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10

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DAY 163

20

PROCEEDINGS COMMENCE ON 13 SEPTEMBER 2019

CHAIRPERSON: Good morning Ms Norman, good morning everybody.

ADV THANDI NORMAN SC: Good morning Chair. Good morning Chair.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: Thank you.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: Chair I beg leave to hand up the properly paginated bundle for this morning.

CHAIRPERSON: Okay. Thank you.

10 **ADV THANDI NORMAN SC:** Thank you Chair. That will – may it be entered into the record as Exhibit CC36?

CHAIRPERSON: The file containing the statement of Mr Garth Strachan will be marked Exhibit CC36.

ADV THANDI NORMAN SC: Thank you Chair. Before we deal with the witness Chair just if I may just hand up a letter that has been received from the office of the State Attorney in relation to the witness Minister Ndlodlo that was going to come this morning. Minister Ndlodlo is represented Chair. I would like Ms Gcilishe to put herself on record. Thank you.

20 **ADV UNATHI GCILISHE:** Good morning Chair.

CHAIRPERSON: Good morning.

ADV UNATHI GCILISHE: I am Advocate Unathi Gcilishe I appear with Advocate Terry Motau SC. Advocate Motau is unfortunately not able to come this morning; he does send his apologies.

CHAIRPERSON: Hm.

ADV UNATHI GCILISHE: Chair we were brought on brief yesterday in this matter and we seek time to consult with our client for the purposes of assisting with the representations that will be made.

CHAIRPERSON: Hm.

ADV UNATHI GCILISHE: It has been agreed with the evidence leaders that we be granted a two week extension for the making of the necessary submissions.

CHAIRPERSON: Hm. Well from what I have been told what the Minister is supposed to canvass something that appears to be quit
10 narrow. I am wondering why two weeks is necessary when from what I have been told she would have been ready today except maybe some commitments and so on. Do you really need two weeks?

ADV UNATHI GCILISHE: Chair we have not yet consulted with the Minister that is being arranged for the upcoming week.

CHAIRPERSON: Hm.

ADV UNATHI GCILISHE: Therefore I cannot really state...

CHAIRPERSON: You cannot say?

ADV UNATHI GCILISHE: Ja.

CHAIRPERSON: So you cannot say whether you need two weeks or
20 one week?

ADV UNATHI GCILISHE: No we – we ... we think two weeks is reasonable in the circumstances Chair but I cannot say anything less than that would be sufficient.

CHAIRPERSON: How long has the Minister known about it? She has known for some time.

ADV THANDI NORMAN SC: Chair there was a point when the Minister was indisposed.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: I think that – that period then we felt that we needed to give her enough time to recuperate.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: After that yes. And – but he – she has been very cooperative.

CHAIRPERSON: Yes.

10 **ADV THANDI NORMAN SC:** Yes thank you. And we – in fact she has actually sent the commission her draft. Every time she worked on a draft she sent those to the commission.

CHAIRPERSON: So she has been working on certain files?

ADV THANDI NORMAN SC: She has yes, yes Chair. We have those.

CHAIRPERSON: Which means it should be easier to finalise an existing draft.

ADV THANDI NORMAN SC: Yes. Unless she wants to extend her scope Chair and deal with other matters. Thank you.

CHAIRPERSON: Okay.

20 **ADV THANDI NORMAN SC:** Thank you.

CHAIRPERSON: I am inclined to rather give you a week and if you really get into difficulties in complying then you approach and then I can consider giving you more, is that fine?

ADV UNATHI GCILISHE: That will be fine Chair.

CHAIRPERSON: Yes so...

ADV UNATHI GCILISHE: Thank you.

CHAIRPERSON: Let us say you will try and – or you file or finish her statement or affidavit on or before Friday next week.

ADV UNATHI GCILISHE: That will be Friday the 20th.

CHAIRPERSON: If you really run into difficulties then you approach the commission.

ADV UNATHI GCILISHE: Okay we will do so Chair.

CHAIRPERSON: Okay thank you.

ADV UNATHI GCILISHE: Thank you.

10 **ADV THANDI NORMAN SC**: Thank you. Thank you Chair. Chair the witness this morning is Mr Strachan the evidence of this witness...

CHAIRPERSON: Yes I am sorry this letter from the State Attorney.

ADV THANDI NORMAN SC: Yes Chair.

CHAIRPERSON: Is it anything that I need to know about now or I can read later?

ADV THANDI NORMAN SC: No Chair no you may read it later Chair.

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: Yes thank you.

CHAIRPERSON: Yes.

20 **ADV THANDI NORMAN SC**: Thank you. Chair this witness' evidence is relevant in the sense that SABS Chair would recall has been mentioned as being one of the stakeholders by Mr Jansen Van Vuuren and also yesterday's witness Mr Roy Kruger that SABS South African Bureau of Standards was – is part of the stakeholders that had to work on the set-top boxes. His evidence also becomes relevant because the next

witness that we are going to call when the Chair allocates us additional time Doctor Boloka actually deals with local content and those are matters that SABS deals with. For that reason therefore Chair I would like you to receive his evidence before that of Doctor Boloka.

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: Thank you. Oh sorry Chair.

CHAIRPERSON: Are you ready that ...

ADV THANDI NORMAN SC: Yes Chair.

CHAIRPERSON: He be – that the oath be administered or affirmation.

10 **ADV THANDI NORMAN SC**: Yes may he be sworn in? Thank you.

CHAIRPERSON: Ja.

REGISTRAR: Please state your name and full names for the record?

MR GARTH STRACHAN: Garth [indistinct] Strachan.

REGISTRAR: Do you solemnly affirm that the evidence you will give today will be the truth; the whole truth and nothing but the truth if so please say, I truly affirm?

MR GARTH STRACHAN: I truly affirm.

CHAIRPERSON: Thank you.

ADV THANDI NORMAN SC: Thank you Chair. Thank you. Thank you.

20 Mr Strachan you have a document that is placed in a presentation file in front of you and it is marked Exhibit CC36, do you have that?

MR GARTH STRACHAN: I do [indistinct].

ADV THANDI NORMAN SC: Yes if you page through there you will – on page 1 of that their names Garth Strachan is that your statement?

MR GARTH STRACHAN: Yes.

ADV THANDI NORMAN SC: Oh sorry your microphone is off. I beg your pardon.

MR GARTH STRACHAN: Yes Counsellor.

ADV THANDI NORMAN SC: No you answer to the Chairperson.

MR GARTH STRACHAN: I beg your pardon. Yes Chairperson.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Thank you.

ADV THANDI NORMAN SC: Thank you. And then if you could please turn to page 5 of that statement. Is that your signature that appears on
10 that page?

MR GARTH STRACHAN: It is Chairperson.

ADV THANDI NORMAN SC: Yes. Did you make this – are the contents of this statement first true and correct?

MR GARTH STRACHAN: Yes Chairperson.

ADV THANDI NORMAN SC: And you made this statement at the request of the investigators of the commission?

MR GARTH STRACHAN: Yes Chairperson.

ADV THANDI NORMAN SC: Yes thank you. Could you just for the record place your qualifications please?

20 **MR GARTH STRACHAN:** I hold a Master's Degree in Science and Public Policy from London University.

ADV THANDI NORMAN SC: Yes. If you could just try and speak up a little. Yes.

MR GARTH STRACHAN: Sure.

ADV THANDI NORMAN SC: Or maybe just – ja – that should work

thank you. You are currently occupying a position as acting Chief Executive Officer of the South African Bureau of Standards, is that correct?

MR GARTH STRACHAN: Yes Chairperson.

ADV THANDI NORMAN SC: And that is normally referred to as SABS?

MR GARTH STRACHAN: Yes Chairperson.

ADV THANDI NORMAN SC: Yes. When were you appointed to this position?

MR GARTH STRACHAN: In June 2018.

10 **ADV THANDI NORMAN SC:** Yes. 2018?

MR GARTH STRACHAN: Yes.

ADV THANDI NORMAN SC: Yes. Could you just tell the Chairperson what was SABS role – you do make that point in your statement that you are appointed after the active role of SABS had taken place. So your evidence is based on the documentation and the evidence that you have received from those who are responsible for that role, is that correct?

MR GARTH STRACHAN: Yes Chairperson.

20 **ADV THANDI NORMAN SC:** Yes. Now could you just tell the Chairperson what is the role of SABS generally? What does SABS do?

MR GARTH STRACHAN: Chairperson the South African Bureau of Standards is the only national standard body in South Africa mandated in terms of legislation the standards acts which are set out in my statement in order to undertake broadly speaking full functions. That is the setting of South African National Standards which are either

standards which are home grown or which amended from the international standards organisation which we are a member of. SABS also undertakes certification to a standard which is a process at the end of which any company which requires certification is issued with a certificate and then the company being in possession of a certificate is able to place what is called a SABS mark on its product which ensures that that company – that product purchased by any member of public has been certified to a national standard which can be a product or a systems certification.

10 **ADV THANDI NORMAN SC:** Yes.

MR GARTH STRACHAN: And then SABS operates testing laboratories which test in a variety of ways but in this context they test to a certification. So if a product requires testing for any characteristic then that product is tested by our laboratories. And the fourth element of the SABS legislative mandate is to undertake local content verification on behalf of the government of South Africa for which SABS has established the requisite capacity and accreditation to undertake local content verification to a standard. In this case the standard is SANS, SANS 1286.

20 **ADV THANDI NORMAN SC:** Yes.

MR GARTH STRACHAN: Ma'am that would be a summary of the legislative mandate.

ADV THANDI NORMAN SC: Yes. Just to remind you that you answer to the Chairperson.

MR GARTH STRACHAN: I beg your pardon.

ADV THANDI NORMAN SC: Yes thank you. Yes. Could you just – let us just deal with the local content aspect? So what is it that SABS usually looks for when it says that I am going to test for local content, what is it looking for?

MR GARTH STRACHAN: So if I may Chairperson go back slightly. The Department of Trade and Industry under the Preferential Public Procurement Finance Act and its regulations designates products for local content to a threshold depending upon the capabilities of South African industry to produce any product. In some cases it might be 100
10 in other cases it might be 30%. And the National Treasury issues an instruction note to all South African entities when they are undertaking tender and procurement processes to ensure that those designated products are procured in keeping with the National Treasury Instruction Note, the DTI designation and the SANS 1286. SABS is then requested to undertake local content verification of the companies which would be providing goods to the state and that local content verification is undertaken to SANS 1286.

ADV THANDI NORMAN SC: Yes.

MR GARTH STRACHAN: In some instances a standard can be
20 referenced in a piece of regulation and in that case the state is – must ensure that where a standard is referenced in the regulation any product provided to the state has – carries a SABS mark. In other words it has been audited and certified to a local content threshold.

ADV THANDI NORMAN SC: Thank you. And insofar as the set-top boxes is it correct that even with those SABS was tasked with the

responsibility to certify those set-up boxes that are going to be supplied to the various households?

MR GARTH STRACHAN: Ma'am if I may SABS in an MOU with the Department of Communications and the Department of Trade and Industry was mandated as I set out in my statement to undertake amongst others to undertake conformity assessment of set-top boxes. And it established a laboratory and the capabilities to do that. We do not as a 3B Public entity carry a compliance mandate. In other words we cannot say to Department X you have to come and test or the
10 companies that are supplying you have to come and test. We carry out the mandate of conformity assessment.

ADV THANDI NORMAN SC: Yes.

MR GARTH STRACHAN: And my understanding is that the policy as originally conceived referenced the SANS 862.

ADV THANDI NORMAN SC: Yes. Thank you. And I am aware of the fact that today you are not going to be talking to the specifics because a technocrat from your department will come and deal with matters that relate to which companies were tested for this and which companies were compliant and all of those. That type of details is going to come
20 later. Am I right?

MR GARTH STRACHAN: Ye Ma'am I can speak to some of it.

ADV THANDI NORMAN SC: Yes.

MR GARTH STRACHAN: But a detailed technical evidence would need to be advanced by an expert in the field.

ADV THANDI NORMAN SC: Yes.

MR GARTH STRACHAN: Which might be an auditor for certification or a laboratory engineer Chairperson.

ADV THANDI NORMAN SC: Yes thank you. Then you deal with the monies and the setting up of the laboratory in paragraph 4 of you state – in paragraph 4 of your statement and you say you were allocated by the Department of Communications an amount of R26.3 million.

MR GARTH STRACHAN: Chairperson the original memorandum of understanding between the Department of Trade and Industry which is the SABS shareholder, the Department of Communications and the
10 SABS agreed upon a sum of R30 million to be transferred to the SABS by the Department of Communication. In order to establish the capacity in other words the equipment and the capability in other words the requisite technical staff to be able to test to the requirements of the SANS 862 and SABS did that. SABS never spent – never received R30 million it received R26 million. Nevertheless the requisite capacity and capability was establish in order to test set-top boxes.

ADV THANDI NORMAN SC: Yes.

MR GARTH STRACHAN: To the SANS 862.

ADV THANDI NORMAN SC: Yes. And just as a – just to clarity on
20 what – if one says this – one sees a particular set-top box which is something that we are going to deal with later and that person sees it and that person wants to see whether that is SABS approved you – the team has just put up some pictures to show what your SANS approval would look like. Could you just put up that demonstration please? Thank you. Is that – sorry Chair could you – that – is that a – sorry.

MR GARTH STRACHAN: Ma'am – Chairperson that is not a SABS mark.

ADV THANDI NORMAN SC: Just that one. Would that be a SABS one?

MR GARTH STRACHAN: That is unequivocally not a SABS mark, a SABS.

CHAIRPERSON: I think I know how...

ADV THANDI NORMAN SC: Yes how it works.

CHAIRPERSON: How ...

ADV THANDI NORMAN SC: Yes Chair.

10 **CHAIRPERSON:** Why this is a SABS mark look like – looks like.

ADV THANDI NORMAN SC: Okay.

CHAIRPERSON: I am sure that is not one – the one.

ADV THANDI NORMAN SC: No. Oh yes Chair but...

CHAIRPERSON: I mean one sees it in all – in many products.

ADV THANDI NORMAN SC: Yes it does.

MR GARTH STRACHAN: Ja.

ADV THANDI NORMAN SC: Could you just have a look at the one that will have your mark please?

CHAIRPERSON: But I...

20 **ADV THANDI NORMAN SC:** Chair it is going to be...

CHAIRPERSON: I do not know...

ADV THANDI NORMAN SC: It is going to be...

CHAIRPERSON: But I do not know if we need to see it.

ADV THANDI NORMAN SC: It is going to take a second Chair.

CHAIRPERSON: Ja because...

ADV THANDI NORMAN SC: Oh but if you do not need to see it then there is no need.

CHAIRPERSON: Yes unless we anticipate that there will be some disputes about whether certain boxes were SABS approved.

ADV THANDI NORMAN SC: That is the point. That is the point Chair.

CHAIRPERSON: Or they will be some dispute?

ADV THANDI NORMAN SC: Yes. There is that – that is the point.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: Yes thank you.

10 **CHAIRPERSON:** And there will be some dispute about whether ...

ADV THANDI NORMAN SC: They were approved.

CHAIRPERSON: A particular mark is a SABS mark.

ADV THANDI NORMAN SC: That is correct.

CHAIRPERSON: Oh okay.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Then that is fine let us see it.

ADV THANDI NORMAN SC: Alright. The second one? Is it not coming through?

CHAIRPERSON: Do you want to...

20 **ADV THANDI NORMAN SC:** No Chair if it is a problem.

CHAIRPERSON: To give them a chance to get it while you – we continue.

ADV THANDI NORMAN SC: Well – we continue okay.

CHAIRPERSON: Ja they must look for it and so when you go back to them they must have it ready.

ADV THANDI NORMAN SC: Thank you Chair. Okay. So then you – in paragraph 4 you also deal with the fact that the laboratory itself it is now losing staff and it is underutilised and could you just tell the Chairperson what could be the reasons for this lack of enthusiasm to actually utilise and use the laboratory and what would the result would be in terms of products maybe that do not go through the laboratory process.

MR GARTH STRACHAN: Chairperson a laboratory housed at the SABS tests to certification in other words if it is – if there is a product which
10 is being certified in an audit process that certification can include testing.

CHAIRPERSON: So there has got to be testing in order to have certification?

MR GARTH STRACHAN: Not in every instance but certainly in many products.

CHAIRPERSON: Oh okay.

MR GARTH STRACHAN: If I may give an example Chairperson.

CHAIRPERSON: Okay.

MR GARTH STRACHAN: A bottle of water – the company would seek a
20 certification for the bottle of water and the durability of the glass or the characteristics of the bottle or the chemical composition of the water could be tested to the certificate.

CHAIRPERSON: Okay.

MR GARTH STRACHAN: But there is another form of testing which is customer specific requirement testing Chairperson where a customer

may bring testing – bring a product for testing including for example to be able to meet the conformity requirements for the exporting of a product into another jurisdiction. So the laboratories do not only test to certification they would test for other reasons. But to specifically answer the question a laboratory which in this case costs R26 million to set up and which incurs recurring operational costs in the form of maintenance the payment of the staff and so on and so forth depends upon the volume of testing which passes through and I can say that there has been a very low volume of testing in the laboratory specifically set up for set-top boxes and in fact we have incurred significant losses which we estimate in the time available to be R1.8 million and the viability of the laboratory is in serious question and the administrators are contemplating closing the laboratory since it is not viable and in the total revenue of the institution only a small fraction is from the public fiscus the bulk of the revenue arises from a commercial payments for standards certification, laboratory services and local content verification and consignment inspection.

ADV THANDI NORMAN SC: Yes. If a product carries the – made in South Africa stamp or manufactured in South Africa stamp is that an equivalent of what you would expect to be – to have at least gone through the SABS standards testing?

MR GARTH STRACHAN: Oh no Chair.

ADV THANDI NORMAN SC: No.

MR GARTH STRACHAN: Made in South Africa is unequivocally not a SABS mark. Remember that a SABS mark is a certification to a

particular standard whether it is a standard in this case 862.

ADV THANDI NORMAN SC: Yes.

MR GARTH STRACHAN: Or a local content standard which is 1286.

ADV THANDI NORMAN SC: Yes. Thank you. Just what I had said I – relating to the question that I – if that product has got Made In South Africa and you do not see it – or do you see a SABS mark there?

MR GARTH STRACHAN: Chairperson there is definitely no SABS mark on that display.

10 **ADV THANDI NORMAN SC:** Yes thank you. And then lastly could you just...

CHAIRPERSON: In fact there is not even an imitation of a SABS mark, is that right?

ADV THANDI NORMAN SC: Yes.

MR GARTH STRACHAN: Yes Chairperson.

ADV THANDI NORMAN SC: Yes thank you. And then in the next one we just showed that where it is – it has the SABS approval would it come up in that way?

20 **MR GARTH STRACHAN:** Chairperson the middle stamp is the SABS mark and it is the customer view on whether or not that product has been certified by SABS. The manufacturer is in possession of the certificate which enables the manufacturer to stamp the mark on the product for sale.

ADV THANDI NORMAN SC: Yes.

MR GARTH STRACHAN: Or distribution.

ADV THANDI NORMAN SC: Yes. Thank you.

CHAIRPERSON: That – that sounds strange to me. I hope I understand it correctly. The South African Bureau of Standards is the authority that by law has been given power to certify goods and products to meet certain standards – to be meeting certain standards. It sets the standard as well is it not? Set the standards and then certifies that those goods or products – whether those goods or products meet that standard. Is that right?

MR GARTH STRACHAN: Yes Chairperson.

CHAIRPERSON: Yes. So when I see South African Bureau of Standards mark on any product then I have the comfort that because I
10 have high regard for the South African Bureau of Standards and knowing that it is an authority that performs this certification job in terms of the law I have the comfort that then the product must be fine.

MR GARTH STRACHAN: Chairperson that is absolutely correct.

CHAIRPERSON: Yes.

MR GARTH STRACHAN: Please bear in mind that certification or certificates expire.

CHAIRPERSON: Yes.

MR GARTH STRACHAN: After three years.

20 **CHAIRPERSON:** Yes.

MR GARTH STRACHAN: And therefore companies are required to renew.

CHAIRPERSON: Yes.

MR GARTH STRACHAN: The permit.

CHAIRPERSON: Yes.

MR GARTH STRACHAN: The certification.

CHAIRPERSON: Yes.

MR GARTH STRACHAN: And then auditors or re-audit the company.

CHAIRPERSON: Yes.

MR GARTH STRACHAN: Where there is testing required there might be testing.

CHAIRPERSON: Yes.

MR GARTH STRACHAN: And they are re-issued a permit.

CHAIRPERSON: Yes.

10 **MR GARTH STRACHAN:** Which allows that company to stamp the product with the SABS mark which is a mark obviously of high quality to the requisite standard.

CHAIRPERSON: Hm.

MR GARTH STRACHAN: A standard would differ in by product and sector of the economy.

CHAIRPERSON: Yes.

MR GARTH STRACHAN: Ja.

CHAIRPERSON: Ja. But my understanding was that only the South African Bureau of Standards can put that stamp on a product and that
20 when I see that mark I say it is the South African Bureau of Standards who have satisfied themselves that this product has got all the [indistinct] and the fissures that are required or this product when it meets the required standard. Now from what you say – you have said I am getting the impression that somebody else – a company, an entity can put the stamp, the SABS mark on its product on the basis that in

their view that product meets the SABS standard. Did I misunderstand something?

MR GARTH STRACHAN: Chair if I failed to communicate that adequately I apologise.

CHAIRPERSON: I have misunderstood?

MR GARTH STRACHAN: No company can voluntarily use a SABS mark unless they have been through a certification process and being issued with a certification which allows them to use the SABS mark. We must of course be mindful that there might be certain you know cases where
10 companies may use the SABS mark illegally because they have not renewed the permit in which case SABS conducts market surveillance and if there is a company that is using the SABS mark illegally we would approach the company and the courts to ensure that the illegal use of a SABS mark is - is stopped immediately.

CHAIRPERSON: Let us - let us go back to the example of that bottle in front of you. If I am - if I manufacture a bottle and I bring it to SABS and ask SABS to certify it and put its mark on it. I do not know whether they put its mark or they authorise me to put their mark on it but basically I go through that process and everything goes well.

20 Is the position that the way this works is that once you have so to speak certified a sample then you give me authority or permission to go and manufacture other - other bottles of the same type and I undertake to manufacture them in the same way as the one that you have seen and make sure that it has got same things that it - the one I gave to you had and then if I am satisfied that I have made it in that

way then I do not take it back to you. I put your mark on it. Is that how it works?

MR GARTH STRACHAN: Chairperson broadly speaking correctly but if I may add in order to secure certification of the bottle in our example you would have to purchase the required standard. In other words and developed in a process involving industry, industry experts, academic, scientists in what is called technical committees which either develop according to South African conditions a home grown standard or they adapt an international standard belonging to the International
10 Standards Organisation but a manufacturing company would purchase a standard.

The test - the certification process is carried out by SABS which is suitably qualified and accredited auditors going to the plant or factory which produces the bottle of water to ensure that the production accords with the requirements set out in the standard. If the product in this case the bottle of water in the standard also has to have certain of its characteristics tested then the SABS laboratories would test to the requirements of the certification.

At the end of the auditing process the compliance report
20 would go to an authority within the SABS which ensures that due and process has been followed and the company is issued with a certificate which enables it to stamp its products for the duration of that permit that certificate which is three years with a SABS mark.

At the end of the three years in order to ensure that there is conformity assessment is robust that the company in this case would

not have to repurchase the standard but they have to renew the permit and undertake for the next phase of the ownership of the SABS mark another certification which may involve auditing and testifying.

So this is not a situation where you get a certificate and for the rest of time you can use the SABS mark. It is a very specific set down internationally process that you have to follow. SABS is then accredited by the South African National Accreditation System an agency of Government and in many cases international accreditation authorities that come to SABS and check that our systems our auditing
10 our testing and the enter process meets rigorous requirements of the certification process. I hope Chairperson that answers the question.

CHAIRPERSON: Yes. Maybe let us take it further. I am trying to understand to what extent the system is open to abuse. From what - I think for some reason I took it that each bottle or product that has got a SABS mark has gone through a SABS certification or testing process but on - on reflection probably that is impossible to - to happen.

I mean millions of bottles could not have all gone through SABS process. So - so - but if once I give you that bottle and I say I intend manufacturing bottles exactly like this and when I sell them I
20 want them to carry a SABS mark. It seems to me from what you are telling me that certain things must be in place.

Laboratory and you talk about academics and the industry blah, blah, blah. You - you would then after testing provide the certification but the certification gives the manufacturer in this case of the bottle the right to put the SABS mark on all its bottles. I assume

that are made like that one and then when - when they are sold they are sold with - with that mark.

Now I am wondering whether if as the business person I am supposed to do that. Obviously one should assume that I will have an interest to make sure that my business has a good name in the market. That these bottles which carry the SABS mark are really of quality and - and I do not have a situation where maybe some are not really up to that standard - the SABS standard but I am wondering whether if I am established.

10 Everybody knows that my bottles have got the SABS mark but I run out of ingredients that must be used in order to be - manufacture this bottle. Instead of using five that are required. I use three but I do not want to send out to the market bottles from my company that do not have the SABS mark because my company is known to only sell bottles with the SABS mark and then I - whether I - I can put the SABS mark.

I can cheat in other words cheat the - the public. Put the SABS mark. Even though this batch of bottles maybe do not actually meet that standard. Whether the - the system allows that to happen or not.

20 **MR GARTH STRACHAN:** Chairperson if I may answer in this particular manner. Remember that a SABS mark is a voluntary process. It is a mark of conformance to a particular standard.

CHAIRPERSON: Yes.

MR GARTH STRACHAN: If a standard is referenced in a piece of legislation because there are health safety and other concerns then

another institution of the state the National Regulator for Compulsory Specifications comes into play. They may use the testing capabilities at SABS or other test houses to ensure that that company and agricultural - agroprocessing products can apply or health and safety products of one kind and another and NICS is not the only regulator.

Remember there are many other regulators. If a standard is referenced in a regulation then it is absolutely critical that the National Regulator for Compulsory Specifications comes in - into play and they have the responsibility to ensure that it is not just a question of a - a
10 golden sample but that there are regular checks on the conformity of that compulsory specification.

If I may give you an example. The Department of Health and the National Treasury purchase condoms. The legislation and the tender documentation references the standard in the - in - in law and therefore in those instances the - the SABS mark is a mark also of quality which can be tested against from time to time and is tested from time to time but the SABS mark in itself is a - is a voluntary mark.

Unless a procuring department or a regulatory authority says we are procuring from the private sector and the condition of that
20 procurement is that the product must carry a SABS mark.

CHAIRPERSON: It would not be SABS role to from time to time during the term of licence that it has given to a manufacturer to use a SABS mark. It would not be its role to from time to time pay surprise visits to the manufacturer's laboratory for example. Just take samples. Check whether there is no cheating in the sense in which I have made to say

okay bottles are made in the same way that they are supposed to in terms of what was tested.

So that that is the threat that a manufacturer has of being caught if he sends out bottles with a SABS mark which do not deserve to have a SABS mark.

MR GARTH STRACHAN: To the best of my knowledge Chairperson no but it is an area where ...

CHAIRPERSON: That somebody else might be able to talk about?

MR GARTH STRACHAN: We - we could provide further technical ...

10 **CHAIRPERSON**: Yes.

MR GARTH STRACHAN: Clarity to that ...

CHAIRPERSON: Okay.

MR GARTH STRACHAN: But to the best of my knowledge no.

CHAIRPERSON: Yes, okay. No thank you.

ADV THANDI NORMAN SC: Thank you Chair. Thank you and then in - as you have already testified to the obligations but maybe just to - to emphasise one obligation in terms of the MOU that you referred to at page 13 that deals with the obligations of SABS insofar as the set-top boxes are concerned.

20 **CHAIRPERSON**: Did you say page 13?

ADV THANDI NORMAN SC: Page 1-3 yes Chair.

CHAIRPERSON: Okay.

MR GARTH STRACHAN: I beg your pardon. Which page?

ADV THANDI NORMAN SC: 1-3 - page 1-3 on the right hand corner. Okay. 13, okay. Are you there?

MR GARTH STRACHAN: I am not. Sorry.

CHAIRPERSON: It is the red numbers on the right hand corner ...

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Of the pages.

MR GARTH STRACHAN: Oh, oh okay. I beg your pardon.

CHAIRPERSON: Yes. After the yellow ...

ADV THANDI NORMAN SC: Yes.

MR GARTH STRACHAN: I beg your pardon.

CHAIRPERSON: Divider.

10 **MR GARTH STRACHAN**: I beg your pardon.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: Thank you and then there is Clause 9 which those obligations of the parties and then it deals with:

“SABS shall provide the following services and then the feasibility study to determine full cost of setting up a fully accredited laboratory. The feasibility study must be concluded within two months of this agreement’s signature.”

That was done. Is that correct?

20 **MR GARTH STRACHAN**: Yes Chairperson.

ADV THANDI NORMAN SC: And you have attached that feasibility study as Annexure B. It appears Chair at page - from pages 32 onwards and then 9.1.2:

“Testing of set-top boxes to the applicable South African National Standard or other specification and

provide applicable test reports.”

MR GARTH STRACHAN: Yes Chairperson.

ADV THANDI NORMAN SC: And then:

“Provision of discounted rates for local manufacturers wishing to be certified by SABS which includes product certification, SABS factory audits, consignment inspections and other relevant certification schemes as agreed by both parties.”

And then ...

10 **MR GARTH STRACHAN:** Yes Chair ...

ADV THANDI NORMAN SC: Maybe ...

MR GARTH STRACHAN: Yes Chairperson.

ADV THANDI NORMAN SC: “Audit reports and certificates which will be provided by SABS for applicable audits.”

And then maybe those are the most relevant ones to the - to the discussion that you are having this morning. Am I right?

MR GARTH STRACHAN: Yes Chairperson to the very best of my knowledge SABS has honoured all the obligations to the MOU signed
20 between the Department of Communication, the DTI and the SABS.

ADV THANDI NORMAN SC: Yes. The witness before you yesterday Mr Roy Kruger linked the manufacturing of these set-top boxes within the country to job creation. Now can I ask whether the fact that now the factory itself is becoming - where you have to test these products is becoming redundant and do you have any idea of how - where the

manufacturing of the set-top boxes is happening but if you do not then you can just tell the Chairperson.

MR GARTH STRACHAN: We do not because it is not our mandate.

ADV THANDI NORMAN SC: Yes.

MR GARTH STRACHAN: It is a Department of Trade and Industry mandate. I can say without fear of contradiction that local manufacturing is as set out in numerous Government documents unequivocally a generator of not only employment but it has multiple other economic spill overs, skills creation, supply development and so
10 on and so forth.

Please bear in mind of course that a SABS mandate is to certify and test to a standard and we are not in a position to force a Government department to insist that public sector procurement is conformed to the standard. That is a policy matter of Government. We provide the certification and the laboratory testing capabilities which we did to the terms and conditions of the MOI.

ADV THANDI NORMAN SC: Yes.

MR GARTH STRACHAN: The fact that there has been so little certification and testing to the capacity that we established is beyond
20 our remit. I can say that three companies went for local content verification. Remember there is a separate standard and both - all three of the certificates have expired and since 2015 11 companies have had tests undertaken on their equipment but that is not the certification.

They can come for other forms of testing. We can provide

you with detail of what they came to test for. It maybe for example that they were testing for an export destination to a different standard but in the time available we do not have that information other than 11 companies came and in four years that is simply not capable or that kind of revenue and passing through the laboratories is completely unsustainable for the existence of a testing facility and as I said we have incurred costs of 1.8 million.

ADV THANDI NORMAN SC: You have 1.6 at paragraph ...

MR GARTH STRACHAN: 1.6 I beg your pardon.

10 **ADV THANDI NORMAN SC:** Paragraph 4.1.4.

MR GARTH STRACHAN: *Ja.*

ADV THANDI NORMAN SC: Yes. Thank you. Thank you Chair. That - that is the evidence from this witness. Thank you.

CAIRPERSON: Okay. Thank you very much for coming to give evidence and to share with the Commission your knowledge of how SABS - of SABS role in this project. Thank you very much. If a need arises for us to ask you to come back we will ask you but thank you very much and you are excused. Thank you.

ADV THANDI NORMAN SC: Chair I beg leave to hand up EXHIBIT
20 CC35 which I meant to hand up. It is - it is the SABC Policy bundle. It deals with the DTT Policy, the changes to the policy - the various policies from 2008. Thank you Chair. Thank you Chair.

CHAIRPERSON: Do you want this to be admitted or not yet?

ADV THANDI NORMAN SC: Yes Chair. May it be admitted so that the next time when we come we know it is already part of the exhibits?

CHAIRPERSON: Hm.

ADV THANDI NORMAN SC: We - we have marked it policy bundle.

CHAIRPERSON: The lever arch file containing or marked SABC Policy bundle will be marked EXHIBIT CC35.

ADV THANDI NORMAN SC: Thank you Chair.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: Thank you. Mr Chairman that with your leave would then bring us to the end of today's proceedings because we were thinking of having two witnesses which is the one witness that
10 could not attend today and we will approach Chair for another allocation because Chair you would recall that on the very first day when we started we had placed various boxes of material before you.

We have not dealt with that material. For instance the evidence of Dr Boloka who is going to deal with specific contracts and point out the irregularities and unlawful awards of those tenders. That evidence will have to come in the next session. The evidence of Mr Zikode who is the Forensic Auditor for the SABC who has covered over a hundred investigations.

We have - he has placed most of those before you. those are
20 the ones that were - were placed on - on the first day when we started but we are - now he is doing a second exercise of simply selecting the ones that are really crucial for placing before you. Instead of dealing with the hundred and - over 160 investigations and then thirdly Chair you would recall that the evidence of Professor Mutuvhi who came before you last week ...

CHAIRPERSON: Hm.

ADV THANDI NORMAN SC: Is supposed to come back and also ...

CHAIRPERSON: Dr Mutuvhi?

ADV THANDI NORMAN SC: Fhatuwani Mutuvhi.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: Yes, yes.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: She is supposed - he - I beg your pardon.

He is supposed to come back and deal with the actual Auditor-
10 General's findings in - relating to some of the tenders.

CHAIRPERSON: Hm.

ADV THANDI NORMAN SC: That evidence as well Chair we would
request that it be allocated in the second session ...

CHAIRPERSON: Hm.

ADV THANDI NORMAN SC: Of the proceedings. Then we have other
witnesses that are lined up but we will provide you with a memorandum
latest by Monday ...

CHAIRPERSON: Hm.

ADV THANDI NORMAN SC: Of who those witnesses are, what are they
20 going to be talking about ...

CHAIRPERSON: Huh-uh.

ADV THANDI NORMAN SC: But of course there is just two witnesses
that - who are going to come and - and discuss - who have not yet
given us statements but have been promising to give statements ...

CHAIRPERSON: Huh-uh.

ADV THANDI NORMAN SC: But now have changed tact. One of them now seeks legal representation.

CHAIRPERSON: Hm.

ADV THANDI NORMAN SC: Then we would just ask that Chair that those be directed to - to submit their statements by ...

CHAIRPERSON: Hm.

ADV THANDI NORMAN SC: A certain date, yes.

CHAIRPERSON: Hm.

ADV THANDI NORMAN SC: Thank you.

10 **CHAIRPERSON:** No that - that is fine and to the extent that Ms Swanepoel ...

ADV THANDI NORMAN SC: Yes Chair.

CHAIRPERSON: May have to be called.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: There might be no need to delay too long ...

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Calling her ...

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Because her evidence would cover a very narrow ...

20 **ADV THANDI NORMAN SC:** Issue, yes.

CHAIRPERSON: Issue.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: So it may well be that within the next two weeks or so we might consider finding a space for her ...

ADV THANDI NORMAN SC: For her.

CHAIRPERSON: In the morning maybe from nine to 10.

ADV THANDI NORMAN SC: Yes Chair. We will - we will do that.

CHAIRPERSON: So we will need to look at that.

ADV THANDI NORMAN SC: Yes, thank you Chair.

CHAIRPERSON: Okay. No that is fine. We are therefore going to adjourn the proceedings for the day but we will continue on Monday. I think at Monday it is - we have one or more witnesses - to two witnesses for Estina if I am not mistaken.

ADV THANDI NORMAN SC: Yes Chair but I think the evidence leader
10 for Estina was here this morning. I think there might be just some ...

CHAIRPERSON: *Ja.*

ADV THANDI NORMAN SC: Some changes in that line up but I ...

CHAIRPERSON: *Ja.*

ADV THANDI NORMAN SC: Yes, but I think ...

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: She is going to come as soon as we adjourn.

CHAIRPERSON: *Ja.*

ADV THANDI NORMAN SC: Yes. Thank you Chair.

20 **CHAIRPERSON:** Okay, alright. We will adjourn then and resume on Monday.

ADV THANDI NORMAN SC: Thank you Chair.

CHAIRPERSON: We adjourn.

REGISTRAR: All rise

INQUIRY ADJOURNS TO 17 SEPTEMBER 2019