




# OUTA

ORGANISATION UNDOING TAX ABUSE

## SABC

OUTA'S SUBMISSION TO THE  
JUDICIAL COMMISSION OF  
INQUIRY INTO STATE  
CAPTURE



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## INTRODUCTION

1. In this chapter, we shall detail how the Gupta family were able to exert undue influence over high-ranking government officials, including:
  - 1.1. the President;
  - 1.2. members of Cabinet; and
  - 1.3. the Board, or accounting authority, of the state-owned entity (“SOE”) namely the South African Broadcasting Corporation SOC Ltd (“the SABC”).
2. Oversight of the SABC is exercised by the Board, the Executive and Parliament. By exerting its influence as it did, the Gupta family captured the entire chain of responsibility for this particular SOE, with the arguable exception of Parliament.
3. Furthermore, we shall explore how the company of a known Gupta family associate was unlawfully appointed.

## SYNOPSIS

4. The Department of Communications has endured a turbulent decade, with the position of Minister changing hands on no less than eight occasions during that period. It is no coincidence that seven of these changes occurred during Jacob Zuma’s tenure as President of South Africa and that the two longest serving

Ministers, Dina Pule (“Pule”) and Azwihangwisi Faith Muthambi (“Muthambi”), were also the most controversial.

5. The intentional absence of oversight of the Ministers, in particular Minister Muthambi, resulted in the decline of the SABC through chronic and systemic maladministration at the hands of its Board and senior management led by the now infamous Hlaudi Motsoeneng (“Motsoeneng”).
6. On or about 17 July 2017, OUTA lodged a criminal complaint against Muthambi that included charges of high treason and corruption. Said complaint was registered under Brixton CAS: 223/7/2017. It is from this complaint that much of the evidence substantiating our submission is drawn.
7. On or about 12 October 2017, OUTA lodged a complaint with Parliament’s Joint Committee on Ethics and Member’s Interests, based on the same evidence as the aforementioned criminal complaint. The complaint is now being considered by the Committee.
8. The complaints, together with their annexures, are annexed hereto as **SABC 1A** and **SABC 1B** respectively.

## THE DEFINITION OF STATE CAPTURE

9. OUTA construes the definition of state capture as follows:

“...a situation where powerful individuals, institutions, companies or groups within or outside a country use corruption to shape a nation’s policies, legal environment and economy to benefit their own private interest”.<sup>1</sup>

(Own emphasis added).

10. This chapter attempts to illustrate the immense influence that the Gupta family were able to exert over the Cabinet members, the Department of Communications and the SABC.
11. Furthermore, it shall attempt to illustrate how those officials who participated in state capture maintained their positions, or were further promoted, in the face of evidence to their unfitness to hold such positions.
12. Finally, it will detail how a company owned by a known Gupta associate was unlawfully appointed by the SABC.

## DINA PULE

### EMAIL LEAKS: SAXONWOLD MEETING

13. During the course of October 2012, Rajesh “Tony” Gupta sent out a number of meeting invitations via email. The meeting title was “*Mr Tony Meeting Diana Pule Ace @ 6pm Tues 2 Oct - No.5 Saxon*”.

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<sup>1</sup> Chene M, “*State Capture: An Overview*”, 11 March 2014.

14. The invitations are annexed hereto as **SABC 2**.
15. “Diane Pule” is likely Dina Pule, the former Minister of Communications from the period October 2011 to July 2013. “Ace” is likely Elias Sekgobelo "Ace" Magashule, the former Premier of the Free State from the period May 2009 to March 2018.
16. OUTA cannot confirm whether the aforementioned meeting took place or not, but these invitations indicate that the Gupta family was in communications with the Minister Pule at the time and that they felt comfortable enough to invite her to their private residence at Saxonwold.
17. Whilst there is nothing inherently damning about a meeting request, the interests of the Gupta family in the Department of Communications, through African News Network 7 (“ANN7”) and TNA Media (Pty) Ltd, together with the greater context of state capture are concerning to say the least.
18. On 9 July 2013, Pule was dismissed from Cabinet by President Zuma subsequent to allegations that her romantic partner had benefitted from the ICT Indaba hosted by her Department.
19. These allegations, amongst others, were found to be substantiated by Parliament’s Joint Committee on Ethics and Members’ Interests and the Public Protector in her Report titled “*Unsolicited Donation*”, published on 5 December 2013. The report is attached hereto and marked **SABC 3**.

20. During February 2014, the Public Protector published the Report, “*When Governance and Ethics Fail*”, in which she found that the Minister and the Department had unduly interfered in the affairs of the SABC and that the former had acted improperly in her handling of the Role of Shareholder’s Representative in the SABC.<sup>2</sup>

## FAITH MUTHAMBI

### INCOMPETENT AND IMPROPER CONDUCT

21. On 25 May 2014, President Jacob Zuma appointed Muthambi to the Cabinet as Minister of Communications. According to Muthumbi’s People’s Assembly profile, she has been Member of Parliament since April 2009, during which period she served as the Chief Whip of the Portfolio Committee on Communications and served in the Standing Committee on Public Accounts (“SCOPA”).
22. Muthambi obtained a BProc degree from the University of Venda in 1996 and completed her Attorney’s Admission Examination in 2000. She is currently an admitted attorney of the High Court of South Africa.
23. On 24 February 2017, the National Assembly’s *ad hoc* Committee on the SABC Board Inquiry (“the Committee”) concluded its Final Report.<sup>3</sup>

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<sup>2</sup> See SABC 1A, annexure SF6, ad paragraphs 10.8.1 & 10.8.2, pg. 145.

<sup>3</sup> See SABC 1A, annexure SF1.

24. The Committee found that Muthambi “...displayed incompetence in carrying out her responsibilities as Shareholder Representative [of the SABC]”. The Committee noted that the evidence suggested “major shortcomings” in Muthambi’s conduct, particularly in relation to the amendment of the SABC’s Memorandum of Incorporation (MOI) and her role in Motsoeneng’s permanent appointment as Chief Operating Officer (COO).<sup>4</sup>
25. It concluded that “...the Minister interfered in some of the Board’s decision-making and processes and had irregularly amended the MOI to further centralise power in the minister...” and condemned all political interference in the SABC Board’s operations.<sup>5</sup>
26. The Committee recommended that: “The President should seriously reconsider the desirability of this particular Minister retaining the Communications portfolio”.<sup>6</sup>
27. During the Cabinet reshuffle of 30 March 2017, President Jacob Zuma retained Muthambi as a member of Cabinet, appointing her as Minister of the Public Service and Administration.
28. In *Democratic Alliance v South African Broadcasting Corporation SOC Ltd and Others 2016 (3) SA 468 (WCC)*,<sup>7</sup> the High Court found that Muthambi acted

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<sup>4</sup> See SABC 1A, annexure SF1, ad paragraph 39.1.1, pg. 79.

<sup>5</sup> See SABC 1A, annexure SF1, ad paragraph 39.1.1, pg. 79.

<sup>6</sup> See SABC 1A, annexure SF1, ad paragraph 39.1.2, pg. 79.

<sup>7</sup> See SABC 1A, annexure SF2.



irrationally and unlawfully in appointing Motsoeneng as Chief Operations Officer of the SABC particularly in the face of the Public Protector’s damning findings against him based on abuse of power, fraud and maladministration.<sup>8</sup>

29. The court held that *“the [Minister’s] decision to appoint Mr Motsoeneng, when there was a manifest need for a transparent and accountable public institution such as the SABC to exhaustively examine all of the disputes raised about his integrity and qualifications, cannot be considered as a rational decision”*.<sup>9</sup>
30. In *South African Broadcasting Corporation SOC Ltd and Others v Democratic Alliance and Others 2016 (2) SA 522 (SCA)*,<sup>10</sup> the Supreme Court of Appeal upheld the findings of the High Court, stating:

*“As the excerpts from the affidavits of both the Minister and Ms Tshabalala show, they express themselves in strong language. Both appear to have already exonerated Mr Motsoeneng of any wrongdoing. For it seems to be inconsistent to promote a person to one of the most senior positions at the public broadcaster if there had been any genuine intention of instituting disciplinary proceedings against him. Rationally, implicit in his promotion has to be a rejection of the rather damning findings by the Public Protector. Not only does all of that render their assertion that they were still intent on engaging with the Public Protector contrived and disingenuous, but it strongly dispels the notion that they can still*

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<sup>8</sup> See SABC 1A, annexure SF2, ad paragraph 54, pg.28.

<sup>9</sup> See SABC 1A, annexure SF2, ad paragraph 49, pg. 26.

<sup>10</sup> See SABC 1A, annexure SF3.

*bring an open and impartial mind to bear on the matter. The appeal against the suspension order must therefore also fail.”*

31. In *Electronic Media Network Limited and Others v E.TV (Pty) Limited and Others 2017 (1) SA 17 (CC)*,<sup>11</sup> the Constitutional Court expressed its concern at Muthambi’s “evasive” and “suspicious” responses or lack thereof to pertinent questions raised by E.tv, regarding consultations that she had with undisclosed parties. Chief Justice Mogoeng stated: *“We live in a constitutional democracy; whose foundational values include openness and accountability. It is thus inappropriate for the Minister [Muthambi] to not have volunteered the identities of those she consulted with and what the consultation was about, as if she was not entitled to solicit enlightenment or did so in pursuit of an illegitimate agenda. This conduct must be frowned upon and discouraged...”*<sup>12</sup>
32. The actions of the Muthambi and Ellen Zandile Tshabalala (“Tshabalala”), the Chairperson of the Board of the SABC at the time the above application was launched, indicate that both were willing to abdicate their responsibility to act in the best interests of the SABC in order to protect Motsoeneng.

## COLLABORATION WITH THE GUPTA FAMILY

33. The evidence obtained from the #GuptaLeaks show that between July and August 2014 – shortly after President Zuma appointed Muthambi to Cabinet as Minister of Communications – she sent a series of emails to Tony Gupta on

<sup>11</sup> See SABC 1A, annexure SF4.

<sup>12</sup> See SABC 1A, annexure SF4, ad paragraph 61, pg 28.

confidential matters of executive policy and on the scope of her ministerial powers.<sup>13</sup>

34. These emails were either sent directly from Muthambi to Tony Gupta or indirectly, from Muthambi to the Sahara company's CEO, Mr Ashu Chawla ("Chalwa"). Chawla, in turn, forwarded Muthambi's correspondence to Tony Gupta and Duduzane Zuma, President Zuma's son. The latter appears to have acted as a conduit between the Gupta family and President Zuma.
35. As the bundle of emails and promulgations email annexed to the criminal complaint is unnumbered, we have thus annexed a numbered version of said bundle as annexure **SABC 4** for ease of reference.
36. On 18 July 2014, Muthambi emailed a copy of the President's Proclamation on the transfer of administration and powers to certain Cabinet members (published as Proclamation 47 of 2014 in Government Gazette No. 37839 of 15 July 2014 – "the Proclamation") to Chawla who, in turn, forwarded the email to Tony Gupta.<sup>14</sup>
37. The Proclamation provided, *inter alia*, that all powers under the Electronic Communications Act 36 of 2005 and the Sentech Act 63 of 1996 were to be assigned to the Minister of Telecommunications and Postal Services, Minister Cwele. Previously, it was assigned to the Minister of Communications.

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<sup>13</sup> See SABC 1A, annexure SF5.

<sup>14</sup> See SABC 4, ad pg. 2-27.

38. A few minutes after emailing the Proclamation to Chawla, Muthambi sent him a second email attaching a document describing the effect of the proclamation. The document contained the following statement:<sup>15</sup> *“The ability to make broadcasting policy and issue broadcasting policy directions are set out in section 3 of this Act. These powers have been transferred from the Minister of Communications to the Minister of Telecommunications and Postal Services. It is therefore the Minister of Telecommunications and Postal Service who will make policy and issue policy directives to ICASA for broadcasting, including public service broadcasting.”*
39. On 25 July 2014, Muthambi sent two emails to Chawla. In the first e-mail, with the subject line *“Proclamation New July 18”*. Muthambi wrote: *“These sections must be transferred to the Minister of Communications.”* A document describing the statutory provisions to which she referred was attached to the e-mail under the file name *“proclamtion (sic) new 18 July 2014 (clean).docx”*.<sup>16</sup>
40. The document named *“proclamtion (sic) new 18 July 2014 (clean).docx”* proposed the retransfer of certain powers under the Electronic Communications Act 36 of 2005 from the Minister of Telecommunications and Postal Services to the Minister of Communications.

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<sup>15</sup> See SABC 4, ad pg. 28-29.

<sup>16</sup> See SABC 4, ad pg. 33 & 34.

41. In a second e-mail sent minutes later, with the subject line *“Responsibility for InfraCo and Sentech”*, Muthambi wrote: *“Sentech's signal distribution **must** rest with the Ministry of Communications”*.<sup>17</sup> (Own emphasis added)
42. The attached document motivates for the transfer of powers and functions over Sentech (which is responsible for broadcasting signal distribution to the SABC and commercial broadcasters) from the Minister of Telecommunications and Postal Services to the Minister of Communications (under the Sentech Act No. 63 of 1996).<sup>18</sup>
43. Both e-mails of 25 July 2014 were subsequently forwarded by Chawla to Tony Gupta and Duduzane Zuma, in separate emails.<sup>19</sup>
44. Included in the powers which *“proclamation new 18 July 2014 (clean).docx”* proposed to have retransferred to Muthambi, was the power under section 3 of the Electronic Communications Act to make national policy for the information, communications and technology sector *“to the extent that it deals in any way with a broadcasting service or an electronic communications network service used for or in the provision of broadcasting service.”*
45. On 6 December 2013, Muthambi’s predecessor as Minister of Communications, Minister Carrim, had started the process of exercising his power under section 3 of the Electronic Communications Act 36 of 2005, by issuing for public comment

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<sup>17</sup> See SABC 4, ad 35.

<sup>18</sup> See SABC 4, ad 36-38,

<sup>19</sup> See SABC 4, ad pg. 39-46.

draft amendments to the broadcast digital migration technology under Government Notice 954 of 2013.

46. The above-mentioned Government Notice is annexed hereto as annexure **SABC 4.1**.
47. For present purposes, we emphasize two features of the amendments proposed by Minister Carrim:
  - 47.1. The first is that it proposed fixed dates for certain stages in the digital migration process; and
  - 47.2. The second is that it proposed that the Government would subsidise set top boxes capable of receiving encrypted signals.
48. As pointed out in the document that Muthambi had forwarded to Chawla on 18 July 2014<sup>20</sup>, in terms of the assignment of functions in the Proclamation, responsibility for broadcast digital migration policy would lay not with Muthambi, but with Minister Cwele.
49. On 29 July 2014, Muthambi sent an e-mail to Chawla, with the following message: *“Despite my request, the cde is determined to table the matter in cabinet tomorrow... He called me that he was coming to Cape Town this morning ... I hope he still on his way.”*<sup>21</sup>

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<sup>20</sup> Paragraph 36 above.

<sup>21</sup> See SABC 4, ad pg. 47.

50. Muthambi attached a memorandum that she had sent, as Minister of Communications, to the Minister of Telecommunications and Postal Services, to Mr Cwele. In the memorandum, Muthambi noted that Minister Cwele proposed to table final amendments to the Broadcasting Digital Migration Policy in Cabinet and expressed concerns about the proposed amendments.<sup>22</sup>
51. On 1 August 2014, Muthambi sent an email to Chawla, to which she attached a draft of a proclamation in the name of the President for the transfer of administration, powers and functions under the Electronic Communications Act from the Minister of Telecommunications and Postal Services to the Minister of Communications. Mere minutes later, Chawla forwarded the email and its attachment to Tony Gupta.<sup>23</sup>
52. The emailed message was: “*See attached Proclamation that President **must sign***”.
53. On 8 August 2014, one “Ellen” of Fortune Holdings emailed Muthambi in reply, thanking her for the proposed proclamation that the President “*must*” sign. The email was signed by “Zandile”.<sup>24</sup>
54. “Zandile” is likely Zandile Ellen Tshabalala (“Tshabalala”), the then Chairperson of the Board of the SABC. “Zandile” copied Chawla and a certain Khumalo at the SABC on this correspondence.

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<sup>22</sup> See SABC 4, ad pg. 48-50.

<sup>23</sup> See SABC 4, ad pg. 51-56.

<sup>24</sup> See SABC 4, ad pg. 57.

55. The draft Presidential proclamation was never promulgated in the self-contained form attached to the emails between Muthambi, Chawla and Tony Gupta. However, on 2 December 2014 the President Promulgated Proclamation 79 of 2014 which transferred to the Minister of Communications a range of powers including the power to make national policy on information, communications and technology under section 3 of the Electronic Communications Act insofar as it relates to broadcasting.<sup>25</sup>
56. With policy on Broadcast Digital Migration under her control, Muthambi published her amendments to the policy on 18 March 2015 under Government Notice 232 of 2015.<sup>26</sup>
57. The final policy included neither of the two features mentioned above in Minister Carrim's published draft of December 2013:
- 57.1. The policy no longer tied the Government to any dates for the digital migration process; and
- 57.2. The policy provided that Government-subsidised set top boxes would not be capable of receiving encrypted signals. It thus reversed Minister Carrim's proposal which had been in accordance with ANC policy, and replaced it with a decision that was contrary to ANC policy.<sup>27</sup>

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<sup>25</sup> See SABC 4, ad pg. 61069.

<sup>26</sup> See SABC 4, ad pg. 58-60.

<sup>27</sup> See SABC 4, ad pg. 60.



58. As pointed out above, when Muthambi was taken to Court by e-TV for her failure to consult publicly on the changed provisions relating to encryption, the Constitutional Court commented on her “*evasive and suspicious*” responses relating to the identity of the persons with whom she had consulted in relation to the changes that she made.

#### THE APPOINTMENT OF HLAUDI MOTSOENENG

59. During February 2014, the Public Protector published the Report, “*When Governance and Ethics Fail*”.<sup>28</sup>The Public Protector found, *inter alia*, that:
- 59.1. Motsoeneng’s appointment as Acting COO was irregular<sup>29</sup>;
  - 59.2. The former SABC Chairman, Dr. Ben Ngubane, acted irregularly when he ordered that the qualification requirements for appointment to the position of COO be relaxed, removing academic qualifications as previously advertised;<sup>30</sup>
  - 59.3. The Motsoeneng’s salary progression was irregular;<sup>31</sup>
  - 59.4. The Board of the SABC failed to exercise its fiduciary obligations in the appointment and appropriate remuneration for the Acting COO;<sup>32</sup>

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<sup>28</sup> See SABC 1A, annexure SF6.

<sup>29</sup> See SABC 1A, annexure SF6, ad paragraph 10.1.1, pg. 133.

<sup>30</sup> See SABC 1A, annexure SF6, ad paragraph 10.1.2, pg. 134.

<sup>31</sup> See SABC 1A, annexure SF6, ad paragraph 10.1.3, pg. 134.

<sup>32</sup> See SABC 1A, annexure SF6, ad paragraph 10.1.6, pg. 135.

- 59.5. Motsoeneng committed fraud when he misrepresented that he had completed matric in his application;<sup>33</sup>
- 59.6. Motsoeneng was appointed to several positions within the SABC despite lacking the qualifications for said positions;<sup>34</sup>
60. On 8 July 2014, Muthambi appointed Motsoeneng as permanent COO of the SABC despite the Public Protector's findings and remedial action. The High Court and Supreme Court of Appeal, as detailed above, found that the Minister's decision was, on the face of it, irrational and unlawful.
61. Parliament's ad hoc Committee on the SABC noted in its report that:
- 61.1. That evidence pointed to a number of irregular appointments and dismissals within the SABC and that the company has a high staff turnover especially at the level of its Executive.<sup>35</sup>
- 61.2. SABC producer, Mr Vuyo Mvoko gave evidence that SABC resources were diverted to fund ANN7, the Gupta-owned news channel. He indicated that the SABC's Morning Live resources were diverted to pay for the production costs associated with the TNA Business Breakfasts. The SABC did not generate any revenue from the briefings.<sup>36</sup>

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<sup>33</sup> See SABC 1A, annexure SF6, ad paragraph 10.2.1, pg. 135.

<sup>34</sup> See SABC 1A, annexure SF6, ad paragraph 10.2.3, pg. 136.

<sup>35</sup> See SABC 1A, annexure SF1, ad paragraph 25.1.1, pg. 68.

<sup>36</sup> See SABC 1A, annexure SF1, ad paragraph 8.2.4, pg. 34.

61.3. The former acting Group CEO of the SABC (between July 2011 to January 2012), Mr Phil Molefe (“Molefe”), testified that Motsoeneng had initiated meetings with Mr Tony Gupta in July 2011 to discuss a possible business agreement between the SABC and the TNA Media Group.<sup>37</sup>

61.4. Additionally, Molefe corroborated evidence that the SABC bore costs associated with the TNA business breakfasts at a huge cost to the company and that they also covered the flights, accommodation and subsistence of the production staff whenever briefings took place outside of Johannesburg.<sup>38</sup>

61.5. Finally, Molefe testified that in November 2011, he was pressured by Motsoeneng and then Chairperson of the SABC Board, Dr. Ben Ngubane (“Ngubane”) to increase the former’s salary to R500,000.00 (five hundred thousand rand). When Molefe refused Motsoeneng allegedly said to Ngubane: “*Chair, I told you this is not our man. So I’m going to Pretoria tonight.*”

61.6. This suggests that Motsoeneng may have been protected by President Zuma himself and that he expected the latter to intervene to his benefit.

62. On 12 December 2016, OUTA laid criminal charges against Motsoeneng for fraud and corruption, in respect of, *inter alia*, his misrepresentation of his qualifications. Said criminal case is registered under Brixton CAS: 259/12/2016.

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<sup>37</sup> See SABC 1A, annexure SF1, ad paragraph 8.2.2, pg. 33.

<sup>38</sup> See SABC 1A, annexure SF1, ad paragraph 17.1.3, pg. 55.

63. The SABC Pension Fund and the Special Investigations Unit (“SIU”) have since lodged an application to prevent Motsoeneng from withdrawing certain sums from the pension fund, under Case No: 18/04253. These sums are based on his misconduct detailed within the Public Protector’s Report, which the SIU are in the process of quantifying.
64. In light of the above, it can be reasonably presumed that Motsoeneng was appointed and retained because of his relationship with President Zuma and the Gupta family.

## TV LICENSE FEE COLLECTION

65. During the course of much of the misconduct perpetrated by Motsoeneng, one James Aguma (“Aguma”) was the Chief Financial Officer (“CFO”) of the SABC. He was also qualified as a Chartered Accountant.
66. On 24 May 2017, OUTA lodged a complaint with the South African Institute of Chartered Accountants (“SAICA”), with reference number 066/17, in respect of his failure to exercise his responsibilities as CFO and rein Motsoeneng in. One of the issues our complaint focused on was that of the appointment of Lornavision (Pty) Ltd (“Lornavision”).

## INTRODUCTION

67. On 10 July 2015, the South African Broadcasting Corporation (“SABC”) entered into a Service Agreement with a private company, Lornavision, to *inter alia*, render collections of television licence debt, including collection on 330 000 account renewals per month. In turn, the SABC agreed to make payment in consideration for the services rendered.
68. The abovementioned agreement was signed by Aguma and Mbulu Nephumbada on behalf of SABC and Mr Kubentheran Moodly (“Moodley”) on behalf of Lornavision. The Service Agreement is annexed hereto as annexure **SABC 5** and the Company details as registered for Lornavision as annexure **SABC 6**.
69. On 1 August 2017, Gauteng High Court handed down judgement in a matter between Lornavision and the SABC, under Case No: 19502/17, in which it declared the aforementioned contract unlawful.
70. This judgement is of particular concern as it notes that the appointment of Lornavision was a deviation from SABC procurement policy which occurred after Lornavision approached the SABC and entered into a thirty-month period of negotiations. This constitutes an unsolicited bid, which is prohibited by the SABC’s procurement policy.<sup>39</sup>

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<sup>39</sup> See SABC 7, ad paragraph 43, pg. 18.

71. Of further concern is the fact that Aguma despite the concerns of the head of the SABC's Audience Services Division who noted that there was no reason to appoint Lornavision as the SABC already had the means to render the services that Lornavision was contracted to provide, signed the contract.<sup>40</sup>
72. Additionally, Lornavision held an unscheduled meeting during June 2015 in which it sought an award for a contract to fulfill the role of both a TV license inspector and a debt collection agency. This meeting occurred after Aguma cancelled a Request for Proposal in respect of TV license inspectorate services in February 2015.
73. The judge ultimately concluded that:
- "In sum, the SABC's appointment of Lornavision was not and could not have been rationally connected to the purpose of the SABC's policy; and the information before the SABC, its executives and Aguma at the time of Lornavision's appointment."<sup>41</sup>*
74. The judgement is annexed hereto as annexure **SABC 7**.

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<sup>40</sup> See SABC 5, ad paragraph 55-56, pg. 23.

<sup>41</sup> See SABC 5, ad paragraph 62, pg. 25.

## PRINCIPLE PLACE OF BUSINESS AND REGISTERED ADDRESS

75. In Clause 1.2 of the Service Agreement between SABC and Lornavision the principal place of business for Lornavision is indicated as 75 Grayston Drive, Benmore, Sandton, Gauteng, Republic of South Africa.
76. In Clause 15.1 the chosen *domicilia citandi et executandi* (“domisilia”) for the service provider, Lornavision, is indicated as 75 Grayston Drive, Benmore, Sandton.
77. According to CIPC the registered address of Lornavision is Ground Floor, Block A, 7 Anerley Road, Parktown.
78. The address for Lornavision as indicated in the Service Agreement, namely 75 Grayston Drive, Benmore, Sandton, is the business address for Blue Label Telecoms. No evidence could be obtained during our investigation that Lornavision is doing business from this address.
79. Nowhere on the website of Blue Label Telecoms or in their last two annual reports were there any reference to Lornavision. The annual reports are very thorough documents which show detail on all subsidiaries and business associates. On the Blue Label Telecoms website is also a function to search for words or phrases. In a search for “Lornavision” no results were shown.
80. It is notable that Mark Vivian Pamensky (“Pamensky”) was a director of Blue Label Telecoms during the course of 2015, as detailed in Blue Label Telecoms’ Integrated Annual Report of 2015.

81. Pamensky was also involved when various companies contributed towards Tegeta Exploration and Resources (Pty) Ltd in its transaction to buy Optimum Coal Mine according to the Public Protectors report “State of Capture”. It is also indicated in the “State of Capture” report that a company called Albatime (Pty) Ltd contributed R10 million towards the Tegeta/Optimum transaction.<sup>42</sup> Mr Kubentheran Moodley is the sole director of Albatime (Pty) Ltd. The links and relationship between Moodley and Pamensky will be discussed later.

## PAYMENT FOR SERVICES

82. In Clause 9 of the Service Agreement<sup>43</sup>, provision is made for payment to the Service Provider for the construction and implementation of a pilot programme on licence renewals and further payments on the successful collection of monies for the SABC.
83. In Annexure A attached to the above-mentioned Service Agreement<sup>44</sup>, Lornavision sets out the time frame for the implementation of the pilot programme. On their own version it would take Lornavision twenty weeks to implement the pilot programme. It is also stated that the pilot programme could commence within ninety days from receipt of the SABC database comprising of private and commercial licences showing all transactions dating back to 2005.

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<sup>42</sup> This is dealt with, in detail, in our submission on Eskom.

<sup>43</sup> See SABC 5.

<sup>44</sup> See SABC 5.



84. The amount for implementing the programme and for 10 000 licence renewals per month, was agreed on R2 135 000.00 excluding VAT.
85. Although the Service Agreement was signed on 10 July 2015, provision was made for an effective date of 01 July 2015.
86. On 01 August 2015, an invoice was prepared by Lornavision. It was received by the SABC Radio Front Office on 14 September 2015. The invoice was made out for the amount of R2 135 000.00. The total amount payable is R2 433 900.00. The invoice is attached hereto as annexure **SABC 8**.
87. Lornavision issued the invoice before the programme could have been implemented. The Service Agreement does not make provision for interim payments and one would expect that payment should only be made after the services were rendered.
88. On the invoice, the details of the Service Provider are shown. The invoice was issued by Lornavision (Pty) Ltd with Tax Number (9007737241) and VAT Number (4910270349) shown in the top left-hand block. There also appear a company registration number in the same block. This company registration number, 2012/163517/08, is the registration number for The Axon Foundation and not Lornavision. The Axon Foundation is a non-profit organisation and forms part of the Axon Group and will be explored in further detail below.
89. The bank details appearing on the invoice is a FNB Account (Account Number 62 543 561 858 and Branch 260 950). OUTA could not establish the owner of the account but our investigation team was informed that this account is currently inactive. The question must be asked why a company like Lornavision, who

issued a R2,4 million Rand invoice, has an inactive bank account 17 months later.

90. Before the cancellation of the contract, Lornavision collected approximately R200 million.<sup>45</sup> In light of this, it is curious why the bank account shown on their invoice, is currently inactive.

#### FRANS LODEWYK MUNNIK BASSON – THE CUSTOMER COMMUNICATION SERVICES COMPANY (PTY) LTD

91. Frans Lodewyk Munnik Basson (“Basson”) is a director of Lornavision. He is an attorney and his former company, MBD, previously collected debts on behalf of the SABC.
92. Basson is currently the sole director or a co-director of various companies. Most notable for this investigation are the following companies:
- 92.1. The Customer Communication Services Company (Pty) Ltd;
  - 92.2. Axon Holdings;
  - 92.3. Pritchard & Associates (Pty) Ltd.
93. A comprehensive list of these companies is annexed hereto as annexure **SABC 9**.

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<sup>45</sup> See SABC 5, ad paragraph 60, pg. 24.

94. On the official SABC website there was a direct link to a web address [www.paymytv.co.za](http://www.paymytv.co.za).
95. The link provided information for customers regarding the payment of TV licences. It made provision for existing customers and new customers. The link guided the customer on how to pay their TV licences or how to make arrangements to pay outstanding licence fees.
96. The terms and conditions for doing transactions on the [www.paymytv.co.za](http://www.paymytv.co.za) link, informed customers of internet merchant requirements. The Terms and Conditions (“T&C’s”) of [www.paymytv.co.za](http://www.paymytv.co.za) is attached hereto as annexure **SABC 10**.
97. In the T&C’s, the Customer Communication Services Company (Pty) Ltd (“CCS”) was described as a marketing and communication company who has been authorised to collect TV licence fees on behalf of the SABC. For easy reference, the CCS’s details is annexed hereto as annexure **SABC 11**.
98. The T&C’s informed the consumer of *inter alia* of the following:
- 98.1. The *domicilium citandi et executandi* for CCS (wrongly indicated as ABC in the T&C’s) is Block A, Ground floor, 7 Anerley Street, Parktown;
- 98.2. The website ([www.paymytv.co.za](http://www.paymytv.co.za)) was run by CSS based in South Africa with company registration number 2012/133437/07.
99. CCS informed the customer in the T&C’s that they have been authorised to collect licence fees on behalf of the SABC. The website made provision for payment of new licences as well as payment of outstanding licence fees.

100. An affidavit from the Council for Debt Collectors (“CDC”), annexed hereto as annexure **SABC 12**, confirms that the CSS was not registered as a debt collector at the CDC and therefore was not permitted to collect any debts.
101. The business address of CSS as shown in the T&C’s at [www.paymytv.co.za](http://www.paymytv.co.za) namely 7 Anerley Street, Parktown is an important link and reoccurring link. This address was also the address for most of the Axon companies of Basson and will be discussed in further detail below.
102. On page 2 of the Service Agreement between the SABC and Lornavision, it is stated that the digital engagement platform of Lornavision is called CCS (Customer Communication Service). It is furthermore mentioned that this platform can within a very short period (20 weeks) be implemented and that collections and cash flows can then be maximized expeditiously.
103. It is clear that this platform and website was managed and operated by CSS and that Basson was the sole director of this company. Nowhere in the T&C’s is there any reference to Lornavision.

#### PRITCHARD AND ASSOCIATES (PTY) LTD

104. One of the companies collecting debt on behalf of the SABC was Pritchard and Associates (Pty) Ltd. The directors of which are:
- 104.1. Frans Lodewyk Munnik Basson (ID 640414 5091 086); and,
- 104.2. Dirk Johannes Kotze (ID 840812 5048 089).

105. Kotze was also a co-director of The Axon Foundation and Axon Debt Relief Fund, which shall be discussed below.
106. The physical addresses for Pritchard and Associates is Ground Floor, Block A, 7 Anerley Road, Parktown, Johannesburg. It must be noted that this physical address was the same address as for CSS as shown in the T&C's of [www.paymytv.co.za](http://www.paymytv.co.za) and the registered address of Lornavision.
107. For ease of reference, the company details recorded on the CIPC database for Pritchard and Associates, is attached hereto as annexure **SABC 13**.
108. Numerous customers of the SABC, received SMS messages and/or e-mail correspondence regarding outstanding SABC licence fees. An example of such a SMS message is annexed hereto as annexure **SABC 14** and an example of an e-mail notification is annexed hereto as annexure **SABC 15**.
109. The CDC confirmed in a sworn affidavit that Pritchard and Associates (Pty) Ltd as well as its directors were registered at the Council. This registration took place on 23 December 2016.<sup>46</sup>
110. Any money collected by Pritchard and Associates on behalf of the SABC, before 23 December 2016, was collected unlawfully and all actions of Pritchard and Associates and/or Basson and Kotze in this regard, was illegal.

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<sup>46</sup> See SABC 12.

111. The address, 7 Anerley Road, Parktown, Johannesburg, Gauteng used by Axon Holdings, Pritchard & Associates and Lornavision is also the official address of the Mining Qualification Authority.

112. Whilst OUTA cannot confirm whether Kubentheran Moodley occupied said offices in his capacity as special advisor to the Minister of Mineral Resources, it is concerning that each of the aforementioned companies shared offices in the same building. Particularly in light of Albatime's contribution towards the purchase of OCH by Tegeta, as detailed in our Eskom submission.

## AXON GROUP

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### AXON HOLDINGS

113. Frans Lodewyk Munnik Basson was the sole shareholder of Axon Holdings (Pty) Ltd.

114. Axon Holdings was described on their website [www.axonh.com](http://www.axonh.com), as a group of marketing, technology and financial companies. It is an association of businesses that delivers unique products and services across various telecommunications and web platforms. The company details for Axon Holdings, as recorded on the CIPC database on 1 January 2017, is annexed hereto as annexure **SABC 16**.

115. As of today, the above-mentioned website is defunct and a website with address [www.axon.co.za](http://www.axon.co.za) is online. The address indicated on the aforementioned website is 6th floor, PPS Place, 7 Anerley Road, Parktown, Johannesburg, 2193.

116. The following companies, amongst others, are associated with Axon Holdings and/or Basson:

116.1. Axme - 2016/074764/07 (annexure **SABC 16.1**)

116.2. The Axon Foundation - 2012/163517/07 (annexure **SABC 16.2**)

117. According to their respective CIPC documents, Axon Holdings and Pritchard & Associates and various other Axon companies also shared the same address in Cape Town – Top Floor, Combined HQ, 4 Bridal Close, Tygerfalls, Belville, Cape Town, Western Cape, South Africa,

118. It is concerning that Basson is a co-director of both Lornavision and Axon Holdings and that the companies may have operated from the same address, as the services described in the Service Agreement<sup>47</sup> between the SABC and Lornavision fell squarely within the scope of the Axon Group's day to day business functions.

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## AXON FOUNDATION

119. As noted above, The Axon Foundation's registration number appeared on the invoice that was issued by Lornavision to the SABC for payment in the amount of R2 433 900.00.

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<sup>47</sup> See SABC 5.

120. The Axon Foundation was registered as a Non-Profit Organisation and according to the website of Axon Holdings it was started as a debt relief fund to assist debtors with outstanding debts.
121. In March 2015, Frans Basson resigned as a director of The Axon Foundation. It is unclear why The Axon Foundation's registration number appeared on the invoice of Lornavision.

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#### AXME – REWARDS FOR PAYING TV LICENCE

122. On 5 August 2016, it was reported by Channel 24 that the SABC was offering rewards to loyal paying SABC TV licence payers. These rewards included free funeral cover of R7 500.00 or free online training to assist with skills development and enriching people's lives. The media article is annexed hereto as **SABC 17**.
123. During our investigations, a customer of SABC who paid her TV licence early in January 2017, was found. On 7 January 2017, the customer received a SMS message thanking her for payment of her TV licence. In the message the customer was also invited to visit <http://axme.co.za> to claim her free funeral policy to the value of R7 500.00. The SMS and offer for funeral cover are annexed hereto as **SABC 18** and **SABC 19**.
124. When we visited the website, we noted that this organisation, AxMe, was part of the Axon Group of companies. The insurance was underwritten by African Unity Insurance. The website required from the customer to enter a cellular number to in order to claim their policy.



125. AxMe required from the customer to download an advertising application on their mobile phone to activate the policy. The Terms and Conditions of the application include the ability for the downloading of an additional application to access personal information and contact and address book information on the consumer's mobile phone. In other words, the customer made available to AxMe all the contact details of individuals and entities saved on the customer's phone.

126. In addition, the expectation that the funeral cover was worth R7 500.00 was questionable. The T&C's stated:

*"In exchange, because we advertise on your phone, we will insure your life so that you and your estate can pay for your funeral **up to** (our emphases) R7 500.00 worth of cover, subject to certain terms and conditions set out below, at our own cost to remunerate you."*

127. The AxMe T&C's are annexed hereto as annexure **SABC 20**.

128. From the above, it appears as if AxMe was utilizing the database and information of SABC TV licence payers. When the business activities of the Axon Group were scrutinized, most of the Axon companies conducted business in fields where a database of consumers would have been a useful asset.

## CONCLUSION

129. From the above, it is clear that the Gupta family had an interest in the Department of Communications and the SABC and that the family was able to exert undue influence over the highest-ranking officials of both entities, including:

- 129.1. President Zuma;
- 129.2. Dina Pule;
- 129.3. Faith Muthambi;
- 129.4. Ellen Tshabalala;
- 129.5. Hlaudi Motsoeneng; and
- 129.6. Dr. Ben Ngubane.

130. It must be kept in mind that in terms of section 91(2) of the Constitution of the Republic of South Africa, the President has the power to appoint and remove members of Cabinet. Further, the Minister of Communications as the Executive Authority of the SABC has the power to appoint and remove the Board of the SABC.

131. Whilst OUTA cannot confirm whether Pule accepted the invitation to meet with Tony Gupta at Saxonwold, Muthambi's misconduct is beyond dispute. Her many failings as Minister of Communications, as detailed by the Ad Hoc Committee, were not a sudden revelation but had played out before the eyes of the media and the country.

132. It is clear that Muthambi corresponded with the Gupta family and shared confidential communications, including the business of Cabinet and draft legislation. The correspondence suggests that:

132.1. that the transfer of powers to her national portfolio in 2014 was influenced and vetted by the Gupta family; and/or

132.2. that Muthambi used her relationship with the Gupta family to influence the manner in which the President transferred powers into her portfolio; and/or

132.3. Duduzane Zuma was seemingly used as a conduit to President Zuma, to further the aforementioned transfer of powers.

133. It is further evident that the aforementioned correspondence took place with the full knowledge and support of then Chairperson of the SABC Board, Tshabalala.

134. The explanation for President Zuma's failure to remove Muthambi as Minister of Communications, despite the preponderance of scandal, can be presumed to lie in her relationship (and that of President Zuma) with the Gupta family.

135. It is telling that when Muthambi was eventually removed as Minister of Communications in the Cabinet reshuffle of 30 March 2017, President Zuma retained Muthambi as a member of Cabinet, appointing her as Minister of the Public Service and Administration.

136. Similarly, the protection and promotion of Motsoeneng, notwithstanding his abuses of power at the SABC, appears to lie in the Minister's and Motsoeneng's shared improper relationship with the Gupta family.
137. Motsoeneng's misconduct perpetrated at the SABC could only have occurred through the willing inaction of the Board of the SABC, Ngubane and Ellen Tshabalala in particular, and Muthambi herself.
138. Further, Aguma and the Board of SABC unlawfully appointed Lornvision to collect TV license fees. Moodley, a known Gupta associate, was co-director of Lornvision at the time.
139. Subsequent to the appointment of Lornvision, it appears that the Axon Group made use of the SABC's database of TV licence holders to further its business interests.