



OUTA

ORGANISATION UNDOING TAX ABUSE

GENERAL



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

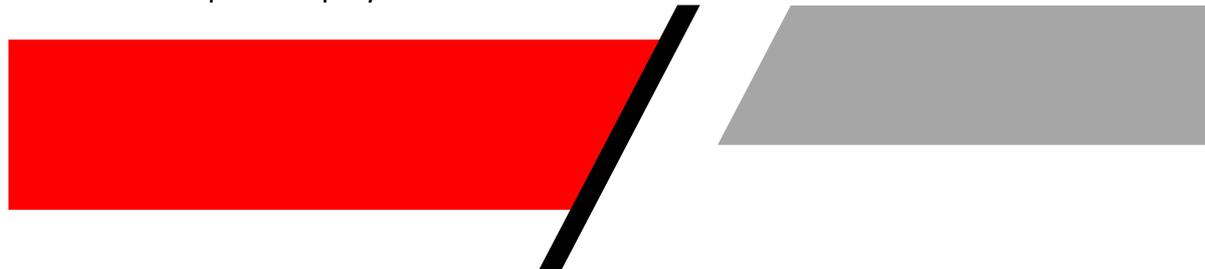


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INTRODUCTION

1. The discussions under the General chapter aims to illustrate how certain individuals and entities were benefitted by the awarding of certain tenders to SOE's and other Departments.
2. Although the information OUTA has in its possession is very limited, OUTA would like to request the Commission to take cognisance of this information in any case.

BROADBAND INFRACO

3. Broadband Infraco is a State-Owned Company ("SOC") and according to its website, Broadband Infraco:

*"...is a licensed state-owned company in the telecommunications sector. It is intended to improve market efficiency in the long-distance connectivity segment by increasing available long-distance network infrastructure. It will also avail capacity to stimulate private sector innovation in telecommunications services and content offerings. Broadband Infraco provides long distance national and international connectivity to licensed private sector partners, license-exempt project of national importance and to previously underserved areas."*¹

¹ <http://www.infraco.co.za/SitePages/Home.aspx>

4. According to a news article, Deloitte released a report in 2011 that found that:

*“Broadband Infraco’s procurement division was in a state of total dysfunction. According to the audit report, of its 19 findings 11 were found to have a potential “catastrophic impact” and should be resolved immediately”.*²

5. The said article is annexed hereto and marked annexure “G1”.
6. The Gupta Leaks found further evidence of misconduct and reveal how the Gupta’s acted as conduits between State-Owned Entities and other entities.

BROADBAND INFRACO AND T-SYSTEMS

7. According to T-System South Africa (Pty) Ltd’s (“T-Systems”) website:

“T-Systems International, a global ICT services firm and subsidiary of Deutsche Telekom, has a proud history of more than 20 years in South Africa.

*T-Systems SA delivers innovative “ICT that Works”, in South Africa and for South Africa. This supports digital nation building and our clients’ business transformation.”*³

² Xulu, L. (2011). Broadband Infraco rocked by anonymous letter. [online] Mybroadband.co.za. Available at: <https://mybroadband.co.za/news/business/31316-broadband-infraco-rocked-by-anonymous-letter.html> [Accessed 18 Sep. 2018].

³ <https://www.t-systems.com/za/en/about-t-systems/company/company-profile-335430>

8. The profile of the company that was available on the internet is annexed hereto and marked annexure “G2”. It should be noted that at the time T-systems was a partner of SAP. ⁴
9. According to an Amabhungane article that is annexed hereto and marked annexure “G3”, T-Systems entered into a partnership with Broadband Infraco SOC Ltd (“Broadband Infraco”). The contract to supply Transnet with IT data services was initially for a five-year period, ending in 2014.
10. However, the contract was extended for a period of two years and earned T-Systems nearly R1.3 billion in additional revenue.
11. The article further notes that due to a dispute over the contract, the company will earn up to R900 million in further revenue. The contract extension was due to expire in May 2018. Therefore, T Systems would have earned just under R4 billion from a 2010 contract, initially only valued at R1.7 billion.
12. The article states further that:

“Sources with direct knowledge of the deal, two from within Transnet and one from the local IT sector, stated that Essa was on the scene as a “negotiator” for T-Systems when Transnet decided to extend the data services contract and while the network tender was underway.

⁴ <https://www.t-systems.com/de/en/about-t-systems/partner/sap/t-systems-and-sap---global-partnership-for-sap-solutions-from-the-cloud-225570>

During the network tender, Mr Essa showed up and said he represented T-Systems as an intermediary. When it became clear that the tender would instead be awarded to Neotel, Mr Essa returned to the negotiating table, this time introducing himself as a representative of Neotel.

The tender was ready to roll [be issued] in November 2013 and was being insisted on by procurement (Transnet's procurement division). But in January 2014, T-Systems was awarded the two-year extension, which was set to commence in 2015.”⁵

13. It appears further from the article that T-Systems outsourced services to Sechaba Computer Services who allegedly belonged to the Guptas.
14. In 2014, when the contract extension came into play, T-Systems appointed Sechaba Computer Services as a supplier development partner to carry out services in Gauteng region, as this formed part of Transnet's empowerment requirements.
15. Sechaba allegedly registered the website for Salim Essa's ("Essa") from the Trillian group.
16. Sechaba also allegedly made a payment to Zestilor, who was T-Systems' then BEE suppliers, ⁶ and Homix.
17. Zestilor was owned by Zeenat Osmany, Essa's wife. The Gupta Leaks revealed that Zestilor first wanted to buy a 51% stake in Sechaba before the two

⁵ Ibid

⁶ Ibid

companies concluded a *"management fee"* deal, a deal that would earn Zestilor R200,000 a month, which will be discussed in more detail below.

18. On 26 June 2015, Santosh Choubey, a Sahara Computers employee, sent an email to Tony Gupta titled *"Sale of Shares Zestilor – Sechaba"*. This email is annexed hereto and marked **"G4"**. The annexure to the email titled *"Agreement of Shares"* was an unsigned copy of the proposed purchase of a 51% stake in Sechaba by Zestilor.
19. In an email dated 23 September 2014, and an accompanying invoice which is annexed hereto and marked annexure **"G5"**, sent by Mr Choubey to fellow Gupta associates Evan Tak, Ashu Chawla and Ugeshni Naidu, details how Sechaba was to pay Zestilor a *"management fee"* of R200,000 for the month of September 2015.
20. The said email further reflects that *"This will be a monthly invoice from Zestillor"*.
21. The timing of the email mentioned above is quite convenient, as T System's two-year contract extension was nearing the end.
22. On 12 October 2015, a month before Transnet would finally advertise the data services tender, an email was sent from Choubey to Essa and Mr Tony Gupta. The email is annexed hereto and marked annexure **"G6"**. The said email made it appear as if the shares transaction had already been concluded.
23. The email further stated that, *"...because Zestilor owns Sechaba now maybe we should have a registered office of Zestilor in Sechaba building itself and put together a proper financial review of Zestilor and Sechaba."*

24. It is alleged that since Sechaba Computer Services did not have the capacity, staff members were transferred from T-Systems who would service both Transnet and Eskom.
25. According to the article, Stanley Shane (“Shane”), Chairperson of Transnet board's Acquisitions and Disposals Committee (“ADC”) and an alleged benefactor of the Guptas, insisted that the contract be awarded to T-Systems and not Gijima.
26. The Gupta Leaks has revealed that Shane received a payment of R1million from the Guptas in September 2016. The said payment is annexed hereto and marked annexure “**G7**” and purports to be the bank statement of Shane.
27. According to Treasury and Transnet's legal team, the tender should have been awarded to Gijima following two separate probes.
28. However, the matter is now being heard in the High Court of South Africa, Johannesburg after Transnet sought to obtain a declaratory order. We are not in possession of the said court documents and have no knowledge of the court proceedings.
29. Furthermore, OUTA is in possession of a document titled “*Media Reports, Parliamentary Hearings and T-Systems Actions 13 November 2017*”. OUTA have not verified the contents of this report, but believe it is important to bring it to the attention of the Commission.
30. The said document is annexed hereto and marked annexure “**G8**”.

31. According to this report, Bowman Gilfillan was instructed to conduct a thorough investigation into the conduct of T-Systems and certain supplier development companies.
32. Bowman Gilfillan was further instructed to investigate whether T-Systems made any irregular payments directly or indirectly or requested any individual or entity to make irregular payments on its behalf.
33. Bowman Gilfillan finalised its investigation on 13 October 2017 and revealed that no irregular payments were made by T-Systems, directly or indirectly.
34. T-Systems advised that they have terminated all three contracts with the supplier development companies namely Sechaba, Zestilor and Global Softeck Solutions due to the potential risks relating to compliance and reputation.
35. Based on the investigation done by Bowman Gilfillan, T-Systems had not made any irregular payments to any of the supplier development companies and have subsequently terminated all three contracts with the supplier development companies.
36. However, we have furnished the Commission with all the media reports and we request that the Commission use its discretion to look into these allegations.

APPOINTMENT OF PULENG SEJANAMANE

37. Puleng Sejanamane was appointed as CEO of the state-owned Broadband Infraco by former Public Enterprises' Minister Malusi Gigaba in April 2012.

38. On 16 February 2012, an email titled “*FW: Greek mythology*” was forwarded from Ashu Chawla to Ronica Ragavan. The email is annexed hereto and marked annexure “**G9**”.
39. The attachment concerns a draft letter for the appointment of a CEO at Broadband Infraco. The letter that appears to have been drafted by the Chairman of the board at Boardbrand Infraco, Mr BMC Ngcobo, was addressed to Minister Malusi Gigaba.
40. Shortly after this email was sent, nearly two months later in April 2012, Gigaba, appointed Puleng Sejanamane as the CEO of the company, replacing acting head, Andrew Shaw.
41. The Guptas had arranged for Sejanamane to travel to Dubai and India at their expense, from Wednesday, 29 February 2012 – 4 March 2012. Sejanamane stayed at Radisson Suites Guraon, also arranged by and paid for by the Guptas.
42. The said ticket and hotel accommodation are annexed hereto and marked annexure “**G10**”. Dr Stephen Michelson and Ashok Narayan (“Narayan”) accompanied Ms Sejanamane on this trip.
43. With the above in mind, it appears that it is possible that the Gupta family was able to exert undue influence over Minister Malusi Gigaba, in appointing Ms Puleng Sejanamane as CEO of the state-owned Broadband Infraco

TECHNOLOGY & PROCUREMENT HOLDING PTY LTD (TECHPRO)

44. On 15 November 2016, Johan Leonard Rossouw, employed by Regiments Capital (Pty) Ltd (“Regiments”) as the Head of Human Resources and Facilities, deposed to an affidavit. The affidavit with the said annexures is annexed hereto and marked annexure “**G11**”. The content of this affidavit will be discussed briefly below.
45. The purpose of the affidavit was to report suspicious transactions in terms of the section 34 of the Prevention and Combating of Corrupt Activities Act 12 of 2004 (PRECCA).
46. Regiments Capital is a company that develops solutions to public sectors including but not limited to services such as risk management, investments and trading.
47. The listed directors of Regiments Capital were:
 - 47.1. Mr Litha;
 - 47.2. Mr Mveliso Nyhonyha; and,
 - 47.3. Mr Magandheran Pillay.
48. Eric Wood was a director of Regiments Capital but was removed on 26 October 2016 and is now in the employ of Trillian Capital Partners (Pty) Ltd.

49. The affidavit further sets out the following:

- 49.1. An investigation was conducted into transactions that Wood was involved in during his tenure as a director at Regiments. This investigation was conducted after the media alleged that Wood was involved with the Guptas
- 49.2. A Draft Services Agreement was concluded between Technology & Procurement Holdings (Pty) Ltd (“Techpro”) and Regiments and was ostensibly signed by Craig Smith a representative of Techpro, on 7 January 2015.⁷
- 49.3. Neither the directors nor any senior management at Regiments were aware this contract was concluded.
- 49.4. Furthermore, Regiments never advertised in the New Age and therefore the payments mentioned below had no lawful purpose.
- 49.5. Various emails were exchanged between Wood, Ashok Narayan (“Nayaran”) employed at Techpro and Yvonne Mokone (“Yvonne”) employed at Regiments.⁸ On 24 March 2015, Narayan informed Wood that he had met with Salim the previous day. It is presumed the Salim mentioned in the email is Salim Essa.
- 49.6. On 4 June 2015, Narayan further indicates in the email correspondence that the Techpro agreement (presumed to be the contract mentioned in

⁷ Annexure A of the Affidavit (Annexure “G11”).

⁸ Annexure B of the affidavit (Annexure “G11”).

paragraph 49.2), will be mailed shortly and that in the meantime Regiments should invoice Techpro, with three invoices for R5 (five million rand) each plus VAT.

- 49.7. Wood further instructs Yvonne on the same day to issue the said invoices.
- 49.8. On 5 June 2015, Yvonne advises Wood that the invoices are attached to the email and if any adjustments need to be made, Wood should inform her.
- 49.9. Yvonne left Regiments with Wood and is now employed by Trillian.
- 49.10. On 5 June 2015 three invoices⁹ were made out to Regiments issued by The New Age. These invoices were received by Regiments on 6 June 2015, amounting to R5 million rand plus VAT for each invoice for *“Advertising Costs”*.
- 49.11. On the same day three invoices¹⁰ were issued to Techpro by Regiments. During the period 8 June 2015 to 13 June 2015, Regiments received payments totaling R17.1 million rand from Techpro.¹¹
- 49.12. On 11 June 2015, Regiments effected payment to The New Age in the same amount; this was authorised by Wood.

⁹ Annexures C1 to C3 of the Affidavit (Annexure “G11”).

¹⁰ Annexures D1 to D3 of the Affidavit (Annexure “G11”).

¹¹ Annexure E of the Affidavit (Annexure “G11”).

49.13. The said payment from the invoices appear to be for *“Financial Modelling and Structuring” (sic)* and *“Professional fees: Agreed Fee pm Work done to Date”*.

50. With the above in mind, there was no lawful purpose for the payments made to Regiments, as Regiments did not advertise and has never advertised in the New Age newspaper.

51. Furthermore, Wood’s participated in these transactions that included a false payment through Regiments’ bank account. The first payment of R17.1 million was made into Regiments’ bank account disguised as payment for fictitious services rendered to Techpro.

52. Following an immediate and exact matching payment of R17.1 million out of Regiments’ account to The New Age newspaper, which was an equally false payment of a non-existent debt to that newspaper.

53. The only reason that can be deduced from the above-mentioned payment, was to launder money.

RICHARD SELEKE

54. Richard Seleke (“Seleke”) was a member of the Transnet board from 11 December 2014 to 27 November 2015. Whilst on the board, Seleke served on the Acquisitions and Disposals Committee and chaired the Risk Committee.

55. As a Transnet board member, Seleke was involved in the seconding of Brian Molefe and Anoj Singh to Eskom.
56. In 2015, Seleke was head of the Free State Department of Economic Development, Small Business, Tourism and Environmental Affairs.
57. A criminal affidavit deposed to by Benjamin Cecil Clark Theron, in his capacity as the Chief Operations Officer at the Organisation Undoing Tax Abuse, was lodged on 28 July 2017 at the Randburg Police Station.
58. The said affidavit is annexed hereto marked annexure “G12” and will be discussed below.
59. The power to appoint the Directors General of the national departments vests exclusively in the President in terms of section 12(1)(a) of the Public Service Act of 1994.
60. Former President Zuma appointed Seleke as Director General of Public Enterprises in December 2015.
61. He did so after Seleke had forwarded his curriculum vitae to Duduzane Zuma on 29 June 2015, apparently for consideration by others for appointment to the then vacant position of Director General of Public Enterprises.¹²
62. Gupta mails revealed that Seleke has had an unlawful and improper relationship with the Gupta family.

¹² Copies of the documents are attached to the affidavit and marked “SOE 2” and “SOE 3”.

63. Seleke has an anonymous email address infoportal1@zoho.com. from which he conducts Gupta related business under the pseudonym "*Businessman*".¹³
64. Seleke's use of this anonymous email is an indication that he was aware that what he was doing was wrong and attempted to hide what he was doing.
65. Using his infoportal1 address, Seleke had acted as a conduit between persons associated with China South Railways ("CSR") and the Gupta family.
66. On 7 January 2015, close to a year before he was appointed Director General of Public Enterprises and while being a Board member of Transnet's Board, Seleke received an email from zhangminyu54642@qq.com which is the email address for China South Railways' Indian subsidiary, CSR ZELC (India) Private Limited. While on the Transnet board, he abused his position on the board – and particularly on its Acquisitions and Disposals Committee.
67. On 22 March 2015, Seleke forwarded an email to Ashu Chawla of the Guptas Sahara company. Attached to the forwarded email, was a spreadsheet indicating how Gupta linked companies were to be paid hundreds of millions of US dollars for their role in brokering Transnet's purchase of locomotives from China South Railways (Hong Kong), a subsidiary of China South Railways ("CSR").¹⁴

¹³ Please refer to the comments attached and marked "SOE 3.1", to the affidavit for the explanation of this conclusion.

¹⁴ Copies of the documents are attached to the affidavit and marked "SOE 5" and "SOE 6".

68. There is no conceivable basis upon which Seleke might lawfully have been involved in email correspondence of this nature.¹⁵
69. In the context of the Eskom/Tegeta Exploration & Resources (Pty) Ltd (“Tegeta”) debacle, Seleke used his infoportal1 email to act as a conduit for Matshela Koko (“Koko”), the then former Eskom Group Executive: Technical and Commercial.
70. Seleke used his infoportal1 email to unlawfully share confidential Eskom documents with the Gupta family to the advantage of Tegeta in its attempts to purchase the Optimum coal mines from Glencore.
71. On 7 August 2015, Koko forwarded to Seleke, a letter that the business rescue practitioners for Optimum Coal Mine (Pty) Ltd (in Business Rescue) (“OCM”) had sent to Eskom. Seleke, in turn, forwarded this letter to Athul Chawla.¹⁶
72. On 4 November 2015, Koko forwarded to Seleke a privileged legal opinion that Eskom had received from senior counsel advising on Eskom’s rights in terms of its coal supply agreement with OCH. Seleke, in turn, forwarded this letter to wdrsa1@gmail.com which is an email address used by Tony Gupta.¹⁷
73. Seleke’s collusion with Koko to provide improper assistance to the Gupta family in relation to Eskom matters, was not confined to the Tegeta/OCH case.

¹⁵ This should be read in conjunction with all the reports compiled at Transnet.

¹⁶ Copies of the documents are attached to the affidavit and marked “SOE 7” and “SOE 8”.

¹⁷ Copies of the documents are attached to the affidavit and marked “SOE 9” and “SOE 10”.

74. On 4 November 2015, Koko forwarded to Seleke a letter from Just Coal (Pty) Ltd (“Just Coal”) complaining about Eskom’s cancellation of its contract to provide coal for various Eskom Power Stations including Rotran, Matla and Arnot.
75. The cancellation of the Just Coal’s coal supply contract would provide an opening for the Guptas to profit by concluding a replacement coal supply contract with Eskom through Tegeta.
76. In this context, Koko’s email stated “*Please give the Boss. The fight begins*” Seleke had no difficulty identifying who “*the Boss*” was. He immediately forwarded Koko’s email to Tony Gupta at his wdrsa1@gmail.com email address.¹⁸
77. Seleke, in his “*BusinessMan*” infoportal1 guise, was also included on much of the internal Gupta Group correspondence relating to the creation of Denel Asia and attempts to set up Denel India.¹⁹
78. He reciprocated by forwarding to Chawla internal correspondence between the Minister of Public Enterprises and Denel in relation to her tentative misgivings about the formation of Denel Asia.²⁰
79. Seleke appears to have been involved with the Gupta company Tequesta Group Ltd (“*Tequesta*”) which benefited from the Transnet / CSR locomotive purchase.

¹⁸ Copies of the documents are attached to the affidavit and marked “SOE 11” and “SOE 12”. We also deal with this extensively in our ESKOM submission.

¹⁹ Copies of the documents are attached to the affidavit and marked “SOE 13” to “SOE 26”.

²⁰ Copies of the documents are attached to the affidavit and marked “SOE 27” and “SOE 28”. We also deal with this extensively in our Denel submission.

80. On 15 December 2015, he forwarded a blank Tequesta letterhead received from Salim Essa to Ashu Chawla.²¹
81. On 1 March 2016, Seleke forwarded to Tony Gupta a spreadsheet analysing trends in the rand exchange rate, the balance of payments and the balance of payments over the periods of office of all Presidents and Ministers of Finance since democracy.²²
82. The most probable reason behind the production of this spreadsheet was an attempt to influence public debate over merits of retaining Minister Gordhan in office as Finance Minister.
83. The Public Enterprises department is important to the Guptas because of their interest in contracts with state-owned enterprises.
84. Against the backdrop of Seleke's sustained improper relationship with the Guptas, it is difficult to find an innocent explanation for the President's appointment of him to the position of Director General of Public Enterprises.
85. President Zuma's appointment and retention of Seleke as Director General of Public Enterprises evidences his use of presidential powers to promote and protect the interests of the Guptas and their business associates, including the President's son, Duduzane Zuma.

²¹ Copies of the documents are attached to the affidavit and marked "SOE 29" and "SOE 30".

²² Copies of the documents are attached to the affidavit and marked "SOE 31" and "SOE 32".

86. It also evidences the unlawful use of the President's appointment powers for improper purposes and is a strong indication that an improper relationship exists between President Zuma and the Gupta family.

CONCLUSION

87. From the above, it is clear that the Gupta family had an interest in The Department of Public Enterprises and that the family was able to exert undue influence over President Zuma.
88. Duduzane Zuma was seemingly used as a conduit to President Zuma as he forwarded the aforementioned CV for the then vacant position of Director General of Public Enterprises.
89. Seleke further served as a conduit between the Gupta's and many of the companies associated with the Gupta's as revealed by the Gupta leaks.

THE NEW AGE

90. The New Age newspaper was a South African national daily newspaper, owned and operated by TNA Media (Pty) Ltd ("TNA Media"). TNA Media was established in June 2010 and the first publication of The New Age was on 6 December 2010.

91. TNA Media is owned by members of the Gupta family and Gupta associates through shareholding.
92. Annexed hereto and marked as annexure “**G13**”, is the shareholding of the company at 16 June 2017, which indicates as follows:
 - 92.1. Sahara Media Holdings (166 ordinary shares);
 - 92.2. Bennet Coleman and Company (14 Ordinary Shares);
 - 92.3. Oakbay investments (10 Ordinary Shares); and,
 - 92.4. Nazeem Howa (10 Ordinary Shares).
93. Further, the directors are listed as:
 - 93.1. Atul Kumar Gupta;
 - 93.2. Varun Gupta;
 - 93.3. Nazeem Howa; and,
 - 93.4. Gary Naidoo.

NEW AGE’S BUSINESS BREAKFAST AND ESKOM

94. The aspect of Eskom and the New Age’s Business Breakfast is discussed comprehensively under the Eskom Chapter, it is however worth it to mention Collin Matjila’s (“Matjila”) involvement in more detail.

COLLIN MATJILA

95. Matjila's involvement in the New Age's Business Breakfasts (at Eskom) as set out in an article annexed hereto and marked as annexure "G14", will be discussed briefly.

96. According to the article, Matjila's link to the Guptas can be traced back to when he held the position as chief executive of Cosatu's investment company Kopano ke Matla.

97. The article further reports that:

"In June 2012, following an investigation by the Financial Services Board (FSB) into alleged corruption and maladministration, Kopano ke Matla's license to manage employee benefits of 400 000 former Bophuthatswana employees was revoked.

Mr Matjila is also reported to have received R1.33 from Kopano's transactions through payments to his company Summerlane, which he described as "personal commissions" when confronted by FSB inspectors. FSB reportedly described the transaction as "unusual and suspicious."²³

98. On or about 22 March 2014, Essa sent Matjila's curriculum vitae to Tony Gupta and his (Gupta's) nephew, Srikant Singhala. The email is annexed hereto marked annexure "G15".

²³ Ibid

99. The curriculum vitae was then forwarded to an employee of the Guptas' Sahara Computers and Duduzane Zuma.
100. At the time, Matjila shared directorships with Salim Essa in Inca Energy (Pty) Ltd (2009/022231/07) and Nu Age Energy (Pty) Ltd (2010/024567/07). Matjila also shared a directorship with Oakbay's Ronica Ragavan.
101. Matjila was subsequently appointed by former Minister of Public Enterprises, Malusi Gigaba, as an Eskom board member in 2014.
102. On 4 April 2014, shortly after Matjila had moved into his new role, there was email correspondence containing a proposal for the renewal and expanding of Eskom's sponsorship of the New Age's Business Breakfasts. The email was sent from Nazeem Howa, the CEO of Gupta-owned Oakbay Investments, to another Gupta employee, Ashu Chawla.
103. The email is titled "_AA_Eskom_BB_proposal_18_03_2014_" and is annexed hereto and marked annexure "**G16**".
104. Attached to this email was a proposal dated 18 March 2014. The proposal was submitted by TNA for the sponsorship of 12 Business Briefings for "*the period of 1 April 2014 to 31 March 2015. This is labelled as an investment of R 14 400 000.00) excluding VAT and agency commission*". The proposal is annexed hereto and marked annexure "**G17**".
105. Further email correspondence from the Gupta Leaks dated 6 May 2014, show that TNA Media's business development manager, Wiedaad Taliep, and Eskom's Chose Choeu ("Choeu"), Divisional Executive of Corporate affairs,

corresponded regarding arranging a meeting to “*discuss the breakfasts logistics and related issues*”. The said email is annexed hereto and marked annexure “**G18**”.

106. The email correspondence further sets out, in Choeu’s response, that the “*the contract has been signed by our CEO*”, referring to the business breakfasts.

107. OUTA is only in possession of an unsigned draft agreement, which purports to be the contract that was signed by the CEO. The draft contract is attached hereto and marked annexure “**G19**”.

108. The draft agreement shows that the contract was amended, and the following was inserted “*effective 1 May 2014 to 30 April 2017*”.

109. Furthermore, the contract was “*extended for an additional three years for the amount of R43.3, with 36 briefings planned for the said period.*”

110. Attached to the same email correspondence, was an unsigned newspaper subscription agreement between Eskom and TNA Media, which was effective from 1 May 2014. The said agreement is annexed hereto and marked annexure “**G20**”.

111. The unsigned copy of the agreement would have committed Eskom to the purchase of 4000 copies at R3.50 a copy and an additional 50c for delivery. It would have taken it to a total of R4,096,000.00 for the three-year period.

112. Question 3910 from the Inkatha Freedom Party’s (“IFP”) Mr N Singh, posed to the Former Minister of the Department of Public Enterprises the following:

“(1) Whether she will take action against the reckless and wasteful expenditure of taxpayers’ money by parastatals that have entered into an agreement to sponsor The New Age breakfast briefing; if not, why not;

(2) What are the (a) names of the parastatals that have entered into the specified agreement and (b) cost incurred in respect of the specified agreement?”

113. The question is annexed hereto and marked annexure “**G21**”.

114. Part one of the reply shows that Eskom in its 2015 Annual Financial Statements reported an amount of R4 million as irregular expenditure related to the New Age’s business breakfast.

115. Part two of the reply indicates that this contract was subsequently amended with effect from 1 May 2014 and extended for three years. The cost incurred amounted to R 43.3 million with 36 briefings planned for this period.

NEW AGE'S BUSINESS BREAKFAST AND OTHER DEPARTMENTAL INVOLVEMENT IN TNA

PETRO SA

116. According to Question 76 of the National Assembly that is annexed hereto and marked “**G22**”, Mr N d du Toit from Democratic Alliance (“DA”) asked the Minister of the Energy the following:

“(a) How many tickets did (i) her department and (ii) any of its entities purchase to attend business breakfast hosted by a certain newspaper (name furnished) (aa) in the (aaa) 2010-11 and (bbb) 2011-12 financial years and (bb) during the period 1 April 2012 up to the latest specified date for which information is available and (b) what was the total cost in each case? NW82E”.

117. In a reply received on March 2013, the entity spent for the period 1 April 2012 to March 2013, R28,459,000.80 on TNA / SABC breakfast, which was “*addressed by Minister Dipuo Peters in May / June last year – two tables of 10 and Post-State of the Nation Address in Cape Town this year (15 February 2013), breakfast addressed by President Zuma – one table of 10.*”

SOUTH AFRICAN BROADCASTING CORPORATION SOC LTD (“SABC”)

118. According to a Parliamentary question NW1080 annexed hereto and marked annexure “**G23**”, the following question was posed to the Minister of Communications by a Ndlozi :

“(a) Has any of her senior officials met with certain persons (names furnished) during the period 1 January 2009 up to 31 December 2015 and (b) has any of the entities reporting to her awarded any contracts to Sahara Holdings, Comair, Oakbay Investments, Islandsite Investments, Afripalm Horizons Stakes, The New Age, JIC Mining Services and Vusizwe Media in the specified period; if so, what (i) are the relevant details and (ii) in the amount of each specified contract?”

119. According to the reply received *“the SABC and The New Age (TNA) have an agreement that the SABC would cover all live the TNA Business Breakfasts. This agreement is for a period of three years. The agreement stipulates that the TNA will arrange and organise the Business Breakfasts by providing the venue (as well as catering) and secure the participants. The SABC in turn broadcasts the event. The advantage for the SABC is proposedly the acquisition of content.”*

120. This was at a cost of R733,390.

121. OUTA is also in possession of what purports to be an unsigned agreement between the SABC and TNA.

122. The agreement is annexed hereto and marked annexure **“G24”**.

123. On or about 24 February 2017, the *ad hoc committee* on the SABC board released a final report about an inquiry into the fitness of the SABC board which is annexed hereto marked annexure **“G25”**.

124. In the above-mentioned report a few aspects relating to the New Age’s Breakfast are mentioned.

125. Mr Phil Molefe (“Molefe”), a former acting Group CEO of SABC during the period July 2011 to January 2012, was invited to give evidence on aspects of the SABC’s human resource management and matters relating to the Public Finance Management Act, No 1 of 1999 (PFMA) and the financial- and supply chain management.

126. The ad hoc Committee on the SABC Board Inquiry adopted its interim report on 27 January 2017, the following was decided:

“The Committee agreed that the report would be published on Parliament’s website and sent to all witnesses who had appeared before the Committee as soon as was practicable. The report was sent to the SABC Board on 27 January 2017 and to all witnesses who had appeared before the Committee on 30 January and 1 February 2017. All affected parties were requested to submit their comment/responses by 17h00 on 16 February 2017.”

127. According to the report Dr B Ngubane (“Ngubane”) in his particulars of claim, alleged during the hearing that Molefe had approved the TNA Business Breakfast arrangement and the New Age Newspaper subscription. He further alleged that Molefe conspired to rebrand the SABC and that the SABC never paid for any costs associated with the breakfasts.

128. Molefe in his testimony contradicts these allegations made by Ngubane. According to the *ad hoc committee*, Molefe gave evidence as follows:

“Mr Molefe testified that Mr 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.

In the main, discussions centered around entering into a memorandum of understanding (MOU) in terms of which the SABC would allow TNA to air live broadcasts of its Business Breakfasts on Morning Live; a “huge” subscription to the New Age, for newspapers to be distributed in the SABC’s national and provincial offices; for a stake in the SABC’s news channel which was still in the pipelines at that time. Mr Molefe testified that he had not agreed to any of the proposals.”

129. Ngubane contradicted Molefe’s testimony above and made the allegation that:

“Mr Molefe himself had approved The New Age-subscription, and that he had initiated the talks with the TNA Media Group which had resulted in the TNA Business Breakfasts being aired during Morning Live.”

130. Molefe stated that Ngubane had *“lied and deliberately misled”* the Committee during his hearing and further denied Ngubane’s claim that he had signed the TNA subscription contract.

131. Molefe further stated that he was against the proposal for the TNA Business Breakfasts which he stated would have amounted to a takeover of SABC Morning Live program by TNA.

132. Molefe further stated that the contract relating to TNA Business Breakfasts and the SABC, was only signed after he had resigned from the SABC.

133. Molefe in his submission corroborated evidence that the SABC bore the costs associated with the Business Breakfasts.

134. He indicated that the shows cost the SABC enormous amounts of money and stated that technical equipment for one production could cost R1 million or more.
135. In addition, the SABC further bore the costs of the flights, accommodation and subsistence for its production staff when the briefings took place outside of Johannesburg.
136. Molefe confirmed that while the production costs were borne by the SABC, the TNA Media Group earned the revenue exclusively.
137. Molefe further indicated that a business case which formed part of the contract, sets out the responsibilities of each of the parties as well as costs. Furthermore, the business plan included a clause that stipulated “*specifically a 50:50 revenue sharing arrangement*” It was this business plan that was presented to the Group Executive.
138. The contract that was eventually signed excluded any reference to the revenue sharing arrangement indicated above. Molefe only became aware of this at a later stage.
139. In evidence provided by Ngubane, he alluded to the fact that Molefe’s visit to India, while he was the acting GCEO, had been linked to the controversial Gupta family.
140. Molefe responded to Ngubane’s allegation as follows:

“Mr P Molefe had indicated that the visits he had undertaken were motivated for and approved and were aimed at exploring possible content and skills

partnerships with other national broadcasters, and part of benchmarking exercises in anticipation of the launch of a free-to-air 24-hour news service. The trip to India had been part of Board-approved international strategy to pursue partnerships with, amongst others the BBC in the United Kingdom, CCTV in China and Prasar Bharati in India.”

DEPARTMENT OF HUMAN SETTLEMENTS

141. A question titled Question No:924 that is annexed hereto and marked annexure “**G26**”, was posed by Dr M J Figg from the DA the Minister of Human settlements:

“What amount was spent by (a) her department and (b) state the entities reporting on her on (i) tickets and (ii) sponsorships on The New Age Breakfast Briefings for the last three financial years?”

142. The reply was two-fold. Part (a): The Department spent a total of R 2,084,868.42 on TNA Breakfast business briefings for the period of 2013-2015.

143. Regarding part (b) of the question, it appears that several entities spent a total of R22,183.70 on sponsorships for The New Age Breakfast briefing for the period 2013-2015.

TRANSNET

144. A question titled Question 3412 that is annexed hereto and marked annexure “**G27**”, was posed by Mr K S Mubu from the DA, to the Minister of Public Enterprises:

“Whether (a) his department and/or (b) any entity reporting to him sponsored any (i) event and (ii) promotion hosted by The New Age newspaper since its establishment; if so, in each case, (aa) what was the nature of the event or promotion, (bb) on which date was it held, (cc) what amount was paid, (dd) for what purpose, (ee) from which budget were the funds derived, (ff) what were the expected benefits to his department and (gg) what actual benefits were derived from the sponsorship?”

145. According to the reply, Transnet had spent an amount of R 17 499 970.00.

146. Also, according to the reply to the question mentioned in paragraph 112 and 113 *supra* and marked annexure “**G21**”, Transnet contracted with the New Age Breakfast for an amount of R20 million for the period 1 April 2015 to March 2016 which include 20 briefings for the period.

SOUTH AFRICAN AIRWAYS (“SAA”)

147. The following question titled Question 3432 [NW4093E] was posed to the Minister of Finance by Mr R A Lees of the DA: which is annexed hereto marked annexure “**G28**”.

“(a) What were the (i) total amounts and (ii) breakdown of the specified amounts spent on the New Age newspaper by SA Airways (SAA) Group in the (aa) (aaa) 2010-11, (bbb) 2011-12, (ccc) 2012-13, (ddd) 2013-14 and (eee) 2014-15 financial years and (bb) since 1 April 2015 and (b) what was the total amount spent of the New Age newspaper by the SAA Group (i) in the specified financial years and (ii) since 1 April 2015?”

148. In the reply, the Minister of Finance set out the following:

“(aa) SAA started buying The New Age newspaper in March 2011. SAA spent a total amount of R55,200.00 for the Financial Year 2010/11 on The New Age newspaper. During this period, the newspaper was only supplied onboard. The quantities were 24000 copies per month at a cost per copy of R2.30.

(bb) During the Financial Year 2011/12 SAA spent a total of R1, 864 560.00. For the period April to November 2011, the applicable quantities were 24000 copies per month at a cost per copy of R2.30 for onboard use only. For the remainder of the Financial Year, the quantities increased from 24000 per month to 154 000 copies per month at a cost per copy of R2.31 with the newspaper supplied to domestic onboard, Lounges and Airports.

(cc) During the Financial Year 2012/13 SAA total spend on The New Age newspaper was R4,268,880 00. The applicable quantities per month were 154 000 copies at cost per copy of R2.31.

(dd) During the Financial Year 2013/14, SAA total spend on the New Age newspaper was R4, 268 880.00. The applicable monthly quantities and cost per copy remained the same as the previous Financial Year.

(ee) During the 2014/15 Financial Year, SAA total spend was R2, 439 360.00 for the entire Financial Year. SAA spent R1067 220.00 for the first three months period (April to June 2014) of Financial Year 2014/15. For the second semester (July 2014 to March 2015) of financial year 2014/15, the quantities delivered to SAA reduced from 154 000 copies per month to 66000 per month with this newspaper being made available only onboard, as a complimentary item. A total spend of R1, 372 140.00 was incurred on The New Age newspaper for the July 2014 to March 2015 period at a cost per copy of R2.31.

The April 2015-March 2016 financial year to date spent as at end August 2015 is R762 300.00. The applicable monthly quantities are 66000copies at cost per copy of R2.31.”

CONCLUSION

149. The New Age conducted business with- and received sponsorships from various SOE's and other Government Departments and it is evident from what is mentioned above that many agreements were concluded for the sole benefit of the Gupta owned entity.

BANK OF BARODA

150. According to the Bank of Baroda's ("BOB") website online:

“Bank of Baroda has its corporate Head Quarters in Mumbai. Present day Bank of Baroda is the successor of the erstwhile “The Bank of Baroda Limited”, founded in 1908 in a small town – Baroda by the great visionary, the Late Maharaja of Baroda – Sir Sayajirao Gaekwad III. From its humble beginnings, the Bank has grown over the years, to emerge as an Indian Financial Powerhouse. It has a network of over 5000 (five thousand) branches in India across the length and breadth of the country. It has 100 (one hundred) overseas branches/foreign offices in 26 (twenty-six) countries across 5 (five) continents serving a Global customer base of over 39 (thirty-nine) million.”²⁴

“Bank of Baroda South Africa offers technologically advanced banking that includes seamless Straight Through Processing (STP) of wire transfers and many other IT innovations to serve customers better. Our true strength lies in our warm and friendly service, which customers always experience when visiting us. Bank of Baroda is an emotional bank, built on the edifice of more than a century of relationship banking with devoted and dedicated staff and the patronage of millions of enlightened customers.”²⁵

151. The BOB held many Gupta linked accounts and many of the transactions related to these accounts were reported as suspicious.
152. On 4 August 2016, the Minister of Finance Pravin Gordhan received a letter along with a certificate from the Director of the Financial Intelligence Centre (“FIC”) which listed 72 suspicious transactions on Gupta-linked bank accounts, which

²⁴ <http://www.bankofbaroda.co.za/index.php/about-us/>

²⁵ <http://www.bankofbaroda.co.za/index.php/about-us/>

took place from the period December 2012 to June 2016 and involved a total amount of R6.839 billion rand.

153. Also, on 13 July 2017, OUTA addressed a letter to Mr Kuben Naidoo (“Naidoo”), The Registrar of Banks Mr Elijah Mazibuko (“Mazibuko”), the Head of Financial Surveillance and to the FIC. The said letter is annexed hereto marked annexure “**G29**”.
154. The letter basically reiterates that several suspicious transactions were revealed in the Gupta Leaks.
155. Annexed to the letter was a spreadsheet with a list of all Gupta link properties and their details which was obtained from the Gupta leaks and investigated further by OUTA. The annexure to the letter is annexed hereto and marked annexure “**G30**”.
156. The spreadsheet reveals that businesses linked to the Guptas, bought properties for a total of R245 million rand. More than R50 million was paid in cash, but the Guptas managed to get bonds on these properties totaling nearly R1 billion rand, an amount that far exceeds the value of these properties.
157. The BOB provided bonds valued at R811 million rand and the Bank of India provided bonds of R176 million; the remaining R11 million rand came from FirstRand. The transactions linked to the Bank of Baroda and the Bank of India are particularly problematic.
158. On 25 July 2017, Naidoo responded to the above-mentioned letter.

159. He advised OUTA that ultimately the Registrar of the Banks has to comply with its directive and adhere to the requirements of public administration. The said response to the letter is annexed hereto marked annexure “**G31**”. OUTA does not know whether the Reserve Bank took any action in this regard or not.

GLORIA BONGI NGEMA-ZUMA (“NGEMA-ZUMA”)

160. Ngema-Zuma’s relationship with the Gupta family appears to have started in 2010, when she was rumored to be engaged to former President Jacob Zuma.

161. Ngema-Zuma and former President Jacob Zuma got married in 2012.

162. In an article that is annexed hereto and marked annexure “**G32**”, it is revealed that during 2010 the Gupta family assisted to purchase a property for Ngema-Zuma.

163. CIPC documents reflect that, in the first quarter of 2010, Ngema-Zuma registered the Sinqumo Trust and she is the only listed trustee of the Sinqumo Trust. A copy of the CIPC document is annexed hereto marked annexure “**G33**”.

164. In April 2010, shortly after the Sinqumo Trust was registered, the trust purchased a house in the affluent suburb of Waterkloof Ridge, Pretoria (“the Property”).

165. Shortly thereafter, Ngema-Zuma took occupation of the Property. A copy of the property report is annexed hereto and marked annexure “**G34**”.

166. According to reports, the property was bought for R5.4 million rand and BOB registered a bond over the property in the amount of R3.8 million rand.
167. On 7 April 2016, the City Press reported that it had been granted access to the records and share registers of some Gupta-owned companies, including JIC Mining.
168. City Press reported that an extract of the minutes of a JIC Mining Services Africa (Pty) Ltd (“JIC Mining”) board meeting held on 10 February 2010 recorded that the Bank of Baroda agreed to grant a facility to the Sinqumo Trust in the amount of R3.84 million rand on condition that JIC would guarantee all amounts owed by Sinqumo Trust under the facility. The JIC Board agreed to do this. The said article is annexed hereto marked annexure “**G35**”.
169. Mabengela Investments (Pty) Ltd (“Mabengela”) is a Gupta linked company and the shareholders are:
- 169.1. Duduzane Zuma - 45%;
 - 169.2. Rajesh Kumar Gupta - 25%;
 - 169.3. Aerohaven Trading (Pty) Ltd - 15%;
 - 169.4. Fidelity Investment (Incorporated in the UAE) (“Fidelity”)- 10%;
 - 169.5. Mfazi Investments (Pty) Ltd - 3%; and,
 - 169.6. Ashu Chawla - 2%.
170. On 10 April 2012 and 01 November 2012 respectively, Ashu Chawla (“Ashu”) Gupta associate, sends Ugeshni Naidu (“Naidu”) another Gupta associate an email with the body of the email stating “*Done*” and further down on the email “*Transfers 10 April 2012*” and “*Transfers 01 November 2012*”, that indicates that

Mabengela paid R65 000.00 to BOB in those said months. The said emails are annexed hereto and marked annexure “**G36**”.

171. A document in OUTA’s possession titled “*investment*”, further reflects Mabengela’s budget for 2012-2013 and shows the amount of R65 000.00 was paid over to the Sinqumo Trust for the months of October 2012, November 2012, December 2012, January 2013 and February 2013. The said document is annexed hereto marked annexure “**G37**”.

172. It appears from the abovementioned emails that Mabengela paid some of the bond repayments on behalf of the Sinqumo Trust.

CONCLUSION

173. In conclusion, OUTA has compiled this General Chapter, with the limited information OUTA had in its possession.

174. OUTA believes that all the topics discussed above should be brought to the Commissions attention as it directly relates to the State Capture Inquiry.