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FINANCIAL AND FISCAL COMMISSION'S READING OF THE ZONDO COMMISSION OF INQUIRY INTO STATE CAPTURE REPORT - PART I

17 February 2022

Summary

Part 1 of the Judicial Commission of Inquiry into State Capture (also known as the Zondo Commission) Report is summarised below. The purpose of the Commission is to investigate allegations of state capture, corruption and fraud in the public sector. Part 2 and Part 3 are expected to be released at the end of January and February 2022, respectively.

Volume 1: South African Airways and its Associated Companies (Chapter 1)

1. Investigations revealed a decline in quality and effectiveness of South African Airways (SAA) from 2012 onwards, which developed during the time Ms. Duduzile Myeni was Chairperson of SAA and Ms. Kwinana was Chairperson of South African Airways Technical (SAAT). People within SAA and government officials who tried to speak out against Ms. Myeni were met with high resistance or removed from their positions. The conduct of Ms. Myeni reflected corrupt intent, acting in disregard for the best interest of the SOE and instead for her benefit and that of other connected persons.
2. In 2012, before state capture, the then Board of SAA, who made compliance with PFMA and Companies Act a top priority, faced costly delays caused by the inaction of the Department of Public Enterprises and Minister Gigaba, who sought to publicly sabotage the Board, in failing to secure a treasury guarantee timeously. This led to the simultaneous resignation of eight Board members. Ms. Myeni then became Chair of the Board.
3. The main findings associated with state capture at the SOE are summarised in the following paragraphs:
4. Money appeared to flow from the Free State provincial government to **VNA Consulting**, a company involved in a provincial housing project. VNA consulting then paid R2 million to Premier Attraction, the business of Ms. Myeni's son. Premier Attraction paid R3.15 million

to the account of **Mr. X**, who was instructed to pay the money out in cash and to the account of the Jacob Zuma Foundation. This evidence merits further investigation and possible corruption charges against individuals involved in this scheme. Moreover, Mr. X was a witness before the Commission and had hidden his identity for his safety and that of his family. Ms. Myeni later revealed Mr. X's identity, which led the Commission to order a criminal complaint against Ms. Myeni to be lodged with the police.

5. Ms. Myeni falsely represented to the Department of Public Enterprises that the Board of SAA had taken two decisions that it had not taken. This resulted in delays in the **Pembroke transaction**, involving a contract to Pembroke Capital to finance the leasing of 10 aircraft, which resulted in financial losses of R800 million. She appeared to be trying to secure her own funding for the ten aircraft, resulting in the attempted change in the Boards funding resolution. Her conduct is likely a crime of fraud.
6. Ms. Myeni further involved herself in transactions with Emirates and Airbus. She caused delays in the conclusion of the MoU for an enhanced code-sharing deal between SAA and **Emirates** before eventually cancelling the ceremony to sign the MoU, leading to a national embarrassment. Every member involved in engaging with Emirates was removed or resigned. She also attempted to stop a transaction between **Airbus** and SAA, which would have allowed SAA to escape onerous payments. Ms. Myeni failed to meet approval deadlines and ratify the Airbus deal. All senior executives who opposed her plan to change the transaction were removed. Treasury eventually intervened to save the transaction, but Mr. Nene, then-Minister of Finance, was fired after complaining about her conduct to the President. Her reasons for sabotaging the Emirates deal and causing delays in the Airbus transaction remain unclear.
7. **LSG Skychefs**, a black-empowered South African subsidiary of Lufthansa, went head-to-head with **Air Chefs**, the subsidiary of SAA, on a catering contract in SAA's lounges. Before the contract bid, Air Chefs had been servicing SAA lounges and received complaints about food and services, causing their lounges to lose competitiveness. After the entire procurement process was followed, the contract was awarded to Skychefs as Air Chefs, who also tendered for the new contract, had not met the minimum qualification criteria for the tender. Ms. Myeni and Ms. Kwinana, unhappy with the award of this tender, sent emails to Ms. Mpshe, acting CEO at the time, to cancel the award of the contract. At a meeting with the Board, despite following a fair tender process, it was resolved to cancel the award two weeks after awarding the contract to LSG Skychefs, stating that SAA had a duty to its subsidiary. LSG Skychefs sued SAA over this decision, and the Board did not concern itself with attempting to improve Air Chefs' services.

8. In 2015, the SAA Board, particularly Ms. Myeni and Ms. Kwinana, aimed to implement a **30% BEE set-aside policy** in which 30% of the value of contracts with new service providers would be awarded to BBB-EE entities of SAA's choosing. The Board also wanted to implement this policy on existing service providers of SAA.
9. SAA was advised to stop implementing this policy immediately by both the Acting B-BBEE Commissioner of the Department of Trade and Industry (DTI) and the Chief Procurement Officer (CPO) of National Treasury, as the policy was illegal and not supported by any legal procurement framework. Nevertheless, the SAA Board went ahead with this policy and implemented it with existing service providers, including Swissport and Engen.
10. In October 2015, the Board set out to include in their award letters that a portion of the Swissport contract be awarded to an entity "Jamicron (Pty) Ltd" and a part of the Engen contract go to "Quintessential". The latter entity was a holding company that Ms. Kwinana had formed, consisting of 60 companies that attended the Durban summit.¹ Ms. Myeni and Ms. Kwinana instructed that the awards be implemented, as a board resolution was already in support for them. This was not the case, however.
11. Dr Dahwa, CPO at SAA at the time, refused to sign the awards because it was unlawful. Shortly after refusing, Dr Dahwa was subjected to intimidation from Ms. Myeni and Ms. Kwinana. He later faced suspension and **grossly unfair disciplinary proceedings**, based on allegations made against him by Ms. Kwinana.²
12. Ms. Mpshe had continuously warned the Board of the illegalities surrounding the implementation of their policy and sought to remedy it against the Board's instructions. She was removed from her Acting CEO post and transferred back to her position as General Manager: Human Resources in December 2015. In this capacity, she was tasked with finding a new CFO of SAA.³ Shortly after her transfer, in January 2016, Ms. Mpshe also received allegations of misconduct and was subjected to suspension, unfair disciplinary proceedings, and removed from her position at SAA.

¹ SAA conducted Roadshows which started as non-committal "information sharing" sessions with BEE companies of Ms Myeni and Ms Kwinana's choosing. Over time these evolved into engagements aimed at procuring contracts with the companies in attendance.

² Dr Dahwa was ultimately removed from his position, to be replaced by Mr Peters as CPO, who did carry out the unlawful demands of the SAA Board.

³ Ms Mpshe gave evidence at the Commission that the CFO who was appointed, Ms Nhantsi, had not made it onto the short list of candidates. However, Ms Myeni then instructed that Ms Nhantsi be placed on the short list. She was appointed as permanent CFO in May of 2017.

13. The Commission’s report emphasises that Mr. Dahwa and Ms. Mpshe were subject to abuse from Ms. Myeni and Ms. Kwinana when they tried to resist the unlawful attempt to redirect 30% of SAA’s procurement spend on preselected BEE entities. The drawn-out disciplinary proceedings they had to endure was costly and wasted taxpayers’ money. Their removal from SAA also presented an opportunity for their positions to be filled by individuals that allowed for corruption and fraud to flourish within SAA.
14. In 2015, SAA was required by National Treasury to draw up a **borrowing plan** for five years indicating how the SOE intends to manage its funds. It was in a financially precarious position at the time.
15. The Board approved an initial plan comprising of a R15 billion debt consolidation and published a request for proposals (RFP) to be sent out to major banks. However, this approval was cancelled by the Board, who requested a new RPF be sent out to a list of unsolicited bidders of the Board’s choice and approval.⁴
16. Despite already having received advice from Treasury, the Board approved a transaction advisor, namely **BNP Capital**, for a debt consolidation plan and source funding for SAA. The latter requirement expanded the scope of BNP Capital’s duties significantly.
17. Ms. Olitzki⁵ had informed the CFO, Ms. Nhantsi, that the scope of the procurement transaction could not be changed by Board resolution and that, to comply with the legal framework, the sourcing of funds needed to go out to tender again, with a new RFP. This was not done. The SAA Board also approved a cancellation fee, amounting to approximately R114 million (without VAT). Ms. Nhantsi, did not question the many **irregularities surrounding this transaction**. This included a conflict of interest concerning Mr. Mngadi – a close friend of Ms. Myeni – who worked for Nedbank (a competitor bidder) and played a dominant role in BNP Capital’s bid. The Commission noted that Ms. Myeni’s and Mr. Mngadi’s conduct displayed an inappropriate level of interest in securing the windfall for BNP Capital.
18. In June 2020, SAA signed a legally binding term sheet with BNP Capital.⁶ The price agreed on the loan was roughly three percentage points above market rates at the time, which were

⁴ What followed was a delayed process whereby the Board eventually approved Free State Development Corporation (FDC), without any RPF issued, who, it turned out, did not even have the legislative mandate to assist SAA with its funding needs.

⁵ The HOD of Financial Accounting in SAA at the time.

⁶ In terms of this agreement, a company Grissag would get a 3.5% fee and an additional 1% payable to it on each draw down that SAA made on the funding.

around 0.5%. **Before this decision was taken, no risk or financial impact assessments had been done.**⁷

19. Swissport had a long-standing history with SAA for ground handling. However, Swissport had been operating on a month-to-month basis as SAA resisted signing a proper agreement. SAA changed the requirements of Swissport's tender by introducing BEE supplier conditions – an attempt to impose the unlawful 30% BEE set aside policy. SAA threatened to stop its business with Swissport if these conditions were not agreed upon.⁸ In 2016, JM Aviation – the BEE partner that SAA selected for Swissport – purchased equipment from SAAT for R3.39 million and then resold these to Swissport for R9.8 million.⁹
20. A payment of **R28 million was paid by Swissport to JM Aviation** in March 2016, a month before the contract between Swissport and SAA was concluded. Although Swissport insisted that it had a legitimate business with JM Aviation, there was no evidence whatsoever of a contract entered into, and the payment could not be accounted for. Of the R28 million, R20 million went to Jamicron, R.5 million to Mr. Ndzeku (director of JM Aviation and shareholder of Swissport), R2.5 million went to Mr. Peter (head of procurement of SAA at the time), R2.5 million went to Ms. Memela (former head of procurement at SAAT), and R4.3 million went to Ms. Kwinana.
21. As holding excessive stock is very expensive, **SAAT** had a component contract where inventory is centralised by a particular service provider, being Air France before February 2013. While the tender process for a new contract was open and ongoing, members of the Board met and interacted with **AAR**, one of the bidders, which is prohibited as per procurement policy guidelines. AAR submitted a bid with a new joint partner, **JM Aviation, in a later tender for the five-year components contract**. Ignoring recommendations from management, the Board resolved to award it to **AAR/JM Aviation**. Evidence suggests that the award of this tender was “unlawful, irregular, and unfair”, and AAR/JM Aviation was favoured by Ms. Memela, SAAT Head of Procurement. Furthermore, AAR/JM Aviation's

⁷ The signing of the term sheet led to Ms Stimpel's whistleblowing which was reported to National Treasury and the Organisation Undoing Tax Abuse (OUTA). Ms Stimpel was also suspended and received unfounded disciplinary charges against her. She was forced into early retirement.

⁸ Swissport initially opposed the condition that they would contract 30% of its work to a selected BEE company. However, SAA accounted for 70% of Swissport's South African business at the time and would have faced liquidation if it lost its business with SAA. Thus, it did not appear to be in a position to bargain with SAA's terms.

⁹ The Commission's inquiries showed that the head of Procurement at SAAT at the time, Ms Memela, had not done any research into whether the price offered by JM Aviation for the GPU's was either at book value or fair market value, as required by the agreement.

performance was unsatisfactory, including long turnaround times for repairs, incorrect invoicing, and charging SAA excessive penalties. Ms. Memela and Ms. Kwinana also received payments, mentioned above, which were likely kick-backs from JM Aviation around the time decisions were made.

22. Investigations revealed that Mr. Ndzeku, Ms. Memela, Ms. Kwinana and Ms. Mbanjwa (the attorney of Ms. Memela and Ms. Kwinana) **attempted to hide the true nature of payments** made by JM Aviation to Ms. Memela and Ms. Kwinana's investment company, Zanospark. They fabricated agreements to appear unrelated to the decisions taken at SAAT at the time. The R2.5 million transferred to Ms. Memela was under the pretence of a sale of land agreement involving Mr. Ndzeku, and the R4.3 million to Ms. Kwinana was under the pretence that she was helping Mr. Ndzeku to invest his money at her investment company. This conduct most likely constitutes fraud. Ms. Memela and Ms. Mbanjwa are officers of the Court, and thus the Legal Practice Council should investigate their behaviour.
23. The Commission's report mentions two specific instances concerning **matters of State Security** where state resources were abused and used for ulterior purposes. The first instance involved **illegal and intrusive vetting** of staff at SAA, which was used to intimidate, harass and/or terminate the employment of staff members¹⁰. The second involved the redeployment of the State Security Agency's (SSA) resources¹¹. The Commission's investigation shows overwhelming and corroborated evidence that **Ms. Myeni** unlawfully benefited from SSA resources and enjoyed the protection of undercover operatives trained overseas in counterintelligence strategies and intelligence gathering.
24. The Commission's report finds that **external service providers**, especially when there were already skilled staff working within SAA, were often used as a mechanism to advance corrupt activities. This section focuses on three specific service providers where problems emanated from, namely, the SAA Working Capital Tender (which involved Nedbank), the use of auditors (PWC and Nkonki) and SA Express.

¹⁰ The mandate to vet employees of Organs of State is limited to those employees who would have access to classified information. Despite this, SAA staff were subjected to vetting without any resource to whether they had been exposed to such information. Many employees were suspicious about the vetting process, and many were not willing to cooperate, as this was not a condition of their employment. The vetting was of an intrusive nature and included questions relating to health, education, substance abuse, romantic relationships, international travel and personal financial information.

¹¹ Undercover operatives were redeployed to act as protection detail for former president Zuma. Approximately 200 agents and members were allocated to specific people who were supporters of Zuma and who would not be eligible for protection from SAPS. Amongst those who benefitted was Ms Myeni.

25. Although further investigation is required, the Commission’s evidence is that **Nedbank** dealers entered into a potentially unlawful deal that incentivised an agent (Regiments Capital) to act against the interests of its client at the time, Airports Company South Africa (ACSA). **Regiments Capital** made R50 million from ACSA – money which was paid by Nedbank but funded through interest-swap agreements with ACSA by way of a shared margin. During this time, Mr. Ramosebudi (then Treasurer at ACSA) developed a corrupt relationship with Regiments Capital, whereby Mr. Ramosebudi colluded to increase the fees to be paid to Regiments Capital by ACSA.¹²
26. The **Working Capital Tender** bid in 2013 was corruptly manipulated by Mr. Ramosebudi (at this point Treasurer at SAA) and Regiments Capital to ensure the tender was awarded to McKinsey, one of the other bidders.¹³ SAA paid McKinsey R12 484 710 in March of 2015 in respect of this tender.¹⁴ Regiments Capital received a consortium fee of R6 241 500. In turn, Regiments Capital paid R2 496 600 into shell companies.
27. Three major issues were raised in the Commission’s report in respect of auditors.
28. Firstly, the audit appointment of **PWC** was in itself irregular from their second year onwards. The contract initially entered into was only for the duration of one year, in 2013. Yet, PWC continued to conduct audits for SAA for a further four years between 2014 and 2016. Between 2013 and 2016, PWC and Nkonki (their partner at the time) were paid a total of R69 760 888. This constituted irregular expenditure due to the irregularities of the tender award and this amount was not disclosed as such.
29. The second issue was a conflict of interest concerning **Ms. Kwinana**, who benefitted from the proceeds that flowed from her business relationship with PWC. Ms. Kwinana’s firm received R6.1 million in fees.
30. The third issue was with the audits themselves. For five consecutive years, **PWC and Nkonki** gave clean audits of SAA, during which time the governance of SAA was in decline the SAA Board appeared to be engaging in acts of corruption. Their audit reports indicated that SAA

¹² Between 2010 and 2013, Ramosebudi received R5 173 013.66 from Regiments Capital, of which Mr Niven Pillay and Mr Eric Wood were partners. Ramosebudi was unable to explain to the purpose behind these payments.

¹³ Regiments Capital liaised closely with Mr Ramosebudi, prior to the issuing of the bid invitation, regarding the scope of work to be conducted. Mr Ramosebudi received a bribe of R375606 from Regiments Capital after making changes to the evaluation criteria. Only thereafter was the bid issued. Confidential information was also passed to Regiments Capital during the tender process to the effect that they amended their price. The tender was eventually awarded to McKinsey as planned. There was no evidence that McKinsey knew of these corrupt activities at the time.

¹⁴ These amounts have since been repaid by McKinsey.

was complying with the relevant law, and that irregular expenditure was under control, which was certainly not the case.¹⁵

31. In the AG’s sample of transactions, it was found that 121 of 140 contracts did not comply with competitive tender process, nor the PFMA or PPPFMA. Total “irregular expenditure” amounted to R2.4 billion, comprising 86% of the tenders. The AG’s audit showed that the SAA Board had failed to comply with section 51 of the PFMA, requiring the accounting authority of an SOE to ensure it maintains an effective, efficient and transparent system of financial risk management and internal controls.
32. **SA Express** was contracted for a development of two airports in the North West province. No tender was advertised and no supply chain management processes followed. SA Express’s price was also substantially more than other bidders – R110 million compared with R4.5 million – and there was no compelling justification for appointing them. In terms of the contract, subsidies would be paid to a management company that would do the ground handling. The total amounts payable amounted to R407 221 142.
33. The management company selected, Korenka, issued invoices to SA Express for certain services that were not referred to in their agreement, yet were paid by SA Express under the authorisation of Mr. van Wyk, who was the Commercial Manager of SA Express at the time.¹⁶ Later, the contract with Korenka was cancelled to be replaced by another entity, Valotech Facilities Management (Valotech).
34. Valotech was paid R15 million by the Transport Department without rendering any services to the Department or to SA Express and was subsequently liquated. After this, two other entities were appointed as management companies. These companies were paid R15.8 and R15.5 million respectively. There was no evidence of any work that was conducted to justify these payments.
35. The Commission’s report shows how Mr. van Wyk laundered money that was paid from the North West government to the management companies via other entities, one of which was Neo Solutions (which received R9.9 million). Neo solutions, it transpired, transferred this money to Batsamai, an entity owned by Mr. van Wyk’s life partner, Mr. Phiri, and himself.

¹⁵ This came to light once the Auditor General (AG) conducted its audit in 2017.

¹⁶ According to the Commission’s evidence, a bribe of R3 million was said to be offered to the Divisional Manager of Security Management at SA Express (Mr Ngwenya) to halt his investigations into the payments between SA Express and Department of Transport, on the one hand, and SA Express and Korenka, on the other.

Volume 2: The New Age and its Dealings with Government Departments and State-Owned Entities (Chapter 2)

Volume overview

36. Chapter 2 notes the unjustified public spending between Eskom, Transnet, SAA, and The New Age (TNA) from 2011 and 2017. TNA serves as an example of how state capture took hold in South Africa. It shows the extent of the Guptas' influence in the public sector in South Africa and the Guptas' strategy to replace officials that were not compliant with their looting scheme.
37. The TNA investigation conducted by the Commission has shown that contracts concluded between TNA and Transnet, Eskom, and SAA were not only irregular but wasteful, too.
38. The Gupta family established TNA in June 2010. Its newspaper, *The New Age*, was released on 6 December 2010. Former President Jacob Zuma testified before the Commission that the newspaper was his idea. He said there was a need for a different perspective in the news that would not be so "negative" and critical of the government. TNA's primary client base consisted of government departments and parastatal companies.
39. Volume 2 consists of four main themes: Mr. Maseko's removal, Eskom transactions, Transnet and SAA with TNA.

The Removal of Mr Maseko

40. Near the end of 2010, Mr. Themba Maseko was approached by Mr. Ajay Gupta in hopes of becoming the primary advertising contractor of the Government Communications and Information Systems (GCIS) department. At the time, Mr. Maseko was the Director-General (DG) and CEO of the GCIS.
41. Mr. Ajay Gupta demanded that the entire advertising budget of the GCIS, worth R600 million, be allocated to his new media company, The New Age. Mr. Maseko denied his demands resulting in intimidation by Mr. Gupta, even requesting former President Zuma to call Mr. Maseko to ensure that he would comply.
42. Mr. Maseko was removed from the office of the GCIS and replaced by Mr. Mzwanele Manyi as he did not comply with the demand of the Guptas' and former President Jacob Zuma. Mr. Manyi was under suspension and facing disciplinary charges due to allegations of misconduct that occurred while he was DG at the Department of Labour. His dismissal order was suddenly withdrawn, allowing for his redeployment.

43. The correct due processes were not followed during the redeployment of Mr. Maseko, suggesting that former President Zuma and other high-ranking officials had no issues bending the laws of the country to further the agenda of the Gupta family.

The transactions between Eskom and TNA

44. Eskom concluded three contracts with TNA, which totalled R 58 385 628 to provide advertisements within the newspaper and sponsor TNA's Breakfast Briefings. The Breakfast Briefings were an hour-long segment on SABC 2's Morning Live that hosted business discussions about pressing economic issues in South Africa. The costs to Eskom for each sponsored briefing totalled R1 million at a minimum.

45. The three contracts were concluded without assessing whether any value would be extracted from the commitment; thus, the contracts constituted fruitless and wasteful expenditure. Contracts also did not follow the proper policy procedures for advertising and sponsorships.

46. Eight members of the sponsorship committee rejected the second contract due to the parliamentary inquiry of the first TNA contract. Regardless, the second contract was signed by Mr. Choeu.

47. The third contract was signed directly between Eskom and TNA for 36 briefings at the cost of R43 million. Mr. Matjila, the acting CEO, agreed to the contract although it well exceeded his authority making the contract unlawful and irregular. The third contract also removed the termination clause. The incoming Board ratified the third contract without completing the necessary due diligence.

48. Eskom had policies and protocols to ensure that sponsorships had appropriate approval mechanisms. However, this did not appear to help prevent significant irregular and wasteful expenditure.

The transactions between Transnet and TNA

49. Transnet concluded separate advertising and sponsorship contracts with TNA. Concerning advertising, Transnet employees were instructed to use The New Age newspaper exclusively for all the recruitment and tender advertisements. Regarding sponsorship, Transnet concluded contracts with TNA for The Big Interview, to the value of R24.8 million and five long-term contracts and one ad hoc contract for TNA Business Briefings, to the value of R122 809 526.70.

50. Mr. Brian Molefe and Mr. Mboniso Sigonyela directly facilitated public funds for TNA spending. Mr. Sigonyela used threats and intimidation to ensure that his subordinates complied with instructions to advance the interests of TNA. Sponsorship contracts were

deliberately changed to “partnerships” so that contracts would fall under the authority of Mr. Molefe instead of the Board at Transnet.

51. At Transnet, there does not appear to have been any proper interrogation of these contracts by the internal audit function or the external auditors. There was also no formal sponsorship and advertising approval process, which allowed Mr. Molefe to conclude contract after contract with impunity.
52. More junior personnel were asked to justify decisions already taken by their superiors by preparing recommendations that made it look as though proper processes were being followed—this type of ex post facto generating of a paper trail allowed state capture and corruption to flourish.

The transactions between SAA and TNA

53. Ms. Cheryl Carolus testified that in 2011, TNA had approached SAA seeking advertising spend for the newspaper – she was the Chairperson of the SAA Board at the time. The proposal went through the Bid Adjudication Committee (BAC), which decided that the newspaper did not meet the business criteria for SAA and, therefore, declined the bid.
54. This decision was met with considerable intimidation by the DG of Public Enterprises, Mr. Matona and the advisor to the Minister of Public Enterprises, Mr. Mahlangu. The Board’s mass resignation in 2012 paved the way for a more TNA compliant board that contracted TNA for the subscription of 3000 daily newspapers.
55. Mr. Kona was the Chair of the SAA Board from 28 September 2012 to 26 February 2013 – when he was removed from office. On 6 November 2012, the BAC submitted a proposal, which Mr Kona approved, for a dramatic increase in volumes of TNA newspapers from 3000 to 7000 per day. However, the BAC submission did not provide any reasons or justification for the increased volume. The submission proposed an extra R2.4million spent on TNA subscriptions over the next year.

Volume 3: South African Revenue Service (Chapter 3) and Public Procurement in South Africa (Chapter 4)

South African Revenue Service (SARS)

56. Prior to state capture, SARS was recognised internationally as one of the best and most efficient tax administration services. Evidence indicates collusion between **SARS, the Executive including President Zuma**, and the management consultancy at **Bain & Company South Africa** (Bain) with an organised and coordinated plan to dismantle and

control SARS. President Zuma and **Mr. Moyane**, former Commissioner at SARS, played critical roles in the weakening of the revenue service.

57. This collusion resulted in clear patterns of procurement corruption. Mr. Moyane was promised the position of SARS Commissioner by President Zuma well in advance of his formal appointment. Similarly, Bain, primarily through their senior representative, Mr. Massone, met frequently with President Zuma and Mr. Moyane before they had been appointed as third-party consultants to SARS. It had been obvious that Bain would be awarded the contract from early stages despite no tender process having started and despite Bain having no tax authority experience. Their engagements included discussions of plans to not only restructure SARS, but also the South African economy, including centralising procurement systems.
58. Similar to the findings of the **Nugent Commission**, which focused on irregularities at SARS, the Zondo Commission also finds massive failure of governance and integrity at the institution. Mr. Moyane served to dismantle the elements of governance and seize control of SARS. This included the purging of competent top officials and strategic positioning of compliant individuals. Additionally, a climate of fear and bullying was created with plans to restructure and deliberately weaken institutional functions.
59. One of the methods devised to target specific individuals in the institution was through false allegations of a “**rogue unit**,” in which senior investigators at SARS were accused of illegally spying on President Zuma. As a result of poor journalism at the Sunday Times, this story appeared many times in the news. Instead of investigating the truth of these assertions, which are now acknowledged to be false, Mr. Moyane used it to dismantle his entire executive committee.
60. Mr. Moyane defied accountability to authorities, such as refusing to account to **Mr. Gordhan** as Minister of Finance at the time and making various institutional and personal attacks on him. Moreover, Mr. Moyane laid criminal charges against Mr. Gordhan for alleged involvement in the “rogue unit” and for granting Mr. Pillay, former Acting Commissioner at SARS, early retirement. Members of the Hawks and Mr. Moyane’s bodyguard held Mr. Symington, a senior employee at SARS, hostage as he unwittingly held exculpatory evidence related to Gordhan’s charges. It appears they were seizing this information to withhold crucial evidence in their investigation against Mr. Gordhan.
61. These frequent attacks on SARS, which began after the appointment of Mr. Moyane, halted the work of SARS’ investigative units. It appears that SARS’ investigatory and enforcement capacity was targeted due to the hurdles it presents to individuals involved in organised crime.

Public Procurement in South Africa

62. The government is the single biggest procurer of goods and services. The public procurement system must operate to advance the national interest under section 217 of the Constitution. It is widely acknowledged that a public procurement system will only be fit for purpose if it is founded on good governance and good management and enforced through effective monitoring and oversight measures that ensure accountability. Anything less renders the system open to abuse.
63. The procurement cycle covers three main stages: pre-tendering, tendering, and post-award. Evidence indicates that goods and services were often **procured when they were not needed and were often a duplication of work** that had already been done. The report references Transnet, Eskom, SARS, and Free State Provincial Government as examples. Procurement abuse is not limited to the provincial and national levels of government but also at the local government level. For example, the City of Johannesburg paid millions of Rands of payments to a technology company EOH for work not done. EOH also donated R50 million to the ANC for the 2016 local government elections.
64. The report explains that ministers are responsible for the appointment of directors to the boards of SOEs. The Board and senior management are both critical in ensuring good governance. Evidence indicates that the Boards of SOEs have neglected their responsibilities or used their powers to corrupt the SOEs in many cases. A common problem was that there was **no clear distinction between the role of the Board as an oversight body and the role of the executives** as operational controllers. An example of this is that high-value procurement decisions by the Board were often uninformed or made based on questionable advice received from external advisors and consultants. In some instances, the Board directly overruled decisions made by executives.
65. Evidence from various studies shows that state capture was not the beginning of the subversion of the procurement system, even though it was the most aggressive and concentrated attack on it. **State capture attacked an already weakened system.**
66. Some public procurement problems emanate from **legislative design** and others from **state capture or systemic weakness** that facilitate corruption. Issues in the legislative design include difficulties in interpreting, harmonising and reconciling the numerous pieces of legislation. The legislative network is highly fragmented and often too complex for accounting officers to monitor their oversight responsibilities. The extent to which legislation has become decentralised is vital to examine as excessive decentralisation in legislation can create serious problems, noting also that excessive centralisation can make systems vulnerable

to corruption and irregularities. The efficiency and competence of procurement officers – training, experience and competence are essential in fighting against corruption.

67. The consequences of state capture and systemic weaknesses include financing political parties with the proceeds of corruption and the lack of whistleblowing. Further, the collapse of governance in SOEs led to widespread state capture. The Zondo Commission recommends the following response to corrupt procurement on the supply side: disqualification from participation in tenders, deferred prosecution agreements, criminal prosecution and restitution for damages suffered and monies misappropriated.
68. The Commission recommends that a *National Charter Against Corruption*, that incorporates a standardised Code of Conduct, be adopted by the government, the business sector and relevant stakeholders. Creating an *Anti-Corruption Agency* is an appropriate starting point for a scheme of reform. Adequate protection for whistle-blowers is recommended. Additionally, the creation of a procurement officer's professional body consisting of all officials who work in procurement, ensuring that all members have the necessary qualifications and experience. The body must train members on high standards of integrity and ensure that members commit to resisting mismanagement, waste and corruption. The Commission recommends the added protection for accounting officers/authorities acting in good faith, amending the Prevention and Combatting of Corrupt Activities Act 12 of 2004 (“PRECCA”) and the Political Party Funding Act No. 6 of 2018. Lastly, the Commission advises considering the enactment of various legislations that improve the system of fair and fruitful public procurement.

Analysis and Recommendations

Volume 1:

- i. The report notes how the costs of state capture lie in “millions of rands lost to the taxpayer”, the “broken careers of people who tried to resist”, the “emotional trauma experienced when managers subjected to unlawful and invasive state security vetting”, “livelihoods of those who faced joblessness because these entities were driven into the ground”, and the political decisions made motivated by the personal interests of the President. It is thus essential to note the vast devastation that state capture has on individuals and the entire country.
- ii. The case of SAA is an example of how fraud and corruption take hold when companies are depleted of responsible and accountable people. The report explains how state capture thrives as entities were run in the interest of a select few who held power inside and

outside the entities. Ms. Myeni and Ms. Kwinana acted in disregard for the best interest of SAA in their decision-making, resulting in sustained damage to the national airline. In a statement from the interim Board of SAA, they are committed to break away from its past and take the necessary actions to recover any lost money or assets that have been misappropriated.

- iii. The report recommends that the National Prosecuting Authority (NPA) consider prosecuting various individuals and organisations related to these events at SAA, SAAT and SA Express for corruption and related crimes. Given the severity of the contents and evidence presented, the Commission strongly urges that such action be taken, particularly given the damage to the SOE and public trust throughout state capture.

Volume 2:

- iv. The overwhelming lesson from the Zondo Commission's investigation of TNA and various State departments and parastatals is that although policies, committees and boards help ensure that the public sector tendering process is fair, cost-effective and non-corrupt. However, the ultimate decision lies with public officials. The Gupta family infiltrated many departments and parastatals by connecting with high-level government officials. These officials were fundamental pawns in furthering the agenda of the Gupta family and the looting of public funds.
- v. High-level government officials achieved this agenda by removing public officials and boards that were non-compliant with their agenda and amending contracts to change whose authoritative delegation it falls under - often circumventing board approvals and due processes. Further, corrupt senior officials often intimidated junior officials to create paper trails for irregular contracts.
- vi. The law is just and flawless as it correctly identifies unlawful and irregular contracts, but the will of officials is highly concerning. Implementing policies regarding public funds is fundamental in curbing corruption and fruitless and wasteful expenditure.
- vii. The Commission recommends that legal action be taken against officials who assisted in the looting of public funds, and added layers in procurement are necessary to ensure that contracts are regular and efficient. An example of this is to use a bloc chain in procurement from proposal to board acceptance so that all information is available, and the process is transparent.

Volume 3:

- viii. Regarding state capture at SARS, the Commission supports the recommendations suggested in the report. The recommendations include that all Bain's contracts be re-examined for compliance with relevant constitutional and statutory provisions; that law enforcement agencies investigate to decide whether to initiate prosecutions regarding the award of the Bain contracts; that the SARS Act of 1997 is amended to provide for transparent and fair processes for the appointment of Commissioner of SARS; and that Mr. Moyane be charged with perjury relating to his false evidence given at Parliament.
- ix. Concerning public procurement, the FFC supports the findings and recommendations by the Zondo Commission in combatting corruption. The recommendation includes legislative changes to improve the procurement process and provide criminal and restitutive justice to those who misuse the system. Establishing a professional procurement body within the government is a nuanced recommendation that should provide fruitful outcomes.

Overall:

Since this report has exposed the devastating evidence and effects of state capture related to these entities, it is imperative that the NPA and other relevant authorities act on the recommendations presented by the Zondo Commission. It would be a national tragedy to have exposed such extreme corruption and not enforce all the appropriate consequences on the wrong doers, exacerbating public distrust in the government.

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Date: 24 January 2022



Mr C Tseng

Acting Chief Executive Officer

Date: 17 February 2022