

L-Atti tal-Inkjesta datata 19 ta' Novembru 2019, rigward skont it-Termini ta' Referenza ta' l-Inkjesta Pubblika dwar l-Assassinju ta' Daphne Caruana Galizia.

Seduta miżmuma llum l-Gimgha 2 ta' Ottubru 2020, fid-9:30 a.m. fit-Tieni Sular, Awla 20, il-Qorti.

Judge Michael Mallia :

Xhud **Paul Apap Bologna** iben Michael u Patricia nee` Bianchi imwieled H' Attard u residenti H' Attard bil-Malti u bil-gurament tieghu jghid :

Chairman Judge M Mallia :

Sur Apap Bologna bhala mod generali tista' ittina

The Witness :

Can I ..?

Judge J Said Pullicino :

Trid tghidilna xi haga?

The Witness :

Could I request for testimony in English please?

Judge A Lofaro :

Yes, no problem.

Chairman Judge M Mallia :

All right. Can you please give us some background as to your business interests throughout the years

Judge A Lofaro :

Throughout the years; summery; basic summery

The Witness :

So basically I was educated abroad; and I came back to Malta the family having been working in business on both sides of my family.

Judge A Lofaro :

When did you come back to Malta?

The Witness :

I came back to Malta when I was 27 years old

Judge A Lofaro :

In the year? Which year?

The Witness :

So that be .. I am 48, so its 20 years ago.

Chairman Judge M Mallia :

Raise your voice please

Dr Therese Comodini Cachia :

..

The Witness :

We primarily in the pharmaceutical industry and we have entered into the Electrogas project of which in the last ten (10) months I have been a director on that company.

Judge A Lofaro :

You had an interest you said? Because we can't really understand what you are saying.

The Witness :

My primarily business is in the pharmaceutical industry

Judge A Lofaro :

Pharmaceutical industry

The Witness :

Yes. So we are distributors in the pharmaceutical. We have pharmacies etc. And one to the things what we have gone into diversified is that we entered into the Electrogas project. Which is the project that was awarded the tender to build the power station operation in Delimara.

Judge A Lofaro :

So could you perhaps tell us how it came about that you got interested in this project?

Chairman Judge M Mallia :

So industry electrical generation sector?

The Witness :

Yes that right. So as I stated I lived most of my life in the UK so I was educated there. A lot of my friends are obviously outside of the Maltese shows. And obviously reading and seeing back in the days the issues that there were with.. you know, the production of electricity in Malta the high levels of pollution, the high cost of electricity. I was having then with a friend of mine in England who moved to company that was in the energy sector. And ..

Judge A Lofaro :

Who did this?

The Witness :

Pardon?

Judge J Said Pullicino :

LNG

Judge A Lofaro :

LNG

The Witness :

Yes. He was in the LNG, in the LNG sector; so LNG construction of.. you know, this all type of operations. And I had a meeting with him.. well actually had a meeting with him ..

Judge A Lofaro :

Abroad?

The Witness :

Abroad.

Judge A Lofaro :

Which year was this?

The Witness :

This goes back to 2007.

Chairman Judge M Mallia :

His name if you can tell us?

The Witness :

Constantine Obermay

Chairman Judge M Mallia :

Constantine ..

The Witness :

Obermay

Chairman Judge M Mallia :

Yes.

The Witness :

And we had dinner.. you know, and he told me that he was going to work for this company. And I asked him - I be great if I could meet your boss. And in a few months.. a few months later I met his boss and we discussed.. you know, we are putting together a concept paper that could solve the issues that I saw that there were in Malta with power generation

Judge A Lofaro :

Back in 2007

The Witness :

Yes that's right.

Judge A Lofaro :

And then what?

The Witness :

We put together concept paper which was based on the Enemalta generation plan 2006 to 2015. That generation plan, which was put together by Enemalta and Miti, point 4 of the conclusion of that report which was a policy paper clearly stated that the only cost-effective way of reducing the cost of power generation in Malta would be to go to a CCGT gaster binned operation. It also goes on to say that the only.. it is the only plant that would be able Malta to reach the NEC pollution limits by 2020. It however did say towards the end of that statement that there will be an issue would having gas in Malta not before 2012 to 2015.

Judge A Lofaro :

Why?

The Witness :

This is a statement that is simply stated....

Judge A Lofaro :

Just a statement.

The Witness :

It doesn't stat. Obviously having taken this statement into consideration we built a concept around the possibility of having gas in Malta earlier. And this was a concept paper that we put together with the UK operation.

Judge A Lofaro :

Did you come to this to the Maltese Government with this proposal?

The Witness :

This proposal was presented to quite a number of people in Malta..

Judge A Lofaro :

Can you tell us who and when? Who and when?

The Witness :

It would have been presented towards the end of 2007 and 2008. I don't know the exact dates because it's quite a long time ago; but it was presented to the then Prim Minister Lawrence Gonzi; it was presented to Minister Austin Gatt; it was presented to the Minister Pullicino; it was presented to John Dalli; and it was also presented to Paul Borg Olivier as you well know.

Judge A Lofaro :

Yes we do know. And what was the reaction if any?

The Witness :

Look, the then prime minister said that it was a great project and understood that LNG or gas was the way forward for Malta. The Minister Gatt introduced me to Minister Pullicino because ERA fell under his remit and they would a regulator so we had to meet with them. I met with Minister Pullicino who then setup a meeting for me and with the UK team with ERA. At the last minute he did not attend the meeting

Judge A Lofaro :

The minister.

The Witness :

The minister. And we had a meeting with ERA; and I think it was at that point in time where I decided to.. well, we decided as a team to shelve the project.

Judge A Lofaro :

Why?

The Witness :

Because I felt that.. you know, when we are putting a project.. when we've put a project together which I felt was an extremely good project for Malta, it was going to solve or bring, let say it was going to bring down the cost of the power generation. It was going to bring down the level of admissions. And when things weren't moving forward and I couldn't see that.. you know, there wasn't a real feeling of this happening for the minister even to not doing his own ERA meeting, you know, when we had foreign projects ..

Judge A Lofaro :

Was John Dalli therefore present for the meeting?

The Witness :

No he wasn't.

Judge A Lofaro :

No. But you've said you spoke to him and to Mr Borg Olivier. You said that you spoke to then about the project.

The Witness :

I did speak to them about the project. I shall...

Judge A Lofaro :

When did you do that?

The Witness :

Pardon?

Judge A Lofaro :

When did you speak to them about it?

The Witness :

Around same time back in 2007 and 2008.

Judge A Lofaro :

And did they refer you to the minister and prim minister?

The Witness :

No. I first spoke to John Dalli and then I ..

Judge A Lofaro :

So it was John Dalli who first

The Witness :

John Dalli was the first one, and he introduced me to the Prime Minister.

Judge A Lofaro :

Because you didn't mention this before.

The Witness :

Sorry.

Judge A Lofaro :

Ok, it's no problem.

The Witness :

So, yes I introduced it to John Dalli. He introduced me to the Prime Minister ..

Judge A Lofaro :

What did John Dalli think about this project?

The Witness :

Well he introduced me to the Prime Minister so I will assume he is ..

Judge A Lofaro :

Without given any comment right?

The Witness :

Yes.

Judge A Lofaro :

Ok. Because I recall he did give comments about this to the press. I recall that he did. Nevertheless, go on ..

The Witness :

I can't remember this ..

Judge A Lofaro :

Yes I remember, go on please.

The Witness :

Sorry. Yes, then I.. then we presented it. We presented it to the different parties and we felt this was not going to be forward so we shelve the project.

Judge A Lofaro :

Did you speak to the Opposition Party about it then?

The Witness :

No I didn't.

Judge A Lofaro :

Not at that stage.

The Witness :

No.

Judge A Lofaro :

So what happened? What happened?

The Witness :

Not at any stage.

Judge A Lofaro :

Not at any stage.

The Witness :

No.

Judge A Lofaro :

Not even when the Labour Party came to government?

The Witness :

No. I did not.

Judge A Lofaro :

Not even then.

The Witness :

No I didn't.

Judge A Lofaro :

So what happened when they did come into the government, how was it reactivated?

The Witness :

Well on the 9th January there was a ..

Judge A Lofaro :

Of which year please?

The Witness :

On the 9th of January of 2013 there was a press release which came out with the government had.. not the government, it was the pre electro plan, when the price came out whatever, and there was a public press release where if one of the things that will be looked at would be the restructuring of any generation in Malta.

Judge A Lofaro :

It was in the manifest of the Nationalist Party or of the Labour Party?

The Witness :

No it was in the manifest of the Labour Party.

Judge A Lofaro :

Labour.

The Witness :

Yes.

Judge A Lofaro :

All right.

The Witness :

But I got to know it like I said on the 9th of January when I saw this press release. There were a number of press releases thereafter. 1, 2, 3, I can't remember how many..

Judge A Lofaro :

By the Labour Party.

The Witness :

Yes. So obviously when I saw the thing.. so many press releases that were coming out which everybody else in Malta would have seen, you know?, I said well, I got this project which is sitting.. you know, sitting there, perhaps we should re-look at it and see whether there could be an opportunity over here.

Judge A Lofaro :

And who did you speak to then?

The Witness :

Then I spoke to Mr Yorgen Fenech.

Judge A Lofaro :

Mr Yorgen Fenech

The Witness :

Yes.

Judge A Lofaro :

How come?

The Witness :

Well, I knew.. I bought my first house actually from the Fenech's were I lived. So I got to know them; I got to know them a little bit. So as time went on from then you know?, I bumped into Yorgen

Judge A Lofaro :

Because you were friends, no?

The Witness :

At that point in time we were ..more acquaintances. I knew I bumping to him at a party, at a Christmas event, etc. Look, it is renowned they are the.. one of the biggest people who were involved in somebody business projects.

Judge A Lofaro :

....businessman

The Witness :

Yes; but apart from businessman that've got.. they are in big projects. They manage projects. They know how to manage big projects. They' ve got the means, they've got the team. So it made perfect sense.

Judge A Lofaro :

Yes yes. Did you involve anyone else or did Mr Fenech involve anyone else?

The Witness :

Look, at the beginning right back in 2007 - 2008 I had spoken to Mr Gasan. So Mr Gasan was interested in this project ..

Judge A Lofaro :

So approach Mr Gasan then.

The Witness :

Pardon?

Judge A Lofaro :

It was you that approached Mr Gasan

The Witness :

Back in 2007, 2018, yes it was me. Then back, when we go back in 2013 when we started put ... together, it was Mr George Fenech who then approached Ms Joe Gasan.

Judge J Said Pullicino :

One moment. I think you are hurry... Going back to the time when you presented the project to the former administration.

The Witness :

Yes.

Judge J Said Pullicino :

You had already formed the company? GEM Holdings?

The Witness :

No.

Judge J Said Pullicino :

What about GEM Holdings?

The Witness :

No. GEM Holdings was formed much much later.

Judge J Said Pullicino :

Much much later.

The Witness :

GEM Holdings was formed back in 2013 I believe.

Judge J Said Pullicino :

Therefore it wasn't placed when you spoke Borg Olivier

The Witness :

No. GEM Holdings.. GEM, actually GEM came from it's a brand name. GEM came from a name it stands for Green Energy Malta. It was based on a diamond, a green diamond being the diamond – the green diamond of the Mediterranean. That we would be the gold standard.

Judge J Said Pullicino :

Because Mr Borg Olivier told us here that during the short meeting you had with him ..

The Witness :

I am not hearing you, sorry.

Judge J Said Pullicino :

Mr Borg Olivier told us here, Mr Borg Olivier informed us that when you met him ...

The Witness :

I am not hearing you, sorry

Chairman Judge M Mallia :

There is something wrong with the recording. Try again.

Judge J Said Pullicino :

Mr Borg Olivier informed us that during that short meeting GEM Holdings was mentioned.

The Witness :

No, GEM Holdings is not mentioned. It was GEM.

Judge J Said Pullicino :

And am I correct in saying that the former government told you that they had alternative plans for energy?

The Witness :

No, they had not informed me of that

Judge J Said Pullicino :

No.

The Witness :

No. Not that I recollect.

Judge J Said Pullicino :

But from I understand the way that they did with you, I mean they just the day ..

Mr Borg Olivier told us that the end result was of your discussion that you told him that the decision is yours and you will our bid if.. be yours; is that correct?

The Witness :

...Borg Olivier has given you a copy of the presentation..

Judge J Said Pullicino :

I am not understanding ..

Judge A Lofaro :

But now we are talking about something else.

The Witness :

In that presentation that was presented to Dr Borg Olivier it is exactly the same presentation that was presented to all the other people who we presented....

Judge A Lofaro :

You mean John Dalli, the prime minister...

The Witness :

Absolutely. It was an identical copy; it was even presented to ERA. That project ..

Judge A Lofaro :

Nothing was changed at all?

The Witness :

Nothing was changed.

Judge A Lofaro :

Nothing.

The Witness :

It was exactly identical.

Judge J Said Pullicino :

And that project was presented to the Labour administration? The same project..

Chairman Judge M Mallia :

Was the same project presented to the Labour Party in 2013?

Judge A Lofaro :

Yes, that what he said.

The Witness :

No its not.

Chairman Judge M Mallia :

I was not.

The Witness :

No. Because we put the project together, a concept paper together; that concept paper was presented to the then government.

Judge A Lofaro :

Yes.

The Witness :

The request which is the expression of interest that came out from the government when it was elected back in 2013...

Judge A Lofaro :

2013

The Witness :

2013, was different in quite a number of aspects to the project that we had presented ...

Judge A Lofaro :

And why so? Why? Were there reasons?

The Witness :

I don't know.

Judge A Lofaro :

Financial, business reasons. I don't know.

The Witness :

I don't know. That is not for me to.. it wasn't ..

Judge A Lofaro :

But you did not go into these changes as one of the businessmen involved.

The Witness :

No; never discussed it, no. I mean....

Judge A Lofaro :

But.. you know, if you are going to invest project isn't in your interest to find out all the details?

The Witness :

I am not sure if I am understanding your question because...

Judge A Lofaro :

Because you said ..

The Witness :

I didn't come out with the expression of interest ..

Judge A Lofaro :

No, I know. But you said that things then changed, no? In some aspects.

The Witness :

Yes.

Judge A Lofaro :

And yet you don't know how it changed!

The Witness :

No. I know how my.. how the project change in itself.

Judge A Lofaro :

You do know.

The Witness :

Of course I do. Because we presented the project with a 400MW plant back in 2007; the reason for presented a 400MW plant was the ... interconnector into a profit centre rather in keep it as a cost centre.

Judge A Lofaro :

Profit instead of cost.

The Witness :

Exactly. Because all we do is we buy electricity through the interconnector. Our partners who at the time were a company that do not exist any more was a company called International Power

Judge A Lofaro :

And which company was this?

The Witness :

International Power.

Judge A Lofaro :

Ok. IP

The Witness :

International Power were big UK energy generation company. They had power plants in Italy. They knew exactly what the issues were in Italy with the issue of electricity. So in our proposal it was said rather than build a plant just to satisfied in needs of the Malta market, build something which is bigger so that you could turn these interconnector to a profit centre and you can also make money from that for the government. So that is primarily what it was..

Judge A Lofaro :

So it changed mostly in that respect.

The Witness :

Yes.

Judge J Said Pullicino :

Therefore when the administration came in, you had a different project basically the same idea but were different project; but you were prepared to go into it with the new administration and you were organized already .

The Witness :

No I wasn't organized already because....

Judge J Said Pullicino :

One moment one moment. I mean before you were saying that there was a plan and an idea. Now it is become concrete and you decided to go into other Maltese interest with you and present a project to the government. And you mentioned Fenech ..

Judge A Lofaro :

Fenech, Gasan ..

Judge J Said Pullicino :

When did setup materialized?

The Witness :

We didn't present it. We didn't present it. We put the group together to be able to submit at the expression of interest

Judge J Said Pullicino :

After the election?

The Witness :

After the election.

Judge A Lofaro :

Before.

The Witness :

After the election.

Judge J Said Pullicino :

After the election.

Judge A Lofaro :

So you did nothing before? Because we had Mr Mizzi, you know, on TV talking about this Project, and it was before the election. So how would have Mr Mizzi have had all these details had you not spoken to him?

The Witness :

I did not met Mr Mizzi

Judge A Lofaro :

But maybe somebody else did.

The Witness :

Well, I can't talk for somebody else. But

Judge A Lofaro :

But wouldn't they the keep you informed?

The Witness :

Well, I am sure that they would have if they did but ..

Judge A Lofaro :

But you know that Mr Mizzi presented this project to the electorate before the election?

The Witness :

No I didn't see this project, this particular project being promoted before the election, not at all. They did promote the fact that they wanted to move to an environmentally friendly operation, you know, and bring down the cost of the electricity

Judge A Lofaro :

But they went into details..

Judge J Said Pullicino :

But they were quite specific on the targets they wanted to reduce the electricity rates, and they said they had a plan how to do that and how to do that; I mean they were very specific.

Judge A Lofaro :

Yes; they went into details.

Judge J Said Pullicino :

My point is this, at what time,, at what stage did you and any other Maltese investor sit down to plan and ..

Judge A Lofaro :

Were over the phone, or over emails, I don't know.

Judge J Said Pullicino :

Because the timeframe is so short between the day when the election was held and the day when the project was announced there is such a short time lag that is very difficult to conceive a situation where nobody knew anything and all of a sudden this still materialize. What I ... seeking an explanation for that. You have to explain for us

Judge A Lofaro :

I am totally conquered with what he is saying because I remember all this.

Judge J Said Pullicino :

You have to explain why this happened so suddenly basically. Because normally any government would take it's time to decide these things, not just.. unless it has prior knowledge of what was going to happen it couldn't have happen so fast!. This is the point.

Judge A Lofaro :

He is right.

Judge J Said Pullicino :

I mean now you have to explain

The Witness :

I think these are...; it is assumption that has being made because at the end of the day ..

Judge A Lofaro :

But there are logical ones.

The Witness :

But at the end of the day we never presented this project .

Judge A Lofaro :

Ok you didn't; but did you have any kind of discussions about it?

The Witness :

No I did not.

Judge A Lofaro :

Not you, your partners. Your PR people. I don't know

The Witness :

No PR people. We did not. We didn't even know the specific work of what was coming out. The original project was different to what was presented there..

Judge A Lofaro :

But you jad the projects ..

The Witness :

The partners that were originally in the original project ..

Judge A Lofaro :

IP changed, right?

The Witness :

International Power changed..

Judge A Lofaro :

Exactly, they were out of it.

The Witness :

TK weren't there anymore. All the other contractors were not there anymore.
The only one that was there was Gasol

Judge A Lofaro :

Gasol.

Judge J Said Pullicino :

And there was interest ..

The Witness :

And I got in touch with Gasol.. I got in touch with Gasol even if they were interested about a month later from the 9th of January.

Judge A Lofaro :

So February then.

The Witness :

So then in February. So to see even.. even if they were interested ... and exploring.

Judge A Lofaro :

And they were. Went they?

The Witness :

And they were.

Judge A Lofaro :

And you did inform somebody, no? From the Labour Party.

The Witness :

No I did not.

Judge A Lofaro :

None of your partners did?

The Witness :

As far as I know no.

Judge A Lofaro :

I mean the Fenech, the Gasans

The Witness :

As far as I know not.

Judge A Lofaro :

That's as far as you know.

The Witness :

Yes.

Judge J Said Pullicino :

It just materializes like that you say. Because it ... a couple of months. In a couple of months we had the project being bended.. I mean this is the project going to do; the tanker and everything. I mean unless you were synchronized there were sort of telepathy between you....

Judge A Lofaro :

We just suggesting that all this paid work.....

The Witness :

The first time which I know for certain and I am a hundred percent sure on this, the first time I met Konrad Mizzi ..

Judge A Lofaro :

But that's meeting.

The Witness :

...was after..

Judge A Lofaro :

That's different.

The Witness :

The first time I ever ..

Judge A Lofaro :

You can meet virtually, no?

The Witness :

No. The first time I have came across him. The first time I .. spoke to him.

Judge A Lofaro :

Even virtually.

The Witness :

The first time I spoke to him, was after the award of this contract.

Judge A Lofaro :

So you didn't exchange any emails; you didn't call him ..

The Witness :

No I did not. No.

Judge A Lofaro :

No video conference call ..

The Witness :

No.

Judge J Said Pullicino :

You have to be careful eh! Because these things are..

Judge A Lofaro :

Please be careful; please be careful. We are just.. caution, that's all.

Judge J Said Pullicino :

When did you first meet Yorgen Fenech?

Judge A Lofaro :

'Meet' can be virtually.

The Witness :

I didn't meet virtually.

Judge A Lofaro :

Emails, you know, I don't need to tell you what virtually is.

Judge J Said Pullicino :

When did you meet Yorgen Fenech on this project?

The Witness :

Mid January.

Judge J Said Pullicino :

Of what year?

The Witness :

2013.

Judge J Said Pullicino :

Before the election.

The Witness :

Yes.

Judge J Said Pullicino :

Therefore he knew about it. He knew about it..

The Witness :

He knew about...

Judge J Said Pullicino :

... what's the project; he knew what the motion of the project was; how you intended to do it. And Mr Fenech did he try to / you from going to the project with the British companies and go for say Azerbaijan or Siemens.

The Witness :

No.

Judge J Said Pullicino :

What was his participations at that stage?

The Witness :

No.

Judge A Lofaro :

What was his involvement? I need please explain in detail.

The Witness :

Ok. At that point in time he.. I gave him the project. He spoke to his father about it...

Judge J Said Pullicino :

Why did you need to involve him in the project? I mean ..

Judge A Lofaro :

For the money? For the investment?

The Witness :

For everything. For the infrastructure; for the expertise of project management; for the financial backing today what have had. They are one of the biggest contractors in Malta.

Judge A Lofaro :

Yes yes,. You've already said this. So he spoke to his father then?

The Witness :

He spoke to his father; he said let me see if my father is interested in exploring, in exploring possibly to this project. About a week and a half - a week later he came back to me said – Dad, you know, is interested, can you come to speak to Dad ..

Judge A Lofaro :

So this was in January.

The Witness :

Yes.

Judge A Lofaro :

Yes.

The Witness :

So then I went to speak to his dad.

Judge J Said Pullicino :

One moment. You spoke to him alone or with the Gasan's as well?

The Witness :

No I was there by myself with Yorgen.

Judge J Said Pullicino :

By yourself.

The Witness :

And I at that point in time turned out and I said- look, I had spoken to the Gasan's back in 2007. I said it's the only decent thing to do is the contact the Gasan CC whether they are still interested in participating in this. Mr Fenech spoke.. Mr George Fenech spoke to Mr Gasan and....

Judge A Lofaro :

Which one? Which Mr Gasan please?

The Witness :

Joe Gasan.

Judge J Said Pullicino :

Did you speak to him yourself?

The Witness :

Now I didn't.

Judge J Said Pullicino :

But you are related.

The Witness :

Yes I am related.

Judge J Said Pullicino :

Allura how come?

The Witness :

Because I haven't to be in the meeting with him; I haven't to be a meeting with Mr Fenech at the time and they were in projects together. And I turned round and I told him - shall I speak to him? He said look, .. the project .. see him all the time; let me give him a call; and he did.

Judge A Lofaro :

And during this call did you participate?

The Witness :

No.

Judge A Lofaro :

No? So he immediately agreed then Mr Gasan, on the phone. Am I correct?

The Witness :

I think you would have to ask Mr Gasan that because I wasn't participating.

Judge A Lofaro :

No but you were present; I can ask you. You were there.

The Witness :

I didn't participate in the call

Judge A Lofaro :

But you were there. You were listening.

The Witness :

No, he made the call after I left.

Judge A Lofaro :

Oh I see, I didn't get that, ok.

Judge J Said Pullicino :

Therefore in 2013, in January, Mr Fenech knew about the project.

The Witness :

Yes.

Judge J Said Pullicino :

Did you know about his close connections with the then leader of the opposition?

The Witness :

No.

Judge J Said Pullicino :

... no idea?

The Witness :

No idea at all.

Judge A Lofaro :

And with Mr Keith Schembri chief of staff, he was already very heavily involved at the time.

The Witness :

I had absolutely no idea.

Judge A Lofaro :

Did you know Mr Keith Schembri?

The Witness :

I met Mr Keith Schembri probably 3 times in ..

Judge A Lofaro :

When?

The Witness :

Throughout the past 7 years.

Judge A Lofaro :

No, let's take you back to 2013 please.

The Witness :

No I didn't meet Mr Keith Schembri ..

Judge A Lofaro :

But you met Dr Joseph Muscat.

The Witness :

Socially I would meet him at a social event

Judge A Lofaro :

Before the election

The Witness :

At a social event I'll be invited to... ..

Judge A Lofaro :

Did you speak about this project with Dr Muscat?

The Witness :

No I did not.

Judge A Lofaro :

Why not?

Judge J Said Pullicino :

We shall be asking him eh!

The Witness :

Why not? Because ...

Judge A Lofaro :

But wasn't he the future Prim Minister?

The Witness :

An election had to happen.

Judge A Lofaro :

Yes but well it was pretty obvious by that stage.

Judge J Said Pullicino :

But you are one of the major business enterprises in Malta. Your business is to promote business and obviously every time you meet a minister, the prime minister, you have to go into your business interest to help the country and ..

Judge A Lofaro :

It is normal to speak ..

Judge J Said Pullicino :

I mean, how can you tell us that you never spoke to the leader of the opposition at that time? We had a very strong feeling that would be, the actually the prime minister.

Judge A Lofaro :

Yes. There were opinion polls.

Judge J Said Pullicino :

Without those things such as an important subject. I don't know ..

Judge A Lofaro :

And it is normal for businessman to speak about business at social events. It's normal in all around the world.

The Witness :

But I knew Dr Joseph Muscat at that time I knew him as a hi and bye. I didn't know him as ..

Judge A Lofaro :

Wasn't it in your interest to get to know him? You know, all the opinion polls are saying he is going to be the new prime minister and you've got this project in mind!

The Witness :

But why we ..

Judge A Lofaro :

Why not? You know, it's in your interest.

The Witness :

Is this a competitive process they came out..

Judge A Lofaro :

Yes, but so what? You can just talk about it.

The Witness :

I submitted.. we submitted the consortium along the lines of that expression of interest, you know?, amongst 18 other bidders.

Judge A Lofaro :

18?

The Witness :

Yes.

Judge A Lofaro :

18. When was it submitted?

The Witness :

The bid was submitted in 2013.

Judge A Lofaro :

But which month? March, April, May?

Judge J Said Pullicino :

After the election.

The Witness :

I don't recollect exactly...

Judge A Lofaro :

But shortly after the election, am I right?

The Witness :

When the expression of interest came out, yes.

Judge J Said Pullicino :

Let me try to help you. Is it possible that you left the political side of the project in the hands of Yorgen Fenech at that stage? You had a direct interlock with the government who obviously was Yorgen Fenech even before the election, and is it possible that you does said back and discus the thing with him and he manage the part.. the political aspect of it. You understand me. Is it possible? I mean ..

Judge A Lofaro :

Do you have discussed anything ..

The Witness :

I need ..

Judge J Said Pullicino :

Mr Apap Bologna, you need to open up; I'm sorry ta!

Judge A Lofaro :

Yyes you have to.

Judge J Said Pullicino :

You need to open up.

The Witness :

I am open up ..

Judge J Said Pullicino :

No, because I mean certain things ..

Judge A Lofaro :

..you sure you are?

The Witness :

..yes its ..

Judge J Said Pullicino :

.. certain things just need to be explained. Ok? Unless they are explained we wouldn't be in a position to judge. Then I can understand you not being a political person, allowing other persons within the group to forward to promote your project and just it back, its ok; .. that., but just tell us.

The Witness :

What is for sure is that when we had the project to input the project together the lead person on that project was yes Mr Yorgen Fenech. He was a lead person.

Judge J Said Pullicino :

At least we have this yes. Now we have this.

Judge A Lofaro :

So perhaps he told you no leave things up to me; I will handle things.

The Witness :

No, he never told me that at all

Judge A Lofaro :

Not any wrong doing

The Witness :

No.

Judge A Lofaro :

You did say he had business.. . You did say he had the right connections..

The Witness :

..whatever so he was the right person to lead the project for us.

Judge A Lofaro :

Because it also because of his connections.

The Witness :

I didn't know about his connection

Judge A Lofaro :

You didn't know.

The Witness :

No I did not know

Judge A Lofaro :

You didn't know.

The Witness :

No.

Judge A Lofaro :

That sounds a bit naïve; but anyway. Be that as it may. Let's go on.

Judge J Said Pullicino :

Therefore at that stage 2013 we have established that Mr Fenech was the leading .. in the project, ok?

The Witness :

Yes, when you do the submission.. when you do the submission, submission states that you have to have one person who is going to lead the project. And .. that submission was Yorgen .

Judge A Lofaro :

Because Yorgen also had.. apart from the Fenech interest, he had also his own, which was separate.

The Witness :

Yes.

Judge J Said Pullicino :

Then will come to that. And once you made this a special of interest did you indicate who could be possible contributors or partners ..

Judge A Lofaro :

Investors ..

Judge J Said Pullicino :

At that stage.

Judge A Lofaro :

Foreign companies.

The Witness :

When you get the special of interest you have to have the team put together. Already to be able to submit for the ...of interest ..;

Judge J Said Pullicino :

Yes of course.

The Witness :

So yes. By that point in time the whole team had come together.

Judge J Said Pullicino :

And you have established therefore the Azerbaijan contact..

Judge A Lofaro :

Socar, Siemens ..

Judge J Said Pullicino :

The Socar. That was established as well?

The Witness :

Yes that was established.

Judge J Said Pullicino :

It was established.

Judge A Lofaro :

In a very short time I must say.

Judge J Said Pullicino :

Now therefore at that moment you had decided to unhinged from your origin project with the British companies and go to this set up.

The Witness :

No I could not hinge because ..

Judge J Said Pullicino :

One moment. Who suggested who brought up this set up we have today?

The Witness :

So, the companies that were originally in the original project International Power etc., no longer exist to day.

Judge A Lofaro :

Yes you said that.

The Witness :

So its not a matter of unhinge ..

Judge A Lofaro :

You did say that.

The Witness :

The first contact then we eventually made that I made with Yorgen was back to Gasol. Ok?

Judge A Lofaro :

Gasol.

The Witness :

Gasol.

Judge A Lofaro :

You suggested Gasol to Yorgen, right?

The Witness :

Because I had spoken to them originally back in 2007, ok?

Judge A Lofaro :

Ok; fair enough. And then?

The Witness :

...the British company. They were already in partners, ok?, with Socar working on project in the Benin region.

Judge A Lofaro :

Where?

The Witness :

In the Benin region. So, they were already working together. So we did not have to go out to find Socar to bring on .. project, that were there, they made the introduction; Gasol. Ok? So Gasol

Judge A Lofaro :

But why was Gasol retained and the other company not? You know? Why did you decide to continue with Gasol but not with the British investments company?

The Witness :

Gasol are British.

Judge A Lofaro :

Yes, but there was also the other company; you mentioned it.

The Witness :

International Power

Judge A Lofaro :

Yes, that.

The Witness :

International Power were no longer exist.

Judge A Lofaro :

So why? They were no longer exist as a company?

The Witness :

As a company.

Judge A Lofaro :

It had been dissolved.

The Witness :

No it had been enquired by Suez

Judge A Lofaro :

Why did you not go to Suez then ?

The Witness :

They did approach to EDF Suez They weren't interested

Judge A Lofaro :

They approve

The Witness :

We approach the EDF Suez

Judge A Lofaro :

You have proof of this?

The Witness :

I've got proof that we approach EDF who spoke to him in Paris. I spoke to a guy called... who use for International Power who had told me that there was this acquisition and that they were no longer there. I would have to go back, I

don't know whether I've got proof of this but I have to go back and I go to check. So I can't give you an answer to that. But yes, we spoke to EDF

Judge A Lofaro :

Was it you or was it Mr Fenech as well?

The Witness :

For the EDF there was a team that went. So there was Gasol, there was ..

Judge A Lofaro :

At whose behest? Yours? Mr Fenech? Both? Gasan? At whose behest

The Witness :

The meeting happened?

Judge A Lofaro :

No, that approach, you know. This approach you are mentioning.

The Witness :

The approach to EDF actually came through my cousin who works for EDF.

Judge A Lofaro :

Your cousin.

The Witness :

Yes. Ok? So we spoke to EDF; there were several discussions. I did not attend that meeting. I couldn't go to that meeting.

Judge A Lofaro :

But you did know about it. Did Mr Fenech know about it?

The Witness :

Yes. He went to that meeting.

Judge A Lofaro :

He went.

The Witness :

Yes.

Judge A Lofaro :

Did Mr Gasan attend?

The Witness :

My mind doesn't recollect; you have to ask Mr Gasan better. Ok? In Malta GE

Judge A Lofaro :

GE.

The Witness :

The Chairman of GE Italia met us in Malta. And they were interested but they were only interested in selling the equipment to us.

Judge A Lofaro :

But you did not take them a board, did you?

The Witness :

No.

Judge A Lofaro :

No. Ok.

The Witness :

We met Siemens in Malta

Judge A Lofaro :

Siemens?

The Witness :

Siemens were interested and bring up the equipment and bringing ...

Judge A Lofaro :

So who introduced Siemens to you? Was it Mr Fenech? Was it Mr Gasan?

The Witness :

Siemens came through Gasol.

Judge A Lofaro :

Through Gasol.

The Witness :

Yes.

Judge A Lofaro :

Ok. So as did Socar and Siemens came through Gasol.

The Witness :

Yes

Judge A Lofaro :

They approached you, Mr French, Mr Gasan?

The Witness :

Yes.

Judge A Lofaro :

So this team.. you know it was done very quickly, right? All this, all these details.

The Witness :

Perhaps Oilgas..

Judge A Lofaro :

All these financial negotiations. Were concluded in what? One month? 6 weeks? You tell us please.

The Witness :

No, I don't ...

Judge A Lofaro :

You surely know

The Witness :

No I'm ..

Judge A Lofaro :

You must know.

The Witness :

We negotiated yes. We negotiated them within those 6 weeks. But Gasol...

Judge A Lofaro :

It was all done within 6 weeks. We are just asking here.

The Witness :

Yes yes. The shareholding etc as a company we discussed obviously straight within those 6 weeks with who was interested and coming on as what equity shareholders bla-bla etc., you know? At the same time we also contracted

serious consulting companies like PWC etc., to come on board; so have to put all on this together.

Judge A Lofaro :

PWC, ok.

The Witness :

So there were serious companies behind this..

Judge A Lofaro :

Yes yes, PWC.

The Witness :

This whole project together.

Judge A Lofaro :

What did you think about the Azerbaijani interest? Were you happy about it?

The Witness :

The Azerbaijani interest were coming in because they are traders, they are traders in oil, you know? And they were coming in equity shareholders, where they were introduced to us by Gasol. So I have never any really query. I knew that they were working with Gasol and they were working in other infrastructure projects etc.

Judge A Lofaro :

So you had no calls about that, did you?

The Witness :

At the time no I didn't have any..

Judge A Lofaro :

No, not at the time. Ok. So this team being together within 6 weeks and you had everything ready just in time to apply, right? To submit your proposal.

The Witness :

I had mine ready as much as the other 18 people who had special of interest put there in that space of time.

Judge A Lofaro :

18 all. No, you were 18 in all, right.

The Witness :

Yes.

Judge A Lofaro :

So you were short listed, am I right?

The Witness :

Yes. So everybody at that same period of time to submit ..

Judge A Lofaro :

They admit they did not have the necessary requirements, so they didn't qualify for reconsideration.

The Witness :

That is not for me to....

Judge A Lofaro :

I know, but I am just.. you know, we are stating facts here.

Judge J Said Pullicino :

We...the Auditor General said in his report, I mean into consideration, you know what the conclusions of that report is

The Witness :

I can't recollect, no.

Judge A Lofaro :

Nothing at all?

Judge J Said Pullicino :

You don't know of what the conclusions of your report is?

The Witness :

I didn't prepare myself with the .. report for coming here because I didn't ..

Judge A Lofaro :

But you must know about the report.

The Witness :

I don't know ..

Judge J Said Pullicino :

... conclusions?

The Witness :

I do know about the report. I ..

Judge J Said Pullicino :

Are you sure?

The Witness :

Yes.

Judge A Lofaro :

Do you know whether he approved or not? whether he found any regularities or not? Do you know anything about this?

The Witness :

I think in principal yes he approved of the project.

Judge A Lofaro :

He approved. Din he fined any irregularities ?

Judge J Said Pullicino :

We are not discussing the validity of the project? The project could be a valid one; it is not our concern. Ok? It might have been contribution to the Maltese economy, but it is .. to concern of this Board. But what we are after here is to see loose connections if any there was between business and government. This is the only issue.

Judge A Lofaro :

Politics

Judge J Said Pullicino :

This is the only issue. Otherwise no other considerations are interest to us.

Judge A Lofaro :

That's is our concern

Judge J Said Pullicino :

Therefore I am again asking you how can it be that you do not know what the gist of the critical Auditor General's report as a 600 page report, and you don't know was the conclusions are! At least the conclusions. Because then we start..

Judge A Lofaro :

That's what start I look at

Judge J Said Pullicino :

...doubting.... Yes or no. I mean you have the right not to agree with these conclusions, but don't tell me you don't know what these conclusions are. That is unacceptable, sorry.

Judge A Lofaro :

Do you still say that you do not know?

The Witness :

I have to go back and refer back to it again because this .. so much information and ..

Judge A Lofaro :

So you have no idea about these negative conclusions?

The Witness :

I have to go back and read it.

Judge A Lofaro :

Right here and now you don't know, right?

The Witness :

No.

Judge J Said Pullicino :

Therefore if the Auditor General says that the expression of interest was tailor-made to suit Electrogas, I mean what is your ..

The Witness :

I would disagree with that.

Judge J Said Pullicino :

Yes but tell us.

The Witness :

But I would disagree with that because as I have already said I've never discuss this with the then with the ..

Judge J Said Pullicino :

You are not agreeing with what the Auditor General said; you have the right to.

The Witness :

I don't even .. because it's not the case.

Judge A Lofaro :

But how do you know whether the others discussed or not? Maybe they didn't tell you! Or do you know? Because if you do know could you kindly tell us.

The Witness :

Minister Mizzi came out with his press release on the 9th of January, all right. He was already discussing this project, ok? On the 9th of January what they wanted to do was to. I met up with Yorgen a week to 10 days later. So if the government already knew what they were going to do and was never discussed with the government how can I be that I discuss with the government? If he is already ..

Judge A Lofaro :

Maybe your partners discussed it?

The Witness :

No because my partners did..., Yorgen especially did know about it 10 days after Minister Mizzi's press release.

Dr Therese Comodini Cachia :

How do you know what Yorgen Fenech knew and after the press releases?

Judge A Lofaro :

That's what I am telling him..

Dr Therese Comodini Cachia :

...before you were telling us that you don't even know if Yorgen had spoken to the government about it before the election. So now how do you know that Yorgen did not know that the opposition was than ..

The Witness :

No. No what I am saying is that Konrad Mizzi came out with the press release on the 9th of January, ok ..?

Judge J Said Pullicino :

2013?

The Witness :

2013

Judge J Said Pullicino :

2013, before the election.

Judge A Lofaro :

2013

Dr Therese Comodini Cachia :

Yes of course before the election

The Witness :

Ok? So he was already discussing in public the restructuring of any generation in Malta. I presented this project to Yorgen 10 days later from that article. So..

Dr Therese Comodini Cachia :

Did you know Yorgen Fenech before January 2013?

The Witness :

Yes I did.

Dr Therese Comodini Cachia :

Did you know Mr Muscat before January 2013?

The Witness :

I had met him a couple of times, yes.

Dr Therese Comodini Cachia :

Did you know members of parliament from the opposition before 2013? Like maybe Mr Edward Zammit Lewis?

The Witness :

Yes I did.

Judge A Lofaro :

John Dalli, Edward Zammit Lewis...?

Dr Therese Comodini Cachia :

You knew John Dalli?

The Witness :

Yes.

Dr Therese Comodini Cachia :

You had spoken to other people from the other side of the house?

The Witness :

Yes.

Dr Therese Comodini Cachia :

And can you exclude that in any of your meetings with a members of the Labour Party you actually referred to your project?

The Witness :

I never had any meetings with the Labour Party.

Dr Therese Comodini Cachia :

While you meet them.

Judge A Lofaro :

You meet them socially for ..

Dr Therese Comodini Cachia :

So when you met them socially, can you exclude that?

Judge A Lofaro :

You well know what happened socially

The Witness :

Yes I can exclude that. I never spoke about it.

Dr Therese Comodini Cachia :

If I show you a presentation which was given to this Board and this is taken form that acts of this Board.

The Witness :

Yes.

Dr Therese Comodini Cachia :

Is that the presentation you had given to Dr Paul Borg Olivier, to ..

The Witness :

Yes.

Dr Therese Comodini Cachia :

..to Mr John Dalli, to everyone else?

The Witness :

Yes.

Dr Therese Comodini Cachia :

If you go through that presentation, when there is written GEM and here you explained that GEM was really a concept at that time

The Witness :

Yes.

Dr Therese Comodini Cachia :

But did that concept then turn into GEM Holdings Limited?

The Witness :

When we decided to set up the company in Malta that would hold the Maltese shareholding obviously we decided... we needed to call it a name. And it was recommended. We discussed it and we said why don't we call it GEM for Green Energy Malta as was in this..

Judge J Said Pullicino :

..the date cooperation of the company?

Dr Therese Comodini Cachia :

2013

The Witness :

2013.

Judge J Said Pullicino :

When?

The Witness :

May I believe?

Dr Therese Comodini Cachia :

8th May.

Judge J Said Pullicino :

8th May. Mr Apap Bologna, you have to be careful because what you are saying now it doesn't completely tell you what you had said before. Therefore be very careful for how to answer.

The Witness :

If you look at that presentation, so we are saying that 2 of the similarities between that presentation and the initial setup of Electrogas are that GEM was the concept which was then transferred into a registered company.

The Witness :

Yes.

Dr Therese Comodini Cachia :

Gasol was already involved, right?

The Witness :

Yes.

Dr Therese Comodini Cachia :

If you turn a few pages from representation which is basically page 2, the second page of that presentation ..

The Witness :

Yes.

Dr Therese Comodini Cachia :

The title is Who Are We. And I am going to refer last paragraph – a Maltese Investors group assembled by and led by Paul Apap Bologna

The Witness :

Yes.

Dr Therese Comodini Cachia :

..we do not want to come to Malta as an entirely foreign group. The investor group will comply a diverse group of Maltese citizens and prominent business families.

The Witness :

Yes.

Dr Therese Comodini Cachia :

So when you had this presentation in hand who were the prominent business families you were thinking of?

The Witness :

When I was ready I was in touch with Mr Gasan as I have already mention..

Dr Therese Comodini Cachia :

Who else?

The Witness :

At that point in time Mr Gasan and I had not discussed who else could will bring onboard. We went out to the then government to discuss whether there

was any interest. When there was internal interest there wasn't any reason to further to explore and bring on any other people because we then shelved the project.

Dr Therese Comodini Cachia :

So in 2007 the prominent families were yourself and the Gasans.

The Witness :

Yes.

Judge A Lofaro :

Why did you not think of the Fenech's you praised them so much

The Witness :

Because at that time I hardly knew Mr Fenech and ..

Judge A Lofaro :

But you must know of all the Fenechs

The Witness :

Yes, but as you rightly pointed out I am related to the Gasan's so it..

Judge A Lofaro :

Yes, but you know, business is business.

The Witness :

Yes; but the Gasan's ..

Judge A Lofaro :

You mentioned their prouds, their knowledge, their ...

Dr Therese Comodini Cachia :

And now you are telling us that as the Board rightly noted you related to the Gasan's and so it was easy for you to speak to them in 2007.

The Witness :

Yes.

Dr Therese Comodini Cachia :

But before you answered the Board and told them that you weren't the one to speak to Mr ..

Judge A Lofaro :

..in 2013 no

The Witness :

2013

Judge A Lofaro :

Yes.

Dr Therese Comodini Cachia :

...in the hands of Mr Fenech

Judge A Lofaro :

In 2013 ..

Dr Therese Comodini Cachia :

Yes, but why the change of heart?

Judge A Lofaro :

Exactly.

The Witness :

No there wasn't a change of heart at all. It was just a progression of the way that it happened.

Dr Therese Comodini Cachia :

There is another question that builds on that presentation. So, this was the way you spoke of this initial project it was like.. it was a pat project for you. You believe that this project was a necessary for Malta and you felt it was a contribution to the country.

The Witness :

Yes.

Dr Therese Comodini Cachia :

This was way back in 2007.

The Witness :

Yes.

Dr Therese Comodini Cachia :

You actually setup meetings with your friends who got you in touch with Gasol, who got you in touch with other foreign companies. You actually took

the time to have a presentation setup which is in your hands now. So you actually discussed it with the Gasans; so this was really untruly something you believed in.

The Witness :

Yes of course I believed in this project.

Dr Therese Comodini Cachia :

If you believed in it so much where were you not the first Maltese director on behalf of the Maltese investors, but Yorgen Fenech was?

The Witness :

Because I do not have the expertise the know-how to be able to take a project like this forward from getting the whole project management put together

Chairman Judge M Mallia :

And that were you so in 2007?

The Witness :

No I wasn't. This presentation was put together by Gasol. The concept was put together by Gasol. I had meetings with Gasol and explained to them what the problems were in Malta or what the problems I thought were in Malta, with regards to the cost of electricity generation and pollution. I don't have the technical knowledge and know-how to put this. And I, obviously as I approached them was the Maltese contact.. you know, to start exploring...

Judge A Lofaro :

So Mr Fenech is more qualified then you are in this regard? And why so.

The Witness :

With certainly with big project management; with big project management getting the teams together etc of course is. I haven't done projects like this myself.

Dr Therese Comodini Cachia :

But you are now the director.

The Witness :

I am now the director because I ..

Dr Therese Comodini Cachia :

So how are you coping?

The Witness :

Because this is not project management anymore. This is running a company.

Judge A Lofaro :

You still have to manage it.

The Witness :

I have to manage it, we've got our team. We've got the Electrogas, we've got the team at Electrogas, the management, there are 2 other directors from Siemens and from Socar..

Judge A Lofaro :

But these people were always .. even on the onset.

The Witness :

But they changed, no. The Board has changed completely .

Dr Therese Comodini Cachia :

The Board has changed but as Madam Justice is saying even when Yorgen Fenech was appointed the first Maltese director he was assisted by directors appointed by the .. companies.

Judge A Lofaro :

Exactly.

The Witness :

Yes but .

Judge A Lofaro :

I am sure he did it all. Did he? Nobody knows it all

The Witness :

He doesn't know it all, but he knew much more than I did, especially when it comes to ..

Judge A Lofaro :

.....and you still coping now, aren't you?

The Witness :

... to work in with the contractors here in Malta. With all the supplies, with all this whatever, which I didn't have that expertise.

Judge J Said Pullicino :

These questions are leading to just one question. When you spoke to the previous administration you were at the initial stages and you rightly said – I am leading this and businessman with me.

The Witness :

Yes.

Judge J Said Pullicino :

Would you spoke to the new administration for some reason you .. was ended up as a lead. Now what is the reason for that change? I can't be simply because you had experience. Because this thing it was beyond Mr Fenech as well.

The Witness :

With this concept paper I was the pont of contact in Malta. I was the ... person in Malta point of contact in Malta. If this had come to official I would not have been taken this project forward. It would have been the foreigners because I didn't have the expertise

Judge J Said Pullicino :

Ok fair enough. But you did not have the expertise either.

Judge A Lofaro :

You did not

The Witness :

Pardon?

Judge J Said Pullicino :

Not even you will help Fenech on his own, will have the expertise on such a big project.

The Witness :

Not but he had ..

Judge J Said Pullicino :

He had more experience then you but ..

The Witness :

He had a lot more experience then me definitely in project management an bringing the whole project form the .. of the contract etc in Malta to bring it together.

Judge J Said Pullicino :

Therefore am I correct in saying that foot forward Yorgen Fenech because Yorgen Fenech had closed .. and contacts ...administration ..

Judge A Lofaro :

Contacts..

Judge J Said Pullicino :

And at whatever level and that was convenient. You are ... right..

Judge A Lofaro :

..contacts

Judge J Said Pullicino :

I put that myself, but I mean logically you are saying he is the person to bring forward this project because he has the right contacts. I mean it's a question of contacts.

Judge A Lofaro :

Did he..

The Witness :

I cannot say that ...part or not because I ..

Judge A Lofaro :

Did you know that he had contacts?

The Witness :

I did not know that he had...

Judge A Lofaro :

You did not know.

The Witness :

I did not know that he had these relationships with these people.

Judge A Lofaro :

But some kind with relationships with these people not the debt not the extend..

The Witness :

I did not know

Judge A Lofaro :

You knew nothing.

The Witness :

No.

Dr Therese Comodini Cachia :

So you weren't aware that Yorgen Fenech had close contacts with Joseph Muscat, Keith Schembri, Konrad Mizzi?

The Witness :

No I did not know.

Dr Therese Comodini Cachia :

When did you become aware of this?

The Witness :

Well well after, well after when we started putting after the bid when the project was been put together from Infrastructure point of view.

Judge A Lofaro :

From 2014? When?

Dr Therese Comodini Cachia :

How did you become aware of this?

The Witness :

Well I became aware of this, 1), when it started coming out in the media, when it started coming out, you know? But obviously you start seeing that Yorgen was speaking to Enemalta and staff and all the time with development of this project, I am sure he would have met them.

Dr Therese Comodini Cachia :

And it didn't bother you?

The Witness :

I didn't question it.

Dr Therese Comodini Cachia :

Pardon?

The Witness :

I didn't question it

Dr Therese Comodini Cachia :

You didn't question it?

The Witness :

No.

Dr Therese Comodini Cachia :

Why would you not question it when your investment is laying there?

The Witness :

Why should I suspect that there was something wrong?

Dr Therese Comodini Cachia :

I would have thought that doesn't Electrogas have any internal policy against corruption, against bribery? Against close contacts with ,..

Judge A Lofaro :

And with Siemens about this ..

Dr Therese Comodini Cachia :

...or Siemens themselves?

Judge A Lofaro :

Siemens.

Dr Therese Comodini Cachia :

Didn't Siemens imposed this type of policy on Electrogas?

The Witness :

Yes of course we did, but whoever.. but why is an insinuation that ..

Judge A Lofaro :

Nobody is insinuation anything.

The Witness :

That there is corruption within....

Dr Therese Comodini Cachia :

There have been so many insinuations in the public not ..

Judge A Lofaro :

In the public yes.

Dr Therese Comodini Cachia :

.. including in the connection of 17 Black with your director, your former director, and yet who audited all this when there was so much publicity about it? Was there an internal audit at that time carried out?

The Witness :

There were internal audits carried out. Our hold systems with GEM. When I became a director of Electrogas we appointed an international independent law firm..

Dr Therese Comodini Cachia :

I'll come to that, because that was this year, no? Just in the last few months.

The Witness :

Yes, 10 months.

Dr Therese Comodini Cachia :

So when the first allegations in the media were coming out what action did you take?

Judge A Lofaro :

Did you speak to Yorgen Fenech?

The Witness :

We spoke to Yorgen Fenech, of course we had a board meeting.

Dr Therese Comodini Cachia :

When?

The Witness :

We had a board meeting ..

Judge A Lofaro :

Immediately?

The Witness :

Pretty much immediately. We had a GEM Board meeting.

Dr Therese Comodini Cachia :

Immediately after what? Because I have..., I apologies but there had been so many allegations allover the last 4 years ..

The Witness :

Yes, the allegations that came out; the allegations ..

Dr Therese Comodini Cachia :

Which ones?

The Witness :

The ones about 17.

Dr Therese Comodini Cachia :

About 17 Black?

The Witness :

Yes. And I asked Yorgen

Dr Therese Comodini Cachia :

When?

Judge J Said Pullicino :

Not the Panama Papers

Judge A Lofaro :

They did not worry you about the Panama Papers? With Konrad Mizzi, Keith Schembri been involved in them?

The Witness :

Yes of course it was concerning.

Judge A Lofaro :

Excuse me?

The Witness :

It was concerning yes.

Judge J Said Pullicino :

It was concerning.

The Witness :

And we asked. We asked about.

Judge A Lofaro :

And who did you asked if I may know please?

The Witness :

We had a board meeting; and we asked ...

Judge A Lofaro :

But with whom? With whom? Between yourselves. No?

The Witness :

Between yes our Board. We obviously discussed it.. we discussed, well, I wasn't a director of EGM so ..

Judge A Lofaro :

So were your concerns put to bed so to speak?

The Witness :

EGM would have the board meetings and they were discussing themselves. I been a director ..

Judge A Lofaro :

So you had a meeting, all right? Between yourselves. Now you had concerns; were they put at rest? And if so how and by whom?

The Witness :

They were put at rest because the company.. the EGM directors at the time went back to all the records to see if there any transaction, if there was anything, any wrongdoing within the company, and we were ensured by the directors at the time that there was not. But apart from what you are saying, or what about you are saying yes to these allegations that have being made, and these are allegations that had being made in the press, right?

Judge A Lofaro :

Yes.

The Witness :

And the allegations have been pointed at Electrogas; there is the allegation about the leaks or the stolen emails that was stolen from our servers.

Dr Therese Comodini Cachia :

...right?

The Witness :

.....yes I tell you, it perplexes me actually

Judge A Lofaro :

It what?

The Witness :

It perplexes me.

Judge A Lofaro :

Yes.

The Witness :

And the reason why it perplexes me because of these accusations are being made. And one of the things that I wanted to find out is the timelines of how it all happened etc..

Judge A Lofaro :

How what happened the leaks? Panama Papers

The Witness :

How the leaks ..

Judge A Lofaro :

What exactly is worrying you? Panama Papers, 17 Black, or the leaks?

Dr Therese Comodini Cachia :

What should worry you in that leak?

Judge A Lofaro :

Exactly.

Dr Therese Comodini Cachia :

Do you think that leak will show something you are not aware of?

The Witness :

No, I tell you what it is. I got this email over here which comes from our system where Electrogas found out about the leaks on the 27th of December.

Judge A Lofaro :

Of which year?

The Witness :

27th December 2017

Dr Therese Comodini Cachia :

2017

The Witness :

That is when we found out.. or management found out about the leaks of..

Judge A Lofaro :

ok; so what did you do about it then?

The Witness :

They stopped the contract with ICT and they reported; they did in Italian investigation and they reported it to the police. There was an .. report. And still today we still do not know.. and the police are still going on, who stole this data.

Dr Therese Comodini Cachia :

So what is of interest to this Board is actually the former questions we were placing. You said you met to discuss the allegations which included Yorgen Fenech and Electrogas...

Judge A Lofaro :

And Panama Papers...

Dr Therese Comodini Cachia :

So which allegation.. on which allegation did you first meet?

The Witness :

I didn't meet. It was the EGM Board directors at the time that met.

Dr Therese Comodini Cachia :

EGM Board. Ok; and do you know when EGM Board met?

The Witness :

I was not a director at the time, so it have to go back to the records.

Dr Therese Comodini Cachia :

So as a shareholder you wouldn't know.

The Witness :

I can talk about EGM from when I was a director, became a director.

Dr Therese Comodini Cachia :

Ok. So how do you know that EGM Board met if you don't have any further information?

The Witness :

Because we would have discuss this at GEM level.

Dr Therese Comodini Cachia :

Ok; so if you discussed this at GEM level when did you first discussed this at GEM level?

The Witness :

After the press allegations.

Judge A Lofaro :

And which allegation.?

Dr Therese Comodini Cachia :

Which press allegations? Because we have had press allegations since 2016. So which ones?

Judge A Lofaro :

Panama Papers.

The Witness :

Panama Papers and 17 Black.

Dr Therese Comodini Cachia :

Panama Papers and 17 Black

Judge A Lofaro :

No, 17 Black came after.

Dr Therese Comodini Cachia :

And what was your discussion? Or the conclusion of your discussion.

The Witness :

Our conclusion was that they had done all the necessary internal checks to see whether there were any transactions or anything to do with this and then ...

Judge J Said Pullicino :

Therefore in your opinion up till quite recently there was nothing untoward in Mr Fenech's conduct to justify his remover form a director; is that correct?

The Witness :

At that point....

Judge J Said Pullicino :

On facts as established. Because there are allegations and there are facts. Ok? Now there are certain facts that are proving. Now in your opinion, the company's opinion, there was nothing untoward in his conducts that would warrant his remove from a director.

The Witness :

Certain at that point in time yes.

Judge J Said Pullicino :

Yes; ok.

Chairman Judge M Mallia :

You tell us that Electrogas came to know of the leaks in December 2017.

The Witness :

Yes that's right.

Chairman Judge M Mallia :

Mrs Caruana Galizia was killed in October 2017.

The Witness :

Yes.

Chairman Judge M Mallia :

Yet before that date it was already public knowledge that she had that.. a cash of documents from Electrogas had been leaked. So how come you tell me that..

The Witness :

This I am talking from the documentation..

Chairman Judge M Mallia :

..came to know in December? When this is before October ..

Judge A Lofaro :

Did you ever read her blog?

The Witness :

No.

Judge A Lofaro :

Never at all?

The Witness :

Well, once in a blue moon yes.

Judge A Lofaro :

Did nobody ever speak to you about what she was writing?

The Witness :

Yes that would have

Judge J Said Pullicino :

This is incredible eh! I' am sorry. This is incredible.

Judge A Lofaro :

It is incredible, it is.

Judge J Said Pullicino :

How can I accept a director of Electrogas does not know what a leading journalist was writing, rightly or wrongly, perhaps even false allegations..

The Witness :

No I didn't say that. I didn't say that

Judge J Said Pullicino :

..without ..; you said it

The Witness :

No.

Judge A Lofaro :

You said ..

The Witness :

I said I read her blog at times. But I didn't read her blog all ..

Judge A Lofaro :

Various occasionally..

The Witness :

But I said I heard people talking about it. You know?

Judge A Lofaro :

I note you command in the English language and you used the word occasionally .

The Witness :

Yes.

Judge A Lofaro :

Now I have as well just as a command that you do. And occasionally means you know, once in a blue moon.

Chairman Judge M Mallia :

But you still you haven't answered my question. I mean how do you explain the fact that before October 2017 it had already become public knowledge that caches of documents form Electrogas had been leaked. And you tell me that Electrogas came to know about this in December of 17

Judge A Lofaro :

2 months after.

The Witness :

This what I am telling you what I found since I ..

Judge A Lofaro :

That's what you found. Did you know before from other sources ..

The Witness :

No I didn't know

Judge A Lofaro :

Did anybody speak to you on these things?

The Witness :

No I don't know.

Judge A Lofaro :

You were so involved in the project and yet you don't know!

Chairman Judge M Mallia :

So you didn't know that before October '17 these documents has already been leaked? You didn't know that?!

Judge A Lofaro :

We remind you that you are under oath.

The Witness :

I can't recollect .

Judge A Lofaro :

Do you the consequences of giving evidence ..?

The Witness :

I know; I can't recollect.

Judge A Lofaro :

Ok. You don't remember, ok.

Dr Therese Comodini Cachia :

Are you aware..., you told us that Electrogas Board met to discuss these allegations. You told us that you also discussed them at GEM level.

The Witness :

Ehe.

Dr Therese Comodini Cachia :

As shareholders did you make any requests to the Board of Directors of Electrogas to undertake any action to verify whether there was a bases for these allegations?

The Witness :

We did. We did. We told them that they had to do.

Dr Therese Comodini Cachia :

And what were your requests?

The Witness :

They had to do all the audits of all their process is to make sure that there was no wrongdoing.

Dr Therese Comodini Cachia :

When you tell me they had to do the audits of all their process is, are you telling me audit your IT process to see if there is a leak? Or what type of audit your process is? What does that mean to you?

The Witness :

No, from day one looking at all the transactions that happened within the company; transaction documents, all the way up to the present day at that time.

Dr Therese Comodini Cachia :

So this was an audit which is usually done in the normal course of business? You look at documentation, you see what payments were agreed to in that documentation and you see if the payments were made? You see what payments were received? Is this type of what you are referring to?

Judge A Lofaro :

Was it a normal audit?

The Witness :

No it wasn't a normal audit. It was a group of people that were set up within the organization to take this on....

Dr Therese Comodini Cachia :

Yes, but what I am asking for is not how many people carried out the audit; but the nature of the audit.

The Witness :

No this was over and above, this was over and above the daily work.

Dr Therese Comodini Cachia :

Can you explain what is 'over and above' for you?

The Witness :

I wasn't at the.. I wasn't an EGM Director.

Judge A Lofaro :

So no one informed you?

The Witness :

But for me that day ..

Dr Therese Comodini Cachia :

So you relied on the outcome of an audit which you don't know exactly what it was about.

The Witness :

No.

Dr Therese Comodini Cachia :

Then can you explain what this audit was of?

The Witness :

We asked, we had asked EGM management to go through all the documents that they have to make sure that there was no wrongdoing in any of the transactions that were done at EGM level..

Dr Therese Comodini Cachia :

Do I take that to mean that you asked this group of people to read the contracts and see that the contracts were being abided with?

Judge A Lofaro :

You mentioned transactions ..

Dr Therese Comodini Cachia :

Or did you asked them for something else?

The Witness :

Financial transactions

Dr Therese Comodini Cachia :

Financial transactions

The Witness :

Financial transactions, documents, all of these were could have been wrongdoing. And they went through them and they found no wrongdoing. It was then obviously when I became a director we enforced that even more by contracting an international independent law firm with forensic accounting and IT expertise to go through the whole lot independently.

Dr Therese Comodini Cachia :

And the documentation that the last audit that was undertaken was that.. did the audit take place on the documentation given to the auditors.. well, to the law firm by Electrogas? So basically they audited the documentation you gave it?

The Witness :

They had access to all our information.

Dr Therese Comodini Cachia :

They came to the company and they had free access to everything, passwords to all the server could see any document..

The Witness :

I would have to double check that but I would assume so.

Dr Therese Comodini Cachia :

Did they also carry out a forensic audit or review of the shareholders of the Electrogas and their ultimate beneficiary owners?

The Witness :

No, they were contracted by EGM to do the EGM project.

Dr Therese Comodini Cachia :

You say that you were appointed director only in..

The Witness :

.... November.

Dr Therese Comodini Cachia :

November, right?

The Witness :

Yes.

Judge A Lofaro :

2019.

Dr Therese Comodini Cachia :

Yes.

The Witness :

Yes.

Dr Therese Comodini Cachia :

So 12th November 2019 Yorgen Fenech resigns as director and you take that position instead.

The Witness :

Yes.

Dr Therese Comodini Cachia :

Did Yorgen Fenech tell you why he was resigning?

The Witness :

No.

Dr Therese Comodini Cachia :

Did you ask him?

Judge A Lofaro :

Didn't you ask him?

The Witness :

Actually Yorgen Fenech was not present at the Board meeting when we were told about his resignation. We had a meeting, a GEM Board meeting with Mr Ray Fenech, Mark and myself, and we were informed by Mr Ray Fenech that a week before, I think it was a week before or 5 days before whatever, that Yorgen Fenech had resigned from all his

Judge A Lofaro :

Did you ask him why?

The Witness :

I didn't speak to him.

Judge A Lofaro :

No, did you ask his uncle why?

Dr Therese Comodini Cachia :

Din you ask Mr Raphael why?

Judge A Lofaro :

His uncle, did you ask him why?

The Witness :

I can't remember whether I did or I didn't, because I was pretty shocked at the time that he had resigned.

Dr Therese Comodini Cachia :

But this was the person who actually took your project because he had more experience than you.

Judge A Lofaro :

According to him eh!

Dr Therese Comodini Cachia :

Yes of course. And he resigns, you take his place and you don't ask him why?

Judge A Lofaro :

You don't even call him and ask him? Yorgen ..

Dr Therese Comodini Cachia :

I am assuming you had a good relationship with the person who was

Judge A Lofaro :

Didn't you call Yorgen ...?

The Witness :

Towards the last 2 years I hardly spoke to him.

Judge A Lofaro :

So you couldn't even pick up the phone and..; you were talking to him

Dr Therese Comodini Cachia :

Why not?

Judge A Lofaro :

Why not ask?

The Witness :

He was traveling a lot; I would call him he didn't answer his phone, you know?

Judge A Lofaro :

Yes. Did you try to call him?

The Witness :

Yes of course I did

Judge A Lofaro :

You tried calling him.

The Witness :

Yes.

Judge A Lofaro :

But he didn't answer your calls?

The Witness :

No.

Judge A Lofaro :

No.

Judge A Lofaro :

Were you aware at that point in time that he was a person of interest in the investigation of the assassination?

The Witness :

No. I had no idea.

Dr Therese Comodini Cachia :

Were you aware that he was the actual owner of 17 Black?

The Witness :

No.

Dr Therese Comodini Cachia :

Why not? Everyone was aware by then.

The Witness :

I was aware what I have read in the press

Dr Therese Comodini Cachia :

So you was aware that...

Judge A Lofaro :

So you were aware.

The Witness :

I was aware of what was being written in the press.

Judge A Lofaro :

Yes.

The Witness :

Did he tell me that it was his?

Judge A Lofaro :

But you were aware

Judge J Said Pullicino :

But you are aware that 17 Black was the company, which was suppose, suppose, alleged, to be supply .. funds to companies of Panama?

The Witness :

No I don't know.

Judge J Said Pullicino :

No?

The Witness :

Well, I read from what I read in the papers.

Judge J Said Pullicino :

Of course

The Witness :

That's from what I read in the media.

Judge J Said Pullicino :

Fair enough.

Judge A Lofaro :

And you did not confront him about this..

The Witness :

That I know for fact no. I read what I read in the media.

Judge A Lofaro :

But you asked him – isma' is it true? It this true?

The Witness :

We asked him. We asked him in a Board meeting – is 17 Black yours? And he did not answer us.

Judge A Lofaro :

That would give concern wouldn't it?

The Witness :

You know?

Judge A Lofaro :

That did not give you concern, major concern?

The Witness :

It was a major concern but it was not proof for us that ..

Judge A Lofaro :

But he is not answering. He is not denying it.

Judge J Said Pullicino :

Sorry ta'; your director, leading director, is alleged to be involved in this sort of transaction you should undermine the whole projects; and you just say he.. it is... not even given you a reply.

Judge A Lofaro :

You didn't even bother giving a reply. It's in acceptable. I'm sorry.

Judge J Said Pullicino :

And who is the auditor.. or who was the auditor of GEM Holdings?

The Witness :

Nexia.

Judge J Said Pullicino :

Nexia BT. And how was the auditor who... the project for government?

The Witness :

PWC.

Judge J Said Pullicino :

What about Karl Cini?

Judge A Lofaro :

Brian Tonna?

Judge J Said Pullicino :

He was involved? He wasn't involved?

Judge A Lofaro :

Nexia BT?

Judge J Said Pullicino :

In the processing of the ... applied for the project. Up to your knowledge

The Witness :

Not to my knowledge. We were contracted the PWC and PWC did our financials etc.

Judge J Said Pullicino :

I am not after your accounting. I am after the government's procedure to choose the early bidder.

The Witness :

No. All I know is what I read in the press.

Judge J Said Pullicino :

In the press.

Judge A Lofaro :

But when he did not reply what did you all do? Just stare back?

The Witness :

No, we ..

Judge A Lofaro :

What did you all do?

The Witness :

We went, we called our accountant we make sure that all our process transactions etc., were not involved in any of this, and it's clear.

Judge A Lofaro :

But he is shareholder, and major one.

The Witness :

And it was clear. It was clear ..

Judge A Lofaro :

The first director and he is not even replying!.

The Witness :

And there was no wrongdoing, there was no wrongdoing...

Judge A Lofaro :

And he is not replying to your question .

Dr Therese Comodini Cachia :

Mr Apap Bologna,

Judge A Lofaro :

This is incredible, I'm sorry.

Dr Therese Comodini Cachia :

Do I assume correctly that Yorgen Fenech was appointed first director with the approval of all the shareholders of GEM.

Judge A Lofaro :

Mhux ovvja!

The Witness :

That's quite right, yes.

Dr Therese Comodini Cachia :

Yes. So you actually had faith in Mr Fenech to be appointed as that director .

The Witness :

Yes.

Dr Therese Comodini Cachia :

Do I assume also correctly that each shareholder of GEM has heavily invested in Electrogas

The Witness :

That's right yes.

Dr Therese Comodini Cachia :

You've actually forked out money and you actually entered into loans

The Witness :

Yes.

Dr Therese Comodini Cachia :

Big amounts of loans.

The Witness :

Yes.

Dr Therese Comodini Cachia :

So how do you explain ..

Judge J Said Pullicino :

You are asserting that there is heavily financial investment by the shareholders, I am not quite sure about that eh! Its better explain to what extend...

Judge A Lofaro :

There was he guarantee...

Dr Therese Comodini Cachia :

I'm coming to that...

Judge A Lofaro :

The Maltese government made, the guarantee

Dr Therese Comodini Cachia :

Yes yes. That is another line of questioning yet to come. So if you feel.. if you appointed this person to represent you on Electrogas, to manage it for you on Electrogas, if you felt you've invested heavily in Electrogas, how do you expect us to react when then you then come here to tell us that.. you know, you were ok with Yorgen Fenech remaining the director of Electrogas managing your heavily investment .

Judge A Lofaro :

And not replying to the question.

Dr Therese Comodini Cachia :

And you were so much okay with it that he resigned. You didn't even fine him. Weren't you even worried about your reputational risk? You have other business.

The Witness :

Yes of course I ..

Judge A Lofaro :

You know how reputation is in a small island!

Dr Therese Comodini Cachia :

But you were worried enough to ask this director to be removed? Because you appointed him. What was so important to you about Yorgen Fenech for you to take the risk of your investment?

Judge A Lofaro :

Your reputation even

Dr Therese Comodini Cachia :

Either your reputation risks.

Judge A Lofaro :

Your reputation is worst, it's even worse.

Dr Therese Comodini Cachia :

What is so important into you?

Judge A Lofaro :

That's much worse.

The Witness :

He wasn't so important to us. It was the fact that what was be written was being stuff written in the media. It was an accusation and it wasn't fact; it was a media accusation

Judge A Lofaro :

No he didn't reply to your question about 17 Black.

The Witness :

Yes, but its still a media accusation

Judge A Lofaro :

But he didn't reply

Dr Therese Comodini Cachia :

...media accusations in your book are not reputational risks.

The Witness :

Of course there is am element of reputational

Dr Therese Comodini Cachia :

There are.

The Witness :

..

Dr Therese Comodini Cachia :

So if there was and I would assume there is a big reputational risk here.

Judge A Lofaro :

Of course

Dr Therese Comodini Cachia :

You were being made for the last 4 years; your picture was all on the papers.

The Witness :

I know that very well.

Dr Therese Comodini Cachia :

So there was a big reputational risk for you.

The Witness :

Yes.

Dr Therese Comodini Cachia :

So once again despite is big reputational risk why did you not ask for Yorgen Fenech to be removed?

The Witness :

Because that is that what.. the decision was taken at Board level.

Dr Therese Comodini Cachia :

Initially or even along the last 4 years

Judge A Lofaro :

Even after he refused to reply to that question? You all have faith in him still?
Yes or no please?

The Witness :

Yes.

Judge A Lofaro :

Yes. Ok. You all have faith in him still.

Chairman Judge M Mallia :

Another thing if you don't mind my question; 17 Black is fact, ok? We know it existed, we now why it existed; we know how it existed. Weren't you concerned that where is the money coming from? Is it Electrogas that is paying 17 Black? Is it the state? Is it the Maltese taxpayer that is financing 17 Black? Did you not care to find out?

The Witness :

Yes I care to find out. We did check with the Electrogas project. Because that is the project that I am involved in. And I am confident that the Electrogas project has got absolutely nothing to do with it.

Chairman Judge M Mallia :

So 17 Black was not financed by any money coming from Electrogas.

The Witness :

From what I know and from the research that we had done absolutely not.

Judge J Said Pullicino :

But Yorgen Fenech had a 10 % personal share

Judge A Lofaro :

Yes he did.

The Witness :

8 %.

Judge J Said Pullicino :

8 %?

The Witness :

8 %

Judge J Said Pullicino :

8 %. And the reason for that?

The Witness :

The reason for that is .. when we decided at the time that we sent him up and we had a meeting who was going to deed this project we knew that this was going to take a lot of time and a lot of manpower so much so, Yorgen gave up very much most of the stuff that he was doing all the stuff that he was doing to manage this huge project. And he felt that if he was going to do that he felt that he wanted a stake of his ... be able to do that. Which would be had compensation for what he is doing.

Judge J Said Pullicino :

Compensation.

Dr Therese Comodini Cachia :

And were you still ok with that after having spent the last 2 years hardly being there? This is what you told us. You said he..

The Witness :

You cannot go back on something which you had agreed back on 2013.

Dr Therese Comodini Cachia :

So even then you didn't question his position.

The Witness :

Why did I need to question his position in 2013?

Dr Therese Comodini Cachia :

When Yorgen Fenech resigned in the same time that he resigned and you were appointed there were other directors who resigned.

The Witness :

Yes.

Dr Therese Comodini Cachia :

There was Turab Musayev who resigned on the 11th of December 2019, and there was Gerald Banner who resigned on the 17th of April 2019.

The Witness :

Yes.

Dr Therese Comodini Cachia :

Do you know their reason for their resignation?

The Witness :

Gerald Banner moved on with Siemens Group; but I don't know there are any reason why; obviously this change.. personal. I believe Turab Musayev resigned.. I am not sure of the exact dates..

Dr Therese Comodini Cachia :

I have the exact date. It's 11th December 2019.

The Witness :

I would have to double check exactly the reason why he ..

Judge A Lofaro :

But you know what is happening in this country at the time, don't you?

The Witness :

Yes.

Dr Therese Comodini Cachia :

Why do you need to check the reason why? Is because you don't know it?

Judge A Lofaro :

You have any idea at all?

Dr Therese Comodini Cachia :

Do you have?

Judge A Lofaro :

Was it connected to what was happening here?

Dr Therese Comodini Cachia :

You were director when this guy resigned.

The Witness :

Yes.

Dr Therese Comodini Cachia :

For a month or for few days.

The Witness :

For a month yes; whatever it is.

The Witness :

So when you receive his resignation, you didn't ask Turab Musayev why he is resigning?

The Witness :

If ..

Judge J Said Pullicino :

Is there correspondence relating to this decision?

Judge A Lofaro :

Resignations are usually in writing no?.

The Witness :

Yes. I would have to check in GEM records.

Judge A Lofaro :

So you don't recall anything at all.

Judge J Said Pullicino :

Who is your company secretary please?

The Witness :

Dr Michael Grech .

Judge J Said Pullicino :

Dr Michael Grech.

Dr Therese Comodini Cachia :

And did you or any of the other shareholders of Electrogas have any other business with Gerald Banner or Turab Musayev?

The Witness :

No.

Dr Therese Comodini Cachia :

Does that mean you are not aware that Fenech was in business with Turab Musayev on the wind farms?

The Witness :

That's right.

Dr Therese Comodini Cachia :

When did you become aware?

The Witness :

When it came out in the media.

Dr Therese Comodini Cachia :

Did you question Turab Musayev or Yorgen Fenech when it came out in the media?

The Witness :

I couldn't question Yorgen Fenech because....

Dr Therese Comodini Cachia :

No because he was under arrest already.

The Witness :

Absolutely.

Dr Therese Comodini Cachia :

And what about Turab Musayev?

The Witness :

Turab Musayev after he resigned I haven't spoken to him. Obviously, you know.., he no longer works for Socar Trading, so obviously yes it was a shock to us to that what we read in press.

Dr Therese Comodini Cachia :

The fact that he no longer works for Socar Trading means that Turab Musayev was actually appointed as director by Socar on the Board of Electrogas?

The Witness :

Yes.

Dr Therese Comodini Cachia :

Does his termination of employment with Socar also explain why he resigned as director?

The Witness :

No because I think he resigned before.

Dr Therese Comodini Cachia :

He resigned before.

The Witness :

Yes.

Dr Therese Comodini Cachia :

So he was still director on Electrogas although he wasn't connected or employed with one of the major shareholders.

The Witness :

No, he was.. he resigned as the director of EGM and then it was.. and then left Socar after that.

Dr Therese Comodini Cachia :

Ok. And did you ask Socar if they carried out any investigation on their end when you got to know that Turab Musayev was in business with Yorgen Fenech on the wind farms?

The Witness :

They said they were doing their internal investigations, but I don't know have any information about that.

Dr Therese Comodini Cachia :

Did you carry out any internal investigations on 2 of these directors? You have 2 directors here who were involved now in allegations not one.

The Witness :

We did, like I said, we contracted this company with... you know, legal accounting and internal forensic abilities to do all the searches etc within the EGM Company.

Judge J Said Pullicino :

There is one point that concerns, I mean, all the directors except you apparently, seem to be unhappy with the situation and they just leaving or sell out or whatever. So how is it that you continue to.. sort of you are happy with this situation.

Judge A Lofaro :

Because Mr Fenech isn't happy at all.

Judge J Said Pullicino :

Even Mr Gasan.

Judge A Lofaro :

I mean Mr Gasan, excuse me. Mr Gasan isn't happy.

Judge J Said Pullicino :

What's the situation the position? It's a buried project, ok. I mean..

The Witness :

We've just come back, we've just spent a lot of money, we've just spent a lot of money doing a whole investigation on the Electrogas project. Starting from day one to present day.

Judge J Said Pullicino :

But it's a risk free project

The Witness :

Pardon?

Judge J Said Pullicino :

It was a risk free project.

The Witness :

Not it's not a risk free project. It's an extremely complicated ...

Judge A Lofaro :

...government guarantees

Judge J Said Pullicino :

But we had no ...

The Witness :

It had overruns, it had overruns, heavy overruns; it is not a risk free project.

Judge J Said Pullicino :

Anyway; let's continue to that...

The Witness :

We did a full report on our whole company from A to Z stating from day one of project to present day. And when a report by that comes back to me and tells me that we have found no wrongdoing within the Electrogas project, I cannot..

Judge J Said Pullicino :

That is not what the Auditor General said eh!

The Witness :

Pardon?

Judge J Said Pullicino :

That is not what the Auditor General said. He was highly critical.

Judge A Lofaro :

The Auditor General

Judge J Said Pullicino :

...of that project.

The Witness :

But I never said that I agree with the auditor general ..

Judge A Lofaro :

..how could you know?

Judge J Said Pullicino :

..so go back home and read it

The Witness :

But we did at a full internal audit from an independent international ...

Judge A Lofaro :

And the Auditor General does not cont here? The Auditor General?

Judge J Said Pullicino :

...the auditor general of the country; the highest..

Judge A Lofaro :

He does not count to you?

The Witness :

No of course he does count. But ..

Judge A Lofaro :

But you don't even know what he said!

The Witness :

But the conclusion that...

Judge A Lofaro :

You've testified under oath that you don't know what he said. If it interested you, you would have bother to find out; ergo you don't care. It doesn't bother you. Its a logical conclusion.

Dr Therese Comodini Cachia :

Have you chosen to carry on with Electrogas because for the same reasons you give in your statement that is there may not be a market to buy the shares?

The Witness :

I didn't say there may not be a market! I said one has to look .

Dr Therese Comodini Cachia :

No. You said you will..

The Witness :

One has to look to all the dynamics ..

Dr Therese Comodini Cachia :

.. depending on the dynamics of the market.

The Witness :

Exactly.

Dr Therese Comodini Cachia :

Is there a market for these shares to be sold?

The Witness :

I don't know because I haven't explored it.

Dr Therese Comodini Cachia :

How can you explain that the accounts of Electrogas for 2018 and 2019 have not as yet be presented to the Registry of Companies besides other late returns of former years?

The Witness :

Because when we talk about 2018, PWC also requested that we do a full audit of the company from a legal accountant an forensic point of view; and once that report was completed and was then... and PWC were then give access to it to be able to see that the company had done nothing wrong, PWC would then be willing to conclude their accounts. And the accounts ..

Dr Therese Comodini Cachia :

So before you were giving me the impression that you undertook this forensic audit because of the allegations and because you wanted to be sure that there was nothing wrong; and now you are telling us that it was PWC who asked you to do this because otherwise they would not have signed of your audit?

The Witness :

No, we were going to do it, because as director, directors we have an obligation to do it to make sure that the company is clean because we would have to sign of; so we as directors wanted to do it anyway, ok? And PWC also said they would have like to do it

Dr Therese Comodini Cachia :

When did PWC ask you for this audit?

The Witness :

We started discussing this with PWC in December, or end of November.

Dr Therese Comodini Cachia :

December 2019?

The Witness :

Yes.

Dr Therese Comodini Cachia :

When were the accounts of 2018 due to be filed? December 2019 or before?

The Witness :

Before.

Dr Therese Comodini Cachia :

So when did PWC asked for this audit to be undertaken?

The Witness :

End of November...., well, I can't talk from.. I am a director, so I've been a director for the past 10 months. I know that PWC spoke to us when we were talking to them about the accounts in November and December 2019.

Dr Therese Comodini Cachia :

How do you explain, if I understood you well before you said that the auditor of GEM Holdings is Nexia BT

Judge J Said Pullicino :

How is that Mr Gasan is unhappy with this thing and you are happy? I mean there is ..

Judge A Lofaro :

In fact he said that he was shocked; it's shocked.

Judge J Said Pullicino :

So close.. sort of an arrangement this thing; how can you explain this?

Judge A Lofaro :

You related, your businesspeople

Judge J Said Pullicino :

You don't need to reply for Mr Gasan because he is her, but I mean..

The Witness :

I am not happy with the accusations that are being made vis a vis Electrogas. That I am certain not happy about, you know? Especially when I got a report that shows that Electrogas is done non wrongdoing. So yes, with regards to the business the business is showing and the ... of the business that done no wrong. Am I happy with the accusations that had been made? Absolutely not.

Judge J Said Pullicino :

You are nor responsible for corruption if it happened?

The Witness :

Pardon?

Judge J Said Pullicino :

You are not responsible for any corruption if it happened.

The Witness :

Certainly not.

Judge J Said Pullicino :

Ok.

Judge A Lofaro :

There are not just.. you know, accusations. There is the report of the Auditor General which you did not read. I think you should read it.

Dr Therese Comodini Cachia :

Let me go back to the question before the interruption. So the account the Auditors of GEM Holdings is Nexia BT

The Witness :

Yes.

Dr Therese Comodini Cachia :

Were they already auditors when your bid for this project was presented to the government?

The Witness :

I don't have the exact time when they were appointed as our auditors. I would have to come back to ...

Dr Therese Comodini Cachia :

Ok. And did you know Brian Tonna for a long time? How long have you know Brian Tonna for?

The Witness :

I ...Brian Tonna twice maybe in my life. And no, I met him well after.

Dr Therese Comodini Cachia :

So will just need to check when Nexia BT was actually your ..

The Witness :

Yes. What I do know is that we did come out with a former tender for people to participate to be our auditors; and they came in with the best price

Judge J Said Pullicino :

The company itself made a tender to ..

The Witness :

To a number of firms

Judge J Said Pullicino :

To a number of firms and..

The Witness :

To a number of firms .. to come back ... and they put in the best price.

Judge J Said Pullicino :

And it was just coincidence that the Nexia BT ..

Judge A Lofaro :

Just based on price then

Judge J Said Pullicino :

Nexia BT is connected with number of other things

The Witness :

It was based on price. And this is in our records.

Dr Therese Comodini Cachia :

But GEM Holdings was incorporated in 2013 we said before?

The Witness :

That's right, May 2013.

Dr Therese Comodini Cachia :

So did GEM Holdings ever changed its auditor?

The Witness :

No.

Dr Therese Comodini Cachia :

Then was Nexia your only auditor since 2013

Judge A Lofaro :

All along?

The Witness :

It was; but I don't know when they were appointed

Dr Therese Comodini Cachia :

Pardon?

The Witness :

I don't know when they were appointed; that's what I am saying.

Dr Therese Comodini Cachia :

Ok, but if GEM was registered in May 2013 then you wouldn't have spent years without an auditor, right?

The Witness :

No. So that would have been appointed within a year of the company being set-up.

Dr Therese Comodini Cachia :

Exactly.

The Witness :

But I don't know that date of when it was.. when they were appointed

Judge A Lofaro :

U iva, we have the timeline more or less

The Witness :

And we are talking 8 years ago!

Dr Therese Comodini Cachia :

And was Nexia BT or people representative of Nexia BT also involved in the evaluation of this project? Of the bids?

The Witness :

I was still learned something about this after I read it in the papers.

Dr Therese Comodini Cachia :

But you've read so many things in the papers, so many connections, and yet what did you do? I mean you said it was.. I assume this.. you considered this one to be one of your most important investments right?

The Witness :

Yes absolutely.

Dr Therese Comodini Cachia :

So what did you do?

The Witness :

I only found out a lot of this information after the project is up and running. You know? The project is up and running...

Judge A Lofaro :

Yes but Mr Gasan has taken a different approach to yours. This is why we are asking you this.

The Witness :

Mr Gasan from what I ...written whatever, is yes, he is upset also with the accusations.....

Judge A Lofaro :

He is more then upset.

The Witness :

.... that are been made towards Electrogas...

Judge A Lofaro :

He is more then upset he is more then upset.

The Witness :

...towards Electrogas, you know, in respect, you know? But obvious Mr Gasan has also got a going concern over there as an operation ..

Judge A Lofaro :

But he still wants out. He wants out and you don't.

The Witness :

I never said I didn't want out. I never said I didn't ..

Judge A Lofaro :

How?

The Witness :

I would explore. I never said that at all. But today we have an operation which has to ...

Dr Therese Comodini Cachia :

Can I go back to Nexia BT being your auditors. I believe it was in 2016 when we had the Panama Papers; April 2016. Then we had revelations of Nexia BT involved in Pilatus Bank, in the FIAU report of Pilatus Bank. We had FIAU reports leaked to the public which included investigations of money laundering or corruption; that involved Brian Tonna, Nexia BT and Karl Cini and basically the Nexia BT setup, and they had an involvement with the selection of the bid of Electrogas. You had this connection of 17 Black, Electrogas, FIAU, Nexia, and you did nothing not even change your auditors?

Judge A Lofaro :

You could have changed your auditors.

Dr Therese Comodini Cachia :

At least!

The Witness :

At Board level we had done nothing wrong as GEM. They were doing a basic audit for the company...

Judge A Lofaro :

But did you discuss all this at Board level?

The Witness :

We discuss this at Board level

Judge A Lofaro :

And you decided to keep them on.

The Witness :

And we decided to keep.. you know?

Judge A Lofaro :

To keep them on.

The Witness :

I mean at the end of the day they were doing a very simple audit of the company. It is a holding company. So ..

Judge J Said Pullicino :

Nexia BT are only involved with this part of your operation?

The Witness :

Yes.

Judge J Said Pullicino :

You are involved also in Cannabis production, no?

The Witness :

Yes, that's right.

Judge J Said Pullicino :

There are .. auditors in that?

The Witness :

No.

Judge J Said Pullicino :

The problem is that you are.. I mean the whole setup is complicated, because you are involved in a lot of government projects which is fair enough; but then when..

The Witness :

...a lot of government projects?

The Witness :

A lot of government projects.

The Witness :

No not. I am involved in one government project.

Judge J Said Pullicino :

Not. Only Electrogas.

The Witness :

Yes.

Judge J Said Pullicino :

I see.

The Witness :

Its one government project.

Chairman Judge M Mallia :

This question has been legging me from quite some time. Mid round the middle of the year of 2017 Electrogas was not doing so well financially. Banks were becoming nervous, got emails telling us that this issue is becoming serious. We know that in September of 2017 Electrogas defaulted on its payments with the bank; in other words it was on the verge of bankruptcy. Then you got the government guarantee and then subsequently you got the security of supply services agreement. Now we know by that time that the emails had already been leaked to Daphne Caruana Galizia. Had Daphne not been killed in October 2017, and published those emails before, before, what would have been the situation for Electrogas than when everybody knows what the financial situation had be?

The Witness :

I don't know, I can't answer that question directly because I don't know what the situation would happen. But the situation that I know as I know it is that we needed to reach financial closure.

Chairman Judge M Mallia :

You needed financial closure.

The Witness :

To be able to get ..

Judge Michael Mallia :

Now with publication of those emails would you have reached financial closure?

The Witness :

I can't answer that question

Chairman Judge M Mallia :

You can't answer that question.

The Witness :

But, but the reason why we had not got to financial closure is because the government had to submit the project to the State Aid Commission. And financial closure was very much based on the outcome of the State Aid Commissions feedback and the green light to this project.

Chairman Judge M Mallia :

But do you think that the whole project would have been jepitize had Daphne published the documents that she had in possession then.

The Witness :

We contracted a company, an independent company who have gone through all our emails, who have gone through all our accounts, who have gone through all our transactions; and from there in all of what they have done there is nothing which is incriminating.

Judge A Lofaro :

But you don't know all she had; you can't don't know all she had in her possession. You can't know what she had.

The Witness :

But I know what that I have got on my emails in my servers

Judge A Lofaro :

But she had other things, other leaks

Chairman Judge M Mallia : 11:20

And it so happened that her death contributed to a help to you – a help to Electrogas reach financial closure. Doesn't that worry you?

The Witness :

If that is the case yes that's worry me. But this is ..

Judge A Lofaro :

You don't think it's the case.

The Witness :

But this is an accusation. It is.. it is.. the figures is being pointed to ask without.. you know?

Judge A Lofaro :

You didn't even read the auditors general's report. This shows that you are not very concern, are you?

The Witness :

I've been very concern, I can assure you.

Judge A Lofaro :

Why you didn't you read it?

The Witness :

I've been very concern.

Judge A Lofaro :

We all know what the auditor general is.

The Witness :

I've read it parts of it; I haven't read it in its entirety

Judge A Lofaro :

This is not Mr Brown!... you know.

Dr Therese Comodini Cachia :

Could I on the same question could I read to you some of the emails. For example on the 19th of May 2017 Catherine Halpin wrote an email to Peter Kerner. You aren't copied in this email.

The Witness :

No.

Dr Therese Comodini Cachia :

And Peter Kerner actually says as follows : *Hi Catherine, she has been challenged.., 'she' - xi. So this is an employee from HSBC, ok? foreign HSBC. So, Hi Catherine xi has been challenged in the bridge extension pre screening by her compliance officer on the Maltese issues going on currently. Another email which is dated 1st September 2017. Once again you are not copied in this email. Mark Gasan is, Fabruk Axarlie is, Peter Kerner is, and others. And this is an email sent by Turab Musayev who was then director.*

The Witness :

Yes.

Dr Therese Comodini Cachia :

And he says this : *Dear all, Yorgen and I spoke this morning to Konrad Mizzi and David. We clearly emphasize that current deadline of September 30th for FC is not attainable and as a base case we will slipping for refining to up to 2 months after. There agreed that we need a plan to agree with lenders. But extension of bridge at this stage is not on the table.*

Another email from Catherine Halpin to Peter Kerner. *Peter, very worried that the banks are getting nervous. Lots of questions from the new potential ones. She also wrote ... morning, agree also, I will leggim note so he is aware his company is in the media.*

Yorgen Fenech replied to Catherine Halpin and said : *He is right and today Simon Busuttil said they will remove tanker from Dalimara and buy from interconector. Hogwash in my opinion, but it will surely make new lenders really nervous. I think we have to hold tight for a week.*

There are other emails to this effect; and granted you are not copied in these emails.

The Witness :

And I am not privy to them..

Dr Therese Comodini Cachia :

But you also told us..

Judge A Lofaro :

That you include them ..

Dr Therese Comodini Cachia :

..that you were aware of media publicity

Judge A Lofaro :

And later he went to everything he said.

The Witness :

I went through. I went through this stuff which.. you know, I cannot go through all the emails of Electrogas ..

Judge A Lofaro :

But someone do it for you.

The Witness :

..especially, especially ..

Judge A Lofaro :

Can't your employees do it for you if you don't have the time? ... through the emails

The Witness :

I went through stuff that concerned me about accusations which I believe this hearing is today is ..

Dr Therese Comodini Cachia :

Did it not concern you that your lenders were nervous to give you the facility?

Judge A Lofaro :

Did it not worry you?

The Witness :

One I was privy to those emails; but what my understanding was is that the lenders were not going to give us the money until we got the state aid ruling.

Judge A Lofaro :

The state...?

The Witness :

The state aid ruling

Dr Therese Comodini Cachia :

You referred to the state aid ruling, right? And you said that you've lately undertaken a forensic review

The Witness :

Yes.

Dr Therese Comodini Cachia :

Did that forensic review also questioned and verify whether the state aid ruling is still being strictly abided with that you are still in line with that state aid ruling?

The Witness :

I would have to double-check on that.

Dr Therese Comodini Cachia :

While you while double-checking, can you also then check and let us know if the forensic review questioned the issue of the excise duty that was forgiven for Electrogas? And if the auditors – the forensic auditors questioned whether this would be – would fall foul of the state aid ruling?

The Witness :

I am not aware.

Judge A Lofaro :

And is it normal?

Dr Therese Comodini Cachia :

When did you become aware that you were forgiven the excise duty?

Judge A Lofaro :

Is it normal? Is it normal business practice with government? Is this normal to have the excise duty for given?

The Witness :

I was always under the impression that the excise duty should be paid by the consumer; so the consumer in this case would be Enemalta. That is my.. I understand .

Dr Therese Comodini Cachia :

Did you then not.. ..

The Witness :

..the first time

Dr Therese Comodini Cachia :

.. the RFP

The Witness :

Pardon?

Judge A Lofaro :

The RFP; did you read it or not.

The Witness :

I did not read it in its entirety no. And then we are talking about 2013, because the people who put the RFP together were the technical people from Siemens, Socar, the whole group, the people with the know-how who could be to do it and take it forward.

The Witness :

Have you ever read the agreement that Electrogas has with the government all the agreements?

The Witness :

I have read them in parts but not in entirety.

Dr Therese Comodini Cachia :c

And those agreements though they mention who is going to pay the excise duty?

The Witness :

In the GSA and the PPA it states that the consumer must pay

Dr Therese Comodini Cachia :

So you were not ..

Judge J Said Pullicino :

You would have assumed that extra duty is being paid.. should be paid by your company, no?

Dr Therese Comodini Cachia :

Of course; that was ..

Judge J Said Pullicino :

..that is the assumption.

Dr Therese Comodini Cachia :

That was the original agreement.

The Witness :

Not. The assumption that we had is that.. or the one assumption that I had is that the excise tax is paid by the consumer; which would be at this point in time Enemalta..

Judge A Lofaro :

That's what the agreement says.

The Witness :

....not by the producer which is Electrogas.

Judge A Lofaro :

It's what the agreement says.

Dr Therese Comodini Cachia :

So you are not aware that the excise duty was initially already included in the original deal that Electrogas had with the government and that then the government had to find a way of ..

Judge J Said Pullicino :

..

Dr Therese Comodini Cachia :

..taken in that excise duty himself?

The Witness :

No I was not.

Dr Therese Comodini Cachia :

You weren't aware.

The Witness :

No.

Dr Therese Comodini Cachia :

When did you become aware of this?

The Witness :

I became aware of the excise tax when it came up in the media.

Judge A Lofaro :

In the media.

Dr Therese Comodini Cachia :

As shareholders as GEM Holdings where you ever given report by Electrogas by the board of Directors on what they are doing?

The Witness :

We were given some but very few.

Dr Therese Comodini Cachia :

Were you not copied in emails which discussed these decisions?

The Witness :

As you can see from the batch of emails that you have ..

Dr Therese Comodini Cachia :

I don't have only this batch of emails.

The Witness :

Yes, but it was pretty in frequent that I was copied

Dr Therese Comodini Cachia :

Why was it that... were other shareholders like Mark Gasan copied in these emails?

The Witness :

If I was copied in..., if I wasn't copied I would know.

Dr Therese Comodini Cachia :

Were there emails which were sent to you and in which Mark Gasan was not copied?

The Witness :

I would have to check that.

Dr Therese Comodini Cachia :

You wouldn't know.

Judge A Lofaro :

He will check

Judge J Said Pullicino :

When this guarantee came out.. was given...in manage to obtain that guarantee bank covered guarantee, there was a party at Yorgen Fenech's place;

The Witness :

Yes.

Judge J Said Pullicino :

Were you invited there?

The Witness :

Yes I was.

Judge J Said Pullicino :

It was a big deed on a big day. It was a big day therefore..

Judge A Lofaro :

It was a big celebration, right?

The Witness :

Yes. We have reached financial closure.

Judge J Said Pullicino :

Of course.

Chairman Judge M Mallia :

After Daphne was killed.

Judge J Said Pullicino :

You were all there?

The Witness :

But yes again the figures been pointed at the Electrogas Projects.

Judge J Said Pullicino :

You were all there.

The Witness :

..you know?

Judge J Said Pullicino :

Including Keith Schembri.

The Witness :

Pardon?

Judge J Said Pullicino :

Including Keith Schembri?

The Witness :

I don't recollect.

Judge J Said Pullicino :

You don't recollect

Judge A Lofaro :

No? You don't!?

The Witness :

No. I don't think he was there.

Judge J Said Pullicino :

John Dalli?

The Witness :

No.

Judge J Said Pullicino :

His sister?

The Witness :

Pardon?

Judge J Said Pullicino :

His sister.

The Witness :

No.

Judge J Said Pullicino :

How did she end up shareholder?

Judge A Lofaro :

Because she the wife with Mr Fenech, the decease; Anna Fenech is the wife for Mr Fenech's uncle, right?

The Witness :

..

Judge A Lofaro :

Disease. That's why she was there.

Judge J Said Pullicino :

Therefore notwithstanding that at that stage..

The Witness :

Sorry I am not hearing you properly.

Judge J Said Pullicino :

Notwithstanding that at that stage of the big party, these allegations or at least most of them were already been banded around, you found nothing strange in having that all celebration. I mean did Mr Fenech wait for him?

The Witness :

These are allegations. These are allegations where..

Judge J Said Pullicino :

But someone told us, not allegations;.. someone told us are not allegations, are.. at least supported ..

Judge A Lofaro :

..are facts..

The Witness :

But back in that time ..were allegations and.. and.

Judge A Lofaro :

We are asking you if .. concern

Judge J Said Pullicino :

The responsibility for those facts is not a question here. ... innocent.. but the fact itself ... I mean its proofing, up to a certain point is proofing; you can't ignore it.

Dr Therese Comodini Cachia :

When did you become aware that you will require a guarantee – a bank guarantee to be provided by the state?

The Witness :

I wouldn't know because I was not a director and I wasn't privy to that information. But if I would tended think, I would tended think that we would have needed that bank guarantee ...

Judge A Lofaro :

Sorry; Can you repeat? We can't hear you

The Witness :

I would have thought that we would having know that we would having needed the bank guarantee once we had and got confirmation the state aid commission yet.

Dr Therese Comodini Cachia :

And before you require the bank guarantee from the government had you already approached the banks to give you a facility for this project?

The Witness :

We had the lenders group, yes absolutely.

Dr Therese Comodini Cachia :

And had the lenders group refused to give you a facility and only gave you a bridge loan?

The Witness :

I would have to go back and check the records.

Dr Therese Comodini Cachia :

Pardon?

The Witness :

It's been a while, so I have to go back and check the records.

Dr Therese Comodini Cachia :

Ok. So you are aware of the lending facilities, but you are not aware of how the government guarantee came into place?

The Witness :

I don't know the specific details, so if I don't know the specific details I wouldn't want to lead you..

Dr Therese Comodini Cachia :

Sure. In your bid, had you indicated in your bid that you will be requiring government bank facility?

The Witness :

Same answer's previous, I've got to go back and look at the detail.

Dr Therese Comodini Cachia :

While there was this facility at the end it was of four hundred fifty million Euro

The Witness :

Yes.

Dr Therese Comodini Cachia :

While there was this facility in place which was guaranteed by the State, what was this facility being used for?

The Witness :

This facility was being used to pay for all the contractors and developers of the project ..

Dr Therese Comodini Cachia :

We are not hearing you, sorry

The Witness :

The facility was used to pay all the contractors and developers of this project. So this project can keep on being constructed and finished to be able to ... producing electricity for Malta.

Dr Therese Comodini Cachia :

So all that facility was actually used to pay the contractors, to implement the project.

The Witness :

Absolutely. And you will see all these figures when the audited accounts come out imminently.

Dr Therese Comodini Cachia :

Who was approving the payments from these facilities?

The Witness :

The Board of Directors at EGM.

Dr Therese Comodini Cachia :

Since the government was securing this facility did the government have any power to approve the payments that were being made or supervision?

The Witness :

I wasn't a board member at that time so I have to go back and check; I would not know.

Judge A Lofaro :

You are going to check this.

The Witness :

..

Dr Therese Comodini Cachia :

When you were negotiating or when Electrogas was negotiating with the government for the bank guarantee did you participate in any meetings with for example Alfred Camilleri of the Ministry of Finance?

The Witness :

No

Dr Therese Comodini Cachia :

So, there is an email which is dated 4th of September 2017, and it says as follows : *we all know that an extension of the guarantee is currently not on the table. However it's the only viable option and we have good reason why we haven't asked for it yet.* Do you know why 4th December 2017 the extension of the guarantee was not on the table?

The Witness :

No; as I said I was in privy these meetings

Dr Therese Comodini Cachia :

Do you know why it was the only viable option for Electrogas?

The Witness :

No because I was in privy.

Dr Therese Comodini Cachia :

Do you know why you Electrogas had good reason why you couldn't ask for it as yet?

The Witness :

No.

Dr Therese Comodini Cachia :

The email continues to say : *I would appreciate very much if at least one owner will accompany me in this meeting with Alfred Camilleri; in our view ideally apart from EGM management all the 3 shareholders should be present in such a meeting.* Were you asked to go for this meeting?

The Witness :

No.

Dr Therese Comodini Cachia :

There was an email sent to Electrogas by Fiona Brinkworth on behalf of BOV and on behalf of all the lenders.

The Witness :

Yes.

Dr Therese Comodini Cachia :

This email brought to the attention of Electrogas towards the end of 2017, that Electrogas was in default on its loan facility. Were you aware?

The Witness :

I don't believe I am copied in the email so I don't know, no.

Dr Therese Comodini Cachia :

I didn't ask you if you were copied in the email. I asked you if.....

The Witness :

No no I was not aware.

Dr Therese Comodini Cachia :

...your company.. if you were aware that your company ..

The Witness :

No I was not aware ...

Dr Therese Comodini Cachia :

...your company as in default with the loan facility.

The Witness :

No I was not aware.

Dr Therese Comodini Cachia :

How could you not be aware?

The Witness :

Because this was being handle by EGM, and I was not told about it.

Dr Therese Comodini Cachia :

When did you become aware...

Chairman Judge M Mallia :

But you told that you were aware.

The Witness :

Pardon?

Chairman Judge M Mallia :

You told me that you were aware ..

The Witness :

Of..?

Chairman Judge M Mallia :

That company was going into default.

Judge A Lofaro :

Yes he did know.

The Witness :

No I was talking about the Stat Aid. I was talking about the State Aid part; that we needed the finance, we needed to get to financial closure. Until I didn't know that we were in default. We needed to get the financial closure to raise

the money. Once we got financial closure lenders would had given us the money. But I didn't say I would knew that we were in default! Not at all.

Dr Therese Comodini Cachia :

When did you become aware that you were in default?

The Witness :

I didn't know.

Dr Therese Comodini Cachia :

Pardon?

The Witness :

I didn't know.

Dr Therese Comodini Cachia :

And you never knew until I asked you the question today?

The Witness :

Yes.

Dr Therese Comodini Cachia :

So you really did not read the NAO report at all?

Judge A Lofaro :

Parts of it then!

The Witness :

I read parts and pieces of it.

Dr Therese Comodini Cachia :

Pardon?

Judge A Lofaro :

Parts of it?

The Witness :

I read parts of it.

Judge A Lofaro :

We don't know which parts. We don't know.

Dr Therese Comodini Cachia :

And I assume the report carried out by your own auditors; the auditors you choose; the auditors you appointed; who reviewed the contracts you gave them.

The Witness :

Yes.

Judge A Lofaro :

That he read.

Dr Therese Comodini Cachia :

...the NAO report, right?

Judge A Lofaro :

...mentioning it, he read it

Dr Therese Comodini Cachia :

Or more reliable to ask then then NAO report.

Judge A Lofaro :

When he read it all.

Dr Therese Comodini Cachia :

Don't worry; you don't have to answer that.

Judge J Said Pullicino :

Mr Apap Bologna, what is your real financial commitment material in this company? I mean your shareholding is what it is; is it ten thousand Maltese Euros?

The Witness :

No. It's substantial; substantial amount.

Judge J Said Pullicino :

What is?

The Witness :

It is substantial amount.

Judge J Said Pullicino :

What is the substantial amount that your companies, just your companies, real financial commitment?

The Witness :

It's in the region of about nine (9) million.

Judge J Said Pullicino :

In the region of..?

The Witness :

Nine million.

Judge J Said Pullicino :

Nine million

The Witness :

Yes.

Judge J Said Pullicino :

How does it result? From were does this figure result?

The Witness :

From my 21% shareholding in EGM which is ..

Judge J Said Pullicino :

I am not following because its too

The Witness :

It is the 21 % shareholding that I have in EGM, in GEM which is the eleven point seven percent (11.7 %) shareholding in Electrogas.

Judge J Said Pullicino :

But that is money which you actually put in the company or only is your responsibility? How? I mean you had to explain this.

The Witness :

That is the money that we put in.

Judge J Said Pullicino :

That you actually put in.

The Witness :

Yes.

Judge J Said Pullicino :

In what form? I mean is it just buying shares or it's just a loan? What ..

The Witness :

In cash, loans and guarantees.

Judge J Said Pullicino :

In cash, loans and guarantees

Judge A Lofaro :

Cash, loans and guarantees.

Judge J Said Pullicino :

And therefore Mr Gasan will be in the same position as you; as you are.

The Witness :

...bigger shareholding then I do.

Judge J Said Pullicino :

A bigger holder.

The Witness :

Yes.

Judge J Said Pullicino :

And therefore he is prepared to forget his shareholding in... I mean you said he is not going to carry on with the business possibly. Even though that his commitment that there is losses so large. Will ask him.

The Witness :

...Mr Gasan that

Judge J Said Pullicino :

Haven't you discussed this thing between you? On a different approach I mean.

The Witness :

Pardon?

The Witness :

Whether you discussed this thing with Mr Gasan on a different approach?

The Witness :

No since that article that came out which.. I didn't know about it. It came out in press.

Judge J Said Pullicino :

Mr Gasan ...?

The Witness :

Yes.

Judge J Said Pullicino :

How is it possible?

The Witness :

I do not know.

Judge J Said Pullicino :

Ok; we accept your word ...

Judge A Lofaro :

...I can barely hear him.

Dr Therese Comodini Cachia :

So Mr Gasan did not inform you of his position on Electrogas before he published the public statement.

Judge J Said Pullicino :

... involve the press and I think ..

Judge A Lofaro :

Always from the press; always. These are his relatives that we are talking about now!

The Witness :

We have discussed; we have discussed our position with regards to Electrogas, ok?, at the GEM Board, and what we planned to do in the future.

Judge A Lofaro :

And what did he tell you?

Judge J Said Pullicino :

....you are changing all versions again.

The Witness :

Pardon?

Judge J Said Pullicino :

You are changing all versions.

Judge A Lofaro :

He is.

The Witness :

But I din not know that Mr Gasan who was saying that he was going to get out at the way that he did in the article ..

Judge A Lofaro :

So he did all that without even telling you. Right?

The Witness :

The article?

Judge A Lofaro :

Yes.

The Witness :

I knew he was coming out ...the article, but I didn't know what the contents of the article was. No.

Judge A Lofaro :

Ok, so he is family and he doesn't tell you.

Dr Therese Comodini Cachia :

Sohe was going to make a public statement

Judge A Lofaro :

But he didn't know the contents.

Dr Therese Comodini Cachia :

Yes?

The Witness :

Yes.

Judge J Said Pullicino :

Be careful.

Dr Therese Comodini Cachia :

What did you think that public statement is going to be?

The Witness :

I didn't think

Dr Therese Comodini Cachia :

... because now you are getting us all confused.

Judge A Lofaro :

Not I am not confused; no no I am not confused.

Dr Therese Comodini Cachia :

First you told us that you got to know the public statement when it was published on the newspaper. Then you told us that he discussed things with you before.

The Witness :

Yes.

Dr Therese Comodini Cachia :

Then when I ask you..., what did you know what did you expect him? What did you expect he was going to publish? You say I didn't know.

The Witness :

..

Dr Therese Comodini Cachia :

So what did you speak of?

The Witness :

We didn't speak about his article.

Judge A Lofaro :

So de doesn't telling you then..

The Witness :

I didn't speak about his article

Judge A Lofaro :

Your business partner, you are family and he doesn't tell you

Dr Therese Comodini Cachia :

Did you speak your plans for the future for Electrogas?

The Witness :

We had like I said earlier. Yes we did have a Board meeting before we discussed away forward with the Electrogas Project. And that we would explore....

Dr Therese Comodini Cachia :

Our question is very specific

The Witness :

We would explore all options. We would explore all options with regards to our position in Electrogas.

Dr Therese Comodini Cachia :

What was the time difference between this board meeting and the press statement?

The Witness :

A week to 10 days.

Dr Therese Comodini Cachia :

A week to 10 days. And in that week to 10 days you were not informed that this decision that Mr Gasan had come to this conclusion.

The Witness :

No. Not in....

Dr Therese Comodini Cachia :

Ok.

Judge A Lofaro :

He didn't bother telling you, right?

The Witness :

Pardon?

Judge A Lofaro :

He didn't bother to tell you.

The Witness :

That he is coming out with his press release?

Judge A Lofaro :

Yes.

The Witness :

No.

Judge A Lofaro :

No.

Dr Therese Comodini Cachia :

Can I ask you a question about the project itself?

The Witness :

Yes.

Dr Therese Comodini Cachia :

And the projections of the project

The Witness :

Yes.

Dr Therese Comodini Cachia :

So we repeatedly being told that you invested, you've taken on liabilities, but you haven't made a profit.

The Witness :

That's right.

Dr Therese Comodini Cachia :

Have you had any payments made to you though? Have you received any payments from this project?

The Witness :

In the beginning of the project we had success fees and development fees.

Dr Therese Comodini Cachia :

Which were in the tune of what?

The Witness :

Success fees of four point one (4.1), and development fees of two (2)

Dr Therese Comodini Cachia :

So you had six point one million fees received from this project.

The Witness :

Yes.

Judge J Said Pullicino :

Therefore you had ...practically most of your investments

The Witness :

No not at all because these all went to expenses

Judge J Said Pullicino :

All the expenses.

Dr Therese Comodini Cachia :

Expenses in your case of GEM Holdings?

The Witness :

GEM commitment towards the Electrogas project.

Dr Therese Comodini Cachia :

So what you are telling me? That you received six point one million which you then reinvested in the Electrogas company?

The Witness :

Yes.

Dr Therese Comodini Cachia :

How?

The Witness :

There were paid all the expenses for the government guarantee; so our commitment with regards that guarantee the expenses .. guarantee were to the tune of about three point six million which we had to pay.

Dr Therese Comodini Cachia :

Which lease you roughly two million

The Witness :

Which was prorata. There were bank charges which were another four hundred and something million. Obviously you've got.. these all declared; you've had tax to pay on them' you're got.. you know, etc..

Judge A Lofaro :

So you running all this at a loss basically? You are running it at a loss?

Dr Therese Comodini Cachia :

.. actually lead to the other question. So your financial projections tell you that you will be making a profit on which year? Because you are not given this for free to the people. So your financial projections indicate that you'll make a profit at which year?

The Witness :

The model has been shifting on a regular basis; so ..

Dr Therese Comodini Cachia :

Let's say the last model.

The Witness :

So I would not like..; I would have to get back to you on that

Dr Therese Comodini Cachia :

You don't know when you were been making a profit according to your last model?

The Witness :

The financial.., our model, our working model is been because of all the changes that have happened with FIRIS 15 bla-bla etc, the model has been changing over the time, and I need to go back to the new model to make sure.

Dr Therese Comodini Cachia :

Ok; let's consider your last model, your old model; the model that was sill there when Yorgen Fenech was still director. That is November 2019. When were you ..

The Witness :

The company was start making after.. making money after the fixed priced period which would start after year 5....

Dr Therese Comodini Cachia :

Year 5 being?

The Witness :

...of operations.

Dr Therese Comodini Cachia :

Year 5 being?

The Witness :

So it refers 2 years in operations; it would be 3 years time.

Dr Therese Comodini Cachia :

2023

The Witness :

Yes.

Dr Therese Comodini Cachia :

And what were would your profits be then?

The Witness :

I can't .. I mean I have to go back to ..

Judge A Lofaro :

He will get back to us and tell us. He will tell us next time.

Dr Therese Comodini Cachia :

Before I asked you if you were aware that Mr Fenech was actually running a site business with Turab Musayev; and you said you weren't aware, you only got aware.. you only became aware of that later.

The Witness :

Yes.

Dr Therese Comodini Cachia :

Were you aware that Mr Fenech was running or about to start running a project similar to Electrogas in Bangladesh?

The Witness :

No.

Dr Therese Comodini Cachia :

So when did you become aware of this?

Judge A Lofaro :

From the media. Hux?

The Witness :

No. I knew Yorgen Fenech was going to Bangladesh, but I did not..

Judge A Lofaro :

Ehe? But not from the media this time? I am surprised. I am very surprised

The Witness :

..

Dr Therese Comodini Cachia :

When did you know that was going to Bangladesh?

The Witness :

I can't remember; speaking and I think he told me I am travelling to Bangladesh. But I did not query, I didn't ask him what he was doing. It was.. I am not involved in it.. in any of this, so its not my business to know ..

Judge A Lofaro :

But when did you get to know is the question. When did you get to know?

The Witness :

About what you are saying he ..

Judge A Lofaro :

On Bangladesh thing yes

The Witness :

Then I have heard it from the press

Judge A Lofaro :

You see! From the press. Ok.

Dr Therese Comodini Cachia :

Would you.. would it be your business if you found out that the project of Bangladesh was actually being based on the technicalities of Electrogas?

The Witness :

No, I wouldn't be.

Dr Therese Comodini Cachia :

I don't know, maybe you have some new technology that you wanted to protect? Maybe you have some new structures?

The Witness :

No.

Dr Therese Comodini Cachia :

No.

The Witness :

The Electrogas Project is a number of components, Regas is a standard, is standard Regas terminal. The turbines are what they are. The vessel is and old .. which is to a ..facility

Dr Therese Comodini Cachia :

So do I understand you well when you said you undertook a quick review of the emails of Electrogas?

The Witness :

Of where I was trying to see were they could have been.

Dr Therese Comodini Cachia :

Ok. And are you aware that there is extensive emails which speak of Yorgen Fenech providing all the overall layout drawings of the entire facility, marine facility layout, and section drawings, reports of the storm mooring system, operational philosophy documents, that all this was being given all this were belongs to Electrogas was being used by Yorgen Fenech for the Bangladesh project?

The Witness :

No I don't have... I don't know about it.

Judge J Said Pullicino :

17 Black is a company that directly involved perhaps ... or whatever, your company, 17 Black

The Witness :

Pardon?

Judge J Said Pullicino :

17 Black, the allegation was that money was to be channelled through your projects to other persons, no?

The Witness :

No.

Judge J Said Pullicino :

Wasn't that way?

The Witness :

Through which company? Electrogas?

The Witness :

Yes.

The Witness :

No.

Judge J Said Pullicino :

No. But that was the allegation.

The Witness :

That's the allegation but its .. can found it

Judge J Said Pullicino :

I was asking this because a parallel company which is called Macbride which have no idea the ownership... at least the Board as yet..; have you any recollection of? Ever heard of it?

The Witness :

I am exactly in the same boat as you have. I don't know, I absolutely don't know who belongs to.

Judge J Said Pullicino :

You have no knowledge of that; ok.

Dr Jason Azzopardi :

Mr Apap Bologna, you were became a director last November.

The Witness :

Yes.

Dr Jason Azzopardi :

And you became a director when Ray Fenech asked you to substitute Yorgen Fenech?

The Witness :

No.

Dr Jason Azzopardi :

No. How did come about?

The Witness :

We had a Board meeting at GEM, and we discussed it, and ...

Dr Jason Azzopardi :

You discussed what? Sorry.

The Witness :

We discussed who is going to be the next director of GEM.

Dr Jason Azzopardi :

Because Mr Fenech had .. the resignation.

Judge A Lofaro :

Resigned.

The Witness :

Because Mr Fenech had resigned. And...

Dr Jason Azzopardi :

Fair enough, and you stepped in.

The Witness :

And I stepped in.

Judge A Lofaro :

You offered to step in.

The Witness :

Yes.

Dr Jason Azzopardi :

This was round about 12th December.

The Witness :

I was appointed on the 3rd of November.

Dr Jason Azzopardi :

3rd of November

The Witness :

Yes.

Dr Jason Azzopardi :

3rd so early November; thank you.

Judge A Lofaro :

3rd is when he resigned, no?

The Witness :

So, a week later.

Dr Jason Azzopardi :

Ara, Yorgen Fenech, correct me if I am wrong, resigned on the 12th of November, and you were appointed on the 12th.

The Witness :

So then I ..

Dr Jason Azzopardi :

You are ok with that?

The Witness :

Well, I get to look at the register ...of the MFSA exactly to say when..

Dr Jason Azzopardi :

The day is not that important; what is important is this. Wouldn't it have been logical and reasonable for somebody seasoned, experienced an old salt in the business world to ask why Fenech such a paragon of business entrepreneurship for so many years, the biggest contractor, in fact you had contacted him in 2013, immediately out of the blues resigned from this major project. You would have asked him. Don't tell you didn't. Asked Yorgen Fenech

The Witness :

We asked Mr Fenech. Yorgen wasn't in the meeting

Dr Jason Azzopardi :

To ask Mr Fenech he did not need been a meeting, come-on ?

The Witness :

Yes. But I didn't speak to Yorgen after that point in time; and I asked Mr Fenech and Mr Fenech was....

Dr Jason Azzopardi :

Remember, there will be data coming out from Mobile of Yorgen Fenech in a few days time, be careful, ok

The Witness :

Yes.

Judge A Lofaro :

Ask being caution him all along.

Dr Jason Azzopardi :

Now I am asking you did you speak to.., when I say ‘speak’, is not necessarily be te-ta- tet, it can be also over a phone call or a WhatsApp. Ok?

Judge A Lofaro :

Virtual as well.

Dr Jason Azzopardi :

Did you speak with did you request and it would have been all right to do so, - Mr Fenech, what is going on? why are you resigning? We are doing so well...

The Witness :

I may have requested. I may have requested

Dr Jason Azzopardi :

Skuzani?

The Witness :

I may have asked him.

Dr Jason Azzopardi :

You may have.

The Witness :

I may have

Judge A Lofaro :

He is not sure.

The Witness :

I don't remember ...

Dr Jason Azzopardi :

In any case you don't remember the reason he gave you.

The Witness :

No.

Dr Jason Azzopardi :

You mentioned previously ..

Judge J Said Pullicino :

Sorry ta. He resigned before being arrested?

Dr Jason Azzopardi :

Yes.

The Witness :

Yes yes.

Dr Jason Azzopardi :

Yes. He resigned around 10 days - 11 days before the arrest.

The Witness :

Before the arrest. That's right.

Dr Jason Azzopardi :

Concept paper, this was shown according to your testimony pre 2013 to various prominent politicians.

The Witness :

Yes.

Dr Jason Azzopardi :

If I remember correctly you mentioned that ... point out the names. I got the impression that they were all names coming from the PN administration, which was in government pre 2013, and there was no take-up.

The Witness :

Yes.

Dr Jason Azzopardi :

Yes. Am I to understand that you did not cross the bridge and speak to the Labour Party in Opposition?

The Witness :

You are absolutely right.

Dr Jason Azzopardi :

I am absolutely right.

The Witness :

Yes.

Judge J Said Pullicino :

But I am asking him, but 2013 was election year,

The Witness :

Yes.

Judge J Said Pullicino :

And therefore you did not know who the next government would be. I mean logical is ...

The Witness :

Exactly I

Judge J Said Pullicino :

No no, logically one would expect a businessman with a project to approach both parties could be in government within a couple of months, and explain – look, we have this project; what is your idea? Not just the government party who might not be in government. And actually was a feeling that it wouldn't be in government. I mean how can you explain ..

The Witness :

Like I am telling you, and am I telling you the honest truth that I did not. I did not present it to other side, you know?

Judge J Said Pullicino :

But what was the reason why did the opposition side who could be in government?

The Witness :

It wasn't a matter of ... ; I just didn't do it.

Judge J Said Pullicino :

You didn't do it.

The Witness :

I can't tell you ..; I tell you the truth, I mean..

Dr Jason Azzopardi :

Before January 2013 it's a known fact, it's a publicly known fact, that Joe Gasan organized private meetings between Joseph Muscat and prominent

leaders so the business community at level 22 in Portomaso; its a known fact. Were you ever present for these meetings.

The Witness :

No.

Dr Jason Azzopardi :

Were you aware of these meetings?

The Witness :

No.

Dr Jason Azzopardi :

Now, previously in your testimony did I understand correctly that (I want to be faithful to your words) - *Yorgen Fenech was the lead person on the project.*

The Witness :

Yes.

Dr Jason Azzopardi :

Kindly explain to the Board why or how come the concept paper which was distributed before 2013 on the second page the consortium is consisting of amongst Gasol and International Power..., a Maltese investors group assembled and led by Paul Apap Bologna. Now you said that the project.. the lead was Yorgen Fenech. Over here the person fronting it is Mr Paul Apap Bologna.

The Witness :

Yes.

Dr Jason Azzopardi :

Why this discrepancy?

The Witness :

No, there isn't discrepancy

Dr Jason Azzopardi :

There isn't.

The Witness :

What I said was., what I said was, is that – that concept paper which was in 2007, 2008, ok? That was the paper that was put together by Gasol at the time then. When, when, the project then, or when there was the pre electoral manifest that came put and there was the insinuation that there was going to be

restructuring of the energy sector there in Malta, with the expression of interest coming on this and whatever, Yorgen was the lead man. So much so even on the submission documents where you have to indicate who; it is Yorgen Fenech as the contact person.

Dr Jason Azzopardi :

And it was an agreement between both of you that Yorgen will be the lead person?

The Witness :

Between Yorgen, Mark, and myself.

Dr Jason Azzopardi :

And myself. It was a joint decision.

The Witness :

Absolutely.

Dr Jason Azzopardi :

You confirm in this power point presentation concept paper, call it what you may, that the main bidders Enemalta to enter in power purchase agreement having for bullets. First bullet 20 plus year term; government to guarantee Enemalta's contractual performance. 3rd bullet), fuel an operations maintenance is a pass through; 4th) payment base on capacity made a viable. Let's go through them one by one.

The Witness :

Yes.

Dr Jason Azzopardi :

20 year term, how come it is so similar to the 18 years which resulted in the contract signed with Enemalta?

The Witness :

I cannot answer that because I didn't put the government paper together, so I don't know.

Dr Jason Azzopardi :

You don't know.

The Witness :

And I didn't present that presentation.

Dr Jason Azzopardi :

Government to guarantee Enemalta's contractual performance, what did you have in mind here? How would government guarantee?

The Witness :

So that was a presentation; that was put together by as I say again Gasol. And Gasol would have been as they were in this field presenting standards and I am sure international standards ..

Dr Jason Azzopardi :

International..

The Witness :

International standards of how a project like this could happen.

Dr Jason Azzopardi :

So the words 'government to guarantee' did not entail as far as you can recall the inclusion subsequently of a government sovereign guarantee, bank guarantee.

The Witness :

I would.. well, you are asked me something which was done back in 2007; so it's a very long time ago!

Dr Jason Azzopardi :

It so happens that the truth is not..

The Witness :

So..

Dr Jason Azzopardi :

..it does not change, you know? What does the government to guarantee imply here? A bank guarantee?

The Witness :

No...; the uptake of the electricity.

Dr Jason Azzopardi :

Skuzani?

The Witness :

The uptake of the electricity and gas.

Dr Jason Azzopardi :

The uptake. 3rd bullet) Fuel is a pass through, operations and maintenance and fuel is a pass through. What is the meaning?

The Witness :

The meaning is that the facilities would be used that if you selling gas through your facilities the gas would come through there and you have a mark-up on the processing of that gas; and that is all that would be to the Electrogas. The production of electricity in this case because it was a much bigger power plan that we would sell electricity at a given price with the then government, who were then either sell it onto the grid or would sell it through the interconnector cable.

Dr Jason Azzopardi :

4th bullet); Payment based on capacity made available. Does this.. or rather let me ask in another way. What does this entail - payment based on capacity? Is it the take or pay guarantee?

The Witness :

You are asking me to answer something about a document that been produced by Gasol who rent this sector.

Dr Jason Azzopardi :

It so happened it costing us two hundred million extra per year. So I would gently ask you to try and remember correctly.

The Witness :

I missed your comment.

Dr Jason Azzopardi :

You missed my comment. Actually is not mines, it's the NAO's comment; but I forgot that you had ..

The Witness :

Ok.

Judge A Lofaro :

He didn't read it.

Dr Jason Azzopardi :

Now let me take you to the NAO report. This is the abridged one.

The Witness :

Yes.

Dr Jason Azzopardi :

The NAO - The National Audit Office, for the information of the Honourable Members of the Board of Inquiry this is I am quoting and I'll be quoting and referring to abridged report of the NAO, this is page 13.

The National Audit Office noted.. in paragraph 3.18, that the security and supply agreement was not circulated amongst bidders. Specific reference to the security and supply agreement was first made through an emended draft implementation agreement circulated on the 5th of September 2013. So there wasn't an equal playing field, right?

The Witness :

But we were not privy to that

Dr Jason Azzopardi :

You were not privy

The Witness :

We were not privy to the security of supply ...

Dr Jason Azzopardi :

Would you remember that the call for expressions of interest.. (Sinjuri Imhallfin, nahseb li din hija data importanti). The call for expressions of interest issued by Enemalta took place on the 11th of April 2013

Judge A Lofaro :

11th of April; ok.

Dr Jason Azzopardi :

Just a month after the general... The audit office maintains.., (page 14 at the top), that the introduction of the concept of security of supply was a substantial change from that stated in the expression of interest and RFB that significantly reduced the risk to bidders. It was concretized at late stage. Were you at any time privy to any discussions with Enemalta or with government to clinch this SSA which was so crucial in the reducing risk.

The Witness :

No.

Dr Jason Azzopardi :

No. When did you become aware when was it floated, when was it discussed the insistence by Electrogas that Enemalta commits itself to an overall take or pay obligation; equivalent to 85 % of the annual contract power. So whether we need or not, whether the country needs or not for the next 18 years, take or pay. You have to pay us this rate; which is locked, which is fixed. When was this and by whom was this floated?

The Witness :

I don't know when it was and I don't know by who, because I wasn't a director. And I wasn't privy ...

Dr Jason Azzopardi :

You wasn't a director

The Witness :

So I was not privy to these discussions at EGM level.

Dr Jason Azzopardi :

Did Electrogas ever discuss that an option was or could have been not just offshore but onshore; when was Electrogas informed by government or by Enemalta that the only option being considered was going to be the offshore. Which entails the ship – the FSRU, and not at all onshore being excluded.

The Witness :

That I don't know. I have no clue. But our project was always based on Gasol.

Dr Jason Azzopardi :

Now, who brought in Socar?

The Witness :

Gasol.

Dr Jason Azzopardi :

You trust Gasol?

The Witness :

..

Dr Jason Azzopardi :

You trusted Gasol.

The Witness :

I had one of my own friends from school who work there.

Dr Jason Azzopardi :

School in the UK.

The Witness :

Absolutely.

Dr Jason Azzopardi :

Were you at any point in time aware of any concerns on the financial situation under pinning Gasol?

The Witness :

We became aware of the financial situation gas when we came to the point where the shareholders had to guarantee or put up their money for the project to carry on. That is when we found out.

Dr Jason Azzopardi :

And that would be around about ?

The Witness :

So many ..

Dr Jason Azzopardi :

Would I say.. would I be correct early 2014?

The Witness :

I will have to confirm that for you because

Judge A Lofaro :

You check for us and tell us next time.

Dr Jason Azzopardi :

So what sort of due diligence took place? I mean this is not an ironmongery shop! This is a major contract, a major power station; and just a year after there were already concerns about the financial standing of Electrogas. You are aware that government became aware in early 2014 - mid 2014? I quote for the benefit of the Honourable members of the Board page 32 paragraph 9.1 Financing agreement. *Government's involvement in assisting Electrogas secure financing for the project first emerged in mid 2014; when it became evident that for Electrogas to obtain financing the SSA - Security of Supply ... was to be in effect.* Mela, April 2014 the express of interest is issued, it was a

major project. Early mid 2014 there is already concern about financing. Were you aware of these concerns?

The Witness :

No.

Dr Jason Azzopardi :

Were you aware ..

The Witness :

I became aware when obviously I found out Gasol had issues at that point in time. But you know, a company can a year later fall into financial difficulties absolutely.

Dr Jason Azzopardi :

Something that the auditor noted in his report several times it was actually preserving. Gasol was a lead part, how come.. you must be in a position to explain, how come a lead partner a few month the line is found to have financial difficulties. What was the need for Gasol in the first place?

The Witness :

Gasol was a company that did downstream projects. So They were involved in setting up infrastructure projects. In actual facts one of the things that they were doing at the time and they were doing with Socar was doing if I am not mistaken a similar floating terminal in the Benin region

Dr Jason Azzopardi :

In the...? Sorry

The Witness :

In the Benin region. Because their mother company Efran, Efran owned if I am not mistaken 60 to 70 % on the Oil and Gas recourse in that region. So there were companies there were focusing on the infrastructure projects. Obviously I can say.. and I said it earlier that I had spoken to them. We had spoken to them, and then they have bring on all the other partners. So obviously as they were the first contact and they had this... they had the experience and they put the projects together they were going to lead it.

Dr Jason Azzopardi :

The report of the NAO page 30 is says that Gasol withdrew on the 22nd of July 2015; and the NAO says this was a notable development. When Gasol a shareholder of Electrogas and originally the lead man member of the Electrogas consortium withdrew ... difficulties is in the reason the .. to

support the project. So am I to understand that it was only 2015 that you became aware?

The Witness :

...like I said yes; early that when, you know? they couldn't trace the finance be able to ..

Dr Jason Azzopardi :

Did Yorgen Fenech tell you that he was having discussions with members of government to secure the bank guarantee?

The Witness :

No.

Dr Jason Azzopardi :

No. Were you aware..., now let's go back to early 2013. You stepped in after government or rather the Labour Party during the electoral campaign January 2013 intimated (your words) made no, its plans for this particular project, right?

The Witness :

Absolutely; well, for a project

Dr Jason Azzopardi :

Skuzani?

The Witness :

For a project.

Dr Jason Azzopardi :

For a project hekk hu.

The Witness :

For a project.

Judge A Lofaro :

Yes agreed.

Dr Jason Azzopardi :

April 2013, the expression of interest is issued. Will you explain to the Board that when it comes to speaking about a power plan insurance to insure the risk for third parties. Is a sine qua non, is a necessary..

Judge A Lofaro :

It's a must.

Dr Jason Azzopardi :

It's a must. It's obligatory. It's a must. Will you agree with that?

The Witness :

Yes.

Dr Jason Azzopardi :

Yes. Now, Sinjuri, irid jigi ppezentat dan l-artikolu. Daphne Caruana Galizia on January the 15th, 2013, quotes “a risk assessment consultant - that privately operated power stations have to be insured in terms of investment and more crucially third part damage. Risks to life and other people's property. Now this proper security risk assessment takes a year, and it is obligatory before the insurance sticks out its neck. Now, can you explain how pre January 2013 you did not contact the Labour Party in the opposition. January 2013 you became aware of a project. April 2013 express of interest issued. Was the insurance an afterthought or was it already taken care of?

The Witness :

I don't know; I will have to check.

Dr Jason Azzopardi :

You have to check as well that.

Judge A Lofaro :

You don't know about the insurance?!

The Witness :

Pardon?

Judge A Lofaro :

You don't know?!

The Witness :

These would had been...this would had been...

Judge A Lofaro :

But this is not a ..

The Witness :

But this would have been ...

Judge A Lofaro :

.. a .. matter! It's very important.

The Witness :

The company that was responsible for the power station etc. Would have been Siemens. So Siemens would have been taking care of issue with regards to the power station. Not myself.

Judge A Lofaro :

But they wouldn't tell you?

The Witness :

So if there are things that needed to be done they would have been teams and committees handling these different aspects of the project; so they would had been handling it.

Judge A Lofaro :

And they would even inform you, nothing. They wouldn't inform you?

The Witness :

They wouldn't inform of every single... I mean the insurance

Judge A Lofaro :

But you know... someone is chosen or whatever. They don't tell you who the insurance is? The insurance company is? They don't.

The Witness :

EGM would be handling themselves to

Judge A Lofaro :

And they didn't in this case; ok.

Dr Jason Azzopardi :

On October 16, 2013, Sinjuri Imhallfin, Daphne Caruana Galizia, another article on the alleged done deal concerning the power station, remains her readers that back in January, 9th January Konrad Mizzi told the press that the new power station would cost three hundred seventy six million. I remember asking myself at the time how and why he was able to pull that very specific figure out of his hat. That was clearly the actual cost. And if they had the actual cost ..

Judge A Lofaro :

Dr Azzopardi, can you repeat the amount please?

Dr Jason Azzopardi :

Konrad Mizzi told the press that the new power station would cost three hundred seventy six million.

Judge A Lofaro :

All right, thank you,

Dr Jason Azzopardi :

That was clearly the actual cost. And if they had the actual cost that they probably had the actual supplier to quote it to them. Now we learn through Gasol's investor statement published as mandated by Stock Exchange Regulations, that the power station will cost.. oh what a surprise! Three hundred seventy million Euro (€m370). This is Mrs Caruana Galizia, October 16, 2013. First question : Were you aware of this article?

The Witness :

No.

Dr Jason Azzopardi :

How come Konrad Mizzi on the 9th of January 2013 come up with that specific figure, 373. Not 374, 375, 380, 400

Judge A Lofaro :

9th of January, so before the election.

Dr Jason Azzopardi :

Yes yes. Dak inhar li thabbret il-kampanja elettorali.

Judge A Lofaro :

2 months before.

Dr Jason Azzopardi :

Il-kampanja elettorali thabbret

Judge A Lofaro :

2 months before the election

Dr Jason Azzopardi :

Yes. How can you explain, don't tell me – ask Konrad Mizzi;

Judge A Lofaro :

No. We are asking you.

The Witness :

I don't know.

Judge A Lofaro :

You don't know

The Witness :

No.

Judge J Said Pullicino :

But the indicators are that the minister... the minister had a clear idea of all the project was all about; had a clear of the project, and somewhere from somewhere he must have had this information.

Judge A Lofaro :

He knew the exact amount. Exact.

Judge J Said Pullicino :

Not the quality ... of project, the details of the project.

The Witness :

Yes, but if I have never met with Konrad Mizzi I have never met with Konrad Mizzi! You know? So .

Judge A Lofaro :

We are not saying you met him..

Judge J Said Pullicino :

We are just pointing out

The Witness :

Yes, I can understand when it is coming form but.. you know, if I've never met the guy I ..!

Dr Jason Azzopardi :

Let assume that you are saying the truth and you did not meet Konrad Mizzi

The Witness :

No no, not assuming; I am saying the truth.

Dr Jason Azzopardi :

You say the truth. Before January 2013, inform the Board about your regular meetings, lunch meetings between Edward Zammit Lewis, yourself and Joseph Muscat.

The Witness :

I didn't have lunch meeting with ..

Dr Jason Azzopardi :

No?

The Witness :

No.

Dr Jason Azzopardi :

No? Edward Zammit Lewis did not setup meetings between you, lunch on Saturdays, between you and Joseph Muscat?

The Witness :

No.

Dr Jason Azzopardi :

No?

The Witness :

No.

Dr Jason Azzopardi :

As far as the shareholding goes of Electrogas ..

Judge J Said Pullicino :

It's a direct question with a direct answer eh!

Judge A Lofaro :

Please be careful with your replies eh! I cannot warn you enough. I want to warn you anymore. End of the story.

Dr Jason Azzopardi :

Sur Apap Bologna, shareholding Electrogas, am I right to specify these percentages. 33 % Socar, 33 % GEM, 33% Siemens.

The Witness :

Yes.

Dr Jason Azzopardi :

And then in its own right GEM.. within GEM there is Gasan more or less 35 %, correct me, Tumas more or less 35 %, and there is another company.

The Witness :

Yes.

Dr Jason Azzopardi :

You know the name of that company?

The Witness :

New Energy.

Dr Jason Azzopardi :

Skuzani?

The Witness :

New Energy.

Dr Jason Azzopardi :

And the shareholder the sole shareholder of that company is..?

The Witness :

Mr Yorgen Fenech.

Dr Jason Azzopardi :

Mr Yorgen Fenech. Are we in agreement he has eight point something percent?

The Witness :

Yes.

Dr Jason Azzopardi :

Yes. Now, when setting up the structure of Electrogas did Yorgen Fenech tell you or did you ask him why the need for a company and him having the sole shareholding. He was eating you into your profits. He was already a shareholder via Tumas. What was the need of new energy supply?

The Witness :

As I stated a little bit earlier Yorgen Fenech was going to take the lead on this project and put all his man-hours into running this project. This project was big; he was working and solely had that. And he requested that.. he felt that he

would like part of the shareholding for himself because he was going to be doing all the work for this project. And we agreed to that.

Dr Jason Azzopardi :

He never referred, he never implied, he never led you to believe or understand that Yorgen Fenech was holding those 8 % on behalf of Konrad Mizzi and Keith Schembri?

The Witness :

No, absolutely not.

Dr Jason Azzopardi :

He never told you that those 8 % were being used for kickbacks?

The Witness :

No.

Dr Jason Azzopardi :

No. Did he ever mention Mecbridge to you?

Dr Jason Azzopardi :

You know who the owner of Mecbridge is?

The Witness :

Have absolutely no idea.

Dr Jason Azzopardi :

No idea. Cifidex and Montenegro, no connection?

The Witness :

Nothing.

Dr Jason Azzopardi :

So Yorgen Fenech never spoke to you about the Montenegro initiative.

The Witness :

No, nothing.

Dr Jason Azzopardi :

Nothing. Is it true you donated one million Euros to the Labour Party's electoral campaign in 2013?

The Witness :

Absolutely not.

Dr Jason Azzopardi :

Absolutely not. How much did you donate?

The Witness :

I didn't. I didn't.

Dr Jason Azzopardi :

Nothing?

The Witness :

No.

Judge A Lofaro :

Nothing not one cent.

Dr Jason Azzopardi :

Not one Euro!

The Witness :

No.

Dr Jason Azzopardi :

Nothing.

The Witness :

No.

Dr Jason Azzopardi :

And you still insist that pre 2013 you did not meet via Edward Zammit Lewis
- Joseph Muscat.

The Witness :

As far as my memory ...

Judge A Lofaro :

Could it be you forgot ...

The Witness :

I have met Joseph Muscat

Dr Jason Azzopardi :

When?

The Witness :

...

Dr Jason Azzopardi :

I am not saying casual in the street. Lunch. It was Edward Zammit Lewis ..

Judge A Lofaro :

Please be careful before you answer this question. I said I wouldn't warn you again, and again I am warning you.

The Witness :

I would have met at Edward's house with a whole of other people but ..

Dr Jason Azzopardi :

You and Edward's wife are friends, right?

The Witness :

Absolutely.

Dr Jason Azzopardi :

Absolutely. There is nothing wrong with that.

The Witness :

...met him sociably

Dr Jason Azzopardi :

Edward Zammit Lewis ..

The Witness :

Yes and I've said that, met him sociably.

Dr Jason Azzopardi :

Who?

The Witness :

To Joseph Muscat and ..

Dr Jason Azzopardi :

Lunch at ... house

Judge A Lofaro :

....lunch is social event, isn't it?

The Witness :

Sociably; with other people

Judge A Lofaro :

But lunch is a social event

The Witness :

Regularly certainly not

Dr Jason Azzopardi :

Saturday lunches?

The Witness :

No.

Dr Jason Azzopardi :

No.

Judge A Lofaro :

Ok; no.

Dr Jason Azzopardi :

Did you meet the Siemens CEO this week?

The Witness :

No.

Dr Jason Azzopardi :

Do you have any idea why he came over to Malta last Monday?

The Witness :

He came over to Malta the CEO of Italy

Dr Jason Azzopardi :

Yes CEO Italy Siemens

The Witness :

Yes ..

Judge A Lofaro :

Siemens ehe.

The Witness :

To see about the other business ..

Dr Jason Azzopardi :

Not about Electrogas

The Witness :

No. They have no remit.

Dr Therese Comodini Cachia :

I just have one question. So far a while Gasol were actually involved in the project, right? The bid was initially accepted with Gasol there; your original concept in 2007 relied on Gasol, it came from Gasol. So on the 25th of October 2013 there was an article published in an energy new site; and in that article Gasol was interviewed and Gasol's... I am referring to the international oil daily.

The Witness :

Yes.

Dr Therese Comodini Cachia :

This was just in the few months; the first few months of the project. It is still 2013. And Gasol's chief operating officer Alan Buxton had this to say : so speaking to International Oil Daily Gasol chief operating officer Alan Buxton said – the success of the project relied on the recent lent slight victory of the Labour Party which came to power in March. This was March to October. Very few months.

Judge A Lofaro :

7 months.

Dr Therese Comodini Cachia :

How do you explain this statement?

The Witness :

I can't explain that statement; Alan Buxton has to.

Dr Therese Comodini Cachia :

And your statement that there was no communication with the Labour Party prior to the election held just a few weeks before the statement was published.

The Witness :

You have to ask Alan Buxton at that.., I can't clarify or say what's he was saying over there because... you know? I've already stated that. I mean no contact with them about this. I never presented it.

Dr Therese Comodini Cachia :

So as you were not aware whether Yorgen Fenech contacted the leader of the opposition about this. You were also equally unaware whether Gasol contacted the leader of the opposition?

The Witness :

Yes.

Dr Therese Comodini Cachia :

I do not have any questions.

Judge J Said Pullicino :

Just one question; there was a lot hype on Azerbaijan and the project; I mean how did affect you. They were concern with the supply.... You know?, basically.

The Witness :

The hype, which hype are you referring to?

Judge J Said Pullicino :

The contact between the Malta government and Azerbaijan

The Witness :

I don't know anything about ..

Judge A Lofaro :

It as over the press, you follow the press.

The Witness :

Yes. I follow the press absolutely..

Judge A Lofaro :

So it was...over the press; which we know you follow.

The Witness :

I obviously query about the visit.

Judge J Said Pullicino :

What was the scope of that visit?

The Witness :

I have absolutely no idea what the scope of the visit was and I was never told about the scope.

Judge J Said Pullicino :

But why did you query about it?

The Witness :

What was the scope of that visit. But I never got an answer of what..

Judge A Lofaro :

And there were no reporters present

The Witness :

.. the GEM

Judge J Said Pullicino :

Did it in anyway connect with your project?

The Witness :

...EGM about whether there was any connection with that trip Electrogas whatever, we don't even know about it, no.

Judge J Said Pullicino :

No.

Judge A Lofaro :

In fact there were no reporters. You do know then.

The Witness :

Yes I do know..

Judge A Lofaro :

It was in the media and you follow it assiduously.

The Witness :

Yes.

Judge A Lofaro :

So you must know.

Judge J Said Pullicino :

But I mean what was the reason why.., generally the reason was connected with the Electrogas Project, generally.

The Witness :

No I think there is an assumption there is been made because we at Electrogas don't know what the purpose of the visit was. That is an assumption being made completely. We don't know what the purpose of the....

Judge A Lofaro :

You including Yorgen Fenech doesn't know?

The Witness :

No.

Judge A Lofaro :

How do you know that Mr Fenech doesn't know?

The Witness :

Because when we asked Electrogas about it, if anything Electrogas would have known, we asked Electrogas and they said no. It is.. nothing to do with Electrogas. We don't know. And that is what concerns me the most, was it something to do with Electrogas or not? And Electrogas had no..

Judge J Said Pullicino :

But you never issue the statement saying whether connected with this oily with Azerbaijan. We never heard about a statement..

The Witness :

You have my statement now. No I am not connected.

Judge A Lofaro :

And you speak on behalf of everyone else

The Witness :

..

Judge J Said Pullicino :

Because the allegation is that the supply of Electrogas was discussed in that meeting, particular meeting, and obviously there was Keith Schembri present.. I mean, and no reporters! We are interested to know whether in any way..

The Witness :

The price of gas was in our bid. And when we signed the implementation agreement the price of our bid was in the implementation agreement when it was signed, and actually it was less than what was in our original offer.

Judge J Said Pullicino :

Therefore .. resulted came out of it .. for company ..

The Witness :

Pardon?

Judge J Said Pullicino :

There was no positive outcome; if there was any outcome from this meeting; because you did not acquire your oil from Azerbaijan

The Witness :

I have nothing to do with this meeting. Zero.

Judge Michael Mallia :

All right. Thank you very much.

Din hija s-sustanza tax-xhieda ta' **Paul Apap Bologna** kif giet dettata minnu stess fil-prezenza ta' l-istess xhud.

Niddikjara li traskrivejt bl-ahjar hila tieghi x-xhieda ta' l-istess xhud.

Saviour Scicluna

Traskrittur