayo in any other matters?

MS NAHIED GAMALDIEN: Not to my knowledge, Mr Commissioner.

ADV JANNIE LUBBE SC: Thank you.

MS NAHIED GAMALDIEN: “On the same date, the 27 November 2017, AEEI released a SENS announcement informing the market of the intended BEE consortium share issue. The intention was to issue 31 960 000 shares at R1.50 to various broad-based empowerment consortiums.”

MR EMMANUEL LEDIGA: Question there, do you know if a valuation was done in terms of issuing these particular shares to BEE groupings? Was there a valuation done or Mr Abdullah just decided to put a price?

MS NAHIED GAMALDIEN: I'm not sure, Mr Commissioner, I'm not sure how they arrived at the price of R1.50 per share.

“This BEE share issue along with the listing of Ayo would constitute a category 1 disposal by AEEI in terms of the JSE listing requirements and therefore required the approval of AEEI shareholders by way of a general meeting and a circular was to be issued in this regard. The Social Entrepreneurship

Foundation was listed in the circular as one of the consortiums which would benefit from the share issue but to my knowledge they were not on the final list of shareholders who were eventually allocated shares.”

ADV JANNIE LUBBE SC: Before you continue can you just elaborate on that? Do you know who Social Entrepreneurship Foundation, who that is?

MS NAHIED GAMALDIEN: I’m not aware of who the Social Entrepreneurship Foundation is, I have no knowledge of who the directors and shareholders of that entity are.

ADV JANNIE LUBBE SC: Now you mentioned the final list of shareholders. Where did you get that list?

MS NAHIED GAMALDIEN: Mr Commissioner, the final list of shareholders who were allocated shares was provided to me by Dr Iqbal Survé.

ADV JANNIE LUBBE SC: Was it in all respects similar to the one that you received from Mr Abdullah?

MS NAHIED GAMALDIEN: Mr Commissioner, there were some differences.

ADV JANNIE LUBBE SC: Do you have the original supplied by Mr Abdullah still?

MS NAHIED GAMALDIEN: Yes, I do, Mr Commissioner.

ADV JANNIE LUBBE SC: Are you prepared to provide the Commission with that list?

MS NAHIED GAMALDIEN: Yes, Mr Commissioner.

ADV JANNIE LUBBE SC: And do you have the lists – the final lists supplied by Dr Survé? Do you have that still available?

MS NAHIED GAMALDIEN: Yes, I do, Mr Commissioner.

ADV JANNIE LUBBE SC: And you can provide that to the Commission because we've asked for that but it has not been provided to the Commission but you say you can provide it?

MS NAHIED GAMALDIEN: Yes, Mr Commissioner.

"I have no knowledge of who the directors and shareholders of the Social Entrepreneurship Foundation is. According to the best of my knowledge, some of these BEE consortium shareholders were funded by Dr Survé via Premier Fishing. I no longer have access to the financial records and do not recall the exact amount funded."

MR EMMANUEL LEDIGA: Funded by – funded via Premier Fishing, I don't understand that, how can Premier Fishing fund BEE groups in another company?

MS NAHIED GAMALDIEN: Mr Commissioner, the payment entered the Ayo bank account from Premier Fishing, it was transferred from Premier to Ayo but as I understand it, it was funded by Dr Survé and he returned the funds to Premier Fishing.

MR EMMANUEL LEDIGA: Come again slowly, come again slowly there?

MS NAHIED GAMALDIEN: Sure. Mr Commissioner, the transfer was made into the Ayo bank account from Premier Fishing, but as I understand it, Dr Iqbal Survé repaid Premier Fishing.

MR EMMANUEL LEDIGA: So the Premier Fishing bank account was used to purchase shares, Ayo shares for BEE groupings?

MS NAHIED GAMALDIEN: Yes, Mr Commissioner.

MR EMMANUEL LEDIGA: I mean, Premier Fishing bank account is being

used for something which is not business-related to the Premier Fishing Group.

MS NAHIED GAMALDIEN: I understand.

MR EMMANUEL LEDIGA: You are an accountant, I'm sure you...

MS NAHIED GAMALDIEN: Yes, Mr Commissioner.

MR EMMANUEL LEDIGA: Like am I correct that that shouldn't be done?

MS NAHIED GAMALDIEN: That's correct, Mr Commissioner. At the time, though, my understanding was that the funds were paid back to Premier Fishing by either Dr Survè or a related entity.

MR EMMANUEL LEDIGA: Yes, I do understand that it can be repaid by Dr Survè and all that but I mean when you do the audits and say this payment, what was it for? Is that proper? Is that like a proper thing to do?

MS NAHIED GAMALDIEN: I can't comment on that, Mr Commissioner.

MR EMMANUEL LEDIGA: You're an accountant, I'm sure you would know these things. You can't comment?

MS NAHIED GAMALDIEN: No, I can't comment on that.

MR EMMANUEL LEDIGA: Okay, alright.

ADV JANNIE LUBBE SC: Mr Commissioner, I suppose the next question from the Commission will be the particulars of the amounts involved. We will follow that up and we'll provide the Commission with that information.

MS GILL MARCUS: But in addition who authorised the payment from Premier Fishing because that is the issue, you can't just authorise.

ADV JANNIE LUBBE SC: Yes.

MS GILL MARCUS: It's got to be somebody from that company that authorises it and therefore it has to be a valid transaction.

ADV JANNIE LUBBE SC: It is noted.

MS GILL MARCUS: So who authorised that and then what the timeline was between payment – the return payment of the reimbursement, if you want to put it that way because that's what it sounds like, the reimbursement of the funds used and why would you have done that via a company if you're going to reimburse? You could have just done it directly.

ADV JANNIE LUBBE SC: It is noted, thank you, Mr Commissioner.

MS NAHIED GAMALDIEN: “The general meeting took place on the 18 December 2017 and the above was approved by the AEEI shareholders on this date. The Ayo listing received formal approval from the JSE on the 12 December 2017 and a SENS announcement was disseminated on the 13th to this effect as well as announcing the BEE consortium share issue. The BT ...[intervenes]

MS GILL MARCUS: Sorry, I just want to go back to that point, Dr Lubbe, can we also check if this was the only such transaction that where it was used as a piggy bank for Premier Fishing.

ADV JANNIE LUBBE SC: It is noted, thank you.

MS NAHIED GAMALDIEN: “The BT-SA alliance agreement was negotiated mainly by Kevin Hardy though I had reviewed the agreement and provided input. This was also signed on the 12 December 2017. I had left to spend the Christmas holidays with my family in Port Elizabeth on or around the 15th or 16th December as my dad had been ill for some time. I flew from PE to attend the listing function at the JSE on the 21 December

2017.”

ADV JANNIE LUBBE SC: Before we carry on, was that a function on the floor of the JSE?

MS NAHIED GAMALDIEN: That’s correct, Mr Commissioner.

ADV JANNIE LUBBE SC: Can you remember who were present from the PIC?

MS NAHIED GAMALDIEN: Mr Commissioner, the only person I recall being there was Dr Dan Matjila, I didn’t recognise any of the other faces.

ADV JANNIE LUBBE SC: And the top structure of Ayo and AEEI I suppose were all there?

MS NAHIED GAMALDIEN: That’s correct, Mr Commissioner.

ADV JANNIE LUBBE SC: Thank you.

MS NAHIED GAMALDIEN: “On the 18 December 2017 a SENS announcement was disseminated indicating the Ayo shares had been oversubscribed by R1 billion. I was not involved in the share allocations as this was handled by AEEI corporate finance. I was informed that the full allocation had been made to the PIC instead. I subsequently obtained the following information from AEEI corporate finance which confirms that the Ayo shares were oversubscribed by R1 005 000 000 which is made up as follows: Miramar Investments, 160 million, Capital One Investments, 215 million, Sowenroy(?) Lewis, 430 million, 3 Laws Capital, 200 million.”

MS GILL MARCUS: Sorry, can we just stay with – can we ask then in

relation to these four entities. We do know 3 Laws Capital is owned and controlled by Sekunjalo as you say in point 38 and that has come up before but can we find out why there was no allocation to these other three – to the all four entities, did they not want to take up their shares? Why would they have then subscribed? What were they – what were the reasons given for non-allocating to them and giving everything to the PIC? Did the PIC actually insist on take the entirety of the share allocation? And are there any related party transaction or connections between these four companies the Sekunjalo Group, the question of who the directors are, what their businesses are, who exactly are these entities as it does raise question marks of being part of a commitment to take up shares and then suddenly it all goes to the PIC at a particular price?

ADV JANNIE LUBBE SC: Thank you, it is noted, Mr Commissioner.

MS NAHIED GAMALDIEN: “3 Laws Capital is an entity owned and controlled by Sekunjalo. I’m not aware whether any of the other entities are owned or controlled by Sekunjalo or Dr Survè. In response to the question about where the R43.00 per share came from, what valuation was done to get the R43.00 per share and whether the BT-SA historical numbers were in my possession and what they indicated about the future revenues. I must point out that these matters were all dealt with by the AEEI corporate finance team. I’m accordingly not in a position to provide details about where the R43.00 per share came from and what valuation was done to get to this price. I do not recall having access to the BT-SA historical numbers.”

ADV JANNIE LUBBE SC: Before you continue, I have presented to you this morning before you started your testimony with a document, it is an email from Mr Malik Salie dealing with the Ayo prelisting and the email is dated September 3, 2017, it is sent at seven o'clock that evening. It is sent to Mr Hardy, to yourself, to Mr Khalid Abdullah, it is copied to him. Mr Commissioner, I've presented the Commission with a copy of this, I trust it is before you and attached to this email is the minutes of a meeting with the Ayo listing team held at Claremont offices on the 8 August 2017. According to the minutes the following people were present at this meeting, Dr Survè, Salim Young, Khalid Abdullah, Redantia Nock(?), Njabulo Jike(?) and yourself. There was apologies from Ms Salie. Now what I want to know from you, have you received such an email?

MS NAHIED GAMALDIEN: Mr Commissioner, I would have to check whether or not I'd received such an email.

ADV JANNIE LUBBE SC: Can you recall a meeting minuted in this document stating the minutes of the meeting on the 8 August?

MS NAHIED GAMALDIEN: I do recall such a meeting, Mr Commissioner.

ADV JANNIE LUBBE SC: And you were present?

MS NAHIED GAMALDIEN: That's correct, Mr Commissioner.

ADV JANNIE LUBBE SC: And the meeting was dealing with the listing and trying to get a valuation of Ayo and the share price of Ayo, is that correct?

MS NAHIED GAMALDIEN: I can't recall, Mr Commissioner.

ADV JANNIE LUBBE SC: Now if you look at the minutes, is that not what is stated in the minutes? The purpose of this question is not get you into

trouble but Dr Survè testified under oath before this Commission that he was not involved in the prelisting matters, they had very competent people dealing with that, they were sitting behind him that day in the Commission but it appears from this that he was indeed actively involved and attended meetings on the prelisting values, is that not correct?

MS NAHIED GAMALDIEN: Mr Commissioner, the only meeting which I attended where Dr Survè was present was that one meeting. I don't recall him being present at any other listing meeting.

ADV JANNIE LUBBE SC: Okay.

MS NAHIED GAMALDIEN: I can't remember the exact details of what was discussed on the day though.

ADV JANNIE LUBBE SC: Did you discuss anything about the prelisting with Dr Survè before the listing?

MS NAHIED GAMALDIEN: No, Mr Commissioner, I did not.

ADV JANNIE LUBBE SC: Thank you, please proceed?

MS NAHIED GAMALDIEN: "I was not directly involved in the 990 million valuation arrived at for the 30% held by Kilomix(?). What I do know is that in accordance with the JSE listing requirements the investment was required to be independently valued by a JSE approved valuer. Questco Corporate Advisory was appointed for this purpose. I attached the independent expert opinion in respect of the subscription by Ayo of new shares in Kilomix constituting 99% of the issues shares in Kilomix as annexure NG2. In regard to the question about whether or not the BT-SA alliance agreement was sufficient to allow Ayo to achieve its objectives ...[intervenes]"

MR EMMANUEL LEDIGA: Sorry, sorry, can I just ask a question on paragraph 37? Are you aware that when you apply for JSE shares in a listing probably there's a formula to allocate shares, you know, when people sign subscription forms. Once it goes through you have applied for shares and there would normally then be allocated via a formula. Did we have in that in sort of in the Ayo listing or – because one would presume then that all the parties that applied for this would get allocated shares. No?

MS NAHIED GAMALDIEN: Mr Commissioner, ja, I wasn't involved in the allocation of shares, that was handled by AEEI corporate finance so they be best positioned to answer that question.

MR EMMANUEL LEDIGA: Okay, thanks.

MS NAHIED GAMALDIEN: “In regard to the question about whether or not the BT-SA alliance agreement was sufficient to allow Ayo to achieve its objectives rather than to sell Kilomix's 30% to Ayo, I respond as follows:

I was personally not opposed to the deal as I felt that the 30% ownership would give us representation on the BT-SA board and allow us to cement the relationship with BT-SA. We would also be able to equity account for the 30% of the profitability of BT-SA which would be to the benefit of the Ayo shareholders. The Ayo executives were, however, concerned about the pricing of the deal and were concerned whether the PIC would be agreeable to the transaction as the funds would ultimately flow to AEEI. Hardy was responsible for addressing these concerns.

After the listing on the 21 December 2017 I returned to PE and

on the 22 December 2017 I was instructed telephonically by Abdullah to transfer 35 million to 3 Laws Capital and a further 35 million to Sekunjalo Capital. I requested that he send me this instruction in writing as I was concerned about the payments because I felt that board approval would be necessary in this instance.”

ADV JANNIE LUBBE SC: I’m sorry to interrupt, just to make it clear and for the record this is transfers from the Ayo account into those other two entities.

MS NAHIED GAMALDIEN: That’s correct, Mr Commissioner.

ADV JANNIE LUBBE SC: And it is money coming out of the investment by the PIC.

MS NAHIED GAMALDIEN: That’s correct, Mr Commissioner.

MS GILL MARCUS: Sorry, can we just go back a second to the previous paragraph?

“The Ayo executives were, concerned about the pricing of the deal...”

Which is the one element.

“... and were concerned whether the PIC would be agreeable to the transaction as the funds would ultimately flow to AEEI.”

Why would they flow to AEEI when it’s an Ayo capital raising?

MS NAHIED GAMALDIEN: Mr Commissioner, I speak there about the acquisition of the 30% in BT-SA which was held by AEEI at the time so if Ayo were to purchase those shares, the funds – the 990 million for the purchase of the 30% of shares would be to AEEI.

“I requested that he sends me this instruction in writing as I was

concerned about the payments because I felt that board approval would be necessary in this instance. He subsequently sent me an email with the bank details. After I had received the email I made the necessary payments. In retrospect I realise that I erred in making the payments but did so because Abdullah was adamant that the payments be made. The board subsequently ratified this as an investments with 3 Laws Capital and I signed an investment mandate to this effect.

CHAIRPERSON: And this is the same concerns which we raised about corporate governance, you know, that things are done, no – you know no board approvals for things, no resolutions, you know, and it just looks like there's a problem, a huge problem in the group companies with corporate governance across the board.

MS NAHIED GAMALDIEN: That's correct, Mr Commissioner, the payments that I speak about here were before the signature of that letter, though, but that's correct, Mr Commissioner.

ADV JANNIE LUBBE SC: What is of – sorry.

MS GILL MARCUS: Sorry and did the board ratify the 35 million to Sekunjalo Capital as well or only to 3 Laws Capital?

MS NAHIED GAMALDIEN: Mr Commissioner, the board ratified an investments of 70 million with 3 Laws.

MS GILL MARCUS: So the original instruction of 35 and 35 was changed to 70 to 3 Laws?

MS NAHIED GAMALDIEN: That's correct, Mr Commissioner.

ADV JANNIE LUBBE SC: Were you at the board meeting?

MS NAHIED GAMALDIEN: Yes I was, Mr Commissioner.

ADV JANNIE LUBBE SC: Can you recall what was placed before the board as the motivation or the reason for this investment into 3 Laws?

MS NAHIED GAMALDIEN: If I recall, the rationale behind all the investments with 3 Laws Capital was to diversify the cash holdings so that we don't have all the PIC funds sitting in one bank account.

“When Abdullah again ...[intervenes]

MS GILL MARCUS: I think it would be very useful to get the submission to the board about that matter because it is really – I mean, 3 Laws is a related party so you're putting deposits with them to earn interest in a related party matter.

ADV JANNIE LUBBE SC: It is correct, Mr Commissioner, through you, it's exactly why I asked the question, to in fact obtain that documentation.

MS GILL MARCUS: So we can get board – ja.

MS NAHIED GAMALDIEN: “When Abdullah again on 1 March 2018

instructed me telephonically to transfer 400 million to 3 Laws Capital I told him that I was not prepared to transfer this amount without board approval and requested that a resolution be drafted.”

MS GILL MARCUS: Sorry, if I could just ask again and I'm sorry to keep interrupting you but it's really for clarity. This would have been 400 million in addition to the 70 million?

MS NAHIED GAMALDIEN: That's correct, Mr Commissioner.

“I then discussed this with the other Ayo executives and informed them of the request of which we were all uncomfortable.”

ADV JANNIE LUBBE SC: I'm sorry, we keep interrupting you.

MS NAHIED GAMALDIEN: That's fine.

ADV JANNIE LUBBE SC: But we had the testimony of Mr Hardy and an email confirming that Mr Johnson from 3 Laws Capital had absolutely no say or control of these monies transferred into 3 Laws.

MS NAHIED GAMALDIEN: "They, however, verbally agreed ...[intervenes]

ADV JANNIE LUBBE SC: Can you comment on that? Do you know anything about it?

MS NAHIED GAMALDIEN: "Yes, Mr Commissioner, I think I was copied in on that email though I was not privy to the conversations between Mr Hardy and Mr Johnson.

ADV JANNIE LUBBE SC: But you have seen the email where Mr Johnson complained about the fact that he had absolutely no control over that money.

MS NAHIED GAMALDIEN: I did, Mr Commissioner.

ADV JANNIE LUBBE SC: Thank you.

MS NAHIED GAMALDIEN: "They however verbally agreed to sign the resolution along with a few other directors. On the 2 March 2018, Abdullah sent an email to Salim Young and Hardy in which he motivates why the 400 million should be paid. I attach in this regard annexure NG3. In response to this email, Young stated that:

"All good with me, please ensure that there's appropriate reporting to the board or at least the investment committee."

I then replied to the email exchange between Young, Abdullah,

Salie and Hardy and stated:

“As per discussion with the executives we are in agreement to invest with 3 Laws but will need a board resolution approving the transaction.”

ADV JANNIE LUBBE SC: Before I forget, just to get it on record, Mr Young, who is now featuring everywhere in your testimony, what is he, is he a chartered accountant, a lawyer or what is he doing?

MS NAHIED GAMALDIEN: My understanding, Mr Commissioner, is that he’s an attorney.

ADV JANNIE LUBBE SC: Thank you.

MS NAHIED GAMALDIEN: “Since the majority of directors had already approved, I will proceed with transfer and simultaneously request that the resolution be circulated.”

At that time I only had verbal approval. The resolution was eventually signed by the majority of the board. We agreed to transfer the funds on condition that it would be returned before our financial year end of 31 August 2018. These funds were repaid by 3 Laws Capital on or about 21 August 2018.”

MR EMMANUEL LEDIGA: Just a question. I mean, you know, looking at this paragraph 43, you were a director in the company in Ayo. I mean, with all this, you know, corporate governance breaches, were you not worried that if the money gets lost somewhere or doesn’t come back that, you know, shareholders can sue you? I mean, these are listed companies, these are not private companies, there are other shareholders, you know? Weren’t you worried as a director that you could be sued?

MS NAHIED GAMALDIEN: Yes, Mr Commissioner, we certainly were worried and that's why we eventually wrote that letter to the board to express our concerns.

ADV JANNIE LUBBE SC: Mr Commissioner, just a household rule, it's nearly eleven o'clock, it's the only witness for today, would it be acceptable that we do not take a tea adjournment and finish the business of the day?

CHAIRPERSON: I think that's preferable.

MS NAHIED GAMALDIEN: "In July 2018 a round robin resolution was circulated by the company secretary to invest 1.5 billion with various asset managers in an attempt to reduce risk by diversifying the Ayo cash holdings."

ADV JANNIE LUBBE SC: I'm sorry again to interrupt you. Can you just identify who is the company secretary?

MS NAHIED GAMALDIEN: Yes, Mr Commissioner. At that point the company secretary was Nabulungisa(?), I can't recall her surname, Balisele(?), I think it is.

ADV JANNIE LUBBE SC: Thank you.

MS NAHIED GAMALDIEN: This email gave me the authority as sole signatory to handle such investments. The maximum amount to be invested with each asset manager was 400 million. The Ayo executives were in a meeting at the time when the resolution was sent to us. None of us had instructed the company secretary to draft such resolution. I had no prior knowledge of such resolution and was surprised by the email. Hardy responded to the email requesting clarity on the resolution. The

resolution was never signed.

ADV JANNIE LUBBE SC: Did any receive clarification on this resolution drafted by the company secretary without knowledge of any of the executives?

MS NAHIED GAMALDIEN: I'm not sure I understand the question, Mr Commissioner.

ADV JANNIE LUBBE SC: Did the company secretary clarify this? Why did she send out this resolution without a decision by the executives?

MS NAHIED GAMALDIEN: I don't recall, Mr Commissioner, I can't recall whether she responded.

“The board eventually approved this investment of 1.5 billion in the board meeting of 7 November 2018. As a result thereof an amount of 400 million was invested with 3 Laws Capital in November 2018 and in December 2018 an amount of 400 million was invested with Oasis Asset Managers. As I understand, all amounts invested with 3 Laws Capital have since been repaid with interest and the mandate terminated.”

ADV JANNIE LUBBE SC: Can you perhaps assist the Commission by telling – who is Oasis Asset Managers/

MS NAHIED GAMALDIEN: Mr Commissioner, Oasis Asset Managers is, as I understand it, an independent asset manager not related to the Sekunjalo Group of companies.

ADV JANNIE LUBBE SC: That is correct, Mr Commissioner.

MS NAHIED GAMALDIEN:

“Post February 2018, I was requested to present to Abdullah a copy of the AYO Draft Interim Results. Abdullah was at the

time still a board member of AYO.

I have met with him on the 26th April 2018 at his home where he scrutinised the gross profit and operating expense margins. I presented to him an Excel version of the results, as prepared by the AYO Finance Team.

At this point, AYO's profit after tax PATH was 32 million. He queried why the margins were so low, as he was expecting a higher profitability and asked me to adjust the spreadsheet to reflect the usual margins, to show him what the effect on PATH would then be.

I adjusted the gross profit margins to align to the 35% of prior years and this increased PATH to R50 million. I confirmed that I had sent a screenshot of the Excel spreadsheet to the AYO executives which I understand Hardy has presented into evidence..."

MS GILL MARCUS: If I could just ask you about that 35%? Given the issues that are being raised here as a usual margin, was that a real number or was it something that was just determined at that point in time, as well? So that you had a particular prior years' profit margin set at 35%. Was that real in itself or just, also, manipulated to give you an outcome?

MS NAHIED GAMALDIEN: Mr Commissioner, at that point, what we had done was. We looked at the prior year to see what the gross profit margin ordinarily would be and we applied that same percentage to see what the outcome would be. The intention at that point was just to see what profitability would be if we normalise the margin.

MS GILL MARCUS: But why would you normalise a margin to something that is not real? And is the 35% itself...? What I am asking, was the 35%, was that real? Or what that had been normalised as well?

MS NAHIED GAMALDIEN: No, Mr Commissioner. 35% is our usual margin. That is what we normally achieve in our businesses.

MS GILL MARCUS: So, your norm and what you would see as regular profit margin would be 35%?

MS NAHIED GAMALDIEN: That is correct, Mr Commissioner.

MS GILL MARCUS: I do not know what the norm would be in relation to other companies, but that seems pretty high. But there we go. Let that be as it is. Therefore, your understanding of this would be, just to indicate what the differential would have been and that would have been R18 million?

MS NAHIED GAMALDIEN: That is correct, Mr Commissioner.

MS GILL MARCUS: Your... If I read this correctly or as I am reading it, it is not whether I am reading it correctly, as I am reading it. You did not intend that to be a manipulation, it was for information?

MS NAHIED GAMALDIEN: That is correct, Mr Commissioner.

MR EMANNUEL LEDIGA: Just a question there too, is that, why was the margin lower and you know, what was the margin? What was the real margin? Because a margin is just a margin. You just have to report it, you know.

MS NAHIED GAMALDIEN: Ja, that is correct, Mr Commissioner.

MR EMANNUEL LEDIGA: Ja?

MS NAHIED GAMALDIEN: At that point, Mr Commissioner, I think the

margin was about 30%. I cannot recall what was the other question you asked, Mr Commissioner?

MR EMANUEL LEDIGA: Why was the margin lower than the 35%? Thirty is not bad, ja. But why was it lower?

MS NAHIED GAMALDIEN: Mr Commissioner, at that point, the intention was then that an investigation should be done to establish exactly those reasons.

MS GILL MARCUS: Was such an investigation done?

MS NAHIED GAMALDIEN: As I understand it, yes. If I can maybe read the next two paragraphs?

“Because I was about to go to PE on the 27th April, as my dad’s health had deteriorated, Abdullah requested that I hand over this exercise to Salie for completion.

I emailed Salie the Excel spreadsheet that Abdullah and I had worked on and left.

I was distracted from my work by having to deal with my dad’s illness which had worsened dramatically.

Even though I had been copied in on emails and was kept updated in relation to this issue, I must concede that I was not properly focused on the issue.

My dad passed away on the 10th May 2018 and I returned to Cape Town on or about the 15th May 2018.

The Sens announcement was released on the 15th May 2018...”

ADV JANNIE LUBBE SC: Can I just go back to 46. I understand that you took a screenshot of the Excel spreadsheet which you then sent to the AYO executives. Was it perhaps because you felt uncomfortable

what was happening with Mr Abdullah at his home?

MS NAHIED GAMALDIEN: Yes, Mr Commissioner. I was uncomfortable. I was not sure at that point what the intention was.

“In response to the question about whether BDO...[intervenes].

CHAIRPERSON: I am sorry. Are you still not sure now what the intention was?

MS NAHIED GAMALDIEN: Mr Commissioner, the JSE has now subsequently requested that those results be reviewed and audited. So, we await the outcome of that investigation.

“In response to the question about whether BDO has rotated their audited partners in dealing with the AYO audited:

I wish to state that the audit partners were rotated, as from what appears hereunder.

In 2015, MT Hashiem. For 2016/2017 was Bernard van der Walt and in 2018, Stefan Cilliers.

In response to the statement that the 2018 AYO Annual Report shows that AYO showed profitable results and the question whether this was mainly due to the interest earned on share proceeds and if this was excluded, would AYO be loss making:

I respond as follows. In the financial statements the profit before tax, amounts to R195 997 million and the interest is reflected as R225.200 million.

Once the interest is added back, the company appears to have made a loss of R29.203 million.

In short, I agree that AYO showed profitable results, mainly due to the interest earned on share proceeds and if this was

excluded, AYO would be loss making.

There are various once off costs, amounting to R27.836 million, also included in the profit before tax number and mainly attributable to the listing.

It is also important to note that AYO is in the growth phase and therefore investing in staff and other costs for growth.

As at the date of listing and as...[intervenes]...”

MR EMANUEL LEDIGA: Just a question on the once off costs. What would those be?

MS NAHIED GAMALDIEN: Mr Commissioner, the once off costs are made up of an IFRS2 adjustment which relates to the BEE consortium share issue. There are some provision for warrantees in there and I cannot really recalls what else makes up that amount, but it is in the financial statements.

MR EMANUEL LEDIGA: Okay. And I guess we will know soon what BDO says about this figure, is it not?

MS NAHIED GAMALDIEN: About the interim results.

MR EMANUEL LEDIGA: Ja.

MS NAHIED GAMALDIEN: This is the 2018 results. The August results, Mr Commissioner.

MR EMANUEL LEDIGA: The annual results, ja.

MS NAHIED GAMALDIEN: That is correct, Mr Commissioner.

MR EMANUEL LEDIGA: These ones. Okay.

MS NAHIED GAMALDIEN: So, Mr Commissioner. These numbers are audited and are available on our website.

MR EMANUEL LEDIGA: Oh, all right. Okay, no. It is fine then. Ja,

okay.

MS NAHIED GAMALDIEN:

“As at the date of listing and as disclosed in the PLS, AYO owed an amount of R80 million to AEEI.

This amount was repaid to AEEI, using funds generated from the listing....”

MS GILL MARCUS: And that would be in contravention of the conditions set by the PIC.

MS NAHIED GAMALDIEN: May I read the next two paragraphs, Mr Commissioner?

MS GILL MARCUS: [No audible reply].

MS NAHIED GAMALDIEN:

“On the 20th December 2017, I was copied into an email sent by Mr Victor Seanie, the Assistant Portfolio Manager at the PIC to Salie in which Seanie states the following:

We just concluded a committee on AYO. The committee believes that the issued price is very high and as such we require downside protection in the form of a put-option to protect PIC’s clients against a share price decline. A commitment that AYO will spend the equity funds raised only on acquisitions and within 24-months. Shareholder approval for all acquisitions, other than BT, that are greater in value than 10% of AYO’s market capital...”

ADV JANNIE LUBBE SC: Just for record...[intervenes]

MS GILL MARCUS: Sorry, Advocate Lubbe. Just for clarity. In our previous discussions around AYO, by the 20th December the money had

already been transferred to AYO?

ADV JANNIE LUBBE SC: No, that is not correct. You will recall...[intervenes]

MS GILL MARCUS: Ja? When did the money flow?

ADV JANNIE LUBBE SC: You will recall that there was not enough funds.

MS GILL MARCUS: Correct.

ADV JANNIE LUBBE SC: To pay for the shares. It was paid in two tranches. So, on the 20th, is the day before the listing.

MS GILL MARCUS: Okay.

MS NAHIED GAMALDIEN:

“Only the put-option forms part of the downside protection agreement between AYO Corporate Finance and the PIC. The other conditions were never incorporated into the DPA.

I was not involved in the negotiations of the DPA which was between AYO Corporate Finance and the PIC.

In response to the question whether share proceeds were only used for acquisitions for growth in within 24-months:

My response is that, share proceeds were also used to repay the AEEI loan.

AYO has made the following acquisitions since listing:

- 55% of Sizwe Africa IT Group via *Zaylo Serve* at a purchase price of R165 million.
- 40% of Saab Grintek Technologies, SGT by a main street, at a purchase price of R100 million.
- 24% of Global Command and Control Technologies, R1,00

for the equity and a term loan of R15 million.

- 32% of Vunani Group, R145 million preferent share; and
- 50% into Vunani Fin Tech Fund at R100 million...”

MS GILL MARCUS: So, just for clarity there. That is roughly R500 million of the R4.3 billion raised?

MS NAHIED GAMALDIEN: That is correct, Mr Commissioner.

MS GILL MARCUS: And was this done in 2018? Has there been sort of – just not necessarily the months – but at least the question of 2018/2019. When were these transactions conducted?

MS NAHIED GAMALDIEN: These acquisitions were done towards the end of – the second half of 2018 and the beginning of 2019, Mr Commissioner.

MS GILL MARCUS: And again, related party. Are any of these already related parties or had an investment from any of the Sekunjalo Group? Do you know?

MS NAHIED GAMALDIEN: I am not sure, Mr Commissioner. The only one that I am aware of is Sizwe where Reverend Mehana as a shareholder of Sizwe and also a director of AEEI, but Reverend Mehana was not a director of AYO. I am not sure of the relationship of the others. To my knowledge, there is not related party relationship.

MS GILL MARCUS: Can we check that, Advocate Lubbe?

ADV JANNIE LUBBE SC: It is noted.

MS GILL MARCUS: Just to see whether – not necessarily to AYO but to any entity within the group.

ADV JANNIE LUBBE SC: Thank you, Mr Commissioner. It is noted. Can you just deal also with the 32%, Vunani Group, 145 million

preference share. If my memory does not fail me, there was evidence that this was in fact a bailout for the debt owed to Investec by the Vunani Group. Is that correct?

MS NAHIED GAMALDIEN: That is correct, Mr Commissioner.

MS GILL MARCUS: Okay. Can you just elaborate on that a little bit?

MS NAHIED GAMALDIEN: I am not sure of the detail, Mr Commissioner. But I am aware that Vunani owed... There was a loan between Vunani and Investec at the time when AYO purchased the shares.

MR EMANUEL LEDIGA: Okay, a question here. If I can sort of recall that there was a criteria on how to buy these companies. That they would have warranties, you know. Were this done according to the criteria which you guys put out?

MS NAHIED GAMALDIEN: Yes, Mr Commissioner. That is my understanding that they were done according to that criteria and some of them do have warranties in place.

“In regard to the question about whether AYO implemented a conflict of interest policy:

I wish to state that such policy was in the process of being drafted when I last checked in January 2019.

I understand that the policy has in the meantime been drafted but I am unsure as to whether it has been approved by the board or issued to PIC.

As far as the composition of the AYO board is concerned:

I understand that the board appointments are nominations rest with the Nominations Committee of AYO.

The only knowledge that I have...[intervenes]...”

ADV JANNIE LUBBE SC: I am sorry. Do you know who are the people on this Nomination Committee?

MS NAHIED GAMALDIEN: I cannot recall, Mr Commissioner. I would need to check that.

ADV JANNIE LUBBE SC: We will follow that up and provide the information to the Commission, Mr Commissioner.

MS NAHIED GAMALDIEN:

“The only knowledge that I have in relation to the nominations requested by the PIC is a board nomination received by myself from the PIC in respect of Advocate Ramathodi on the 27th February 2018. He was subsequently appointed on the 7th March 2018.

I am not aware of which other board members were appointed by the PIC, as I did not serve on the Nominations Committee...

ADV JANNIE LUBBE SC: Just to get that clear. That Advocate Ramathodi was nominated by the PIC to serve on the board.

MS NAHIED GAMALDIEN: That is correct, Mr Commissioner.

“Since my appointment as CFO of AYO, I, over a period of time became concerned about certain corporate governance issues in the business.

These concerns were ultimately presented to the board of AYO in a letter dated 7 August 2018. A copy of which I attached as Annexure NG4.

I pause to mention that as soon...[intervenes]...”

CHAIRPERSON: Where is that list? Just see... Annexure NG4.

ADV JANNIE LUBBE SC: Is that the same letter that was presented in his evidence by Mr Hardy?

MS NAHIED GAMALDIEN: I believe that it is, Mr Commissioner

CHAIRPERSON: Yes. Okay, to Mr Salim Young. Is it not? Ja?

MS NAHIED GAMALDIEN: That is correct, Mr Commissioner.

CHAIRPERSON: All right. So you put out all the concerns here? All right, ja.

MS NAHIED GAMALDIEN: That is correct, Mr Commissioner.

CHAIRPERSON: Okay.

MS NAHIED GAMALDIEN:

“I pause to mention that, as soon realised that the role of CFO placed huge responsibility on me, bearing in mind that I had a very young child.

I also felt overwhelmed by being the CFO of a listed group which carried much more responsibility than being a director of an unlisted company.

At the end of July 2018, I had discussions with Abdullah and informed him of my intention to resign and that I wanted to leave at the end of August.

Abdullah pleased with me to reconsider. At the time, Hardy and Nodwele had also indicated to me that they were not happy with the corporate governance breaches and that they wanted to resign. I told Abdullah about this.

I did not tell Hardy and Nodwele about my intention to resign at that time, as Abdullah had told me that if I did so, that they may also wish to resign.

I felt that if all three executives resigned, that it would have severe consequences for AYO.

Over this period, there were ongoing discussions between myself, Hardy and Nodwele around the corporate governance issues that are contained in the aforesaid letter.

Nodwele felt very strongly that we should present a joint letter to the AYO board in which our concerns are set out. Myself and Hardy agreed with this.

It was important for me that the board addressed our concerns in a constructive manner, so that AYO could deliver on the undertakings that AYO has made in its PLS.

We agreed that we would present our letter to the board at a meeting which was to be held on the 7th August 2018.

Salim Young was advised about our intention to present the letter to the board and he requested that we meet with in the morning prior to the board meeting at the Vineyard Hotel to discuss the letter.

At this meeting we presented the letter to Young and also verbalised what was contained in the letter. Young undertook and agreed that he would present our concerns to the board at the meeting scheduled for later that same.

Young had sight of the contents of the letter and as far as I can recall, was given a copy thereof.

At the board meeting:

Young advised the board that he had received a letter, setting out certain concerns raised by ourselves in relation to

corporate governance issues. He advised the board that he did not intend to read the whole of the contents of the letter to the board and that he would address certain main concerns which he then did and undertook to circulate a copy of the letter to the board.

On Sunday the 19th August, Hardy, Nodwele and myself had a conference call. They informed me that it was their intention to resign if the concerns raised in our letter were not addressed and or resolved. They did not give an indication of when they intended to resign.

In the discussions, they suggested that I should also consider resigning. I told them that I did not think it is the right thing for all of us to resign together and said that we should each decide for ourselves what we wanted to do.

I particularly appeal to Hardy to reconsider his intention to resign and pointed out to him what great staff we had recruited, particularly staff who had transitioned from BTSA to AYO when we were awarded the SASOL contract.

I further informed them of the consequences to the business, if all the AYO executives resign at the same time and that we had staff to whom we had a responsibility to as leadership.

I was under the impression that they were considering the way forward but was then shocked and surprised when I learned that they had both resigned on the 23rd October 2018.

After the resignation of Hardy and Nodwele, Abdullah approached me and requested that I assume the role of CEO.

I agreed to assist in this capacity with the understanding that he would recruit a new CEO and CFO and I indicated that I no longer wanted to remain on the board of AYO and or be the CFO.

He agreed and as previously stated, I resigned from the board in January 2019...”

ADV JANNIE LUBBE SC: Thank you. Can I just, before we conclude, ask you a couple of questions. You have listened to the evidence of Hardy and to Nodwele and you have seen their written statements.

MS NAHIED GAMALDIEN: Mr Commissioner, I have listened to Kevin Hardy but not Nodwele.

ADV JANNIE LUBBE SC: Okay, but you have seen Nodwele’s statement?

MS NAHIED GAMALDIEN: I have not actually read it, Mr Commissioner.

ADV JANNIE LUBBE SC: All right. Where Hardy talks about you and your role and involvement, are you in agreement with his evidence or do you disagree with his evidence?

MS NAHIED GAMALDIEN: Mr Commissioner, I think... I cannot recall everything he said, but on the balance of it, I think I do agree with his evidence, Mr Commissioner.

ADV JANNIE LUBBE SC: Okay. Then there is the evidence – there was this evidence of Hardy about recordings made of two board meetings. Is that correct?

MS NAHIED GAMALDIEN: I only recall the on board meeting, Mr Commissioner on the 7th August.

ADV JANNIE LUBBE SC: All right. Is it correct...? Well, there was also a recording of a meeting after the board meeting.

MS NAHIED GAMALDIEN: That is correct, Mr Commissioner.

ADV JANNIE LUBBE SC: So, there are two recordings?

MS NAHIED GAMALDIEN: That is correct, Mr Commissioner.

ADV JANNIE LUBBE SC: And is it correct that you made those recordings?

MS NAHIED GAMALDIEN: Mr Commissioner, I made those recordings at the request of Kevin Hardy.

ADV JANNIE LUBBE SC: And have you seen the transcription of those recordings?

MS NAHIED GAMALDIEN: I have not seen the transcription, Mr Commissioner.

ADV JANNIE LUBBE SC: All right. In his evidence before this Commission, Mr Hardy testified about Dr Survé at the meeting after the board meeting, trying to persuade him to call the PIC, in particular, Mr Fidelis Madavo to convince the PIC that the BTSA deal is still on track. Can you recall that conversation?

MS NAHIED GAMALDIEN: I do recall that conversation, Mr Commissioner.

ADV JANNIE LUBBE SC: According to Mr Hardy, he was in fact, requested by Dr Survé to tell a lie to the PIC and to calm them prior to the listing. I have asked you this question this morning and your reply to that is that the Commission should look at the transcription of the meeting which is speaking for itself. Is that your answer?

MS NAHIED GAMALDIEN: That is correct, Mr Commissioner.

ADV JANNIE LUBBE SC: That is the evidence. Thank you, Mr Commissioner.

CHAIRPERSON: You are at AYO at the moment. What is your feeling about the future of that company without BTSA, in general? I mean, looking forward two, three years out.

MS NAHIED GAMALDIEN: Mr Commissioner, AYO and BTSA still do have an alliance agreement in place and they are still working together on the SASOL contract. I am not sure about the future of AYO since we have obviously been slowed down significantly with all the negative media reports, etcetera.

We have an amazing team of people, managers, etcetera. And if I look back to the past few months, at the pipeline of acquisitions, the customers we had lined up, etcetera. If not for all the negative media reports, I think we probably would have achieved the target set out in our PLS.

But at this point, I cannot – I am not sure what the future holds for AYO.

CHAIRPERSON: Okay. Thank you.

MS GILL MARCUS: Ms Gamaldien, you have been subpoenaed before this committee and I would ask you and obviously, you do not need to reply, but what is your – do you have any concerns about your own situation in AYO and whether there will be any repercussions to you from appearing before this committee?

MS NAHIED GAMALDIEN: Mr Commissioner, I prefer not to answer that question, if that is okay.

ADV JANNIE LUBBE SC: If I can be of assistance. Is it correct that

you were requested by people in AYO or Sekunjalo to meet with their lawyers, Mr Abrahams to prepare a statement before you appear before this Commission?

MS NAHIED GAMALDIEN: That is correct, Mr Commissioner. I was requested to meet with their lawyers. However, I declined and choice to use my own representation.

ADV JANNIE LUBBE SC: And there must be an obvious reason for that, but I understand if you do not want to talk to the Commission about that, but...

MS NAHIED GAMALDIEN: Thank you.

MR EMANUEL LEDIGA: Mr Lubbe, just a question from my side, if you can clarify that. If someone is subpoenaed to come and present to the Commission, can there be any repercussions for them, if any? Can they be victimised and are they because...?

ADV JANNIE LUBBE SC: Yes. Unfortunately, yes, Mr Commissioner. That can happen. The only protection for the witness is in The Labour Relations Legislation which is unfortunately not a complete protection. So, yes.

And I think I need to place it on record. This witness came to this Commission under the subpoena, under huge stress and in all probability, there will be repercussions for her after her evidence before this Commission today.

Unfortunately, I nor the Commission cannot guarantee that nothing will happen to her. That is unfortunately the situation.

MS GILL MARCUS: Except that we can say that it would be most unfortunate if there was to be any repercussions for you appearing

here because first of all, we have subpoenaed you and second of all, this is a Commission of Inquiry to see whether there was any impropriety committed by the PIC and what the issues were around that.

And you have presented, as far as I can see, your honest opinion of what happened in relation of the AYO transaction, which should be visible to whoever is an investor in the AYO or any of the Sekunjalo Group.

So, I think it would be something that we would – perhaps Advocate Lubbe through you – just keep an eye and see whether there is any repercussions, but I think it would be most unfortunate.

ADV JANNIE LUBBE SC: Thank you, Mr Commissioner. It is appreciated and I think that what must be added to your comment is that you will recall that Dr Survé, at the conclusion of his evidence, if I recall correctly, told the Commission that he is prepared to fully cooperate with the Commission, in the work of the Commission.

And if necessary, he will come back to the Commission, if there is a need for that and in the light of that attitude, it would be most unfortunate, if there is any action taken against this witness, after she came here under the subpoena and just gave her evidence, based on the facts to her disposal.

MS GILL MARCUS: But perhaps in terms of concluding the record of this particular witness, it would be useful to look at the testimony of Dr Survé, because if I recall and I do not have it in front of me at the moment, but if I recall, he actually said words to the effect that the AYO transaction was, that he had nothing to do with the AYO

transaction.

It was handled by the team dealing with AYO and that his team was available to appear before this Commission and to ask them any questions, and if I am remember correctly, he actually specifically mentioned Mr Salie as a person who was dealing with and would be available to talk to the Commission.

ADV JANNIE LUBBE SC: You are absolutely correct and you will recall that he in fact looked back to the people behind him and said: Here is my very competent team. And Mr Salie was in fact sitting that morning in the Commission. So ...[intervenes]

MS GILL MARCUS: Therefore, none of those people being asked to come to the Commission, should be afraid of any repercussions or victimisation, as this was at the direct request and if you like, recommendation by Dr Survé about questioning or talking to his team. And I think that should be placed on record.

ADV JANNIE LUBBE SC: Thank you. It is noted, Mr Commissioner.

CHAIRPERSON: ...here when Dr Survé...[intervenes]

ADV JANNIE LUBBE SC: She was not present that day in Dr Survé's team, sitting behind him. That is quite correct.

MR EMANNUEL LEDIGA: Perhaps we should put some kind of protection, you know, for witnesses in the Commissions Act, but that is a separate matter, I guess.

CHAIRPERSON: The gentleman sitting behind you.

ADV JANNIE LUBBE SC: That is the witness's husband, giving support to the witness.

CHAIRPERSON: Yes, I thought that, that is the husband. Thank you

very much, sir. You may be seated. Yes, I just want to thank you on behalf of the Commission, Ms Gamaldien for availing yourself to come here. All we can say is that hopefully nothing untoward will happen to you. It is correct that Dr Survé offered some of his, call it, employees who were here and I would assume that you would not have any objection, really, to anyone else in the companies to be called to come and testify before us. We thank you for coming and please get in touch with Advocate Lubbe if anything were to happen, so that we can see what we can do, okay?

MS NAHIED GAMALDIEN: Thank you, Mr Commissioner.

CHAIRPERSON: Thank you very much.

ADV JANNIE LUBBE SC: Mr Commissioner, this is the business for the day. There is an Easter weekend ahead of us. So, we will have to adjourn then until Tuesday. That is the 23rd April at ten o'clock.

CHAIRPERSON: At 09:30.

ADV JANNIE LUBBE SC: At 09:30. You are absolutely... You remind me now. That was the agreement with the legal team of Harith. That is quite correct.

CHAIRPERSON: Yes, yes. And everybody, enjoy your Eastern weekend and drive safely and come back fresh on the 23rd. We adjourn until the 23rd at 09:30.

INQUIRY ADJOURNS TO 23 APRIL 2019