

RULING

In the course of his evidence yesterday, Mr Terry Crawford-Browne referred to a document annexed to his bundle of documents at page 173, being a report compiled by the USA firm of Attorneys, Debevoise & Plimpton, for their client Ferrostaal, one of the companies forming part of the German Submarine Consortium (GSC) which was awarded the contract to supply the South African Government with submarines. The same report had been referred to in the evidence of a previous witness on the 2nd September 2014 and an objection was raised to its admissibility on the basis that it was privileged. I had upheld the objection and ruled that such report was inadmissible. The same objection was raised when Mr Terry Crawford-Browne wanted to refer to it in his evidence.

I indicated that due to the importance of the issue I was prepared to reconsider my earlier decision and called for fresh argument to be heard on the matter. Mr Terry Crawford-Browne argued that the report should be admitted as it contained important information relating to the allegations of fraud in the SDDP acquisition process. Ms Ramagaga, who led Mr Crawford-Browne, also argued that the document should be admitted on the basis inter alia that it had already been widely disseminated and had been in the public domain for a considerable time. She submitted that the Commission is not bound to apply the rules applicable to a court of law and further that it would be in the public interest that the contents thereof be disclosed. Mr S Burger, for Ferrostaal, argued that it is trite law that a confidential communication between an attorney and his/her client is protected against unauthorised disclosure and cannot be used in evidence unless the privilege has been waived. He submitted that the privilege in casu has not been waived as the document was disseminated without his client's consent.

The protection of privilege is recognised by both the Commission's Act 1974 (Act 8 of 1947) and the Regulations applicable to this Commission which were published in Government Gazette no 35023 of 8th February 2012. Regulation 8(1) provides that the only ground on which a witness can refuse to answer questions is privilege. It is undisputed that the report is a privileged document and that such privilege has not been waived by Ferrostaal. The document stands on the same footing as a stolen document. It stands to reason that this Commission would be perpetuating an

illegality if it were to admit it. In these circumstances the ruling of the 2nd September 2014 should stand.

This notwithstanding, I indicated that the same report had been furnished to the Commission in confidence not as evidence but for the purpose of assisting it in its investigations by way of providing leads. In this context, the Commission has initiated certain investigations based on the contents of the report. I reiterate, however, that it will be results of the ensuing investigations that will be used by the Commission and not the contents of the report as such.

In the result, I confirm my earlier ruling that the report in question is inadmissible and cannot be referred to in the evidence of Mr Terry Crawford-Browne or any other witness.



Chairperson



8th October 2014