

COMMISSION OF INQUIRY OF THE PUBLIC INVESTMENT CORPORATION

HELD AT

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10

14 AUGUST 2019

DAY 63

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PROCEEDINGS HELD ON 14 AUGUST 2019

CHAIRPERSON: Good morning Adv Lubbe.

ADV JANNIE LUBBE SC: Good morning Mr Commissioner and members. It's hard to believe that we've come to the last day of presenting evidence in this Commission but we're ready with the last witness. Mr Naidoo is here and his legal team will introduce themselves.

CHAIRPERSON: Just before I – yes?

MR GEORGE VAN NIEKERK: As it pleases Commissioner and
10 members, George Van Niekerk from Edward Nathan Sonnenbergs, confirm that we act, Mr Jayendra Naidoo is here. Commissioner we have provided the Commission with a copy of a signed statement by him and he is here to testify and he is prepared to take the affirmation Commissioner.

CHAIRPERSON: Just before I get to that, Adv Lubbe yesterday or the day before yesterday you sought an order in terms of certain parts of the lifestyle audits of the certain members of the Board of Directors of the PIC. I just want to read out that order.

ADV JANNIE LUBBE SC: Thank you Mr Commissioner.

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ORDER

Having considered the documentation contained in the lifestyle audit reports compiled by PricewaterhouseCoopers and the submissions by the Chief Evidence Leader, I make the following order:

1. The affidavit deposed to by Lionel Van Tonder can be made

public and can be posted on the official website of the Commission.

2. The entire contents of paragraph 6 of each of the lifestyle audits of the individuals are confidential and may not be made public.

Dated 14 August 2019.

ADV JANNIE LUBBE SC: Thank you, thank you Mr Commissioner.

CHAIRPERSON: Yes Mr Naidoo can you just stand up please? Your full names?

MR JAYENDRA NAIDOO: Jayendra Naidoo.

- 10 **CHAIRPERSON**: I understand you are prepared to, I don't know whether to say take an affirmation or make an affirmation, am I correct?

MR JAYENDRA NAIDOO: I prefer to affirm.

CHAIRPERSON: Prefer that instead of an oath?

MR JAYENDRA NAIDOO: Yes.

CHAIRPERSON: Yes, do you affirm then that the evidence you're about to give will be the truth, the whole truth, nothing but the truth?

MR JAYENDRA NAIDOO: I do.

CHAIRPERSON: Thank you. You may be seated. Yes Mr Van Niekerk?

- 20 **ADV JANNIE LUBBE SC**: Mr Commissioner we had a discussion before we started and we agreed that certain parts of the statement can be taken as read, we will deal with that when we get to that and Mister ...

CHAIRPERSON: Van Niekerk.

ADV JANNIE LUBBE SC: Van Niekerk, sorry, will proceed.

CHAIRPERSON: Yes thank you.

MR GEORGE VAN NIEKERK: Thank you Commissioner. I had also

indicated to my learned friend that as I go through the statement I would imagine the first couple of pages will go quickly as Mr Naidoo takes you through his personal history how he got to where he is. But then with your leave Commissioner it may well be easier if he then takes questions and if for any reason you need to interrupt to get clarity or have questions he would prefer to do it in that way as we progress through his statement and of course anything else beyond the statement that we hadn't dealt with which requires clarification he will then take those questions, as it pleases.

10 **MR JAYENDRA NAIDOO:** Good morning Commissioners. I was approached by e-mail by the evidence leader of the Commission sometime in March 2019 to provide information to the Commission on the Steinhoff Lancaster transaction involving the PIC. I appointed Mr George Van Niekerk of Edward Nathan Sonnenbergs to assist and via his office we arranged a meeting with the Commission evidence leader and his colleagues ... (intervention)

CHAIRPERSON: Sorry there's some confusion it seems about which statement was going to be placed before us whether it's the latest or the previous one. We got one two days ago through which we went and
20 got the latest this morning.

MR GEORGE VAN NIEKERK: It would be the statement of this morning I'm not aware whether the earlier one would have been an unsigned one I assume?

MR JAYENDRA NAIDOO: Yes.

MR GEORGE VAN NIEKERK: It's the signed statement Commissioner.

MS GILL MARCUS: I'm sorry but that's difficult because we've worked off the previous one and I don't know what you're reading from I mean I had a copy this morning but I've worked off a previous document. It means that you're talking to something that I may or may not have in front of me.

CHAIRPERSON: But how different is it, is it completely different from the one that was ... (intervention)

MR GEORGE VAN NIEKERK: It isn't completely different, it is different in some respects and we had prepared on the one which we had, the signed one that we had submitted to the Commission that's the one
10 which we would prefer to deal with if at all possible. The unsigned one was made available quite some time back in fact, probably about three weeks ago. I would, with respect, if it's at all possible be more comfortable leading my witness through the signed one. I don't think there's anything new, certainly not of import that differs materially but it is cleaned up the one that we're presenting today, the signed one in other words.

MS GILL MARCUS: I want to just place on record then I'm reading a document or you're talking to a document that I have not had the
20 opportunity to read as I got it this morning and I've based my information and my work on the previous document and I need a copy please.

CHAIRPERSON: Ja we'll ask a member of our staff to quickly make two copies for my colleagues but we won't take a break for that, we can carry on.

MR GEORGE VAN NIEKERK: I'd be grateful for that. We'll arrange for the copies to be made available to you now.

ADV JANNIE LUBBE SC: Mr Commissioner we have arranged for the copies it will be with you within a minute or two, can we proceed?

CHAIRPERSON: In fact one copy, one copy would be enough because my colleague on the left has got a copy.

MR EMMANUEL LEDIGA: Yes, I do have a new one, thank you.

ADV JANNIE LUBBE SC: Okay.

MR GEORGE VAN NIEKERK: I'm indebted to the Commission.

10 **MR JAYENDRA NAIDOO:** Should I continue?

CHAIRPERSON: Yes please.

MR JAYENDRA NAIDOO: As I was saying I appointed Mr Van George Van Niekerk of Edward Nathan Sonnenbergs to assist and via his office we arranged a meeting with the Commission evidence leader and his colleagues and provided the Commission with information on the transaction.

20 Subsequently, in July this year I was advised by Mr Van Niekerk that the Commission evidence leader had requested that I attend the Commission in person. I agreed to this request and my appearance was initially scheduled for 22nd July. This date was deferred by the Commission as its proceedings fell behind schedule. Subsequently in early August I was again requested to make myself available which I again agreed to. I provide this statement, and attend these proceedings, on a voluntary basis.

The facts contained in this statement fall within my personal

knowledge, save where the context indicates to the contrary.

When I make assertions of law I do so on advice of my legal representatives.

In order to provide the Commission with a clearer understanding of my role in the so-called Steinhoff/Lancaster transaction, and the manner in which this transaction was developed, I wish to briefly recap some background information.

May I proceed?

I was born in Durban in 1960, into a family of political
10 activists. My father was President of the Natal Indian Congress from 1973 to the early 1980's, a political organisation which had a strong association to the then banned and exiled ANC and the wider Congress Alliance. My father's brother was a political prisoner on Robben Island from 1967 to 1972, and was my political mentor when he was released from prison. Fortunately he was house-arrested so I had much time with him during the following years.

I finished high school at the age of 16 and thereafter attended the University of Durban Westville where I began to study for a law degree in 1977. I joined the South African Students Organisation
20 (SASO) that year, but shortly afterwards it was banned, together with other organisations. I became active in student based politics at the University, and also became actively involved in community based civic organisations. In 1980, I was actively involved in the student education boycotts and mass community based rent protests in Durban.

In 1981, I left university, and became a full time organiser of a

trade union in the retail sector. I remained a full time trade unionist from then until 1994. The union I was part of grew successfully, making a huge impact in the 1980's on improvements in wages and working conditions in the retail sector. I was personally involved in several campaigns for workers' rights, and in the largest national strikes in the retail sector over wages in companies like Pick 'n Pay and the OK Bazaars which later became a part of the Shoprite Group in the 1990's. The union was a founding member union of COSATU when the latter was established in 1985. Subsequently, I became part of the
10 COSATU Central Executive Committee, and other COSATU structures. With the unbanning of political organisations and release of political prisoners in 1990, COSATU became involved in various negotiation processes.

In 1991, in the negotiation process leading to the signing of the National Peace Accord, as a result of my track record I was appointed as Coordinator of the ANC Alliance negotiating team, comprising ANC, COSATU and SACP delegates. The success of the National Peace Accord served as a prelude to the later CODESA political negotiations. In 1992 I moved to the COSATU Head Office as
20 full time National Negotiations Coordinator, in which capacity I led the federation's work to establish the National Economic Forum comprising Government, Business and Labour, as well as other multiparty fora dealing with various aspects of the political transition.

In 1994, after the establishment of the first democratic government, I led the Labour negotiation team that negotiated the

terms of the NEDLAC Act, the first law passed by the new Parliament, which gave effect to the establishment of the National Economic Development and Labour Council, a statutory body for dialogue and negotiation on social and economic policy and legislation between the Government, trade unions, business organisations and community organisations. In 1995, NEDLAC was launched and I was appointed as its first Executive Director.

In the first years of its existence NEDLAC was at the centre of change in the country, and much of the country's labour legislation was amended. Other policy and legislation including for example
10 competition policy was also addressed by NEDLAC. In November 1998, believing the country to be on a path of peace and prosperity, I resigned from NEDLAC with the intention to start life as a private citizen.

The day after I announced my resignation, I was approached by then Deputy President Mbeki to serve as the Chief Negotiator representing the Presidency in a strategic procurement programme. In that capacity, until the end of 1999, I led a team representing four
20 government departments and engaged in contract negotiations with the international companies who had been appointed as preferred bidders by Government. Negotiations were also undertaken with international banks from the countries where the preferred bidders came from. Once my task successfully concluded at the end of the year I was then able to move on to pursue my own interests.

MS GILL MARCUS: Sorry Mr Naidoo on that question your strategic

procurement programme that had been appointed as preferred bidders in what area was this, what area of interest?

MR JAYENDRA NAIDOO: This was in the defence area.

MS GILL MARCUS: All of these were defence contracts or companies?

MR JAYENDRA NAIDOO: It was the strategic defence procurement programme which concluded in 1999.

MS GILL MARCUS: Thank you.

MR EMMANUEL LEDIGA: Ja sorry, a question here, and the union that you referred to was it SACCAWU or COWUSA?

10 **MR JAYENDRA NAIDOO**: Today that union is SACCAWU from the early period there were many different variations of it and merges and so on.

MR EMMANUEL LEDIGA: Yes but it's SACCAWU now?

MR JAYENDRA NAIDOO: Today it's SACCAWU. Thank you.

In 2000, the year 2000 that is, I established a private company, the J&J Group, together with an old colleague and friend. Through J&J Group we intended to create new businesses with high growth potential, strong social impact, and which could also be commercially successful. Over the ensuing years, we established several start-up companies, and invested in several businesses, usually in association with other
20 companies with complementary skills.

In 2001, the Old Mutual acquired 25% of J&J Group. As a result of an introduction by Old Mutual in 2003, J&J Group invested in Pepkor Holdings Pty Limited who I will refer to after this as Pepkor and we acquired 3,75% of the ordinary shares of Pepkor. Pepkor was at that time a private company unlisted. The chairman and controlling

shareholder of Pepkor was Dr Christo Wiese. The shares were acquired at market value on the same price and terms as all other shareholders. I became a director at Pepkor and served on the board of Pepkor for eight years from 2003 to 2011.

MR EMMANUEL LEDIGA: A question here and if you can, what was the deal size here, the size of the deal?

MR JAYENDRA NAIDOO: At that time the size of the transaction was R100 million.

MR EMMANUEL LEDIGA: 100 okay, alright thank you.

10 **MR JAYENDRA NAIDOO**: As time passed, J&J succeeded in creating a positive balance sheet. However it began to prefer a different strategy of investing in opportunities with lower risk rather than start-ups or highly leveraged investments. Around 2009, the other co-founder of J&J exited the business and several new shareholders entered J&J Group. Since that time J&J began to exit some of its other investments and focus more on its infrastructure investments.

CHAIRPERSON: Do you mention the co-investor somewhere in this statement?

MR JAYENDRA NAIDOO: No I do not.

20 **CHAIRPERSON**: You don't. Would you mind mentioning him?

MR JAYENDRA NAIDOO: It was J Naidoo, the other J in J&J.

MS GILL MARCUS: (Inaudible – microphone not switched on)

MR JAYENDRA NAIDOO: Commissioner Marcus is referring to Ms Big J and that's because in the trade unions and in the student movement we both had the same name and so being older I like to think is how he

got the name Big J. He has nothing, no involvement with the Lancaster Group; he resigned and exited at J&J level in 2009.

In 2011, J&J Group exited its investment in Pepkor, together with other shareholders, upon receiving a fair commercial offer from Dr Wiese.

I continued to have a strong interest in developing new business initiatives and in investment opportunities which involved higher risks with potentially higher returns. Over time I became a non-executive in J&J Group and in 2012 I established a wholly owned
10 separate investment vehicle, the Lancaster Group, to pursue investments I was personally more interested in.

MS GILL MARCUS: Sorry Mr Naidoo on the Lancaster Group in other documentation that we've seen especially in relation to the issues at hand relating to the Steinhoff and Sierra and Blue Buck it's referred to as the Consortium. Is there a difference between Lancaster Group and the Lancaster Consortium?

MR JAYENDRA NAIDOO: Where we may refer to the Lancaster Consortium it would be where the Lancaster Group which is wholly owned by myself partnered with other entities.

20 **MS GILL MARCUS:** Can you indicate who the other entities are in the Lancaster Group?

MR JAYENDRA NAIDOO: No, Lancaster Group is wholly owned, there is no other entity in Lancaster Group.

MS GILL MARCUS: But then wholly owned by yourself?

MR JAYENDRA NAIDOO: Yes.

MS GILL MARCUS: And therefore the Consortium that went to the PIC to get the additional shares in Steinhoff were also, the Consortium was also wholly owned by yourself?

MR JAYENDRA NAIDOO: I'm not sure what Consortium you are referring to?

MS GILL MARCUS: It's the terminology used in the documentation but if it's the same thing, that's why I was asking is there any difference between Lancaster Group and Lancaster Consortium, if you're only referring to Lancaster Group then that's the same thing that would be in
10 our other documents I'm assuming?

MR JAYENDRA NAIDOO: Yes I'm only referring to the Lancaster Group.

MS GILL MARCUS: And therefore that is wholly owned by yourself, singly?

MR JAYENDRA NAIDOO: Yes, correct.

MS GILL MARCUS: Thank you.

MR JAYENDRA NAIDOO: Through Lancaster Group, I acquired an interest in an IT technology venture directed at managing demand for electricity from end users. Although the venture secured patents
20 worldwide for the technology, it did not achieve commercial viability for various reasons. The knowledge and experience gained in the electricity field can be useful, however, in enabling a resumption of business relationships with Pepkor.

In 2013, I was approached by Pepkor management, who were interested in the retail opportunity for distribution of electricity prepaid

vouchers, which they intended to grow in much the same way that Pepkor had become a major player in the distribution of mobile phone airtime in the country. Given our previous relationship, and my recent experience in the electricity distribution sector, we agreed to form a new joint venture between Lancaster Group and Pepkor for the distribution of electricity payment vouchers.

Following this, in 2014, I approached Dr Wiese and we agreed on Lancaster Group investing directly as a shareholder in Pepkor. Dr Wiese offered to sell 2,5% of his shareholding in Pepkor to Lancaster
10 Group.

At this point, I would like to address the issue of the role of Black Economic Empowerment (BEE) in the envisaged transaction with Pepkor and I'm referring to the transaction that I've just mentioned in 2014 between Pepkor and Lancaster Group that Dr Wiese and I had discussed. The primary driver for reinvesting in Pepkor was the commercial value I saw in Pepkor, and the reciprocal commercial value that Dr Wiese saw in my contribution at board level, my expertise on regulatory and economic issues, and as a strategic business-minded
20 colleague. By this time Dr Wiese and I had an active business relationship for 12 years. Furthermore, I had been involved in the retail sector, in various ways not only as a business person, for over 30 years and I understood the sector well enough. To be clear, BEE has never been the sole determining factor in any business transaction I have been associated with. I consider BEE to be an ancillary aspect that becomes relevant only pursuant to a core commercial rationale

between business partners.

However, the transaction Dr Wiese and I had agreed upon was overtaken by events when Steinhoff offered to acquire the whole of Pepkor. The Steinhoff acquisition of Pepkor was completed late in 2014. Dr Wiese undertook to approach Steinhoff to continue with the original transaction as we had discussed, and arranged a meeting between myself and the Steinhoff CEO in the first of 2015 to discuss it further.

Thereafter, in or around June 2015, Steinhoff offered
10 Lancaster Group an opportunity to invest in Steinhoff.

Steinhoff was an extremely well regarded JSE-listed, what I would describe as a blue chip company. Many international investment banks had a relationship with Steinhoff as a result of their global profile. To raise the funding for this investment I therefore approached a few international banks who I understood were interested in Steinhoff, including some based in London. I also engaged local banks, and local development finance institutions, including the PIC.

With Steinhoff listing on the Frankfurt Stock Exchange in
December 2015, there was not enough time to implement the
20 transaction in 2015, and the engagement between Lancaster Group and Steinhoff continued into 2016. During this process, one of the international banks I had been in discussion with introduced me to Symphony Capital, a local advisory services boutique and recommended the company as a possible adviser who was very competent in raising capital using equity derivatives. In early 2016 I

asked Symphony Capital to provide advice on the best solution they could find to enable the investment by Lancaster Group in Steinhoff.

Symphony provided a proposal which entailed a capital guarantee via a put option against an investment grade international bank. Symphony had obtained commitment for such capital support from a major international bank for up to 10 billion rand of investment by Lancaster Group in Steinhoff shares. I prefer not to identify the particular bank given the existing confidentiality undertakings given by the bank. I

accepted the Symphony proposal, confirmed their mandate as adviser
10 and therefore began exploring ways of raising funding for the transactions against such capital support.”

MR EMMANUEL LEDIGA: Question here. Just in terms of the mandate, was it a risk based mandate or were they paid?

MR JAYENDRA NAIDOO: It was a mandate with no retainer, totally at risk and a success fee being payable at the end of the transaction if there was success. That constituted a level of investment by Symphony in a way and also a level of comfort that we had a transaction that they believed was doable. It’s a typical way of contracting on big transactions.

20 **MR EMMANUEL LEDIGA:** Ja. Okay alright, thanks.

MR JAYENDRA NAIDOO:

“Although several banks were interested to provide funding and I received indicative term sheets from several prospective reputable banks, no single bank counterparty had the capacity to provide this quantum of funding on its own given their investment limits. However,

the PIC was interested in investing further in Steinhoff.”

MS GILL MARCUS: Sorry, can I just refer back to the original document where you says, in that circumstance, I then approached the CEO of the PIC Dr Matjila. In this discussion about the PIC interest was your interaction with Dr Matjila specifically or was there a team that you dealt with directly?

MR JAYENDRA NAIDOO: My first approach was to the CEO Dr Matjila.

MS GILL MARCUS: You dealt with him before?

MR JAYENDRA NAIDOO: No, this was my first time ... (intervenes)

10 **MS GILL MARCUS:** This was the first time.

MR JAYENDRA NAIDOO: That I deal with him directly.

MS GILL MARCUS: And did he- if you could just outline a little bit of the process how that dealt with through Dr Matjila into his team or what were the next steps taken? Who you dealt with in the PIC?

MR JAYENDRA NAIDOO: Once we had reached a stage which I’m dealing with in paragraph 26. Where the PIC indicated an interest, he then referred the matter to his team.

MS GILL MARCUS: Was that the end of his engagement with you?

20 **MR JAYENDRA NAIDOO:** From time to time during the process we did have conversations.

MS GILL MARCUS: With his team or with him separately from the team?

MR JAYENDRA NAIDOO: I had conversation with him ... (intervenes)

MS GILL MARCUS: With him?

MR JAYENDRA NAIDOO: From time to time.

MS GILL MARCUS: Directly between the two of you?

MR JAYENDRA NAIDOO: Yes.

MS GILL MARCUS: Thank you.

MR JAYENDRA NAIDOO: I'll just go back to paragraph 26 where I said;

10 However, the PIC was interested in investing further in Steinhoff. The PIC saw the benefit of the commercial nature of the proposal and was also keen to access the strategic influence that could arise from the relationship between Lancaster Group and Steinhoff.

MS GILL MARCUS: Sorry, can you elaborate a little bit what you mean by the strategic influence?

MR JAYENDRA NAIDOO: The relationship between the controlling shareholder of Steinhoff now with the management of Steinhoff having engaged with us, it was the relationship of working together. I was being invited to become a part of a leadership group. In that sense there was more strategic influence that was capable of being associated with this transaction than simply buying a share through the stock exchange on the market in an anonymous way.

20 **MS GILL MARCUS:** Dr Matjila to the best of my recollection and I could be helped if I'm mistaken on it said that, the purpose of doing it through Lancaster was that you would be able- they wanted to influence decisions and governance and therefore supporting you to be a member of the board and to be on the board you had access in a different way. And therefore this would allow them to exert different influences

through you on that board. Would you agree with that?

MR JAYENDRA NAIDOO: It was an understanding of the investment that Lancaster Group was invited to make in Steinhoff, that I would become a board member. That is correct and that was obviously a point of interest to the PIC that they would have if I can call it, a friendly on the board and we had much in common in our view about developing the economy, developing entrepreneurs. So there was a meeting point between the PICs philosophy and views of the world and my own philosophy and views of the world. So in that sense I think it
10 was not that I would be a formal representative of the PIC but we would be aligned in our thinking.

MS GILL MARCUS: And in that alignment, did you report back to the PIC on issues at any point in time about developments in Steinhoff?

MR JAYENDRA NAIDOO: Post the transaction I obviously kept good line of communication with the PIC on key issues. As a director you have fiduciary responsibilities to the company so I was careful to not cross the line between information that should not go into the public domain and information that could be shared. However, we kept up a very good communication. The PIC was also the second largest
20 shareholder of Steinhoff after the Upington shareholding.

MS GILL MARCUS: So in that communication recognising the role and responsibility of fiduciary duty and keeping things separate. Was it only in relation to you in terms of PIC or was there interaction say through the chair to others with the PIC as well as a major shareholder or were they dependent on the communication from you?

MR JAYENDRA NAIDOO: I cannot answer what other communications the PIC may have had with other individuals that were on the board. I think it would be surprising if the communication was only with me. I would think they had open lines to everybody as the major investor in South Africa. But we kept a direct communication from time to time and they think they appreciated that.

MS GILL MARCUS: And that was with the CEO specifically or with the team that had been part of the deal or with their general corporate management interactions?

10 **MR JAYENDRA NAIDOO:** After the transaction, the doors opened so there was communication at many levels between myself and the PIC and the deal team and the ESG team, there are many different pockets with responsibility for different aspects and I engaged with each pocket that was applicable.

MS GILL MARCUS: Okay. And that was specifically as Lancaster on the board?

MR JAYENDRA NAIDOO: It was as a board member.

MS GILL MARCUS: As a board member.

MR JAYENDRA NAIDOO: In some respects it was as an investor in
20 Lancaster 101. In other respects there were multiple sets of relationships and responsibilities and contractual obligations we can deal ... (intervenes)

MS GILL MARCUS: That would be different.

MR JAYENDRA NAIDOO: with that later in the statement.

MS GILL MARCUS: Ja, those are different areas. Okay thank you.

MR JAYENDRA NAIDOO: Going back now to clause 27;

Following further discussions over the ensuing months, it was finally agreed between Lancaster Group, Steinhoff and the PIC that a special purpose company would be established, Lancaster 101 through which Lancaster Group and PIC would partner and invest into Steinhoff. This transaction was consummated in September 2016 and was known as the project name Project Sierra.

MR EMMANUEL LEDIGA: Why Sierra and Bluebuck, just those names?

10 **MR JAYENDRA NAIDOO:** I can't really explain. Somebody came up with that name and we adopted it, it was not me.

MR EMMANUEL LEDIGA: Oh, it came from the PIC side because they normally bankers give names to transactions.

MR JAYENDRA NAIDOO: No, neither of those names came up from PIC side. Project Sierra was a name invented by Symphony Capital.

MR EMMANUEL LEDIGA: Oh okay.

MR JAYENDRA NAIDOO: I think they liked to use cars for project names.

MR EMMANUEL LEDIGA: Okay and Bluebuck and that?

20 **MR JAYENDRA NAIDOO:** Bluebuck was chosen by Steinhoff, they liked to use animals.

MR EMMANUEL LEDIGA: Oh okay alright, that's interesting. Ja that's interesting. Okay thank you.

MR JAYENDRA NAIDOO: I didn't use anything, I just used their names. Okay we now go into the section Lancaster 101 investment in

Steinhoff NV.

In September 2016, Lancaster 101 acquired approximately 2.75% of the issued ordinary share capital of Steinhoff.

The shares were acquired by way of a combination of approximately 45% of it being directly through a subscription for new shares issued to Lancaster 101 by Steinhoff. And the balance through and acquisition of shares from the market sourced through an international bank.

Now I've been advised by Mr van Niekerk that you are well
10 enough aware of put options and call options and collars so I should kindly refrain from going on with clauses 30 to 33.

MS GILL MARCUS: But if I could just stay with you clause 29 for the moment?

MR JAYENDRA NAIDOO: Mm.

MS GILL MARCUS: As I understand it then 29.1 would be roughly 60 million shares that you got through the direct subscription and the balance of the 118 million shares. So it would have been divided 29.1 29.2 roughly 60 million almost 60 million roughly between the two is that correct? Because the total is 118 million shares.

20 **MR JAYENDRA NAIDOO:** Yes.

MS GILL MARCUS: Okay and the total that was provided by the PIC was 9.35 billion, is that your recollection as well.

MR JAYENDRA NAIDOO: Correct.

MS GILL MARCUS: Okay, were going to come back to that later but in terms of just so that one's aware that 9.35 billion in the evidence that

was presented to us has now rolled up to a debt of 11.6 billion as at the end of February or March this year. You're aware of that?

MR JAYENDRA NAIDOO: It does accrue interest, correct.

MS GILL MARCUS: Sure. So it's 11.6 billion that's outstanding?

MR JAYENDRA NAIDOO: I cannot confirm the exact number but ...
(intervenes)

MS GILL MARCUS: Roughly around that?

MR JAYENDRA NAIDOO: Should be ... (intervenes)

MS GILL MARCUS: I'm sure it's changed since then but that was the
10 number that was given to us.

MR JAYENDRA NAIDOO: Yes.

MS GILL MARCUS: That that is really what the outstanding amount was February 2019.

MR JAYENDRA NAIDOO: That sounds right.

MS GILL MARCUS: Okay thank you. We'll come back to those issues after we've skipped the collar.

MR EMMANUEL LEDIGA: Just another question here. Just in terms of the shares that you required, did they have any super rights in terms of the voting because we understand from Dr Matjila that there were parts
20 of the shares with super rights.

MR JAYENDRA NAIDOO: They have no super rights. They are ordinary shares of the company. They are the same rights like every other share.

MR EMMANUEL LEDIGA: Yes are we clear there so just to repeat this, so the shares which you bought didn't have any super rights in terms of

voting rights?

MR JAYENDRA NAIDOO: Those shares have no additional ...
(intervenes)

MR EMMANUEL LEDIGA: L101.

MR JAYENDRA NAIDOO: They have no additional rights. I think what is the correct way of representing the position is that through the investment Lancaster 101 and myself as a director had voice in the company and some special point of interest in the company and some participation through becoming a board member and through the
10 strategic association with the leadership of Steinhoff. But the shares itself had the same rights as every other shares.

MR EMMANUEL LEDIGA: Yes.

MR JAYENDRA NAIDOO: That was not a special class of shares.

MR EMMANUEL LEDIGA: So there were no shares bought from Thibault or something with super rights and all that?

MR JAYENDRA NAIDOO: We'll deal with that later, that is not in this transaction.

MR EMMANUEL LEDIGA: Ja.

MR JAYENDRA NAIDOO: This transaction we dealing with is the
20 accusation of the shares in Steinhoff.

MR EMMANUEL LEDIGA: The old stuff ja, I do know.

MR JAYENDRA NAIDOO: The discussion about Thibault, I will come to ... (intervenes)

MR EMMANUEL LEDIGA: Okay it might well.

MR JAYENDRA NAIDOO: When it goes with the other transaction in

2017.

MR EMMANUEL LEDIGA: Alright, it might well had be there- okay no, it's fine. Ja, I think we'll check it there. Ja, that's fine.

MS GILL MARCUS: Sorry, just before we continue. Relating back to this transaction, the information that was presented to us was that you had originally gone to the PIC requesting 10.4 billion. Is that correct for the Steinhoff shares?

MR JAYENDRA NAIDOO: We had a support from the international bank for a transaction up to 10 billion. So when we initially approached the
10 PIC, we approached them on the basis of the full amount of support.

MS GILL MARCUS: Okay because ... (intervenes)

MR JAYENDRA NAIDOO: I can't remember the exact number but it would be at the 10 level.

MS GILL MARCUS: The information to us was 10.4 billion and Dr Matjila in his evidence said that they agreed 9.4 billion because his authorisation did not extent above 10 billion and it was the reason that they would have then had to go through other processes and boards. And therefore that's why they reduced it by 1 billion, were you aware of that?

20 **MR JAYENDRA NAIDOO:** They came back?

MS GILL MARCUS: Was that ever part of your discussion?

MR JAYENDRA NAIDOO: That discussion was held between deal tem and the advisors we had appointed which is Symphony and they came at many points with their feedback on our approach. They reduced the size, they participated themselves in the upside as the PIC, they

arranged for or insisted upon a new shareholder which we'll discuss later the BEE trust which is later there setup as a Lancaster foundation. We had many different points of debate which culminated in what they thought they were prepared to approve. I never said, it was not our proposal. It was the parameters that they breached.

MS GILL MARCUS: No, I appreciate that and it's really just asking whether you were aware of the thinking? Whether it ever came to your attention that it needed to be below 10 billion in order to precede without further approvals in the PIC process, were you aware of that at
10 all from your Symphony and other interactions

MR JAYENDRA NAIDOO: I didn't take it as untoward. I took it as the counterparty, the representative of the counterparty were saying that in order for them the PIC as counterparty to approve the approach, these were the parameters they could live with. If we wanted to resist on any of the parameters, then they'd have- they may not approve it. They might take it to another level. So to be frank not something I delved into in great detail, it's the same with the bank or any financial institution. You go for a loan and they say credit committee is not so much interested but if you would like more you must go to the board or
20 else fail. So you live with the feedback of the counterparty representing the institution so we simply accepted that and it was good enough for the transaction, the parameters that they provided and it was still commercial and we could live with that.

MS GILL MARCUS: I know I accept from your perspective, I'm just wanting to understand that you were aware that this was a factor?

MR JAYENDRA NAIDOO: I was aware that was as far as they could go.

MS GILL MARCUS: Okay.

MR JAYENDRA NAIDOO: Before we risked, no.

MS GILL MARCUS: Or before it risked going to another level of approval?

MR JAYENDRA NAIDOO: Well in any commercial transaction ...
(intervenes)

MS GILL MARCUS: That's what would happen.

MR JAYENDRA NAIDOO: When you refuse to accept what the person
10 on the other side of the table is telling you is what he can do and you
want to test them by going to their bosses, you are big risk that you are
going to come with no deal and want to respect the assessment of the
people when you negotiating with. They are the ones that you have to
pay attention to. I would not dear to question the counterparty unless I
felt that there was a better chance somewhere else but there was no
reason to believe that.

MS GILL MARCUS: Thank you.

MR JAYENDRA NAIDOO: I'm now going on to clause 34, skipping the
opportunity to educate you about the call option and the put option.

20 "Due to the specific circumstances associated at that time with
Steinhoff namely being a large company in which high volumes of
shares were traded daily, L101 which is the way I'm describing the
special purpose company, was able to obtain favourable terms on both
the put and call options resulting in a potentially highly positive return
for L101 with limited downside risk.

The PIC provided a loan to L101 for the purposes of the Steinhoff NV investment and received security over the proceeds of the ratio collar and the portion of the shares acquired. In addition, the PIC took the 50% of the upside over the cost loan by acquiring 50% of the ordinary shares in Lancaster 101. It is important to clarify that notwithstanding the original proposal from Lancaster Group, the basis on which the transaction was finally agreed was that Lancaster Group's financial participation in L101 was limited to 25% with the PIC directly holding 50% of L101 and Lancaster Group having the obligation to
10 establish an entity which the which the L101 shareholder agreement referred to as a BEE Trust after the transaction and to transfer 25% of L101 to the BEE Trust. What was called the BEE Trust was in the shareholder agreement was subsequently established as the Lancaster Foundation Non Profit Company.”

This was obviously after the shareholder agreement was amended to permit that change.

The PIC entered into a loan agreement with L101 constituted as I've just described, not with Lancaster Group and nor with myself.”

MS GILL MARCUS: Sorry. Just when was the Foundation
20 established?

MR JAYENDRA NAIDOO: I'm going to deal with the Foundation in a whole section later.

MS GILL MARCUS: Okay.

MR JAYENDRA NAIDOO: In addition, Lancaster Group proposed certain enterprise development orientated key performance indicators

which I will refer to as KPI's, that it contacted with the PIC achieve inter alia

1. to promote black retail entrepreneurs in PIC owned township malls,
2. to promote the development of black suppliers to Steinhoff companies,
3. to grow the performance of the Lancaster Group Pepkor joint venture in electricity, and
4. to actively participate in further acquisitions by Steinhoff.

10

Steinhoff also formally committed as part of the transaction to use its best endeavours to support the achievement of these KPI's by Lancaster Group, and communicated this to the PIC in writing.

The PIC took the following security for the loan;

1. a first ranking security over any dividends received by L101 under the put options,
2. a first ranking security over those L101's Steinhoff NV shares which were not pledged to the bank,
3. a first ranking security over any dividends received by L101, and
4. a second ranking security over L101's Steinhoff shares that had been pledged to the bank.

20

MR EMMANUEL LEDIGA: And just to ask also that the final deal was different to the deal which you presented at the beginning isn't it in terms of the metrics of the value created?

MR JAYENDRA NAIDOO: I'm not sure I understand the question.

MR EMMANUEL LEDIGA: Ja.

MR JAYENDRA NAIDOO: When you say metrics, what do you mean?

MR EMMANUEL LEDIGA: Ja the final transaction was different to the first transactions just in terms of the payouts, future payouts.

MR JAYENDRA NAIDOO: This was the first transaction that was done between Lancaster Group, Lancaster 101 and the PIC. Obviously it was different to the first submission of what I proposed to them.

MR EMMANUEL LEDIGA: Yes that's what I mean. Ja, the first
10 submission yes.

MR JAYENDRA NAIDOO: Yes correct but this was the first contract if I can call it that. In the first submission as Commissioner Marcus said raised we had support up to a larger amount but they came back saying they could deal with this amount and everything then flowed from there. It was still if I may point out, it was still the largest single stock equity derivatives based transaction that have been done in the country at that time. So there was no one feeling that they've lost a status of standing with this outcome. It still was a bigger outcome than had been achieved in similar settings before.

20 **MS GILL MARCUS:** Can I take you back a little bit because I don't see it and it may be somewhere else in the version that we're working from. In your previous version you indicate that the PIC subscribed for 50% of the ordinary shares as you've indicated and 50 million rand following the conclusion of the PIC loan and the ratio collar which was paid to L101 which was the equity in L101 SPV and Lancaster was also

to contribute 50 million. Is that still the case?

MR JAYENDRA NAIDOO: Yes.

MS GILL MARCUS: Can you just explain that?

MR JAYENDRA NAIDOO: Ja. Commissioner I'm is a bit surprised, the earlier draft was a draft and we did get some feedback. The purpose of it was not to be a document for disguise and purpose, it was to get feedback and then to finalise what we have done ... (intervenes)

MS GILL MARCUS: I understand that but you also need to ... (intervenes)

10 **MR JAYENDRA NAIDOO:** I'm happy with the question.

MS GILL MARCUS: You also need to appreciate that we only got this, this morning.

MR JAYENDRA NAIDOO: I do notice that unfortunately.

MS GILL MARCUS: Right.

MR JAYENDRA NAIDOO: In terms of the investment in the shares, the PIC paid 50 million for their 50% Lancaster Group paid 50 million for its percentage eventually that percentage came down to 25% but we did pay 50 and the remain, we paid 50 on behalf of the BEE Trust as well so that was done. I think that's the question that you asking.

20 **MS GILL MARCUS:** And were that intended to be working capital or what was it intended for that 100 million?

MR JAYENDRA NAIDOO: Yes correct.

MS GILL MARCUS: And then the information that I have was that your December management account show that there was only 130 000 cash in the bank. What was, was the 100 million still standing I mean is it

still somewhere or was it used and what was it used for?

MR JAYENDRA NAIDOO: The money is still all there.

MS GILL MARCUS: The money is still there.

MR JAYENDRA NAIDOO: It's all fully accounted for, yes.

MS GILL MARCUS: In which account?

MR JAYENDRA NAIDOO: We have several bank accounts but the money is within the accounts of the company all the money that's been received has been accounted for including money that has been received in the second transaction, all fully accounted for.

10 **MR EMMANUEL LEDIGA:** And just another question, just in terms of the 100 million the working capital, what was it supposed to be used for when you say working capital? What do you mean?

MR JAYENDRA NAIDOO: It was then envisaged as a 7 year transaction during which time it's expected that there will be several costs incurred over the period. So it was with that in mind.

MR EMMANUEL LEDIGA: Like the audits doing the audits and ...
(intervenes)

MR JAYENDRA NAIDOO: Audits, legal, various transaction costs. We didn't specify.

20 **MR EMMANUEL LEDIGA:** Yes, okay alright.

MR JAYENDRA NAIDOO: Okay, I deal now with the execution of the transaction.

Three business days prior to the transaction trade date, L101 issued a drawdown instruction for payment of the full loan value into an escrow account help with a local commercial bank.

On the transaction trade date, L101 and PIC issued a payment instruction to the bank as escrow agent to firstly transfer into a bank account nominated by Steinhoff NV, the rand equivalent for the subscription shares. Pay the bank for the additional Steinhoff shares acquired and the premium for the collar.

Pay the advisory fees to Symphony Capital...”

I’m afraid on this point, Commissioner, there’s an error, there is either one zero too many or it’s one zero too little. Is it one too many?

CHAIRPERSON: Is it 76 million, if so then there’s one zero less.

10 **MR JAYENDRA NAIDOO:** Yes.

MR EMMANUEL LEDIGA: One too little.

MR JAYENDRA NAIDOO: Ja, one zero too little.

MR EMMANUEL LEDIGA: Ja.

MR JAYENDRA NAIDOO: So:

“Pay the agreed advisory fees of 76 950 000 to Symphony Capital and transfer the residual balance of R22 850 020.48 to the L101 current account.

MS GILL MARCUS: Sorry and what was that used for?

MR JAYENDRA NAIDOO: I’m going to explain that in clause 40.

20 “For the avoidance of doubt the entire loan amount...”

That is the whole 9.35 billion.

“...was drawn down in favour of L101 and L101 accrued interest payable to the PIC from the moment the PIC paid the loan into the escrow account.

The residual balance of the loan referred to above was

obviously due to L101 and was transferred from the escrow account to the L101 current account.

No additional fees were paid from that amount to any party specifically...”

I want to emphasise.

“...Lancaster Group did not receive any payments or fees from the PIC loan.”

MR EMMANUEL LEDIGA: Just a question there, in terms of that 76 million it seems to be under 1% of the transaction. You know, how was
10 this fee calculated?

MR JAYENDRA NAIDOO: The fee was set at 75 basis points which is 0.75% of the transaction size. I had initially agreed to a higher fee with Symphony of 1% but the 0.75 was one of the parameters that was communicated from the PIC that was as much as they would be comfortable to bear and this amount included VAT. That was how it was calculated.

MR EMMANUEL LEDIGA: Alright, ja.

MS GILL MARCUS: Just on that same question. I still don't understand what this 22.85 million was used for, if it went to Lancaster, what was it
20 used for?

MR JAYENDRA NAIDOO: It was retained in Lancaster 101 account and obviously there were some expenses which were due and payable like these at the closing and there were other expenses that were expected to follow that were going to be billed later, for example, legal costs, for example share transfer tax on shares acquired from the market not the

issued shares and so on. It belonged to L101 and it was retained in L101 and used in the ordinary course of business.

MS GILL MARCUS: The team have requested documentation about that and nothing has been forthcoming. Are you aware of the request of exactly how that 22 million has been utilised?

MR JAYENDRA NAIDOO: I've been dealing with the Commission through Mr van Niekerk since March/April and I'm happy to engage with him if there's anything further there.

MS GILL MARCUS: Can I also just ask about a SENS notice which was
10 issued in September 2016 that refers to the 60 million shares that were subscribed by Lancaster fully funded by the PIC that there would be a 2.5% underwriting commission. Can you explain that?

MR JAYENDRA NAIDOO: Yes. That fee was paid not by the PIC to Lancaster Group but was paid by Steinhoff to the Lancaster Group. It was paid at the discretion of Steinhoff for the efforts Lancaster Group had made in contributing to what they saw as the capital raising efforts. They made the huge transaction beyond our transaction at that time and it was a payment made in good faith.

I did notify the PIC, it was reported publicly. The drafts of the
20 statements were circulated for discussion, the drafts of the statements were circulated for discussion, there was no objection at any time from the PIC, nor would I expect there to be an objection.

MS GILL MARCUS: And if you had to look at that at the time, the rand amount would what, by about 110, 120 million?

MR JAYENDRA NAIDOO: Correct.

MS GILL MARCUS: And although the PIC funded and paid for all the funding and support it without which you could not have done the deal, that went to Lancaster and the PIC was satisfied with that?

MR JAYENDRA NAIDOO: It was something that Steinhoff thought about at the last moment and it was a good faith consideration from their perspective and we took it as a good faith arrangement. That was compatible with commercial logic.

MS GILL MARCUS: Who at the PIC did you notify?

MR JAYENDRA NAIDOO: The deal team was notified, I mentioned that
10 as well to the PIC CEO and they also had the draft ...[intervenes]

MS GILL MARCUS: SENS.

MR JAYENDRA NAIDOO: Draft SENS announcement and the final SENS announced, so it was public.

MS GILL MARCUS: No, SENS obviously is public, the question for me would be did the PIC pay attention to that and were they satisfied that having funded the whole thing that 110 or 120 million went to the beneficiary, if you like, for underwriting, when they're the ones who had paid for the whole deal.

MR JAYENDRA NAIDOO: They were fully notified.

20 **MS GILL MARCUS:** They were fully notified at the CEO level.

MR JAYENDRA NAIDOO: At all levels.

MS GILL MARCUS: When Dr Matjila was here and we asked him about this, he said he knew nothing about it. Did you – do you have any documentation to notify him or did you sort of ensure that – I mean, a paper trail of the SENS announcement going to the deal team or directly,

was there any personal contact between you and the CEO over that matter or was it through the deal time to the CEO?

MR JAYENDRA NAIDOO: I cannot recall exactly now but there's a paper trail because the drafts were all circulated by email.

MS GILL MARCUS: Perhaps if we could just have copies of that because, as I said, when we raised that with the CEO he said he knew nothing about the SENS announcement or that this amount of money was paid to Lancaster. Thank you.

MR EMMANUEL LEDIGA: Just to be clear, the 2.5%, on what value was
10 it based at, on the 9.4 billion or on a different amount?

MR JAYENDRA NAIDOO: No, it was ultimately constructed as a – based on the amount that we subscribed for, so it would be on 60 million shares.

MR EMMANUEL LEDIGA: Oh, I see, okay. Alright.

MR JAYENDRA NAIDOO: I now go on to the next section, which is the second follow-up transaction which is the transaction in 2017 involving the listing of Steinhoff Africa Retail Assets.

MR EMMANUEL LEDIGA: Can I just before you go further just on the last point, was there time when maybe they felt that that money should have come to L101 not to Lancaster Group, you know, to be shared among the
20 consortium?

MR JAYENDRA NAIDOO: There was never a discussion about that.

MR EMMANUEL LEDIGA: Okay, alright.

MR JAYENDRA NAIDOO: "In late 2016 Steinhoff made an offer to acquire Shoprite Holdings Limited, which was another major retail company controlled by Dr Wiese.

In December 2016 it was then announced that the transaction would no longer proceed as the management teams of the two companies did not agree on certain material aspects.

Following this, in early 2017, I was approached by Steinhoff on a new plan which involved listing their African Retail assets and for that new listed entity later named Steinhoff Africa Retail or STAR, which was a short name at the time, to acquire a controlling interest in Shoprite.

10

This would lead to an African Retail giant with a large market capitalisation which was well-placed for expansion globally.”

MS GILL MARCUS: Sorry to interrupt you again, it was a question there, if I recall correctly, in Dr Matjila’s statement, when we asked him about this initiation of STAR and he said that originated as an idea and a proposal from the PIC not from Steinhoff. Were you aware of a PIC initiative to do this or was there something that came to the PIC as a consequence of your discussions in Steinhoff and Steinhoff board with you?

20

MR JAYENDRA NAIDOO: This was a conversation – the acquisition of Shoprite by Steinhoff was a Steinhoff initiative to the best of my knowledge and when that transaction fell, as I’m, you know, going to deal with it now, it was Steinhoff that proposed a creation of an African Retail giant through a listing of their African assets and then the acquisition of

the controlling interest in Shoprite.

So I think the idea originated from them. It was something that the PIC was very warm towards. So you know how these things can often be that there's a coincidence of thinking about in my sequence of events I got the proposal first from Steinhoff and then I took that proposal as you'll see in clause 43, I took that proposal to discussion with the PIC and if I can read that now, you'll see that there was a ready and willing acceptance of it. So in clause 43 I say:

10 "I thought it was a compelling proposition. I
 approached the PIC to discuss this opportunity. They
 were very supportive."

So it may well have been that this was an idea that they had even before that conversation.

And they were prepared to swap some of their Shoprite shares to acquire an interest in the new listed entity.

20 There was also a new opportunity to invest in STAR at
 the listing. STAR would consist of major retail brands
 that were well-known and understood in South Africa.
 As the new entity was to consist mainly of the old
 Pepkor business, which I understand well, and of
 Shoprite, I considered it a good investment opportunity.
 So too did the PIC and the L101 board.

In discussions between Steinhoff, PIC representatives and myself, L101 agreed to raise its own funding of up to 6.2 billion to invest in STAR which L101 would raise

from market sources, not the PIC and Steinhoff agreed to match the L101 or affiliate funding in STAR.”

When I say or affiliate, it was possibility that the funding may be extended to an affiliate of L101 and not necessarily to L101 itself. L101 was at that time a ring fenced entity, so it was not able to transact in the same way as in any other normal unringfenced company can.

10 “The L101 investment would underpin the listing of STAR and the additional funding, matching funding, provided by Steinhoff to L101 or its affiliate would be used to acquire shares in Thibault Square Financial Services.”

Which I’m refer to as Thibault in the next paragraphs.

“...and Thibault was the controlling shareholder of Shoprite.

The share to be purchased by L101 or its affiliate in Thibault...”

Which, as I mentioned, was to be funded by the Steinhoff matching funding.

20 “...were later to be swapped into additional STAR shares after the acquisition by STAR of Shoprite had received approval from the regulatory authorities.”

MR EMMANUEL LEDIGA: To come to my question earlier then, were these different types of shares, classes of shares, with some super rights or they were just normal shares?

MR JAYENDRA NAIDOO: The STAR shares, that is the shares of the new

listed entity which we called at the time the Steinhoff Africa Retail were ordinary shares with the same rights as any other share but Thibault, as an entity, had a special relationship to Shoprite shares. Thibault in the MOI of Shoprite has the right to have 30% voting shares which are not economic as long as Thibault holds a certain minimum number of ordinary shares and hence the acquisition of Shoprite through Thibault brought in a control dimension.

MR EMMANUEL LEDIGA: Ja, okay, alright. No, I get it. Thank you.

MR JAYENDRA NAIDOO: Thank you.

10 “For the purposes of receiving and applying the matching Steinhoff funding, and entity called Lancaster 102 was established as a wholly-owned subsidiary of L101 thereby providing the existing L101 shareholders with the same level of economic participation in L102 as they enjoyed in L101. Due to JSE requirements in respect of the minimum size of the free float of STAR shares the Steinhoff funding commitment to L101 or its affiliate, i.e. L102, was later reduced to 4 billion instead of matching the 6.2 billion L101 investment in STAR.

20 Steinhoff committed to address the shortfall by providing an additional R2.2 billion of funding to L101 or its affiliates for future joint investment on similar terms.”

MS GILL MARCUS: Can you elaborate on where that stands now in terms

of both the 4 billion, the 2.2 billion and what actually is the circumstance at this point in time?

MR JAYENDRA NAIDOO: I will come back to the 4 billion because I deal with that later in the statement, Madame Commissioner. In terms of the 2.2 shortfall there has obviously not been any further transactions so that shortfall is unaddressed and there's also not much likelihood of a transaction. So think the – safe to say the matter is open and unaddressed. Clause 48:

10 “L101 funded its participation in STAR by agreeing new security arrangements with the PIC to enable L101 to raise third party bank financing against the put option proceeds under the ration column.

To this end, L101 once again mandated Symphony Capital as advisor due to their familiarity with the existing position of L101 and through Symphony we approached several banks to quote on funding terms before selecting the best quote which came from the same bank that L101 had transacted with in project Sierra, incidentally.”

20 However, it was not a given that that same bank would get the opportunity to provide the funding, it was a coincidence because of the competitiveness of their quote.

“The PIC security package for its loan was therefore amended as a result of this transaction as follows.

A primary cession and pledge was effected in favour of

PIC over the ordinary shares in STAR which had been acquired by L101.

Then the PIC security package was a reversionary cession and pledge, i.e. a second ranking cession and pledge which was effected over all of the Steinhoff shares that had been acquired by L101 over which the bank now had first ranking security as well as the put proceeds under the ratio collar and the security held by L102 in respect of the Steinhoff funded investments in Thibault.”

10

MR EMMANUEL LEDIGA: So are you saying then that the 25% of the L101 shares that were held by the PIC were lost into the STAR security package? They were taken by the bank?

MR JAYENDRA NAIDOO: I'll put in this way, not lost but the first ranking that the PIC held over some of the Steinhoff shares which you'll see in the earlier clause that I've mentioned, that there was a first ranking security, they ceded that. That was now the first ranking security of the bank, the bank held first ranking security over all of the Steinhoff shares.

MR EMMANUEL LEDIGA: Ja.

20 **MR JAYENDRA NAIDOO**: The PIC's security rights were now second-ranking they were reversionary rights.

MR EMMANUEL LEDIGA: Second-ranking, yes, yes.

MR JAYENDRA NAIDOO: And the put proceeds that were first ranking security of the PIC in the first transaction project Sierra, those were now first-ranking security of the funder that came in on ...[intervenes]

MR EMMANUEL LEDIGA: In STAR.

MR JAYENDRA NAIDOO: In this transaction, yes, yes.

MR EMMANUEL LEDIGA: And so in terms of security packaging L101, what did the PIC have finally at the end of the STAR transaction?

MR JAYENDRA NAIDOO: So they had first-ranking security over the STAR shares that we bought.

MR EMMANUEL LEDIGA: Yes, yes.

MR JAYENDRA NAIDOO: They had second-ranking security over the Steinhoff shares and the put proceeds.

10 **MR EMMANUEL LEDIGA**: Yes.

MR JAYENDRA NAIDOO: And then they had second-ranking security over the asset that we had in Thibault.

MR EMMANUEL LEDIGA: But they completely then lost the L101 security completely. Can you say that?

MR JAYENDRA NAIDOO: No, no, they didn't lose it because it was ...[intervenes]

MR EMMANUEL LEDIGA: Second ranking.

MR JAYENDRA NAIDOO: The first ranking security only applied to the extent that the – I mean, the value of the collar, to go to the collar which
20 we didn't discuss, this spread between the put strike and the call strike still belonged to L101 and the PIC still had security over that before the economics of the call strike became applicable which is what the bank – so the bank's security was securing its position but we still had economics in the L01 investment.

MR EMMANUEL LEDIGA: Okay. Maybe just to put it in another way. If

the share price of Steinhoff fell by 70% in L101, what security did the PIC have? Let's put it in that way.

MR JAYENDRA NAIDOO: That security ...[intervenes]

MR EMMANUEL LEDIGA: What could the PIC salvage?

MR JAYENDRA NAIDOO: No, that security was ceded to the bank.

MR EMMANUEL LEDIGA: Ja, so there was no – if the share price had to collapse the PIC didn't have any security in L101.

MR JAYENDRA NAIDOO: The PIC's security was now represented by the benefit it had over the STAR shares.

10 **MR EMMANUEL LEDIGA**: Yes, yes. Okay, so it's a counter-balancing force in some ways in a sense that it lost the security in Steinhoff but it was counter-balanced by the shares in Steinhoff.

MR JAYENDRA NAIDOO: Yes.

MR EMMANUEL LEDIGA: Is that correct?

MR JAYENDRA NAIDOO: Correct, correct. If, for example, the share price had gone up by 25% then the value of that gain would have been the value against which you still had relevant security in terms of the PIC loan but on the put strike downwards that benefit belonged to new funding provider.

20 **MR EMMANUEL LEDIGA**: Okay, alright.

MS GILL MARCUS: Sorry, just to stay with that one second. So if I could try to understand it, in essence the PIC security was seriously diluted. In order to enable the transaction that security was transferred to the bank or the funding entity and that it actually relegated its security in order to enable that funding to take place because that was the condition, as I

understand it, that that funding would be provided from the bank.

MR JAYENDRA NAIDOO: Yes.

MS GILL MARCUS: Is that correct?

MR JAYENDRA NAIDOO: There's a – at the time view and a hindsight view that I think one can consider. At the time it made perfect sense because one was leveraging one's existing position to raise effectively up to another R12 billion in which the PIC didn't have to spend any money to get exposure to two assets, Steinhoff and STAR as well as Shoprite and if all things were equal, every model that was done showed how beneficial
10 this would be because the cost of the funding was fairly low in commercial terms.

In hindsight, with the effect of the – what is now widely understood to be the biggest corporate fraud in South African history, PIC sacrificed something which at the time did not look material to protect against the downside looked like a lesser objective compared to getting more of the upside but in hindsight, if we had an ability to see into the fraud, then we would have valued the protection more highly and the PIC would have valued the protection more highly.

MS GILL MARCUS: If the PIC was to liquidate at this point in time on
20 both assets, given its investment in both - and we know that, as we've discussed earlier, on the 1st it about 11.6 billion – if it was to liquidate would there still be losses offset? What would be the extent of the loss taking the STAR investment L101 to Blue Buck the shares in Steinhoff? If that was to happen, what would be the extent if you had to quantify it at a moment in time, now what would that loss to the PIC because and

obviously we do understand fully that the Steinhoff issue and the Steinhoff fraud is material to the outcome that we're facing.

MR JAYENDRA NAIDOO: So in order to liquidate, there's a whole range of legal rights and obligations so I won't go into that now but it's not possible to go to that at this time, as I see it.

However, to answer what I think you are asking which is the current value of the position and the nature of the loss, the GEPF and the PIC do a mark to market test from time to time to establish on any point in time what is the value of the asset if it could be sold and obviously the
10 major asset that has value is the STAR shares which has held its value although it has also been dampened by the fact that there's a huge overhang on the STAR shares as a result of Steinhoff's 71% shareholding that asset but I don't have the exact numbers but it would be a sizeable loss, a sizeable loss on a mark to market position.

I think the GEPF would be better placed with the PIC to give you the numbers but it is sizeable. Relatively speaking to shares that were held in an unprotected environment and Steinhoff, which lost 98% of the value, then you would think that this is a much smaller number but it is still a sizeable loss but it doesn't compare to losses in the ordinary listed
20 shares.

MS GILL MARCUS: Thank you.

MR EMMANUEL LEDIGA: Just to follow up there. So how would you look at the numbers? I mean, STAR is – is STAR still worth around – you bought STAR for R6.2 billion.

MR JAYENDRA NAIDOO: H'm.

MR EMMANUEL LEDIGA: Where would that shareholding be now, would you know? Is it higher, is it lower?

MR JAYENDRA NAIDOO: On a current daily price the last time I looked at the STAR shares it was 15% lower.

MR EMMANUEL LEDIGA: Lower, yes. So under R6 billion and all that.

MR JAYENDRA NAIDOO: So it's less.

MR EMMANUEL LEDIGA: Ja, ja, less than that, yes.

MR JAYENDRA NAIDOO: It's less, yes.

MR EMMANUEL LEDIGA: So meaning that – just roughly, we are just
10 talking, so if you look at the loan, as it was said it has gone up to 11.6 billion and the STAR shares are under 6 billion, the Steinhoff shares are 98% down, you know, so I mean, on a mark to market basis it will be quite a lot, I mean, the loss would be like 11 billion if you include the interest more than the R11 billion and even isn't it that...

ADV JANNIE LUBBE SC: Is it not that the 6.2 billion rands the PIC only owes half of that. Isn't it, because it goes through L102 to L101. Is that correct?

MR JAYENDRA NAIDOO: Yes so the PIC loan as first rank in security
20 over the Star shares so a 100 percent of the current value of Star shares is applicable against the loan so it would not be an elaborate loss there.

MR EMMANUEL LEDIGA: Some loss there.

MR JAYENDRA NAIDOO: If you only had Steinhoff shares it would be a 11-billion-rand loss for sure but in our construct now it is less, but it is a lot without a doubt. You can work out the numbers there. It is not for me to say the numbers, but you know it is not difficult to take a stab at that.

MR EMMANUEL LEDIGA: Sure-sure then broadly then you would say the marked market closes around 11 below for now, for now.

MR JAYENDRA NAIDOO: I would not say that.

MR EMMANUEL LEDIGA: You would not say that.

MR JAYENDRA NAIDOO: No it is not that.

MR EMMANUEL LEDIGA: It is less than that.

MR JAYENDRA NAIDOO: Yes.

MR EMMANUEL LEDIGA: And then you take the, okay the Star shares, you offset by the Stars shares.

10 **MR JAYENDRA NAIDOO**: Correct.

MR EMMANUEL LEDIGA: Okay.

MR JAYENDRA NAIDOO: And then off course one has to hope that the claim which I will deal with later, but is worth mentioning now, we have instituted a claim for 12 billion roughly, for the total value. So one hopes to get some recovery through the plan.

MR EMMANUEL LEDIGA: Okay.

MR JAYENDRA NAIDOO: Okay now ...[intervenes].

MR EMMANUEL LEDIGA: Just to be clear, just the one thing. How, what percentage of the Star shares that the PIC hold?

20 **MR JAYENDRA NAIDOO**: The PIC on its own I don't recall.

MR EMMANUEL LEDIGA: On a see-through basis.

MR JAYENDRA NAIDOO: No they honour the shares in a see-through basis, they have their economics through the security arrangement, but L101 owns 8.7 percent what is today called Pepkor, because the company changed its name from Star to Pepkor. So L101 owns 8.7 percent.

MR EMMANUEL LEDIGA: Okay.

MR JAYENDRA NAIDOO: Of the shares initially.

MR EMMANUEL LEDIGA: And the PIC has got half of that company, owns half of the ...[intervenes].

MR JAYENDRA NAIDOO: Yes the PIC has security over all of it, and owns 50 percent of the shares in L101.

MR EMMANUEL LEDIGA: All the shares okay.

MR JAYENDRA NAIDOO: I think they themselves directly through their listed equities portfolio one another.

10 **MR EMMANUEL LEDIGA**: Okay. No-no it is fine, I think we will get to the correct marked market value from the PIC. It is fine.

MR JAYENDRA NAIDOO: Okay. I then deal with the, I think was it close 50? The PIC duly released its security over the Steinhoff shares and the Levi's security arrangements in respect of the Star shares and the Collar were affected prior to the closing of the transaction. The execution of the new security arrangements over the L 1 and 2 assets was affects shortly after the closing of the transaction. There are no outstanding conditions that are unfulfilled in this regard.

20 **MS GILL MARCUS**: Sorry before you move onto that. I have got a question that has not come up from

off your text but it relates the whole question of the L101 funding to participate in Star, and it says, the essence of it was 6.2 billion to the subscription of around 302 million ordinary shares in Star at R20.50 per share. That was the one element. The second element was the bounce to general corporate purposes value enhancing strategies and transaction

costs and that amounts to 218 million rand. If the loan was 6.2 where did the other 280 million rand come from? Off which 150 million was the evaluate enhancing and we have dealt with that a little bit, but the other parts was capitulation of the trust which was 50 million. The value at ...[indistinct] is 150 million, transaction costs is Symphony with 49 million and the PIC was paid for restructuring. So that we know how it was allocated, what I am asking is what is the source of the funding?

MR JAYENDRA NAIDOO: Ahh okay.

MS GILL MARCUS: Because there is no reflection of where that add.. in
10 any of the numbers that I have seen where that additional 280 million was either provided by the PIC or authorised by somebody. So where did that money come from?

MR JAYENDRA NAIDOO: The money was all raised from the bank. So in giving the bank security over the put proceeds, the question is what was the net present value of the put proceeds which is what equated to the amount of capital that we have received. So the nominal value that was protected was 9.35, but the present value of was less because that value became full only on the final date when you collected the money. So since it is a long term, ultimately 7 years the current of it was-was-was
20 less so it is like if you buy a car now for a certain amount of money but you going to pay for it in 7 years time, the cash that is given now is, is a different number compare to the nominal value of. So the nominal value change from the beginning to the end. On each day that went along there was a bit more that was in the net present value and also the discount rate that is used, also creates a positive effect, and this is where I think

advisors like Symphony can pay for themselves by adding value, so the whole amount came from the-the bank. I think that is a long story short.

MS GILL MARCUS: But we are talking Blue Bucks 6.2 billion not Sierra because as far as I know ...[intervenes].

MR JAYENDRA NAIDOO: Not ...[intervenes].

MS GILL MARCUS: It is Blue Buck that was 6.2 billion ...[intervenes].

MR JAYENDRA NAIDOO: 6.2 of the proceeds that were raised from the bank were applied to Star ...[intervenes].

MS GILL MARCUS: Yes.

10 **MR JAYENDRA NAIDOO**: And the remaining amount of the proceeds was applied to the remaining amount.

MS GILL MARCUS: So there was an additional 280 million raised from the bank ...[intervenes].

MR JAYENDRA NAIDOO: Yes-yes.

MS GILL MARCUS: And that is part the obligations that you have service ...[intervenes].

MR JAYENDRA NAIDOO: Yes.

MS GILL MARCUS: It did not come from the PIC.

MR JAYENDRA NAIDOO: No not at all.

20 **MS GILL MARCUS**: Okay thank you.

MR JAYENDRA NAIDOO: The PIC ...[intervenes].

MS GILL MARCUS: The original amounts.

MR JAYENDRA NAIDOO: Provided funding ones.

MS GILL MARCUS: Okay. Thank you.

MR JAYENDRA NAIDOO: Okay clause 52. Is that the one we are on now? Okay. On 5th December 2017 the Steinhoff board announced that PWC had been appointed to conduct an independent investigation into accounting irregularities. Mr Marcus use to, had resigned as CEO and Steinhoff would publish its audited 2017 consolidated financial statements when it was in a position to do so. And would determine whether any prior year's financial statements would need to be restated. Subsequently Steinhoff informed the market that its 2016 consolidated financial statements would also need to be restated and could not be
10 relied upon. Further on, Steinhoff announced inter alia that the 2015 and 2016 financial statements could not be relied upon. As a consequence of the accounting irregularities, the share price of Steinhoff plummeted, resulting in significant losses for its many individual investors, sovereign wealth funds, private asset managers, banking institutions and others, including L101. The Steinhoff events describe above led to the unwind of the L102 position in Thibault. Thibault had invested the R4 billion received from L102 into a preference share issued by Steinhoff. Upon the unwind L102 received this preference share in exchange for the Thibault shares. Which it gave back to Thibault. In April 2019, after the
20 publication by Steinhoff of the summary of the findings by the PWC investigation, L101 instituted legal action against Steinhoff for the recovery of the investment made in 2016. The matter is currently proceeding.

MS GILL MARCUS: Can I just clarify on the 4 billion because as far as I understand you indicated as a debtor in where L102 management

accounts for December 2017 and for 2018 plus interest of 80 percent of prime. Does this mean in essence it was never settled or is it something that was and a out and it is actually neutralised and will therefore not reflect in your accounts in future or what is the status of that 4 billion?

MR JAYENDRA NAIDOO: Okay in the context of legal claims one has to careful how one answers the question, but I would say there is, it is not an in and out. Lancaster 102 raised 4 billion at that rate from Steinhoff. It then invested that amount in Thibault. Thibault then invested that amount in a pref share that Steinhoff issued to Thibault. When the
10 Shoprite leg of the transaction fell through all of this, in terms of the unwind provision that was in place, that had to be in place, that if the Regulator had never approved then would have to unwind the transaction. We then ended up receiving a pref that Thibault had received from Steinhoff for 4 billion that was on the same costs, so we have two pref's. One which we own, one which we owe. It turns out of course that the formats of pref that we hold has off course performed better than the Star shares. You have a matching asset and a matching liability. But the legal inter relationship between two is another matter. So it is not, it is not obvious that they are simply accounting entries that can be cancelled.
20 They have others differences and terms between the two.

MS GILL MARCUS: Thanks that clarifies that.

MR EMMANUEL LEDIGA: Just another question here. You know Steinhoff pretty well it seems; you know it pretty well. Just in terms of the claims and its future. I mean it is a holding company Steinhoff, so it looks like it does have same value somewhere. Where do you think

Steinhoff is going in terms of, you know value, value wise into the future? It is, I said it is subsidiaries. Can they be sold at good amounts or can they keep them, or can they succeed in the future or it is a lost cause?

MR JAYENDRA NAIDOO: Ja that is a question that is hard to speculate about. I think the new leadership team of Steinhoff have done a excellent job to keep the ship afloat and you will see even in the newspapers today, the company voluntary arrangement that Steinhoff was working on over a year has now been perfected so the debt is all in a locked up phase until the end of December 2021, which gives them an opportunity to try and
10 settle claims, settle creditors and create some value from their assets not being disposed of distress values. But having said that it is still a very difficult job, because the sum of the creditors and the claimants far exceeds the value of the assets. So you know, it is unlikely that you will, you will see a lot of there. You know? But nevertheless, you know we have a substantial claim at the holding company level and we will be pursuing that claim vigorously.

MR EMMANUEL LEDIGA: Are you saying that the creditors' claims are bigger than the assets. Just the creditors' claims.

MR JAYENDRA NAIDOO: The creditors themselves that is the proven
20 creditors whereas the claimants are contingent in that they are not yet proven. Alright. There, it is also arguable. Depending on the value of the assets. Whether the assets and the liabilities are matched to whether the liabilities exceeds the assets. I cannot give you a definite answer about that, but just through a casual look you will see that they do not look far apart, so it will all depends what value you-you allocate to certain of the

unlisted assets that are inside of Steinhoff. But it is arguable that may also, even at the level of the creditors have more liabilities and assets.

MR EMMANUEL LEDIGA: So its, it looks likely that the shareholders themselves might not get a cent.

MR JAYENDRA NAIDOO: I am not qualified to give any advise.

MR EMMANUEL LEDIGA: That is why I say might. That is why I say might, but that is the future then. Once they have dealt with the creditors, I guess.

MR JAYENDRA NAIDOO: You will have to ask me over a cup of coffee
10 for the best ...[intervenes].

MR EMMANUEL LEDIGA: Alright thanks. Thank you-thank you.

MR JAYENDRA NAIDOO: Okay I now deal with the Lancaster Foundation on profit company. As described earlier, at the behest of the PIC, it was agreed that 25% of the shares of L101 would be reserved for a BEE Trust, to provide grants for Black community social development and concessional financing for Black Enterprise development. The shareholders agreement provided that Lancaster Group would establish the new Trust and sell down its shareholding in L101 to the Trust at par value, such that the final shareholding of L101 would reflect the PIC with
20 50%, the BEE Trust with 25% and Lancaster Group with 25%.After receiving legal advice, the initial L101 shareholders (being both the PIC and Lancaster Group) approved the amendment of the L101 shareholders agreement to permit the establishment of a Non-Profit Company as an alternative to a Trust. The Lancaster Foundation Non-Profit Company was established in 2017 and was allocated shares in L101 in accordance with

the terms of the L101 Shareholders Agreement. The Non-Profit Company's main objects permit it to provide grants or concessional finance to recipients, as determined on a case by case basis. In addition, the N101 of the Non Profit Company restricts it from directly or indirectly paying any portion of its income or transferring any of its assets, regardless of how the income or asset was derived, to any person who is or was a director, or a person appointing a director of the Non Profit Company. L101 has provided the Non Profit Company with an initial amount of R50m out of the funds it raised pursuant to the refinancing that
10 occurred in 2017, to enable the Non Profit Company to commence its activities without having to wait until a future time when dividends are paid to L101 shareholders. The Non-Profit Company has not employed any full-time staff, and its Directors receive no remuneration for their work. For the avoidance of any doubt, I record that none of the Directors are beneficiaries of the Foundation. No family member of mine is a beneficiary of the Non-Profit Company, and no one connected to the PIC is a beneficiary of the Non-Profit Company. All its activities are conducted at arm's length.

MS GILL MARCUS: Thank you for that. You say that the question is no
20 one is a beneficiary. Again, just for the point of, for the sake of clarity because allegations are that it is your daughter who runs this foundation. Is that correct?

MR JAYENDRA NAIDOO: My daughter is a Director, non-executive director as I am. She receives no remuneration; no fees and she has not received a benefit from this. She does her work as a Director.

MS GILL MARCUS: Are there, can you name any of the other Directors?

MR JAYENDRA NAIDOO: Roshan Mohar is the third Director. He was the independent Director ...[intervenes].

MS GILL MARCUS: On the PIC board ...[intervenes].

MR JAYENDRA NAIDOO: On the L101 bought by the PIC.

MS GILL MARCUS: Are those just the three of you then?

MR JAYENDRA NAIDOO: Just the three.

MS GILL MARCUS: Thanks very much.

MR JAYENDRA NAIDOO: I now have come to end of my statement. I
10 noticed that I did not have any concluding flourish, so Mr Chair I am in
your hands now.

CHAIRPERSON: Are you thinking of other flourishes?

MR EMMANUEL LEDIGA: Yes, well the suppose the concluding point
would be, that you know at the time the investment by the PIC in L101
and the construct with that investment was, you know of the largest and it
was done at time when we were very optimistic about Steinhoff's feature
heading to prime position of the top ten of South African listed
companies. I think in the final analysis this investment has been
disrupted by the Corporate fraud we have all seen, which is most
20 unfortunate. But it was external to anything that anyone envisaged.

CHAIRPERSON: Thank you. Let me take note of that.

ADV JANNIE LUBBE SC: Mr Commissioner and topics addressed by
Naidoo and his statement are those matters that we engage with him and
his legal advisor, so from our side we are covered. There are some

documentation that the forensic team will obtain from Mr van Niekerk. That will be arranged. So from my side I have no further question.

CHAIRPERSON: Thank you. It remains to say to you Mr Naidoo thank you very much for your time. Thank you for giving us the information we really needed like all the other witnesses. Yours was as important. Having certainly taken into consideration. Mr van Niekerk was there anything further that you wanted to say?

MR GEORGE VAN NIEKERK: No nothing further to add you Your Worship.

10 **CHAIRPERSON**: Thank you too for being here to assist your client. You are excused together with Mr Naidoo. But I am going to issue a statement. If you want to sit, if you want to leave you can do that. Yes this is the commission statement at this stage. The PIC Commission of Enquiry established in October in 2018 held its first meeting on 2 November 2018 and began formal hearings on 21 January 2019. To date 77 witnesses have publicly testified before the commission. A number of them appearing more than once or sitting for a few days.

The commission's interim report was submitted to the President. President Ramaphosa as scheduled on 15 February 2019. Since then the
20 term of the Commission has been extended twice. From 15 April to 31 July and now from 31 July to 31 October 2019 when we will submit our final report to the President.

Today marks the end of the scheduled public hearings on allegations of impropriety as it appears, as it is outlined in the 17 terms of reference that guide the work of the Commission.

It is now our task to review, access, make findings, propose recommendations and prepare our final report in keeping with these terms of reference. In additions to the investigations and testimonies that have been presented to the Commission for the past eight months further possible, questionable transactions have come to the attention of the Investigation team. The team will continue with their investigations and if deemed appropriated and necessary further limited public hearings maybe held.

10 Furthermore, anyone with evidence or who has been mentioned in evidence to date and wishes to place their version of events on record are welcome to submit their testimony by way of sworn affidavits and all such submissions will form part of the testimonies that will be considered when writing our report.

In the period between now and 30 September 2019 Advocate Lubbe and his team remain available as the point of contact with the commission. Our communications team will alert the media if or when any new documents are posted on the website.

We extent our appreciation to all of those, to all those who has given testimony before the Commission, often in difficult circumstances.
20 We thank the media for their consistent coverage of the work of the Commission, and I note that there are certain faces that I have seen every day during our hearing, and we appreciate that very much. Thank you. We shall now adjourn. Thank you very much.

ADV JANNIE LUBBE SC: Before you go. Thank for this closing address Mr Commissioner but I will failing in my duty as the evidence leader not

to tell the Commission that the legal and forensic teams are deeply indebted to the Commission, for their guidance and their assistance which I think was a rollercoaster ride which is still going on. And we also wish to thank from our side the admin staff for which we could not have been able to perform our functions.

To the media printed and electronic, for mostly covering in a very fair and an objective way the proceedings before this Commission. Lastly I would thank and convey a deepest thank to my teams to the PIC for their assistance during these proceedings and in particular Wilna
10 Louw and Deon Botha who were always available night and day to assist of the procurement of documentation or evidence that was needed by the teams. Thank you very much Mr Commissioner.

CHAIRPERSON: Thank you Advocate Lubbe. Now we shall adjourn.

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