

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 it-Tnejn 5 ta' Ottubru 2020, fid-2:00 a.m. fit-Tieni Sular, Awla 20, il-Qorti.

Judge Michael Mallia :

Witness, **Mark Gasan** son of Joe and Clarissa nee` Galea, born in St Julians and residing in Naxxar states on oath in the English language.

Chairman Mr Justice M Mallia :

Can you give us a brief background as to your connections in business; how did you come to the world of business? I know your family is in business; that's public knowledge.

The Witness :

I studied in the UK, and I came back to Malta 2003 ..

Madam Justice A Lofaro :

The problem is we can't hear you. Can you start from the beginning please?

The Witness :

Ok. So I studied in the UK and I came back to Malta in 2003. I started working in the property division within the group

Madam Justice A Lofaro :

Within Gasan Group.

The Witness :

Yes within Gasan Group. And they over the years I started getting involved in the various operations of the group.

Madam Justice A Lofaro :

So not just in property, but you branched on to other things as well

The Witness :

Yes; we held in the group yes.

Chairman Mr Justice M Mallia :

And how long have you been involved in the generation.. in the production of the electricity? What's your history. What's your background?

The Witness :

In electricity?

Madam Justice A Lofaro :

Yes.

The Witness :

I don't have any experience in electricity

Chairman Mr Justice M Mallia :

You don't have?

The Witness :

No.

Chairman Mr Justice M Mallia :

Except this one; right?

The Witness :

Yes .. my papa` ..

Madam Justice A Lofaro :

So this is the first.

The Witness :

Yes the first..

Chairman Mr Justice M Mallia :

Electrogas was your first.

The Witness :

Yes.

Chairman Mr Justice M Mallia :

Of course you know your brother-in-law Paul Apap Bologna

The Witness :

No he is not brighter-in-law. He is my cousin-in-law

Chairman Mr Justice M Mallia :

Cousin-in-law ..

The Witness :

My first cousin is married ..

Madam Justice A Lofaro :

...married to him.

The Witness :

Yes.

Chairman Mr Justice M Mallia :

Ok. Sorry I must have that wrong. How were you first involved in this Electrogas Project? We are going back to conception stage, were you involve at a very early stage? Did Paul bring you into.. in this project? Did he take you to meetings?

The Witness :

Me personally the first we heard about it we were approached by the late George Fenech.

Madam Justice A Lofaro :

George Fenech ..

The Witness :

Yes. In 2013

Madam Justice A Lofaro :

Yorgen's dad.

The Witness :

Yes. Yorgen's father. This was after a Board meeting who we have on something else; because we had some partnerships with ...

Madam Justice A Lofaro :

When do you say 'we' who else was it? Your father..

The Witness :

My father and myself

Madam Justice A Lofaro :

.. and yourself, ok.

The Witness :

Yes. And George Fenech approach the idea to us saying that basically the Labour Party was.. had this proposal for the energy plant, when were trying to form a Maltese consortium, and then also with other partners to possibly look into it and prepare a ..

Chairman Mr Justice M Mallia :

So when Paul Apap Bologna approach the Nationalist Party early in 2009 and after that ..

The Witness :

I didn't have any involvement there

Chairman Mr Justice M Mallia :

You were not involved

Madam Justice A Lofaro :

But were you aware of it?

Chairman Mr Justice M Mallia :

Ware you aware of it.?

The Witness :

He spoke to my father about it; and I believe my father attended one meeting with him, but my father never took it up to our board for discussion, for ..

Madam Justice A Lofaro :

So it was never taken up to board level you are saying.

The Witness :

No it was never taken up at board level. It was just an idea, nothing happened of it.

Madam Justice A Lofaro :

Nothing happened.

Chairman Mr Justice M Mallia :

So it was after 2013 then, that your..

The Witness :

Yes, that's the first time that

Madam Justice A Lofaro :

...that the group became involve.

The Witness :

Yes. And then when were approach by the late George Fenech he had said that they already spoken to Paul Apap Bologna to sort of form this consortium ..

Mr Justice J Said Pullicino :

Can you determine a month in 2013?

The Witness :

Probably was around February 2013; late February.

Mr Justice J Said Pullicino :

Prior to the election.

The Witness :

Yes that's prior the election yes.

Mr Justice J Said Pullicino :

Prior the election; ok. That's important.

The Witness :

But at that meeting we were just approach who had the idea could be potentially be interested to invest with them

Mr Justice J Said Pullicino :

The important thing for us is that Mr Fenech and Mr Apap Bologna where involved in this thing prior to the election and he spokes to you prior to the election.

The Witness :

It was yes.. it was later February; somewhere late February yes.

Chairman Mr Justice M Mallia :

Ok, you go on.

The Witness :

So they approach the subject with us to see if were interested. At that point obviously it was subject to the party coming into government, and so we went back and said hence had an internal discussion if potentially we could be interested or not shall the Labour Party ..

Mr Justice J Said Pullicino :

But what can you tell us more about the involvement of Mr Apap Bologna and Mr Fenech before the election. Are you aware of the discussions that went on between them and the government..? and the opposition at that time.

The Witness :

No, no I am not. I am not aware of that. No.

Mr Justice J Said Pullicino :

But when you were approached they were still in opposition and they told you that Mr Apap Bologna..., Mr Fenech told you, and Mr Apap Bologna was actually roped in already.

The Witness :

That they were obviously interested to work on the..

Mr Justice J Said Pullicino :

To work on that.

The Witness :

Yes to work on the projects..

Mr Justice J Said Pullicino :

Did they give you any indication of what the reaction of the opposition was at that time when he spoke to you?

The Witness :

Reaction of whom sorry?

Madam Justice A Lofaro :

Of the opposition.

Mr Justice J Said Pullicino :

The reaction of the opposition.

Madam Justice A Lofaro :

The shadow government.

Mr Justice J Said Pullicino :

We understand that Mr Apap Bologna and Mr Fenech went to .. the opposition and told them – look, we have this project. Did they give you any indication of what their reaction was?

The Witness :

You are talking about two 2013?

Mr Justice J Said Pullicino :

2013

Madam Justice A Lofaro :

Yes. Late February.

The Witness :

I am not aware of that.

Madam Justice A Lofaro :

You weren't.

The Witness :

No. That they spoke to the opposition.

Madam Justice A Lofaro :

Did you meet any of the Labour Party?

The Witness :

No. Me no..

Madam Justice A Lofaro :

At that stage.

The Witness :

No.

Madam Justice A Lofaro :

No. So what happened then?

The Witness :

So then we had a... my father and I had a discussion on the proposition. Then the Labour Party was .

Madam Justice A Lofaro :

Elected in the government, and then?

The Witness :

Elected in the government, and the internal discussion who he had we had just come after back with were other property developments with Tumas Group in Ta' Monita in Marsascala.

Madam Justice A Lofaro :

So you were already involved with Tumas Group.

The Witness :

Yes, and it was a very successful projects; on that project we were 4 directors, Ray Fenech, George Fenech, my father, and I. It worked successfully, so the idea of possible doing another partnership with the Tumas....

Madam Justice A Lofaro :

You were also related to them, weren't you?

The Witness :

Tumas Group? No.

Madam Justice A Lofaro :

No. Excuse me; to Mr Apap Bologna.

The Witness :

Yes.

Madam Justice A Lofaro :

Yes.

Mr Justice J Said Pullicino :

...at that state are you still thinking about pre-election; when you spoke to Yorgen Fenech and Mr Apap Bologna initially, did they show you something like this? I would like to know whether they showed you that sort of presentation when you discussed the project the first time.

The Witness :

I only saw that to be honest recently. I never.. I mean.., but eventually my father sort in.. when Paul had showed it to him. But I don't recall it myself.

Mr Justice J Said Pullicino :

Therefore when you discussed the thing with, on what lines.....

The Witness :

No basically ..

Mr Justice J Said Pullicino :

...on what lines were ... proposing?

The Witness :

So after George had approached that were internal discussions and then we met up again afterwards.

Mr Justice J Said Pullicino :

When you met with George and met with Paul, did they give you any....

The Witness :

No Paul wasn't there.

Mr Justice J Said Pullicino :

Paul wasn't there.

The Witness :

No.

Mr Justice J Said Pullicino :

Wasn't there. Did George give you an indication of the setup what was intended to do?

The Witness :

No. It was more basically the Labour Party in its ..

Mr Justice J Said Pullicino :

.. .the idea that they wanted to ..

The Witness :

The idea.. it was more.. I wasn't a long discussion. We were looking into this possibility as an investment, could you potentially be interested to come in with

Madam Justice A Lofaro :

And you were interested, right?

The Witness :

Yes.

Madam Justice A Lofaro :

You were.

The Witness :

So then we had discussions ourselves obviously alone and then we hands back to speak to George to understand more about....

Madam Justice A Lofaro :

More details perhaps...

The Witness :

Yes. More about the projects. How it would work. The financials of it. To get and idea.

Madam Justice A Lofaro :

Yes of course.

Mr Justice J Said Pullicino :

This because George Fenech wasn't in the production of electricity. For him it was a first as well.

The Witness :

Yes.

Mr Justice J Said Pullicino :

I mean therefore you must had discussed who one else would be involve in this thing.

The Witness :

Yes.

Mr Justice J Said Pullicino :

And did he get up and come up with the name at time – the early time?

The Witness :

Yes. So we had our second discussion we discussed the logistics of what would potential be required to put in a place. It was discussed that PWC would be approached immediately and...

Madam Justice A Lofaro :

PWC

The Witness :

Yes. And I believe Tumas had signed a letter of engagement with PWC, and then the lead on that was John Zarb. So the PWC would come in to look at the project to see the feasibility of it and also to assist in evaluating whether it

made sense to prepare a bid, eventually if so to do a bid. And we also had the discussion. For us to that concern at that point as Gasan we were extremely busy on our own operations. My brother had gone to Australia so I was heavily above the operations, and my father was starting to work a bit less. We wanted to understand who would operate it and how it would work. And from our side we had made pretty clear on the day one that it were to invest it would be as a passive investor non-operational.

Mr Justice J Said Pullicino :

But a passive investor with a major shareholding.

The Witness :

At that point in time when we initially had first discussions and we've got some of high-level numbers from PWC our share was looking at estimated, I'll being above five million Euros our equity investment. We had just also as Gasan who like to invest in Malta, we also like long term investments. We had sold our investment in Melita, so the idea..

Mr Justice J Said Pullicino :

..the invest.

The Witness :

..so a long-term investments attracted us.

Mr Justice J Said Pullicino :

Was mentioned of Gasol done at that time at that early stage?

The Witness :

I believe so yes.

Mr Justice J Said Pullicino :

At what stage?

The Witness :

Gasol?

Mr Justice J Said Pullicino :

At what stage?

The Witness :

No, the initial discussions to understand ..

Mr Justice J Said Pullicino :

Pre-election or after the election?

The Witness :

I am not sure if .. because pre-election ..

Mr Justice J Said Pullicino :

Because Our problem is this.

The Witness :

Ok, sorry.

Mr Justice J Said Pullicino :

The time limit, timeline between the election and when the project was first launched by government as a fully fledged operational project was very short. And therefore we had seeking time to establish at what stage the project was sort of.. the idea was had materialized.. or it was before or after the election?

The Witness :

From our sides the first time we took it up sort of discussion for the Gasan Group Board was in the March Board meeting

Mr Justice J Said Pullicino :

March.

The Witness :

Which was towards the end of March

Mr Justice J Said Pullicino :

The end of March.

The Witness :

Ehe, and that's when we first mentioned to our Board. Potentially we have been approached

Mr Justice J Said Pullicino :

Sometime before.

The Witness :

... we've been approached to look at this investment; we don't have any details of it. We would be... does the board agree in principle to have a look at it. And if so will go back get some details and come back.

Madam Justice A Lofaro :

But you were interested, weren't you?

Mr Justice J Said Pullicino :

Yes they were obviously.

The Witness :

No. I mean as I am saying, as I said earlier, as a group we like long term investments. We had also exited from Melita ..

Madam Justice A Lofaro :

Exactly; you wanted to invest.

The Witness :

..from ta' Monita. We wanted to invest and obviously we look at all the projects that....

Madam Justice A Lofaro :

What about the feasibility study? Was it carried out?

The Witness :

No the feasibilities study ..

Madam Justice A Lofaro :

Which you commissioned. Your group. Right?

The Witness :

No no. The discussion was engaged PWC, and I believe Tumas Group had signed the letter of engagement form first with PWC.

Madam Justice A Lofaro :

Ok, but they roped you in, right? Tumas Group, in this feasibility study, right?

The Witness :

No. The feasibility study wasn't done on us. The feasibility study was being done on the potential.....

Madam Justice A Lofaro :

Regarding the project.

The Witness :

On the potential..

Madam Justice A Lofaro :

Yes; but you must have taken note of whatever happened.

The Witness :

Yes. So I mean I wasn't... not at that point. Because

Madam Justice A Lofaro :

No, all right.

The Witness :

It might be useful for the Board, Your Honour; I mean for potentially John Zarb to be able to explain those...

Madam Justice A Lofaro :

John Zarb.

The Witness :

Because he was heavily involved.

Madam Justice A Lofaro :

But you know, in essence what did he tell you? You said it's a god idea; I don't know

The Witness :

At that point the idea of an 18-year PPA agreement as a long-term investment looked interesting. There is no question about it.

Madam Justice A Lofaro :

Of course, 18 years!

The Witness :

Yes. But the numbers at that point what is going to cost; where the revenues they weren't available. Those only came much later on after the expression of interest.

Madam Justice A Lofaro :

Those came later on.

The Witness :

Yes

Chairman Mr Justice M Mallia :

So helped you to prepare the bid?

The Witness :

So the expression of interest was, I believe launched towards the beginning of April

Chairman Mr Justice M Mallia :

Year?

The Witness :

2013. And the expression of interest was.. I think it closed 6 weeks later. And that was more ..

Madam Justice A Lofaro :

How much later? 6 weeks?

The Witness :

6 weeks. It was 11th April to ...

Madam Justice A Lofaro :

Ok, roughly 6 weeks ok.

The Witness :

... to 6 weeks. And the expression of interest was for companies to put forward and could they be interested to potentially bid for it. It was not a detailed document. It was a bounded folder.

Chairman Mr Justice M Mallia :

But did you prepare it or you get..?

The Witness :

No. PWC assisted to prepare ..

Madam Justice A Lofaro :

They helped you.

The Witness :

But it wasn't a financial document. What this was, was to understand who the consortium or who the bidder was, and if they have the potential to bid for it and the experience and the financial behind it. What I recall during the expression of interest is that Gasol had a JV - a Joint Venture agreement with Socar; actually at expression of interest period they came in as 50% equity potential equity holders, as a joint venture. They weren't individual. Socar and Gasol.

Madam Justice A Lofaro :

It was joint; Gasol and Socar.

The Witness :

Sorry?

Madam Justice A Lofaro :

Gasol and Socar. You said Gasol and Socar. Right?

The Witness :

Yes Gasol and Socar. Yes yes. And then there was the problem in orders to qualify to put an eventual bid you needed to have a powerplant manufacturer.

Madam Justice A Lofaro :

Yes.

The Witness :

Now, that was a problem for the consortium and they spoke to many different manufactures. And I believe Siemens only committed to the consortium at the eleventh hour, so there was a potential that the consortium would not be able to actually put in an expression of interest because if Siemens had not confirmed then we would not qualified.

Madam Justice A Lofaro :

Do you know why they took them so long?

The Witness :

No, because not really; but at that point I believe there were discussions with a lot of powerplant producers, general electric, EPF, that's as far as I know. And then I think with the expression of interest there were 19 ..

Madam Justice A Lofaro :

18, 19, they told us last time. 18?

The Witness :

18 or 19 ..

Madam Justice A Lofaro :

Something like that ok.

The Witness :

And I believe then in June they issued the results and there were 11 of the 18 or 19 that were ..

Madam Justice A Lofaro :

Still there.

The Witness :

.. still there.

Mr Justice J Said Pullicino :

Initially the lead Maltese investor was to have been Paul..

The Witness :

Not when I., I mean when we were approached, we approached.. with the meetings high head it was one of the first questions we had. To understand who would run the Maltese consortium, organize us; and there obviously there is the interface were the other consortium members, and also the interface with all the consultants for the whole project. And when we met with George he said basically that Yorgen was extremely interested ..

Mr Justice J Said Pullicino :

Ehe, and that was in March before the election.

The Witness :

Somewhere there yes, I mean somewhere there yes.

Mr Justice J Said Pullicino :

Somewhere there. And from that day on it was Yorgen who actually took the initiative?

The Witness :

Yes, I mean basically Yorgen was extremely interested in this project; and then I recall the late George being quite excited that his son was so interested in it, and the idea from when we were approached from day one Yorgen was sort of lead it

Mr Justice J Said Pullicino :

Organize the..; am I correct in saying...

Madam Justice A Lofaro :

But he had no previous experience, no?

The Witness :

No because..; ehe we did have that discussion, but the idea was always that were investors, so you had to.., so the lead party of the Maltese experienced

wasn't that important in the sense that it had been more administrators to organize all the parties.

Mr Justice J Said Pullicino :

All the investors....

The Witness :

And then you had consultants behind you, in terms of engineers, lawyers, and then that's why the intention was always to have the powerplant manufacturer as an equity shareholder; so that their interest would be aligned with the shareholders of the consortium.

Madam Justice A Lofaro :

So you all agreed that Yorgen would take the lead basically.

The Witness :

That is how it as proposed to us, and basically it was one of our biggest concerns of who would manage it because for us.. we were seeing this as a sort of long-term passive non-operational investment.

Mr Justice J Said Pullicino :

This ties in with what you told us that you as far as Gasan is concerned ..

The Witness :

Sorry, I can't ..

Mr Justice J Said Pullicino :

As far as Gasan was concerned, because you .. to be rather sleeping partners.

The Witness :

Not sleeping partners..

Mr Justice J Said Pullicino :

I mean somebody is as active but ..

The Witness :

Passive partners.

Madam Justice A Lofaro :

Passive. Passive

The Witness :

And the idea was that the Maltese consortium would have a holding company; and obviously we would get feedback, so I wanted to .. my concern because rather than the actual details of the project was financials.

Mr Justice J Said Pullicino :

Which you meant that you participated in decisions but negotiations with government were to Yorgen?

The Witness :

No.

Mr Justice J Said Pullicino :

You didn't even participate in decisions?

The Witness :

No; it depends what decisions. Decisions wherein the Maltese consortium yes. But then the representative of the Maltese consortium with the other partners was Yorgen.

Mr Justice J Said Pullicino :

I see.

The Witness :

So obviously in a certain things he would come back to the Maltese consortium to ask to have a discussion for guidance. But the then decision between the partners ...

Mr Justice J Said Pullicino :

The negotiation thing element of your group was Yorgen, even the government.

The Witness :

Yes yes.. the consortium yes

Mr Justice J Said Pullicino :

Yes.

Madam Justice A Lofaro :

Did have contacts?

The Witness :

Sorry?

Mr Justice J Said Pullicino :

As an example, at one time there was this issue about guarantee, the bank guarantee, the government; I mean was that negotiated by your group or as by the negotiator?

The Witness :

Ok, the bank guarantee issue you are meaning came much later.

Mr Justice J Said Pullicino :

Much later yes I know that..

The Witness :

...at the .. that came in I think it was mid.. end 2015. The bank guarantee was an issue to do with State Aid, basically for the consortium, for the Electrogas to be able to close with its lenders, its bankers, the company required clearance from the EU, on State Aid EU

Mr Justice J Said Pullicino :

We are aware of that ehe.

The Witness :

So this my understanding of it I wasn't involved of the discussions. My understanding of it was that it was sort of government's idea to close the ... so that the project can continue; because otherwise....

Mr Justice J Said Pullicino :

But that part of the negotiations would had been carried out by Yorgen.

The Witness :

With government?

Mr Justice J Said Pullicino :

With government obviously yes. With government.

The Witness :

At that point in time there was the whole Electrogas Company. And there were 3 directors there who handled it from 3 directors.

Mr Justice J Said Pullicino :

We know the story about that, but come back to it.

Chairman Mr Justice M Mallia :

What was your reaction when the consortium was informed that Electrogas was defaulting by the Bank of Valletta?

The Witness :

This you are referring to 2017?

Madam Justice A Lofaro :

Before the bank guarantee

Chairman Mr Justice M Mallia :

No, it was after the bank ..

Madam Justice A Lofaro :

After?

The Witness :

No. The government guarantee happened in 2015

Madam Justice A Lofaro :

2015.

Chairman Mr Justice M Mallia :

2015; the letter from Ms Brinkworth from Bank of Valletta came later.

The Witness :

Yes. That was in 2017

Chairman Mr Justice M Mallia :

And 17

The Witness :

Now the issues....

Chairman Mr Justice M Mallia :

That is very important development in the life of Electrogas.

The Witness :

Yes.

Chairman Mr Justice M Mallia :

What was your reaction? How did you come to know about it? Were you aware that Electrogas was moving in that direction?

The Witness :

No. The situation was..., so in 2017 the construction of the power plant was reaching its end. I believe the power plant went into open cycle in the second quarter of 2017; which basically means that the power station was actually working. So I think April – May 2017 the power station was already working; but then the sort of final commissioning to get a combine cycle took a period of time. Also so I think that default you are mentioning is in August 2017; because the government guarantee was expiring in August 2017. So at that point there were a couple of options. The lenders of Electrogas were pushing Electrogas and the government extend the government guarantee until the final issues were... the final contractual issues and agreements with government were concluded. Because I believe there were by that time 2 pending agreement government, the conversion agreement and the security of supply. And I believe the main issue was the clauses in relation to government's.. the option for government to be able to terminates the LNG agreements in the event of the gas pipeline to Sicily. I am not sure when that came into place or it was there before. But that was, I remember, quite a big issue. Because just to understand that, that would mean if the pipeline happened obviously have assume will need to leave and also the agreements of the LNG, because the LNG will be purchase through the gas supply. So to organize that sort of to negotiate that termination agreement at government's option I believe took some time.

Madam Justice A Lofaro :

About Mr Yorgen Fenech, did you know that he had connections in the Labour Party which is now in government?

The Witness :

Not..., which period are you talking about please?

Chairman Mr Justice M Mallia :

After '13

Madam Justice A Lofaro :

Immediately after the elections, perhaps a bit before.

The Witness :

No, after the elections not... after the election and then after the contract was closed in December 2013, my understanding is that the agreements of Electrogas weren't all closed off. It was a very complicated project. And that a lot of meetings needed to happen with Enemalta and the government ...

Madam Justice A Lofaro :

And he had the right contacts? He knew the right people? I am asking, I don't I know.

The Witness :

I mean in terms of Electrogas? In terms of Electrogas...

Madam Justice A Lofaro :

Everything really, the whole aspect. All the aspects.

The Witness :

Later on I am aware that he was friendly with Konrad Mizzi...

Madam Justice A Lofaro :

Konrad Mizzi, when you say 'later on' when was this? Try and pinpoint a month and a year please. Please try, please.

The Witness :

From what I understand, when they were meeting of in 2014 and 15 there were a lot of meetings between Electrogas, Enemalta and the Minister. So I believe he got friendly on

Madam Justice A Lofaro :

So not before; not in 2013

The Witness :

Not as far as I know.

Madam Justice A Lofaro :

You didn't know that he was friendly with Keith Schembri. Did he ever introduce you to Keith Schembri?

The Witness :

No.

Madam Justice A Lofaro :

And if he didn't who did? Did you know Mr Keith Schembri?

The Witness :

The first time I met Mr Keith Schembri was a lot.. quite a bit of time after the election.. I ...to meet with him.

Madam Justice A Lofaro :

Do you know your father met him or knew him? Your father.

The Witness :

I don't think so, no

Madam Justice A Lofaro :

You don't think so.

The Witness :

I mean might have meet him at a courtesy meeting, but I don't think he had a meeting with him no; a former meeting with him.

Madam Justice A Lofaro :

Did you speak to for example Dr Joseph Muscat about the project?

The Witness :

Never.

Madam Justice A Lofaro :

Were there any lunches or dinners perhaps between your father and himself?

The Witness :

At Joseph Muscat no; I don't believe so.

Madam Justice A Lofaro :

Or at Konrad Mizzi..

The Witness :

I mean the first time I met Konrad Mizzi was at the official opening of the power station in April 2017.

Madam Justice A Lofaro :

What about your father?

The Witness :

I don't think.. I mean ..

Madam Justice A Lofaro :

You don't know?

The Witness :

No I don't know.

Chairman Mr Justice M Mallia :

And does Gasan Group have any commercial relation with KASCO?

The Witness :

No. I don't believe so, no.

Chairman Mr Justice M Mallia :

You don't?

The Witness :

No.

Chairman Mr Justice M Mallia :

Or any of the companies that owned by Keith Schembri?

The Witness :

Not as far as I know, no. But I need to see the list. But I don't recall anything.

Mr Justice J Said Pullicino :

I wouldn't like to go into territory which had already been pasted to other inquiries and other things. You are aware about the report of the Auditor General on this power station thing?

The Witness :

The AU report..

Mr Justice J Said Pullicino :

The report of the Auditor General.

The Witness :

Yes.

Mr Justice J Said Pullicino :

You are aware of it.

The Witness :

Sorry. The NAO report?

Mr Justice J Said Pullicino :

The NAO report?

The Witness :

Which was issued in November 2018

Mr Justice J Said Pullicino :

Yes.

The Witness :

Yes yes I am aware of it.

Mr Justice J Said Pullicino :

You've read it?

The Witness :

I read the abridged version and the conclusions. I didn't read the full detail

Mr Justice J Said Pullicino :

You did go into its conclusions.

The Witness :

Yes I did.

Mr Justice J Said Pullicino :

Because your partner didn't seem to be worried and very interested in it.

Madam Justice A Lofaro :

He didn't read it he said.

Mr Justice J Said Pullicino :

But you did read it.

The Witness :

I read it yes.

Madam Justice A Lofaro :

And did it concern you?

Mr Justice J Said Pullicino :

And you know what its conclusions are. And the conclusions are not very a positive about the project. And I am not saying that you did something .. yourself; I am just saying that the background the project itself has been determined by the Auditor General to be me rather ... sahdy, ok? Now that doesn't mean you did something wrong; but we would like to know whether you are in agreement or not with that.

The Witness :

Ok, if I can qualify here. So my, in my opinion from what I read of the auditor's report there was quite a lot of criticism level that government, and sometimes in my opinion fairly ..

Madam Justice A Lofaro :

Sometimes.... ? I didn't get this.

The Witness :

Sometimes in my opinion it was fair criticism.

Madam Justice A Lofaro :

Fair criticism. Yes

The Witness :

Take for example the government guarantee. In my opinion the government guarantee should never really have happen because the issue was State Aid; ideally the State Aid issue would have cleared before all that of that issue

Madam Justice A Lofaro :

Before all that.

The Witness :

And if does was the case then if would not happen. Also the government guarantee because .. it's the public impression opinion is that if somehow .. Electrogas. Electrogas .. paying the government eleven million Euros for the guarantee. So it's more.. it wasn't really.. it wasn't a concession for Electrogas in my opinion.

Madam Justice A Lofaro :

Had you ever had transactions with the government before as Gasan Group? And if so, did you ever had this kind of thing happening the government giving this kind of bank guarantee? Had you ever come across it before?

The Witness :

No... no

Madam Justice A Lofaro :

Please answer the question

The Witness :

No.. I never come across it before..

Madam Justice A Lofaro :

No. Your answer is no.

The Witness :

No. But ..exactly on the bank guarantee, because the problem there was, so the lenders of Electrogas were obviously not going to lend the money to Electrogas until the State Aid issue ..

Madam Justice A Lofaro :

Was cleared.

The Witness :

...was cleared

Madam Justice A Lofaro :

Exactly.

The Witness :

And so the government obviously had 2 options. Either wait until it clears and then Electrogas ... would have..... Or .. the government guarantee. But it wasn't favourable in my opinion to Electrogas. It is more the other way round. I don't see how the government guarantee favoured really Electrogas because obviously it was charged for it as well. And I believe the NAO report specifically states the charge.. that the government charge Electrogas was in its opinion fair. And there is also in the conclusions of the NAO report, I think its clause 13.5, how I read it states that Electrogas won the contest fairly; how I read it.

Madam Justice A Lofaro :

Fairly .

The Witness :

Yes, how I read it.

Mr Justice J Said Pullicino :

Did you give evidence for the Auditor General? To you?

The Witness :

I was never asked; no

Mr Justice J Said Pullicino :

Never asked...

Madam Justice A Lofaro :

Can I ask you about Nexia BT, Brian Tonna? Have you ever dealt with them before? Or any of the companies belonging to Brian Tonna?

The Witness :

In business me personally no.

Madam Justice A Lofaro :

No, the group; Gasan Group.

The Witness :

No.

Madam Justice A Lofaro :

Never never.

The Witness :

No. In business no.

Madam Justice A Lofaro :

What about this time? How did you get to know Brian Tonna? Who introduced you to him?

The Witness :

I met Brian Tonna socially. I never met him for business.

Madam Justice A Lofaro :

So there was no business with him?

The Witness :

No no ..

Madam Justice A Lofaro :

There was, right?

The Witness :

Yes. Nexia BT...

Madam Justice A Lofaro :

Exactly

The Witness :

...was the auditors of GEM.

Madam Justice A Lofaro :

Exactly. How did this come about? Was it Yorgen Fenech?

The Witness :

No. We.. I recall we as GEM had agreed to get a couple of quotations and they had got quotations from both PWC and from Nexia. There was a board meeting, the CFO of Tumas Group presented those quotations. Obviously at that board meeting were discussing a number of issues. The quotations of Nexia was substantially cheaper and was decided to go-ahead with them.

Madam Justice A Lofaro :

But as Gasan Group who used to do this work for you in other projects?

The Witness :

Basically the way I saw it as Gasan at that point for us the important company where the operation was happening was Electrogas

Madam Justice A Lofaro :

I understand.

The Witness :

So as Electrogas where the operation is happening the auditors were PWC. So and they are auditors we use; GEM is ..

Madam Justice A Lofaro :

Those are the ones you used to use so, PWC

The Witness :

PWC, sorry, yes PWS was.

Madam Justice A Lofaro :

So this was the first for you.

The Witness :

But GEM is a Holding company, its not....

Madam Justice A Lofaro :

Yes I know..

The Witness :

... operational company, so for me in the concern of who the auditors where wasn't so important.

Madam Justice A Lofaro :

When things started to come out in the media.

The Witness :

No, but the .

Madam Justice A Lofaro :

You still kept them on, right?

The Witness :

No no, but the auditors of Electrogas were PWC

Madam Justice A Lofaro :

Yes. But as I say, things started coming out. Panama Papers, 17 Black,

The Witness :

Ok, so it go ..

Madam Justice A Lofaro :

What was your reaction if at all?

The Witness :

To Nexia or to..

Madam Justice A Lofaro :

No no, even to.. I don't know, Yorgen Fenech, Brian Tonna, Nexia BT, the whole thing

The Witness :

Ok;

Madam Justice A Lofaro :

When you started to get doubt..

The Witness :

Sure. Tell me which period to sort of ..

Madam Justice A Lofaro :

When the Panama Papers came out in 2016, no?

The Witness :

Yes, Panama Papers came out in 2016 and obviously it was shocking

Madam Justice A Lofaro :

Shocked.

The Witness :

But there weren't.., as far as I know, any links ...

Madam Justice A Lofaro :

There was Konrad Mizzi implicated

The Witness :

Yes but no links..

Madam Justice A Lofaro :

Keith Schembri...

The Witness :

No links to Electrogas

Madam Justice A Lofaro :

No, not at that stage, no

The Witness :

But were shocking.

Madam Justice A Lofaro :

But Nexia BT was implicated.

The Witness :

In Panama Papers

Madam Justice A Lofaro :

Yes, weren't it worried at that stage?

The Witness :

For as the auditors of GEM?

Madam Justice A Lofaro :

GEM yes.

The Witness :

I don't believe there was a discussion on it, at GEM level.

Madam Justice A Lofaro :

But I didn't ask if there was a discussions! I asked were you concerned? You have a reputation to safeguard don't you?

The Witness :

Yes yes, of course, yes.

Madam Justice A Lofaro :

So were you not concerned? Yes or no. Because you are either concerned or you are not.

The Witness :

I mean yes; it was a concern that the Nexia was implicated...

Madam Justice A Lofaro :

So did it you bring it up at board level meeting?

The Witness :

As the auditors of GEM?

Madam Justice A Lofaro :

Yes.

The Witness :

No. I don't think so, no.

Madam Justice A Lofaro :

You did not even bring it up at a board meeting level.

The Witness :

I mean we... I..

Madam Justice A Lofaro :

Yes or no basically.

The Witness :

No no..

Madam Justice A Lofaro :

No.

The Witness :

As Nexia no.

Madam Justice A Lofaro :

And then later on we find out about 17 Black..

The Witness :

Ehe, yes, 17 Black ..

Madam Justice A Lofaro :

I don't need to explain the story to you because you know.

The Witness :

No. 17 Black ..

Madam Justice A Lofaro :

Its story actually! It's a fact.

The Witness :

So 17 Black, the first I heard about it being connected to Yorgen Fenech I had revive an email from a journalist towards the end of October ..

Madam Justice A Lofaro :

Of which year?

The Witness :

Of 2018.

Madam Justice A Lofaro :

2018.

The Witness :

Yes yes.

Madam Justice A Lofaro :

Yes.

The Witness :

Basically informing me that with the Daphne Project that they are informed that the owner of 17 Black is Yorgen Fenech and asked me 3 questions. Obviously I replied immediately to those questions and then I rang up Yorgen Fenech. So what's this about?.

Madam Justice A Lofaro :

What all this about.

The Witness :

.. I said you own 17 Black, sorted out. In the sense I am assuming it is not true.

Madam Justice A Lofaro :

And what did he answer you?

The Witness :

At that time when do it I was in shock; it wasn't a discussion.. isn't yours? I had assumed it wasn't his, but..

Madam Justice A Lofaro :

But did he deny it on the phone?

The Witness :

I didn't ask him at that point ..

Madam Justice A Lofaro :

You could ask him, but you know; he could have said – oh look, don't worry I am not involved ..

The Witness :

If you give me a second I am coming to it

Madam Justice A Lofaro :

Ok.

The Witness :

I am trying .. timeline.

Madam Justice A Lofaro :

Don't worry; take your time.

The Witness :

So at that point the conversation was how I left it that I assumed that he was going to rebut it and it was not his. And actually after speaking to Yorgen, I rang up Mr Ray Fenech as well; I said I got this email form this journalist saying this company is Yorgen's, which I seen is not correct. I mean not true, speak with Yorgen. Then 2 weeks later ..

Madam Justice A Lofaro :

And did Ray say something?

The Witness :

Eh?

Madam Justice A Lofaro :

What did Ray reply?

The Witness :

No, at that point it was.. I was in shock that somehow this probably was being refer to as being owed by Yorgen. Then 2 weeks later the story broke; the ..

Madam Justice A Lofaro :

Yes, all the news came out, right?

The Witness :

Yes. All the news came out. I had assumed within those 2 weeks that obviously they had credit that this company was not his. It was a misunderstanding. But once the story came out ..

Madam Justice A Lofaro :

Then you knew that they had not cleared anything, right?

The Witness :

Yes. So I had then asked Yorgen specifically..

Madam Justice A Lofaro :

How and where? Where?

The Witness :

Where?

Madam Justice A Lofaro :

During a board meeting maybe?

The Witness :

No no. I had asked him through a call.

Madam Justice A Lofaro :

You mean you called him.

The Witness :

Yes.

The Witness :

Then I called him and also we messaged.

Madam Justice A Lofaro :

You messaged.

The Witness :

And he advised me that 17 Black is not his.

Madam Justice A Lofaro :

He said it's not mine.

The Witness :

No. He had told me. But after that I mean there are still huge causes to concern because my next thing obviously if it's not yours then come out and deny it.

Madam Justice A Lofaro :

Exactly.

The Witness :

So within that 2-week period in November quite a lot happened; we obviously first thing is as GEM I wanted to find out any transactions with this company 17 Black.

Madam Justice A Lofaro :

You checked that. Did you check that?

The Witness :

Yes of course.

Madam Justice A Lofaro :

You did.

The Witness :

We checked that immediately because to confirm that there was..no ..

Madam Justice A Lofaro :

No transactions.

The Witness :

And also Electrogas as well checked it also to confirm that there was no links or connection to ..

Madam Justice A Lofaro :

To this company 17 Black

The Witness :

...to 17 Black. We were informed as well that – one, Yorgen had sent an email to the directors of Electrogas and also to the company secretary asking for that email to be attached to the minutes of the next board meeting of Electrogas. Whereby he went through each allegation that was being made ..

Madam Justice A Lofaro :

All the allegations

The Witness :

Yes. And denied those allegations one by one.

Madam Justice A Lofaro :

One by one, ok.

The Witness :

And denied them completely. We were also informed that Yorgen was going to live in London to meet with lawyers to look at suing or the.. not suing, looking at challenging and coming up with a denial for it. But that didn't happen eventually.

Madam Justice A Lofaro :

That did not happen. I still want to know if it was discussed at board meeting level.

The Witness :

Yes. So, at Electrogas or GEM?

Madam Justice A Lofaro :

No, GEM.

The Witness :

Yes; at GEM we had a board meeting towards the end of November ..

Madam Justice A Lofaro :

2018

The Witness :

Yes.

Madam Justice A Lofaro :

And there were 3 directors at that point of GEM. It was Paul, Yorgen and myself. However at that particular meeting Ray Fenech joint and also my father joint, because obviously were extremely concern about this whole situation.

Madam Justice A Lofaro :

Of course.

The Witness :

And that is when during that meeting we were informed one to check there is nothing as I said earlier that there is no link with the company; and also were informed that they were going to London to talk to the lawyers to come out with a statement on the allegations.

Madam Justice A Lofaro :

And during the meeting he denied it then. He denied that it's his.

The Witness :

At that point he had already told me that it's not his. So I didn't ask him..

Madam Justice A Lofaro :

Yes I know..

The Witness :

I am telling you what had happen.,

Madam Justice A Lofaro :

No I know that he had told you.

The Witness :

That meeting was obviously.. you have to put yourself in the picture. I mean it was of great concern.

Madam Justice A Lofaro :

Yes of course.

The Witness :

So my great concern is : 1) whether if were any transactions to this company; and : 2) if it's not yours what you can you do? You cannot not say anything! You either come out with a denial or if not discuss the situation. And we were informed that they were going to London to meet to the lawyers to come up with a statement where I thought denying it. So there wasn't much more.

Mr Justice J Said Pullicino :

A statement that could had been done in Malta

Madam Justice A Lofaro :

But he wanted to go to London

Mr Justice J Said Pullicino :

But what was the reason why that he wanted to go to London?

The Witness :

I am telling you what they told me. I don't have the answer to that question .

Madam Justice A Lofaro :

Did he ever come back with something from the lawyers in England? Some kind of denial? I don't know.

The Witness :

Not he never came back with.. I mean ..

Madam Justice A Lofaro :

That you know of.

The Witness :

But I know of publicly, I haven't seen the email.

Madam Justice A Lofaro :

Nothing, no. Ok.

Chairman Mr Justice M Mallia :

So when did you find out that Yorgen was lying and it did belong to him?

The Witness :

That's a very hard question Your Honour, for me to answer. Because from what I' ve seen publicly it looks like the company is his and hasn't denied it. But ..

Madam Justice A Lofaro :

He hasn't.

The Witness :

But I don't know for sure. I haven't ..

Chairman Mr Justice M Mallia :

You haven't spoken to him after that?

The Witness :

When? After 2018?

Chairman Mr Justice M Mallia :

When it became public that it does really belong to him.

The Witness :

No; When was that Your Honour please... timeframe..

Dr Jason Azzopardi :

4th November '18.....

Madam Justice A Lofaro :

He mentioned December 2018

Dr Therese Comodini Cachia :

....November ...

The Witness :

No; that when the allegation came out, as I said earlier, I gave you the full breakdown, within November he issued his statement; we met with him. So he said he is going to London, meet the lawyers and denied it. But Your Honour, you've just said when it was formally known that it was his.

Chairman Mr Justice M Mallia :

Yes.

The Witness :

No, that what is confusing me.

Mr Justice J Said Pullicino :

But there is a strong evidence ..

The Witness :

Yes yes.

Mr Justice J Said Pullicino :

... that it could be his

The Witness :

Yes yes.

Mr Justice J Said Pullicino :

I mean that is a fact; that's a fact.

The Witness :

Yes.

Mr Justice J Said Pullicino :

Now, having established that, was the company happy to leave him there?

The Witness :

No, not at all. It was of serious concern. And ..

Chairman Mr Justice M Mallia :

Did you talk? Did you talk to him after that?

The Witness :

Basically, so.. well, I am talking for a period ..January 2019 because ..

Chairman Mr Justice M Mallia :

Something there

The Witness :

He went to London, he travelled, anyway. Come that periods, if I recall well Yorgen was hardly around. He was traveling a lot. And we were trying to call board meeting of GEM to meet after discussing it. The problem that we had at GEM level is to hold a board meeting according to the memorandum and articles it require the 3 directors present. So quorum is 3 directors. So if Paul and I turn up to a meeting and Yorgen does not turn up we don't have a quorum to ..

Madam Justice A Lofaro :

Could you have taken some other type of action perhaps?

The Witness :

So what we did then obviously I started talking to Ray Fenech

Madam Justice A Lofaro :

Ray, ehe.

The Witness :

Ehe, and to obviously get involved and to understand what can we gone to do and meet. And that's when we started meeting.

Madam Justice A Lofaro :

And then what did Ray tell you?

The Witness :

Ray I believe was extremely concern with the situation. During that period Yorgen was hardly around. And Ray was struggling to meet with him as well.

Mr Justice J Said Pullicino :

You must point out obviously that all this happened after the assassination, no? All this thing is happening after the assassination of Mrs Caruana Galizia.

The Witness :

The period which I am talking about here is the 2019

Mr Justice J Said Pullicino :

After, after

Madam Justice A Lofaro :

Of course.

The Witness :

Yes,

Mr Justice J Said Pullicino :

And ... concern had been very regraded because obviously what was being linked is this incident of 17 Black with the assassination.

The Witness :

I wasn't aware of the.. I mean that link ..

Mr Justice J Said Pullicino :

But that was. I mean the trend of.. and was actually happened now. I mean what we recall from investigations in Court, that is the trend of the motive.

The Witness :

But Your Honour I didn't. ..

Mr Justice J Said Pullicino :

You are not aware.

The Witness :

...I didn't know that. I was no aware of it; when I first heard.. when it started when it was late November possibly Yorgen's involved.. absolutely shocked.

Mr Justice J Said Pullicino :

But your concern must have been highlighted by the press.

The Witness :

My concern was 17 Black, that was the biggest concern. I mean the idea that the potential suspect ...

Mr Justice J Said Pullicino :

.. kickbacks ...

The Witness :

Eh?

Mr Justice J Said Pullicino :

The idea is.. the allegation in itself is that 17 Black was a vehicle for kickbacks.

The Witness :

Yes.

Mr Justice J Said Pullicino :

As far as you are aware .

The Witness :

Yes that's why Your Honour

Mr Justice J Said Pullicino :

...GEM and Electrogas; were they ever involved as companies?

The Witness :

No no.

Mr Justice J Said Pullicino :

..and kickbacks to anybody?

The Witness :

No. As far as I am aware no.

Mr Justice J Said Pullicino :

No.

The Witness :

No. And Your Honour, during that period in 2019 up to Yorgen's arrest it was a time for huge concern for us. And we are trying what to do considering talking with Ray Fenech, and actually ..

Madam Justice A Lofaro :

We are talking about almost 12 months.

The Witness :

No

Madam Justice A Lofaro :

Yes. Yes ..

The Witness :

Yes. But ..

Madam Justice A Lofaro :

So what was the action that you have could taken?

The Witness :

But as GEM, I was trying to explain, as GEM

Madam Justice A Lofaro :

Ehe, as GEM.

The Witness :

..first we had the issue that to have a quorum..

Madam Justice A Lofaro :

The quorum.

The Witness :

To have board meetings between 3 directors.

Madam Justice A Lofaro :

The quorum yes. Yes I know.

The Witness :

But if Yorgen is not turning up we didn't have the quorum. Si I spoke to Ray Fenech. Then Ray Fenech attended because Yorgen was the appointed director of GEM through Tumas Group.

Madam Justice A Lofaro :

Yes of course.

The Witness :

So then we met obviously with Ray, and there was a discussion in May..

Madam Justice A Lofaro :

In May, after 5 months.

The Witness :

Yes, we were trying to ...

Madam Justice A Lofaro :

I am just establishing a timeline, that's all.

The Witness :

Yes yes; I am telling you the timeline...; but Yorgen was traveling a lot and it was very hard to pin down to a..

Madam Justice A Lofaro :

But was it not... you know, concerning instead of given you reply, he is trotting all around the globe.

The Witness :

Yes Your Honour. But the director at GEM was appointed by Tumas Group. I have no authority to ..

Madam Justice A Lofaro :

Could you not apply pressure to have the director change?

The Witness :

Yes. No, I spoke to Ray Fenech, of course, we were speaking on a constant basis.

Madam Justice A Lofaro :

You spoke to him ..

The Witness :

And he was very concerned as well.

Madam Justice A Lofaro :

Yes, but being concern gets people nowhere. Action take people somewhere.
Am I right?

The Witness :

But I can't see what action I could have done Your Honour.

Madam Justice A Lofaro :

Could you have spoken to your lawyers, I don't know.

The Witness :

To do what exactly Your Honour?

Madam Justice A Lofaro :

To change him as a director.

The Witness :

Of GEM!?

Madam Justice A Lofaro :

Yes.

The Witness :

No.

Madam Justice A Lofaro :

Have someone else appointed from Tumas Group?

The Witness :

But that's not from me to do.

Madam Justice A Lofaro :

You could have asked you...; did you speak to your lawyers about this?

The Witness :

But this like... Gasan Group is appointing me to represent who they ..

Madam Justice A Lofaro :

But you have surely a cost to have him remove.

The Witness :

...talking to Ray Fenech on a concern basis.

Madam Justice A Lofaro :

Just talking; you know what I mean? You had your lawyers, right? Why did you not speak to your lawyers?

The Witness :

Yes, but at that point Your Honour these were allegations.

Madam Justice A Lofaro :

Yes, very true.

The Witness :

I mean of course we spoke to our lawyers. Our lawyers were involved. But there is no a legal action as far as I am aware of that could have been taken by us!

Madam Justice A Lofaro :

Are you aware that Siemens and they have just made it public that they tried to have him removed? Siemens Group.

The Witness :

Yes.

Madam Justice A Lofaro :

So you knew that they were trying to have him removed.

The Witness :

On Electrogas.

Madam Justice A Lofaro :

Yes.

The Witness :

Yes, I mean on Electrogas even Yorgen himself during 2019 was..

Madam Justice A Lofaro :

But that was after a whole year. It was in November 2019.

The Witness :

Yes but Siemens did ...

Madam Justice A Lofaro :

So you know, 11 months had gone by.

The Witness :

Yes, I mean Siemens said that they wanted to remove him. I don't ..

Madam Justice A Lofaro :

To remove him. So it had to take Siemens then. You know. Nobody; the Maltese shareholding they were not really keen on removing him, were they?

The Witness :

No. Your Honour Yorgen was trying... Yorgen wanted to resign his position as EGM.

Madam Justice A Lofaro :

He wanted to resign?

The Witness :

Sorry?

Madam Justice A Lofaro :

Yorgen wanted to resign?

The Witness :

Yes Yorgen wanted to resign in May...

Madam Justice A Lofaro :

But in November, after 11 months.

The Witness :

No. In May ..

Madam Justice A Lofaro :

After 5 months, ok.

The Witness :

Yes. Because.. sorry, I was trying to give you a timeline, so basically revelations in November. ... is going to London, traveling. We trying to fix a meeting. We didn't have a call ..

Madam Justice A Lofaro :

Yes. You're speaking to his uncle.

The Witness :

We were speaking to his uncle; we meet. In that meeting in May Yorgen does not turn up. So we had a meeting anyway with Ray and my father

Madam Justice A Lofaro :

We Ray yes

The Witness :

And one of the things we discussed was for Ray Fenech to speak to Yorgen to understand what we can do about his position as an EGM director..

Madam Justice A Lofaro :

Right. Can you go on with the timeline please after May .

The Witness :

Yes. Then at that point Yorgen ceased the minutes that were issued of the discussions of the ..

Madam Justice A Lofaro :

Of the meetings, right?

The Witness :

..of the meetings, and he circulates an email to sort of all the directors ..

Madam Justice A Lofaro :

This was in May.

The Witness :

Yes.

Madam Justice A Lofaro :

2019.

The Witness :

Yes.

Madam Justice A Lofaro :

And what did he say?

The Witness :

He sent an email to the directors ... of Electrogas, saying that he is resigning from his position and that he is appointing me in his stead

Madam Justice A Lofaro :

Appointing you in his stead.

The Witness :

Obviously I didn't had that discussion with him and I immediately sort of replied to everyone saying whilst I am willing to help where I can with the company as always, I don't have the time to be a director so the position ..

Madam Justice A Lofaro :

You couldn't take it on ..

The Witness :

So that that is not a position to take on. And to have internal discussions of who GEM is going appointed this position

Madam Justice A Lofaro :

And then they appointed Mr Apap Bologna. Right?

The Witness :

Yes ...

Madam Justice A Lofaro :

Was this so as the Head of Siemens?

The Witness :

No.

Madam Justice A Lofaro :

No.

The Witness :

No. During that period there was huge concern, and I mean we were meeting with our lawyers, our teamwork; we were extremely concern with the situation that whether this company 17 Black is Yorgen's or not on potential links to..

Madam Justice A Lofaro :

Yes, you were left without an answer.

The Witness :

... to an investment that wherein ..

Madam Justice A Lofaro :

Of course. And e reputation to.

The Witness :

And our reputation is much more than anything else; it comes first and foremost

Madam Justice A Lofaro :

Yes I think so. Because Siemens were worried too about the reputation.

The Witness :

Yes.

Madam Justice A Lofaro :

They wanted him out.

The Witness :

Yes.

Madam Justice A Lofaro :

And then what happened after May?

The Witness :

So that's the timeline. Then we had lot of discussions. There wasn't a decision of who would replace Yorgen on the EGM board. Then in November we had another...

Madam Justice A Lofaro :

2019; right?

The Witness :

November, yes November 2019, we had a board meeting at GEM where we met up. Ray Fenech was present, but Yorgen Fenech was not present. And Mr Ray Fenech advised us that Yorgen had resigned all of his positions including as a director of GEM and director of Electrogas.

Madam Justice A Lofaro :

All of them.

The Witness :

And it was decided to appoint Paul in his stead.

Madam Justice A Lofaro :

...Apap Bologna, right?

Mr Justice J Said Pullicino :

Why is that in Electrogas Paul was appointed and not you?

The Witness :

As I said earlier, and even from inception, we had always made it clear to the Maltese consortium, that as much as.. because we were busy with other things that at the best of our investment was main to be non-operation.

Madam Justice A Lofaro :

You said passive right?

The Witness :

Yes passive and non-operation. However during the period then later on we had to get involved for other reasons, so I can explain as well. But I, in that time did not feel that I could offer more then I was doing to EGM. I didn't had the time to be a director. If I am going to be a director there is a fiduciary responsibility that I had to do and I don't think that I was in a position to fulfil the fiduciary responsibility, and that's why I said I do not take on the position of a director of Electrogas.

Mr Justice J Said Pullicino :

But now there are record that you are not happy with the situation.

The Witness :

Of course I wasn't happy.

Mr Justice J Said Pullicino :

And you would like as a company to try and solve it by removing out in... publicly that sort of statement.

The Witness :

Yes I did.

Mr Justice J Said Pullicino :

And how do you explain your approach to this situation? To the approach.. that approach taken by your partner, Paul. Sort of his approach is a viable project I will stay there because there .. with it. You seemed to be on a different line. The question I am asking is everyone is asking, not my question.

The Witness :

Can I explain?

Mr Justice J Said Pullicino :

Yes of course.

The Witness :

There is obviously GEM the company, and the .. isn't there, but there is also.. there is Gasan and our shareholding in there. We have been wanting to seek an exit from Electrogas for a while. We only however we only came out with

Mr Justice J Said Pullicino :

'For a while' after the assassination? Before the assassination?

Madam Justice A Lofaro :

Since when?

Mr Justice J Said Pullicino :

Because you were there

Madam Justice A Lofaro :

Since when?

The Witness :

Probably since 17 Black

Madam Justice A Lofaro :

17 Black.

Mr Justice J Said Pullicino :

17 Black ok, fair enough.

The Witness :

And .., where was I? sorry.

Mr Justice J Said Pullicino :

Your relationship with your cousin ...

The Witness :

Ok. So..

Madam Justice A Lofaro :

Your approach.

The Witness :

As Gasan the position raised that we wanted to exit. He felt that we had issue a public statement come out, when recently links were being made. Somehow between this project and the terrible...

Madam Justice A Lofaro :

Yes, the assassination ..

The Witness :

..assassination. And once that was happened although we might disagree; we just felt that we had to.. its not something we could've had them happening to a project that we are invested in. That's why we felt that we had to come out publicly and state our position.

Madam Justice A Lofaro :

Yes, you trying to leave.

The Witness :

As we trying to leave and also publicly we have come out and we said that we don't intend to make a profit. We did not make a profit on this investment. We have made that public commitment.

Madam Justice A Lofaro :

Yes. He read it.

Mr Justice J Said Pullicino :

...in a different approach then that of Paul, apparently..

The Witness :

If I can

Mr Justice J Said Pullicino :

You can speak for yourself.

The Witness :

If I can, as I am as Gasan at this point.

Mr Justice J Said Pullicino :

Were you invited to the party at Level 22 when the guarantee came out?

The Witness :

That was the financial..

Chairman Mr Justice M Mallia :

The financial closure ..

The Witness :

The financial closure yes, in ...

Mr Justice J Said Pullicino :

Yes, you were.

The Witness :

All shareholders; all shareholders were invited.

Mr Justice J Said Pullicino :

There is nothing wrong in that ..

The Witness :

No. all shareholders.....

Mr Justice J Said Pullicino :

I mean its only shows that it was very important for you to get the guarantee obviously.

The Witness :

No there wasn't a guarantee.

Mr Justice J Said Pullicino :

The closure ..

Madam Justice A Lofaro :

The financial closure.

Chairman Mr Justice M Mallia :

The financial closure.

The Witness :

But just to understand the financial closure... the financial closure was the period where the lenders.. so we close and the government guarantee was lifted. But the same, but the 4 banks that were guaranteeing the government guarantee also when included in the consortium the closure of the Financial package.

Mr Justice J Said Pullicino :

Was Keith Schembri there?

The Witness :

No I don't recall.

Mr Justice J Said Pullicino :

Was Victoria Buttigieg there?

The Witness :

Sorry I don't know her

Mr Justice J Said Pullicino :

Was Victoria Buttigieg there?

The Witness :

I don't know her, sorry.

Mr Justice J Said Pullicino :

You don't know her.

Madam Justice A Lofaro :

Konrad Mizzi there?

The Witness :

I am trying to recall. I can't remember.

Madam Justice A Lofaro :

You can't remember. Yorgen Fenech obviously because you were..

The Witness :

The shareholders.. I mean the party was organized by..

Madam Justice A Lofaro :

Exactly, they were hosting it.

The Witness :

Yes; all the shareholders of Electrogas were obviously ..

Mr Justice J Said Pullicino :

That is understanding; that is understanding

The Witness :

... invited.

Madam Justice A Lofaro :

Yes yes.

The Witness :

But Your Honour, I believe...

Mr Justice J Said Pullicino :

There is a list of them.

The Witness :

There is a list yes.

Madam Justice A Lofaro :

Yes there is. Dr Therese ..

Dr Therese Comodini Cachia :

I have few questions which relate.. which are either supplementary questions to what the Board has already asked you, or else questions which are supplementary naturally and truly. So the Board showed you a copy of a PowerPoint presentation and you said you hadn't seen this in 2013 but you've seen it recently. What do you mean by you've 'seen it recently'?

The Witness :

'Recently' I believe it was mentioned in a testimony by ... Borg Olivier.. whether it was posted; but I asked for a copy to see it; just I want to read it; I curious.

Dr Therese Comodini Cachia :

Ok so you actually seen the presentation lately in the last few weeks.

The Witness :

Yes yes. I am not sure when the hearing was.

Dr Therese Comodini Cachia :

And when you saw this presentation did it strike you as being the information that was originally given to you in 2013?

The Witness :

So, what I recall in the expression of interest that was submitted by Electrogas there were proposals, because ... in the expression of interest the government had requested proposals for the proposal that was being done, which was obviously power station with gas. What I believe at that point Electrogas had

offered 2 options. But.. so, yes it was.. I, the general concept power station supplying gas is very hard to change it; in the sense ..

Dr Therese Comodini Cachia :

Ok. And did you notice that there was the inclusion of Gasol on that PowerPoint?

The Witness :

Gasol yes.

Dr Therese Comodini Cachia :

So how were Gasol brought to the table with you in 2013?

The Witness :

Paul had a contact I believe, and ..

Madam Justice A Lofaro :

Paul?

The Witness :

Paul Apap Bologna, sorry

Madam Justice A Lofaro :

Yes yes. No I understood, ok.

Dr Therese Comodini Cachia :

Do you know this because you read the reviews of this testimony or was this told to you by Paul?

The Witness :

No, I mean over the period obviously we try and find out exactly what happened; but yes Paul had told me that.. some friend or something; that's how he got the contact of them.

Dr Therese Comodini Cachia :

So initially in the consortium Gasol was one of the foreign investors.

The Witness :

The expression of interest that went in, there were 3 investors. Siemens on its own 20 % equity, GEM Holdings Limited with 30 % equity, and a joint venture agreement, joint venture company between Socar and Gasol with 50%. They weren't individual. They were a joint venture.

Dr Therese Comodini Cachia :

So when Gasol decided to leave the consortium how did you find out of their wish to leave?

The Witness :

I believe that - that happened in mid 2015, is that correct? What I understand.. what I recall is that getting to a situation whereby we needed to double shareholders needed to put in equity into the company, that was time of the closing of the And I think in the eleventh hour by being advised that Gasol were not going to come up with the funds.

Dr Therese Comodini Cachia :

So, Gasol according to the NAO report on the 16th of July 2015 Electrogas informed the Minister and Enemalta that Gasol were facing difficulty in raising equity to continue to support the project. Had Gasol already informed you that they were facing financial difficulty in this regard?

The Witness :

From what I recall and what I was informed, I was informed that Gasol was being financially supported by Socar; was my understanding. So it was never brought to me as a concern, because Socar were obviously had the financial capabilities to back both themselves and Gasol; where financially supported them in the terms of .. guarantees

Dr Therese Comodini Cachia :

You refer to.. Madam Justice spoke to you .. feasibility study. May I ask, just to make this clear; did Gasan Group undertake a feasible study of the proposal that was being given to it by Mr Fenech before they decided to invest in the project?

The Witness :

No. So at that point the expression of interest was out; and PWC were engaged.

Dr Therese Comodini Cachia :

No hang on a second. At that point the expression of interest was not out because you had spoken to Mr Fenech before the general election..

The Witness :

But you are asking me about the feasibility.

Dr Therese Comodini Cachia :

I am asking you when you were invited to joint the consortium...

The Witness :

No, numbers were ...at the..; there is no feasibility study. PWC started presenting potential figures during the.. I believe during the expression of interest period. And when as Gasan I taken up the proposal to our board to decide whether we were going to participate in the expression of interest, at that point in time the numbers we were given our potential capital investments was five million Euros at that point in time.

Dr Therese Comodini Cachia :

And if the feasibility or at this point in time you knew that your initial investment was at five million what was the expected return on those five million?

The Witness :

At that point in time the expression of interest they were looking at a capital.. the figure presented .. that the costability was two hundred and fifty million euros I believe. So based on those figures the returns were.. at expression of interest stage were looking pretty good. But then the detail on the numbers the expression of interest was the period where you are qualified, or you have the experience or you don't. The real numbers were done after June and July 2013 once the RFP was issued. That's when we started to churn ... was an actually.. the cost that was then presented as the financial assumption with the RFP was substantially more. Even was .. fifty million so it was .. fifty million that was RFP stage.

Mr Justice J Said Pullicino :

Before you leave this point. Am I correct. I mean I might be under wrong impression, but am I correct in saying that looking at it as a company you consider it to be a pretty safe investment long term? Because, I mean we are getting the impression that it's a long term investment, with a guarantee as far as supply goes and return goes, and actually your initial outlet in the right of long-term project didn't seem to be so ... you actually financial commitment.

The Witness :

Yes yes. Initially yes. When we were first ..

Mr Justice J Said Pullicino :

Even eventually, I mean ... company your actual shareholding ...

The Witness :

Yes but..

Mr Justice J Said Pullicino :

.... limited considering the long term issues.

The Witness :

No ..

Mr Justice J Said Pullicino :

I don't know. The expression one get is

The Witness :

If I can explain .

Mr Justice J Said Pullicino :

....investment.

The Witness :

Your Honour, so the...what actually happened was at RFP stage the bid was submitted, then eventually Electrogas got the award. Then by time the award was done the revenues..., so the revenues of Electrogas was going to get were fixed for the period; because obviously those were the numbers in the submission. So on the bases of the cost forecast to build it remained within the budget then they are was looking quite good. I mean in the sense it was looking like a good profitable project. The problem with had in this investment is that those assumptions or estimates were accurate and there was a substantial cost overrun on this project.

Dr Therese Comodini Cachia :

But despite the substantial cost overrun, where was Electrogas not going to see a profit? Never?

The Witness :

No no. No, the financial model maybe she get an expert to explain it, but its very detailed complicated model; the amount of items and the indexes and ..

Madam Justice A Lofaro :

No. Just tell us..

Dr Therese Comodini Cachia :

.... just one thing....

The Witness :

.. I am just ..

Dr Therese Comodini Cachia :

...is it a profit making business or not?

The Witness :

Now or then?

Dr Therese Comodini Cachia :

Not now. You said it's a long term investment.

The Witness :

Yes.

Dr Therese Comodini Cachia :

So when you mean long term it is I assume that means that you will be making a profit at some point.

The Witness :

That's the idea ..

Madam Justice A Lofaro :

Ok, and when? Which year?

Dr Therese Comodini Cachia :

When are these ...that profit?

The Witness :

The latest financial model I haven't seen but ..

Dr Therese Comodini Cachia :

The last one.

The Witness :

The last one it was produced I think last year or so; saying that first profits will be done I don't know two thousand and.. towards the end of .. or before, as far as I remember.

Dr Therese Comodini Cachia :

So when Mr Apap Bologna told us the first financial profits will be made in 2023 was he incorrect?

Madam Justice A Lofaro :

Because that's what he said.

The Witness :

No, I mean the project .. haven't a cost overrun ninety million euros.

Madam Justice A Lofaro :

But he knew that when he told us.

The Witness :

...the first one or .. becausewith the dates..

Dr Therese Comodini Cachia :

Last week Mr Apap Bologna told us that ..

The Witness :

The first model?

Dr Therese Comodini Cachia :

... Electrogas will make a profit in 2023.

The Witness :

Based on which model if can ask?

Dr Therese Comodini Cachia :

...he had seen, which is seems to be the last one of you have seen of last year.

Madam Justice A Lofaro :

Ehe, it's exactly what you said.

The Witness :

As far as I am aware the last when I have seen the profits on later then that.

Madam Justice A Lofaro :

Well, you are diverging here.

Dr Therese Comodini Cachia :

You were asked to say what you know about the default with Bank of Valletta, and this was a default that took place or was not a .. to the government by email dated 4th of September 2017, ok?

The Witness :

Ehe.

Dr Therese Comodini Cachia :

Could you explain what this default was about? Because when you were asked you started speaking of the gas pipeline and you've lost me there; so can you explain the default please?

The Witness :

Sure. So it was a default, a financial default, no question about it. But the default was because the government guarantee was expiring in that period. So the lenders of Electrogas, because there were 4 banks involved, it wasn't just the Bank of Valletta, there were 3 others, were obviously exerting pressure because in order to get the financial close these 2 agreements with government needed to be close. They couldn't.. they wouldn't lend close on financial close without the GSA and security supply agreement and data.

Dr Therese Comodini Cachia :

So basically it was a default because you were expecting the 18 years security of supply agreement to be finalized?

The Witness :

It's not the 18 years. Yes I mean there are 2 of them

Dr Therese Comodini Cachia :

There 2 security of supply agreement?

The Witness :

No. There are 2 agreements. The agreement of conversion term agreement and the security supply agreement. Obviously I am not that technical, so someone else can explain bit more detail. But my understanding was the main issue why was taking long to close was because of the negotiation of the option to.. at government discretion in the event that the gas pipeline happens. That was how to explain to me.

Dr Therese Comodini Cachia :

So do I understand that you entered into a power purchase agreement and a supply agreement only to safeguard yourself should the government have a direct pipeline?

The Witness :

No, I don't think it's a question of safeguarding Electrogas. It's a question of ..

Dr Therese Comodini Cachia :

It would need to safeguard your investments. How would you make... what would you sell to the government if the government had its own pipeline?

The Witness :

No; the gas that produce on the FSU is for the.. is used to produce electricity in the power station.

Dr Therese Comodini Cachia :

Exactly.

The Witness :

If the government gas pipeline and FSU remains there then Electrogas would use the FSU and who would use the gas pipeline? So the government went to the option in the event in the gas pipeline the FSU could remove. Is my understanding of it .

Dr Therese Comodini Cachia :

Before, in your testimony to some of the questions you said that you mentioned the 18 years agreement of supply. When did you first know that you would be getting this 18-years supply agreement?

The Witness :

The expression of interest..? When it was public.

Madam Justice A Lofaro :

Immediately, right? From the beginning.

The Witness :

When it was public yes.

Dr Therese Comodini Cachia :

When I asked you about the default with BOV of the 4th of September 2017 you said that was a non-financial default.

The Witness :

No, I said it was a financial default.

Dr Therese Comodini Cachia :

It was a financial default?

The Witness :

Yes it was a financial default. It's a financial default, but I was trying to give context and explain it.

Dr Therese Comodini Cachia :

Ok. Were there other financial difficulties that Electrogas was facing?

The Witness :

The main problem with the project was the cost overrun. Was the cost overrun of ninety (90) million on this project. So to finance that cost overrun which eventually was financed by the shareholders and the lenders included. But yes, I mean when we have a cost overrun like anything it's a problem. And this was solely Electrogas...

Dr Therese Comodini Cachia :

You referred to or you describe your involvement in Electrogas as being a long term passive a non-operational.

The Witness :

Ok. Can I clean that context?

Dr Therese Comodini Cachia :

I think you need to.

The Witness :

Ok. So the idea back in 2013 was that we would be not operational and sort of passive investors. And up to mid late 2015, that's what remain, then its obviously become clear to us in 2015 that there were issues on the costs that would affect – 1) the feasibility obviously of the project, and - 2) the capital requirements that we as Gasan would have to invest. So once we were made .. at that point at Gasan .. discussions we said we needed to get.. we needed to start to get involve in the project to understand exactly what is going on, what is happening. So I started to involve myself more at that point.

Dr Therese Comodini Cachia :

So you say you were passive non-operational till 2015?

The Witness :

Yes.

Dr Therese Comodini Cachia :

And following that what was your role in Electrogas?

The Witness :

Then I started to get involved mainly as I said by that time all the agreement and so on on the revenue side had been established. So it's a question of cost to see how can deliver the project within the cost that were originally estimated. So I was getting quite involved in obviously seeing the cost and the financial model.

Dr Therese Comodini Cachia :

Were you attending a board meetings of Electrogas?

The Witness :

Yes yes.

Dr Therese Comodini Cachia :

How?

The Witness :

I was attending as an observer, and then when the appointed director of GEM I was present as alternate.

Dr Therese Comodini Cachia :

Are you saying that when Yorgen Fenech was not present for board meetings you went as his alternate?

The Witness :

Paul and I we used to ...that yes.

Dr Therese Comodini Cachia :

Paul Apap Bologna also attended board meetings of Electrogas?

The Witness :

Yes yes absolutely

Dr Therese Comodini Cachia :

In your presence?

The Witness :

I am pretty sure, yes.

Dr Therese Comodini Cachia :

Well, he told us he didn't. Was there an agreement between the...

The Witness :

But it depends on the period.

Dr Therese Comodini Cachia :

From the first day till today.

The Witness :

Yes I stick to

Dr Therese Comodini Cachia :

Ok. And you and Paul Apap Bologna acted as alternates when Yorgen was not in attendance

The Witness :

GEM basically, Electrogas board had 3 directors. So it was one appointed director of Siemens, one appointed director of Socar and one appointed director of GEM. So during a board meeting to have quorum, then we need to be obviously one director for inside; so if the appointed director of GEM was not there either Paul or I would be

Mr Justice J Said Pullicino :

And the quorum was 3 of board meetings?

The Witness :

Electrogas.. but I am not a hundred percent. As GEM it was the quorum that need to be 3

Mr Justice J Said Pullicino :

...and Electrogas?

The Witness :

I ..

Mr Justice J Said Pullicino :

You are not sure?

The Witness :

I wouldn't know hundred percent.

Mr Justice J Said Pullicino :

But you made it a point to be present

The Witness :

Sorry?

Mr Justice J Said Pullicino :

You made it a point to be present to the meetings ..

The Witness :

Yes because obviously GEM has interest..

Mr Justice J Said Pullicino :

..interest ..

The Witness :

GEM has a big interest, and you don't want.. whether the quorum was 2 or 3 you would want a situation were 2 parts are taking decisions ..

Mr Justice J Said Pullicino :

Understand you.

Dr Therese Comodini Cachia :

And this period when you or Paul Apap Bologna attended the Electrogas board meeting instead of Yorgen Fenech.. .

The Witness :

It was continuous ..

Dr Therese Comodini Cachia :

What do you mean it was continuous?

The Witness :

No no, I mean in the sense from two thousand and ...

Madam Justice A Lofaro :

And 15 onwards

The Witness :

...16 onwards,

Madam Justice A Lofaro :

16?

The Witness :

Obviously.., late 15, 16? We obviously were.. I was getting more involved because I have those concerns. So whenever it was that Yorgen was not there, even ... was not there I would attend as an observer.

Dr Therese Comodini Cachia :

Was this something that was... not when you attended as an observer because I get the impression that you attended as observer as a regular basis.

The Witness :

Ehe.

Dr Therese Comodini Cachia :

But when you attended to replace Yorgen Fenech was this occasionally or was there a stretch of time when you were the one who had to go because Yorgen Fenech was not available?

The Witness :

I think later on of this 17 Black haven't definitely I am not sure if Yorgen attended any board meetings until Paul replaced him. So Paul and I were always swapping.

Dr Therese Comodini Cachia :

From the end of 2018 till 2019 you or Paul were exchanging Yorgen Fenech on these meetings?

The Witness :

I believe so yes because obviously someone have had to attend the board meetings from the 3 of us.

Dr Therese Comodini Cachia :

Was on this ..

Mr Justice J Said Pullicino :

But Paul was the... early started Paul was the lead of director by .. how is it that..

The Witness :

No ...

Mr Justice J Said Pullicino :

...ended up as...

The Witness :

No. When we were, as I said earlier, when we were approached ..

Mr Justice J Said Pullicino :

That was Yorgen

The Witness :

When we were approached and we spoke obviously with the late George Fenech and with Yorgen, it was always put forward to us that Yorgen would lead not Paul.

Mr Justice J Said Pullicino :

Agreed. But it was clear I think that the prime mover within the Maltese group would have been Paul rather than... on your side.

The Witness :

Not when I was involved, no.

Mr Justice J Said Pullicino :

Not on your side but ..

The Witness :

Not when Gasan was involved. No.

Mr Justice J Said Pullicino :

I see.

The Witness :

When we were approached we hit it with the idea it was always at Yorgen was ..

Mr Justice J Said Pullicino :

It was a question of Yorgen instead of Paul; it's a question of your internal arrangement.

The Witness :

Yes internal arrangement; basically we just felt that someone from GEM needed to be in attendance at Electrogas board meetings.

Mr Justice J Said Pullicino :

But there were occasions where Paul was there instead of you.

The Witness :

I was never an appointed director of Electrogas myself.

Mr Justice J Said Pullicino :

I understand ehe. But there were occasions when Paul was there instead of you as an observer.

The Witness :

Yes yes definitely.

Dr Therese Comodini Cachia :

So you testified already that in November, even before November let say October 2018 when you received the questions from journalist from the media about 17 Black and Yorgen Fenech being its owner, that this was over be concern to you and your family. And now you are also saying that from this time till Yorgen Fenech resigned he hardly attended board meetings and you or Paul replaced him. So during this time didn't you question were Yorgen Fenech was? Or why he was staying away from Electrogas for such a long stretch?

The Witness :

Yes, I mean I was in contact with his uncle Ray Fenech to understand .. be my concerns forward as well.

Dr Therese Comodini Cachia :

And what was his uncle telling you?

The Witness :

Was concerned as well I think.

Dr Therese Comodini Cachia :

But did his uncle tell you that – don't worry, your lead director is having a long holiday but will be back soon? Your lead director is really.. you know, following everything..

The Witness :

When we eventually met in May it was agreed that he was going to speak to him to see the way forward. And that's when as I said earlier Yorgen sent me email resigned and appointing me. And then we had to..; I said it earlier.

Dr Therese Comodini Cachia :

So October – November 2018 you were all concern that 17 Black belongs to Yorgen. Till May he had not issued disclaimer.

The Witness :

No. So, shall I repeat? Ok let's repeat again. So, November the story comes out. Yorgen issues an email statement that he asked the company secretary of Electrogas to attach to the - the board minutes the .. of the claims. Meetings were held between at GEM level and....

Dr Therese Comodini Cachia :

Hold on. So in November Yorgen Fenech sent an email to all the shareholders of the Electrogas?

The Witness :

All the directors ..

Dr Therese Comodini Cachia :

All the directors of Electrogas

The Witness :

...of Electrogas.

Dr Therese Comodini Cachia :

Disclaiming the claims that were being made against him in the media.

The Witness :

Yes. Its quite a long that email, yes

Dr Therese Comodini Cachia :

Ok. And what happened after that email?

The Witness :

So that email then there were the board meetings of GEM and then Electrogas where we met to... first of all see if investigate any links between GEM and then Electrogas with 17 Black which is confirmed that was not. And to discuss the way, and that's where we were informed that Yorgen would be speaking with lawyers and so on to come out, we understood was gone to be denial at that point.

Dr Therese Comodini Cachia :

So when Yorgen Fenech sent directors of Electrogas a disclaimer, an email disclaiming all the allegations what reasons did he give to disclaim such allegations?

The Witness :

It's quite a long email. Basically because there were various allegations. There is allegation on the FSU. There is an allegation on that ..

Dr Therese Comodini Cachia :

I can't help on this because I don't have that email. So you need to tell; us what that email had.

Mr Justice J Said Pullicino :

I think that email should be produced.

Dr Therese Comodini Cachia :

Exactly .

Mr Justice J Said Pullicino :

Yes, so it's very easy.

Dr Therese Comodini Cachia :

Do you have a copy?

The Witness :

Your Honour but..

Mr Justice J Said Pullicino :

You should produce that email.

The Witness :

... Your Honour since it's an email attached.. that was sent to the company secretary of Electrogas. I am not sure if I have the authority to maybe you can ask Electrogas? I don't know the legal part of this, if I have authority to ..

Mr Justice J Said Pullicino :

What is the difficulty? I am not understanding what the difficulty is

Dr Therese Comodini Cachia :

He is saying since it was an email sent to Electrogas should he present it or should Electrogas present it?

Mr Justice J Said Pullicino :

If it is in the records of your company you can present it.

Dr Therese Comodini Cachia :

You have a copy of it I understand.

The Witness :

Yes. But ..

Dr Therese Comodini Cachia :

So it was

Madam Justice A Lofaro :

... to you

The Witness :

But I need to advise ..

Dr Therese Comodini Cachia :

If the Board gives you an order you ..

The Witness :

That's why. That's I wanted to confirm

Madam Justice A Lofaro :

If it was sent to you - you can.

Mr Justice J Said Pullicino :

...just produce it ..

Madam Justice A Lofaro :

You have it. Its not a problem then.

Chairman Mr Justice M Mallia :

It's in your possession so you are entitled to do what you like.

The Witness :

That's why I asked Your Honour, if may be who be better if you ask Electrogas for it; but ..

Madam Justice A Lofaro :

No no. You can do it yourself, ok?

Dr Therese Comodini Cachia :

If you have it yes..

Mr Justice J Said Pullicino :

If there is confidential commercial information which shouldn't make public will see it, and will restrain it.

The Witness :

...

Dr Therese Comodini Cachia :

What will happen is you can present it and the Board will look at it and will decide on if there is any confidential information in it. Ok?

Madam Justice A Lofaro :

Yes.

Dr Therese Comodini Cachia :

So then you said Ray Fenech in May 2019 informed you that Yorgen Fenech was going to resign?

The Witness :

No. That we had a discussion and that Ray Fenech would be speaking with Yorgen Fenech to.. and then to advise us if Yorgen Fenech is going to remain a director or not.

Dr Therese Comodini Cachia :

I thought I understood that there was a moment when Yorgen Fenech resigned and named you as alternate?

The Witness :

Yes.

Dr Therese Comodini Cachia :

When was that?

The Witness :

That's exactly after the meeting.

Dr Therese Comodini Cachia :

That's exactly after the meeting?

The Witness :

After the meeting which Yorgen was present for.

Dr Therese Comodini Cachia :

So this was the meeting of May 2019?

The Witness :

Yes.

Dr Therese Comodini Cachia :

So you spoke to Ray Fenech and immediately after or soon thereafter you got this notification from Yorgen Fenech to say - I am resigning you can go..

The Witness :

No it wasn't an email to me.

Dr Therese Comodini Cachia :

So what was it?

The Witness :

No; it was an email to the directors and the..

Dr Therese Comodini Cachia :

To the directors of Electrogas or of GEM?

The Witness :

Yes; of Electrogas.

Dr Therese Comodini Cachia :

Of Electrogas. And the email said.. what?

The Witness :

The email basically said that - thank you for.... the usual resignation wording..

Mr Justice J Said Pullicino :

..unless he has a copy of it. You can't speak from memory of something which you might have seen, I mean ..!

Dr Therese Comodini Cachia :

Have you seen this email?

The Witness :

Yes I have seen it.

Dr Therese Comodini Cachia :

You've seen the email..

Madam Justice A Lofaro :

If he saw it he can.

Dr Therese Comodini Cachia :

He was attending the Board meetings, so I assumed he did.

Madam Justice A Lofaro :

He can.

Dr Therese Comodini Cachia :

Ok, so was it just an email where he simply said..; what did he say? Because I haven't seen the email.

The Witness :

Ok. He said – Dear all, usual.. like everything; I think its time for me to move on. And that kind of thing; I'll be resigning and in my stead I am appointing Mark Gasan as a director.

Madam Justice A Lofaro :

Did he admit any wrongdoing at all? Did he admit to any wrongdoing?

The Witness :

No no

Madam Justice A Lofaro :

No.

The Witness :

Never, never; no at no time .

Madam Justice A Lofaro :

No.

Dr Therese Comodini Cachia :

And this was the person who from even before the general election was named by his father to be.. so the one who will lead you into this project and who will lead the project for you. So when you received this.. let say one liner of a resignation in May 2019, did you question whether it was simply because of the issue of 17 Black or whether it was for other reasons?

The Witness :

No I think Yorgen from the - the ... form the special of interest, form the RFP and so on, he did lead and manage the project. He, by that time was 13, 14, 15 ... it was 5 years later, but I believe that that email was mainly sent because of discussion we had with Ray, in the sense that Ray was.. he might be possible of annoyed, but we are discussing his on because he ... and therefore a reaction till that, I would assume.

Dr Therese Comodini Cachia :

So did he ever withdraw this email of resignation?

The Witness :

I was in copy so I reply to everyone, and I said I believe there is misunderstanding at GEM level whilst I obviously will assist where I can at this point in time I cannot take on the role of GEM director.

Dr Therese Comodini Cachia :

But did you reply saying – Thank, you I accept your resignation?

The Witness :

To ...?

Dr Therese Comodini Cachia :

To Yorgen Fenech.

The Witness :

He was appointed me; and I said ‘no’. He was appointing me and I said ‘no’.

Dr Therese Comodini Cachia :

You said ‘no’ for your appointment.

The Witness :

Yes yes.

Dr Therese Comodini Cachia :

But did you say - Thank you Mr Yorgen Fenech, I accept your resignation but I don’t want to be the next director?

The Witness :

First of all the accepting resignation will be done at GEM level, so it’s not me. But I said I mean even talking to Yorgen, lets meet up.. and discussing and let’s see who is gone to replace you. But it’s not me.

Dr Therese Comodini Cachia :

So did GEM Holdings accept that mail resignation?

The Witness :

No, that he needed.. that he wanted to be replace. He needed to be replaced was accepted and agreed; but obviously until you have a replacement you cannot leave avoid. So that was that discussion who is gone to replace him. I put my position that.. no I could not be the GEM director.

Dr Therese Comodini Cachia :

You found a replacement 6 months later in November 2019.

The Witness :

Yes.

Dr Therese Comodini Cachia :

Why did it take GEM 6 months to find a replacement? Because this was a big project for GEM Holdings, no?

The Witness :

Yes. Basically there were discussions of who is going to be director. But don't forget to meet up at that period.. we were trying to fix meetings to meet up, but it wasn't happening.

Dr Therese Comodini Cachia :

But you got Yorgen Fenech to resigned on the ...

The Witness :

It was my company. It was on Gasan to decide who is going to be the director, I can decide.

Dr Therese Comodini Cachia :

It'd true Mr Gasan, but I am trying to understand how you can put a bid for such a project within 6 weeks but take 6 months to find and alternate to a director.

The Witness :

Why are you saying a bid 6 weeks. Can you explain that please?

Dr Therese Comodini Cachia :

Because from the time that the expression of interest was issued within a few weeks you had to submit your bid.

The Witness :

I tried to explain that. Can I? I explained it earlier, but I'll explain it again.

Dr Therese Comodini Cachia :

Sure.

The Witness :

So, the expression of interest was not a financial bid. The expression of interest was a bid where you expression your interest showing what you are as a consortium and given options and proposal. It wasn't a ... financial bid. So it was lots of wording paper and showing your financial ability to be able to do the project and that's why 11 out of 19 bidders were approved. The financial work where .. all the numbers and come up with the estimates happened after RFP stage. Which was much longer then ...

Dr Therese Comodini Cachia :

So how can you explain that preparing this easy document or that is the impression you are given me, that it was a document easily prepared, ok? Took 6 weeks, but changing your director took 6 months from May to November.

The Witness :

Ok. Let me try to explain again. So, the quorum at GEM level at that point ..

Dr Therese Comodini Cachia :

I understand the quorum ..

The Witness :

Yes, but you had to take a decision ..

Dr Therese Comodini Cachia :

But you did not require the quorum to convince Yorgen Fenech to send you an email to resign in May. Because you were speaking to his uncle.

The Witness :

Ehe.

Dr Therese Comodini Cachia :

So in those 6 months...

The Witness :

From May to ..

Dr Therese Comodini Cachia :

Till November.

The Witness :

Yes, what we did is first thing as GEM we tried to sort of quorum issue, so we can have formal fixed board meetings. So 3 new directors joint GEM which was Ray Fenech, my father and Paul's father. So at least we can finally have a meeting with a quorum, so if Yorgen doesn't attended, and does Ray Fenech we have a quorum, so it was still 3 directors quorum of each part ..

Madam Justice A Lofaro :

Yes but that took some quite time didn't it?

The Witness :

I mean yes; during that period discussions were not easy. It was in a difficult period, if someone is not here, you trying to meet, cancels meeting ..

Madam Justice A Lofaro :

Yes I know, but ..

The Witness :

But what do you from our side?

Madam Justice A Lofaro :

What you finally did. That's what you do.

The Witness :

Yes but I mean ..

Madam Justice A Lofaro :

But you do it quicker and faster.

The Witness :

How Your Honour? We really try to do everything, but we can't..

Dr Therese Comodini Cachia :

Can I ask you something else; you already told us that you immediately replied to Mr Fenech and told him – no I will not be the director. Were all of you reticent from being a director of Electrogas at that point in time? Or reluctant to be the director?

The Witness :

I can only talk about myself ..

Dr Therese Comodini Cachia :

Because at this point you were 6 people on GEM right?

The Witness :

No no. In May we were still 3 directors.

Dr Therese Comodini Cachia :

Ok. Soon thereafter at some point you became 6. Let say the fathers and the uncles, and the sons.

The Witness :

Yes.

Dr Therese Comodini Cachia :

So from these 6 businessmen were you all reluctant to fill up this position?

The Witness :

There was an agreement yes, for someone to replace it. It took time yes. That's the reality of it.

Dr Therese Comodini Cachia :

And the reluctance was because of the allegations on the company or for which reason?

The Witness :

I gave you the reasons for me

Dr Therese Comodini Cachia :

For yourself, yes.

Mr Justice J Said Pullicino :

At the end of 6 months Paul accepted.

The Witness :

Yes yes. Paul took it on yes.

Dr Therese Comodini Cachia :

In the shareholding of Electrogas there is GEM which is made up of the 3 families, and then there is a side company which is made up of Yorgen Fenech on his own.

The Witness :

Ehe.

Dr Therese Comodini Cachia :

What led you as Gasan Group to agree to Yorgen Fenech having his personal separate shareholding? It's a parallel shareholding.

The Witness :

That was discussed in the initial discussions with the late George Fenech. The way it was told to us was Yorgen was gone to spend all this time on this project. And he wanted to have a personal equity himself that so if the project does well he would do well as well. We like the idea; I mean sort of.. but his interest would be aligned with ours; if the company does well he does well and we do well.

Mr Justice J Said Pullicino :

Therefore it was on his insistence or at his request that he would have this sort of setup, and as far as you are concern the company .. the .. company only concerned him and nobody else.

The Witness :

Yes, I mean.. yes.

Mr Justice J Said Pullicino :

And you felt it was justified ..

The Witness :

Yes I actually thought.. I mean..

Mr Justice J Said Pullicino :

That it could be feasible ...

The Witness :

For any company if you have managers ..

Mr Justice J Said Pullicino :

Personal interested ..

The Witness :

...who have ...option or on it.

Mr Justice J Said Pullicino :

That is how ..

The Witness :

Its good

Mr Justice J Said Pullicino :

That is how

Dr Therese Comodini Cachia :

We were before speaking of a default on the bank guarantee. But were there other instances when Electrogas was defaulting on its payments? And I am asking this question only because there was a state guarantee. So for example there are a number of emails ..

The Witness :

You need to become a bit specific please?

Dr Therese Comodini Cachia :

I am going to be very specific.

The Witness :

Which period

Dr Therese Comodini Cachia :

I'll be very specific. So there are a number of emails which range basically from.. the ones I have in my hand are from 10th February 2017 to.. actually from November 2016 to February 2017; and the email exchange includes yourself.

The Witness :

Ehe.

Dr Therese Comodini Cachia :

Were you the person trying to conclude a CMIA deed agreement and Tripartite deed agreement with AECOM who were claiming that you had defaulted on payments that were due to them?

The Witness :

AECOM were the engineers ..

Dr Therese Comodini Cachia :

Engineering yes.

The Witness :

The engineers of Electrogas. I remember discussions with them yes, and that I was heavily involved in. But if you can show me the email I can ..

Dr Therese Comodini Cachia :

Sure.

Mr Justice J Said Pullicino :

As Electrogas or as GEM?

Dr Therese Comodini Cachia :

As Electrogas.

Mr Justice J Said Pullicino :

As Electrogas, ok.

The Witness :

This is not a financial default. This is referring to a negotiation who take on to close off and sign final agreement; its negotiating so.. it's not default.

Dr Therese Comodini Cachia :

.. I have it back to me.

Mr Justice J Said Pullicino :

One moment. We are aware that there was a major leak of the Electrogas documents.

The Witness :

Yes.

Mr Justice J Said Pullicino :

And you are aware as well. When were you aware of this leak and what was your reaction as a company? You know this thing happened prior to the assassination.

The Witness :

No, I received an email on the 27th of December 2017 from Electrogas management informing of breach in the system and that was the first I had ever heard of it

Mr Justice J Said Pullicino :

You were not aware of it before.

The Witness :

No no. I did not.

Mr Justice J Said Pullicino :

Were Electrogas aware of it?

The Witness :

No, as far as I know no. Everyone being shocked about it.

Mr Justice J Said Pullicino :

And who informed you?

The Witness :

It was an email sent by Catherine Halpin

Mr Justice J Said Pullicino :

Who is she?

The Witness :

She is the... I can't remember what her position was; commercial ..

Chairman Mr Justice M Mallia :

She the Project manager there at Electrogas. She is the architect employed by the Fenech's to oversee the whole project. And she was also overseeing the Towers.

The Witness :

Yes.

Mr Justice J Said Pullicino :

And your reaction to that was?

The Witness :

I am shocked

Mr Justice J Said Pullicino :

...the company's ..

The Witness :

Eh?

Mr Justice J Said Pullicino :

... the company's reaction not yours.

The Witness :

Sorry?

Mr Justice J Said Pullicino :

The company's reaction?

The Witness :

The company's reaction was obviously shocked. Then they were taking action straight away to .. the servers; and I believe to do a police report..

Mr Justice J Said Pullicino :

Ok.

Dr Therese Comodini Cachia :

So some of these emails say as follows. An email of the 25th November 2016 from Mike Theobald of AECOM, says Dear Mark, this is addressed to you directly.

The Witness :

Ehe.

Dr Therese Comodini Cachia :

Dear Mark, thank you for the replies I was about to chase. With regards to invoice payment we accept that all payments have been honoured to date but payment durations are now being effectively doubled. We ask for your commitment to pay the invoices on time.

The Witness :

Yes; but these are normally negotiations. Normal negotiations .. payments. I am not sure what the point is on that. In the end ..

Dr Therese Comodini Cachia :

Was it normal for Electrogas to make its payments late?

The Witness :

No, I mean as far as I know Electrogas had payments runs but I don't recall a must of issue at AECOM in the sense.. in the end everything was closed and very friendly. I ..

Dr Therese Comodini Cachia :

In the end the deal was closed but did you have to renegotiate or to deal because you were having late payments?

The Witness :

I don't have to do payments. I think they had claims, claims for extra items and that was the main negotiation to close these claims. But these are normal things.

Dr Therese Comodini Cachia :

In this renegotiation you speak of an issue with tax to which you said you will have to speak to the Malta Tax Authorities.

The Witness :

Can I see?

Dr Therese Comodini Cachia :

For example in this email of 14th December 2016, Mike Theobald again sent an email to you telling you – *Dear Mark, I do not believe we have received a reply to my email to you on the 28th November, however we decided to wait for the outcome of the meeting with the Maltese Tax Authority as we saw that some positive movement was imminent.*

Mr Justice J Said Pullicino :

Referring to tax excise duty?

Dr Therese Comodini Cachia :

No?

Mr Justice J Said Pullicino :

No? Try to guess

Dr Therese Comodini Cachia :

I am assuming, so.. I assume so considering the emails. But will present the emails.

The Witness :

This is something to do with double tax ... because there are foreign company I mean, and they are waiting from the PWC ..

Dr Therese Comodini Cachia :

Ok; but my question was going to be who negotiated with the Malta Tax Authorities on your behalf?

The Witness :

I think here he is referring to a tripartite agreement via PWC, I think its ... them.

Dr Therese Comodini Cachia :

Look, all those papers in your hand are email exchanges between Mike Theobald and yourself.

The Witness :

Yes.

Dr Therese Comodini Cachia :

No one else from Electrogas.

The Witness :

No that's from tripartite..

Dr Therese Comodini Cachia :

So you should know what that tripartite agreement says, even what the other agreement says.

The Witness :

No I am seeing itCEO of Electrogas ..

Dr Therese Comodini Cachia :

But you were the person replying to those emails.

The Witness :

Yes.

Dr Therese Comodini Cachia :

So you need to tell us what those agreements were about.

The Witness :

I am reading his email to me. His email to me ..

Dr Therese Comodini Cachia :

There are your emails in reply as well.

The Witness :

Richard is sending me an email, Mark .. It was EGM who was ... until the tripartite agreement was signed. And this request came after we had been negotiating the deed for the claims Its ... change the ... claim but it seems that only fair that payments ...issues are ... in .. But this is there.. tripartite agreement, is my understanding.

Dr Therese Comodini Cachia :

Ara you saying that you are not seeing your own replies in that email exchange? Its ok if tell us you forgot, but don't tell me that you are not seeing your own replies.

The Witness :

No I am seeing the reply but I mean this is something that PWC prepared .. to check with the ...

Madam Justice A Lofaro :

But if you replied!? How can you not be aware of the agreement?

The Witness :

No; but this is.. I think its misunderstanding. This is we are referring to a tripartite agreement that doesn't have anything to do with the claims, because there a foreign company can it be?

Dr Therese Comodini Cachia :

I can't tell you what it can be because you were the director negotiating it.

The Witness :

Can I check it?

Dr Therese Comodini Cachia :

Yes of course.

Madam Justice A Lofaro :

Perhaps you forgot?

The Witness :

No. This what were negotiating here was.. they had claims against the company to close ...; that was what I was negotiating. This tripartite agreement was ... PWC that were handling, but I'll see what it is.

Madam Justice A Lofaro :

So you don't know then.

Dr Therese Comodini Cachia :

There are 2 questions I really wanted to ask you about that email exchange. One is when you told us after 2015 you no longer remained a passive in the operations was that to the extend that even started actioning some of the challenges that Electrogas was facing?

The Witness :

Yes, the certain particular items like involved there, so when there were claims by contractors and issues like that I got involved to ... to try and close them off. So it is mainly focus on the cost of the company.

Dr Therese Comodini Cachia :

Yes, but now you do realize that when you told us you are not sure what the agreement says and we should ask the others ..

The Witness :

Which agreement? Sorry.

Dr Therese Comodini Cachia :

That email, that's in your hand.

The Witness :

No ..

Dr Therese Comodini Cachia :

You can't on the one hand tell me – yes I was getting involved and then tell me – ask them!

The Witness :

No no. I asked them this is.. what we are referring to here and will get and I am going to explain it is tripartite agreement to do with PWC for the tax position because there are foreign company I think. But let's get the agreement and we can read it; but ..

Dr Therese Comodini Cachia :

So who was the interlocutor for Electrogas with the tax authorities? Not necessarily for that.

The Witness :

These emails here are ..

Dr Therese Comodini Cachia :

Not necessarily for that negotiation; in general.

The Witness :

You are asking about this. This is clear for the emails PWC were handling this. So this ask PWC just to understand what it is.

Dr Therese Comodini Cachia :

Ok. And for the excise duty who was the interlocutor then?

The Witness :

So, on the excise tax the.. has an email from me that was referred to in that media. The email that sent had followed the conversation that I had with the CFO of Electrogas. The CFO of Electrogas advised me that there was open issue with Enemalta and that the position management of Electrogas management on the excise tax was that issue be payable by Enemalta. He also advised me that Enemalta they were saying the opposite, that it should be paid by Electrogas; and that the issue was It was unresolved. Since the CFO was advising me that management position is not payable by Electrogas. I sent an email to the board that .. exclaimed and sort it out as soon as possible. It

cannot remain unresolved. But I mean is not.. nothing onto good by that. And the management what telling me was that not paid by Electrogas.

Dr Therese Comodini Cachia :

Ok; so in an email of 7th July 2017, you are not copied in this, ok? But the attachment provides government of Malta issues list. One of those issues was precisely the excise tax. And I understand that you as a shareholder or even as a director of Electrogas wanted Enemalta to pay this.

The Witness :

I was never appointed ...

Dr Therese Comodini Cachia :

Never. But you were alternating for Yorgen Fenech, and you were negotiating some issues as well.

The Witness :

Yes yes.

Dr Therese Comodini Cachia :

So we are clear. In this document prepared by.. I believe prepared by Peter Kerner who was ..

The Witness :

The CFO

Dr Therese Comodini Cachia :

CFO of Electrogas. One of the issues that he named was precisely the issue of excise tax.

The Witness :

Ehe.

Dr Therese Comodini Cachia :

And it says like this; there is a column EGM which is Electrogas, and it says : *excise tax is payable for the purposes of importing goods into the EU market. EGM does not have access to retail customers which would be considered the market. EGM is importing and storing LNG to produce electricity and selling electricity and gas only to Enemalta in wholesale transaction.* But then the second column says Enemalta position, and Enemalta's position was exactly as follows. *Excise tax is included in the tariff reference model EGM is billing for the power purchase agreement sales.* So when to refer to the excise tax am

I not correct in saying that in the power purchase agreement this tariff, this excise tax was to be paid by Electrogas?

Mr Justice J Said Pullicino :

Have you answer for that?

The Witness :

Sure. So the last question.. so I explain the context of why I sent out the email. Since this issue has come out I have been pushing the best I can form my position, Electrogas to respond on the allegation, and I've been.. they need to respond. And come out with their position. I don't have that position and ..

Madam Justice A Lofaro :

They didn't give it to you.

The Witness :

No; I don't have that position. It's not from me to have that position. Electrogas needs to come and explain the position on the allegation been done and actually it is very frustrating for me that they had not come.

Madam Justice A Lofaro :

Did you sent emails to them asking them to this

The Witness :

Yes I've been...no, not through our... point a director in GEM, I have obviously been pushing for this and also the company secretary of the GEM.

Madam Justice A Lofaro :

And did no giving it.

The Witness :

No, Electrogas had not come out publicly with that position, and they need to do so, not me.

Mr Justice J Said Pullicino :

I take it that the position was clear from the start that the tax had to be paid by them. How you would be pushing at that opposite direction?

The Witness :

No that's the allegation being made; but Electrogas ... that position. It that correct? Or ..

Mr Justice J Said Pullicino :

It's not allegation. It's a contract by yourself.

Dr Therese Comodini Cachia :

Did you know discussed things in the board meetings you were attended?

The Witness :

No. From what I was.. and that's why triggered the email after discussion with the CFO was that managements position was that excise tax was payable my Enemalta. If that incorrect then Electrogas is to come out with that position not me. I didn't. I was never involved in the negotiations; I haven't read the agreement.

Dr Therese Comodini Cachia :

So you went involved in these negotiations.

The Witness :

No. In the initial agreement. With negotiations with Enemalta, so I don't know the position. And it's not from me, and Electrogas has all these consultant, all these lawyers, they need had a position on that. And I am pushing them to do that.

Dr Therese Comodini Cachia :

So let me ask you explain your own position which you wrote in an email. An email dated 5th January 2017 from yourself to Turab Musayev. Catherine Halpin, Peter Kerner....

The Witness :

Actually what I was explain before, no?

Dr Therese Comodini Cachia :

I am going to read it, so that you will see that if it was the same email. And you say as follows : *I was speaking to Peter earlier on and it seems there are a number of pending issues with Enemalta that needs to be addressed. Peter, can you please list all of the pending issued.* I am assuming this is the list.

The Witness :

Yes.

Dr Therese Comodini Cachia :

You continue however and this is what I would like you to explain.

The Witness :

Sure.

Dr Therese Comodini Cachia :

Tactically we need to be aware of all the issues and devise a plan how to handle them all and not handle each one as they come by. Do we approach Enemalta on all of them at once etc?

The next question is what you need to explain. *Do we skip Enemalta and go straight to minister?*

The Witness :

Can you continue?

Dr Therese Comodini Cachia :

Of course. *I suggest this should be the first topic of discussion on Monday and possibly a meeting with minister or the minister and Frederick should be held on Monday afternoon after all the issues are discussed internally and a plan formulated. Some of the issues I am aware of: - a) the excise tax is a forty million issue that if we resolve it will heavily impact our profit and loss be interest on LDs.. LD's in general, and .. this ridiculous letter.*

The Witness :

So that's where as ..

Dr Therese Comodini Cachia :

..to pay it for you ..

The Witness :

No no, as I said ..

Mr Justice J Said Pullicino :

Excuse me. The date of the email..?

Dr Therese Comodini Cachia :

The date of the email is 5th January 2017.

The Witness :

As I said, my email, and you read it clearly, follows a call I had with Peter, and then I believe in the article that there was issued as well there is an email with the of the same Peter the CFO saying .. to the board that that in my .. opinion excise tax is not payable. So that information is the information that is comment through media. Electrogas its opposition is that is payable by Enemalta not by Electrogas.

Dr Therese Comodini Cachia :

I am interested ..

The Witness :

If that's wrong, if that's wrong then basically Electrogas needs to come out with this completion.

Dr Therese Comodini Cachia :

I am interested and getting an explanation to the question, I quote; Do we skip Enemalta and go straight to minister ...

The Witness :

Or Minister and Frederick was the Chairman of Enemalta

Dr Therese Comodini Cachia :

No no. Look, do we skip Enemalta and go straight to minister

The Witness :

Yes but also, but then it says Frederick and the minister as well. Is that correct?

Dr Therese Comodini Cachia :

How familiar were you with the minister?

The Witness :

Me no. if I was familiar....

Dr Therese Comodini Cachia :

How familiar was Electrogas with the minister?

The Witness :

So the issue at that point to understanding it is Enemalta is saying is payable by Electrogas. Electrogas is saying is payable by Enemalta..

Madam Justice A Lofaro :

But you are not answering the question. are you?

The Witness :

Yes yes; ok ..

Madam Justice A Lofaro :

Are you going to answer it?

The Witness :

Sure.

Madam Justice A Lofaro :

Can you please?

The Witness :

Me, I did not meet the minister. The minister the first I met him as I said earlier was with the official opening of the power station. I never discussed this issue with anyone, myself

Madam Justice A Lofaro :

So why did you ..

The Witness :

I was concerned that this issue is that LNG were ... was coming issue and it needed to be resolve. It was a suggestion to the board.

Madam Justice A Lofaro :

So you suggested.. you know, let's go to the minister

The Witness :

Escalated. You cannot leave it....

Madam Justice A Lofaro :

So you discuss it with the minister.

The Witness :

You cannot leave it unresolved.

Madam Justice A Lofaro :

Ok.

Mr Justice J Said Pullicino :

If you had to speak to the minister would have spoken to him yourself or Mr Fenech would have done so?

The Witness :

No I didn't know him, so ..

Mr Justice J Said Pullicino :

You didn't know him. Probably Mr Fenech would have done so

The Witness :

The board of directors I can say, yes.

Mr Justice J Said Pullicino :

Because this time with your advice you had from somebody saying that you could perhaps bypass parliament. Am I correct in saying this?

Madam Justice A Lofaro :

That is something else.

Mr Justice J Said Pullicino :

Did it pass by parliament? I don't know. Am I correct I am questioning?

Dr Therese Comodini Cachia :

Yes you are very correct

Mr Justice J Said Pullicino :

Whether there was an advice for somebody that this might be resolved by bypass and would have bypass parliament

Madam Justice A Lofaro :

Bypassing cabinet

Mr Justice J Said Pullicino :

Bypassing parliament

Dr Therese Comodini Cachia :

Are you aware of correspondence between Electrogas and Dr Peter Grech and Dr Victoria Buttigieg as Attorney General?

The Witness :

The once... published in the media recently?

Dr Therese Comodini Cachia :

Could be, because there were so many published ..

Madam Justice A Lofaro :

..the media; we don't know.

Dr Therese Comodini Cachia :

Yes it could be; probably yes.

The Witness :

I saw something in the media yes.

Dr Therese Comodini Cachia :

So were you not aware that you were actually seeking the Attorney General's advice to bypass the excise tax?

The Witness :

I didn't That was for excise tax you think?

Dr Therese Comodini Cachia :

Yes.

Madam Justice A Lofaro :

We are asking you, please.

The Witness :

No no. Can I see it? Sorry.

Dr Therese Comodini Cachia :

I don't have it.

Madam Justice A Lofaro :

We are not involved in the project, are we!?

The Witness :

I don't think so. I can't recall that.

Dr Therese Comodini Cachia :

Ok.

The Witness :

But as I said earlier on the issue of the excise tax I think Electrogas needs to come up with its position.

Mr Justice J Said Pullicino :

Mr Gasan, our problem is that these issues are tied with the whole picture of what extend business and politics are tied, ok? Now, that is what concerns us basically. This incident happened before the assassination. Therefore time to see whether there was ...link, not of you personally, of business in general and particular persons. Whether there was this sort of relationship that could have led to sort of impunity. That is the issue. We are not just fishing ..

The Witness :

Your Honour, I just wanted to clarify for myself the email that I had sent that it was completely onto ... and it was after a discussion with the CFO who was advising me that basically this.. that .. position ..

Mr Justice J Said Pullicino :

As far as you are concern it's not an issue that you are trying to get off some tax from .. somebody else ... of the company

The Witness :

No, I mean no. The position of Electrogas was advising me was that it's not payable by Electrogas, its payable my Enemalta.

Mr Justice J Said Pullicino :

For you it was a straightforward thing. Could happen that.

Dr Therese Comodini Cachia :

There was another issue, another payment on which you required a concession, and this time it was form ERA in relation to the permit that you had obtained to bring in the FSU. Are you aware that the ..

The Witness :

I don't recall this

Dr Therese Comodini Cachia :

.. that you were asked ..

The Witness :

Me personally?

Dr Therese Comodini Cachia :

Yes. I am just going to ask you the question, if you are not aware you just say you are not aware. So in an email exchange dated 12th January 2017, this was sent by Stephen Jurgenson to a list of people, and ..

Mr Justice J Said Pullicino :

Including witness?

Dr Therese Comodini Cachia :

I am trying to go through the list. I don't think that the witness was copied in this email specifically but he was later on involved in the follow-up to the origin email. Also because it was 2017 and he was already taking over or sitting in for Yorgen Fenech. So in this regard the email says a lot of things,

but I'll just read you what is really particular in this case. As can be seen from the forgoing documents the IPPC permit requires EGM which is Electrogas, to provide ERA with a financial guarantee of five point five million to secure Electrogas its obligations pursuant to the IPPC permit in respect of EGM's commissioning phase. It continues.

The Witness :

I am not recalling ..

Dr Therese Comodini Cachia :

As a concession this amount was reduced by the ERA to two point five million, that is half, in respect of the first LNG cargo delivered on Wednesday this week. Would you know how you obtained that concession to half?

The Witness :

No. I don't even recall the issue.

Dr Therese Comodini Cachia :

Pardon?

Madam Justice A Lofaro :

He doesn't recall the issue at all.

The Witness :

I don't recall the issue. The problem.

Dr Therese Comodini Cachia :

But then before that email ..

Mr Justice J Said Pullicino :

Dottoressa, let us make one thing clear. I understand that as far as negotiations with government departments on these projects and these issues it was never in your hands, whatever happened, the direct negotiations was never in your hands.

The Witness :

No.

Mr Justice J Said Pullicino :

If anything if you were involved in a way it could have been Fenech not you.

The Witness :

Yes. I never had....

Mr Justice J Said Pullicino :

You never had direct involvement with any department on tax issues or concessions ..

The Witness :

No.

Mr Justice J Said Pullicino :

It might have been your concern as a director but you never handled negotiation yourself. That would have been handle by somebody else.

The Witness :

Yes, I never had meetings or negotiations with Enemalta, taxes no, correct.

Mr Justice J Said Pullicino :

All right.

Madam Justice A Lofaro :

But should he had informed you..?

Mr Justice J Said Pullicino :

But Yorgen Fenech would have done that. It would have done that on behalf of the company.

The Witness :

Yes yes.

Madam Justice A Lofaro :

Was he in due to bound to inform you?

The Witness :

As Electrogas?

Madam Justice A Lofaro :

No; I mean ..

Chairman Mr Justice M Mallia :

No. Yorgen Fenech

Madam Justice A Lofaro :

That's right, Yorgen

The Witness :

No.

Chairman Mr Justice M Mallia :

About his negotiations with the government.

The Witness :

What is representing Electrogas as a director he would have I am presuming done things with the consent of the other directors to board meetings.

Madam Justice A Lofaro :

Ok.

Dr Therese Comodini Cachia :

So you don't recall this issue mentioned in an email of 12th January 2017. But on the same subject matter IPC guarantee in an email dated 28th December 2016, just 3 weeks before or 2 weeks before, you sent an email to Catherine and to others saying – *Hi Catherine, this is so important we need clarity and an action plan. Thanks; Mark.* On the same day ..

The Witness :

...

Dr Therese Comodini Cachia :

Yes I am going to give to you. You also say - *Catharine, how did you the meeting go with them yesterday? Did they accept the principle? If so as discussed we need the wording and the policy amount agreed in writing with ERA so that we gat quotes and action the policy.*

The Witness :

This is in reference to insurance policy. This is asking basically in order to get the ERA... ERA take as an insurance policy; so I am asking her on the wording of the insurance policy so that so we can.. so Electrogas can get the insurance policy.

Dr Therese Comodini Cachia :

Yes. So ERA needed a guarantee for five point five million which was then halved to two point five million and also asked or needed an insurance policy. So you were not involved in discussing to guarantee for the five point five million which was then halved but you were involved in discussing the insurance policy?

The Witness :

I was in the insurance committee at that point, so yes I was.. sent this because of the insurance.

Dr Therese Comodini Cachia :

Was that because your family is involved in the insurance business?

The Witness :

Yes involved in the insurance business and I have some understanding, its..

Dr Therese Comodini Cachia :

Were you providing that particular insurance?

The Witness :

No were not.

Dr Therese Comodini Cachia :

No. Were you providing or were you family's companies providing other services to Electrogas?

The Witness :

I think will lease a couple of vehicles; some ... work, something like that.

Dr Therese Comodini Cachia :

And you wouldn't know how that came about.

The Witness :

Leasing of cars?

Dr Therese Comodini Cachia :

To services that your family business provided to Electrogas.

The Witness :

Leases of cars I think some employees needed cars and ..

Dr Therese Comodini Cachia :

And these were all by tenders?

The Witness :

Its ... the company ... transaction. I think most of the cars leased by Electrogas; we leased from third parties and not from us. I think they ask for a quotation and the lease taken.

Dr Therese Comodini Cachia :

So what exactly did Catherine Halpin mean on the 16th of June 2017 when she sent an email to Yorgen Fenech, Mark Gasan, Ray Sladden and I Sultana subject contracts. *Gents, is it possible to have a list of companies which you would like our operators to include on any tenders that they are setting up. We will be going for a whole range of items; firefighting, vehicles, scaffoldings, mechanical and electrical, printing, admill, training. Thanks Catherine. Was there this sort of arrangement that the Maltese partners will be providing these services to Electrogas?*

The Witness :

Catherine's email refers to include on any tenders list. So not a question of would, if there was issue tenders to include us to ask for a quotation.

Mr Justice J Said Pullicino :

Dottoressa, I am not certain whether this line of questioning ..

Dr Therese Comodini Cachia :

I have ma last question on this.

Mr Justice J Said Pullicino :

....saying something between the companies that ..

Dr Therese Comodini Cachia :

It depends when those companies are being finance by public funds; but it was my last question.

Mr Justice J Said Pullicino :

All right.

Dr Therese Comodini Cachia :

There was another question Mr Gasan that I wanted to ask you about, and this relates to.. you told us that you knew Minister Konrad Mizzi or you met Konrad Mizzi once the project was given to you?

The Witness :

No; the first time I met minister Konrad Mizzi was in April 2017 at the official launch of the PowerStation .

Dr Therese Comodini Cachia :

And you didn't know him before.

The Witness :

No; as far as I know no.

Dr Therese Comodini Cachia :

And what about Mr Keith Schembri?

The Witness :

I met him a couple of times yes

Dr Therese Comodini Cachia :

You met him a couple of times before or after?

The Witness :

After when? sorry

Dr Therese Comodini Cachia :

After the bid? After you awarded the contract or before.

The Witness :

Yes, no no. After the..

Dr Therese Comodini Cachia :

After.

The Witness :

After.

Dr Therese Comodini Cachia :

And what about then Prime Minister Joseph Muscat?

The Witness :

Prime Minister Joseph Muscat met him casually.., ‘casually’!, what’s the word..?

Madam Justice A Lofaro :

A social event perhaps?

The Witness :

Yes at a social event and then when came Prime Minister courtesy to his office with my father.

Dr Therese Comodini Cachia :

Could explain what do you mean with when you say you meet at social events?

The Witness :

The first time ..

Madam Justice A Lofaro :

Wedding? Reception. Lunch, dinner ..

Dr Therese Comodini Cachia :

... seems to be very, that's why.

The Witness :

No no, ok. The first time I met him was at my wedding. I invited just the Prime Minister and ..

Madam Justice A Lofaro :

At your ...?

The Witness :

Wedding.

Madam Justice A Lofaro :

Oh your own wedding, ok.

The Witness :

Yes the first time I met him.

Mr Justice J Said Pullicino :

The question is whether in 2013 before the election were you ever present that meetings between Muscat, Schembri and other persons connection with projects which could be beneficial to Malta, nothing else.

The Witness :

...no.

Mr Justice J Said Pullicino :

There was no meetings of this sort.

The Witness :

No no.

Mr Justice J Said Pullicino :

Trying to plan what you could contribute in the economy.

The Witness :

No,

Mr Justice J Said Pullicino :

No.

The Witness :

Not from my site, no.

Mr Justice J Said Pullicino :

Not yourself. What about your father?

The Witness :

As far as I am aware .. maybe not

Mr Justice J Said Pullicino :

As far as you are aware no. I mean nothing wrong with this, because there is nothing wrong ..; the leader of the opposition trying to discuss the progress of the country, I mean it's normal

The Witness :

No no.

Madam Justice A Lofaro :

That's what businessmen do.

Dr Therese Comodini Cachia :

There is one final question from my end and my colleague will takeover. This is not your only project with the Fenech family, right?

The Witness :

Yes; we had developed .. in Marsascala together

Madam Justice A Lofaro :

The one you mentioned. Ta' Monito you said?

The Witness :

Yes, Ta' Monita

Mr Justice J Said Pullicino :

..

The Witness :

And we are also developing the Quad Towers in Mriehel.

Madam Justice A Lofaro :

The Towers in Mriehel.

Dr Therese Comodini Cachia :

In relations to the Towers in Mriehel, were you aware of the meeting between Yorgen Fenech and Minister Farrugia back then on the day when policy was changed?

The Witness :

No no, I saw it in the media.

Dr Therese Comodini Cachia :

Did you ask Mr Fenech about this?

Madam Justice A Lofaro :

About the allegations.

The Witness :

I think the allegations came of when he was arrested as far as I am aware.

Dr Therese Comodini Cachia :

Did you question however internally?

The Witness :

How can I question him if he was arrested?

Dr Therese Comodini Cachia :

Did you question him internally?

The Witness :

Who?

Dr Therese Comodini Cachia :

Your company. You must have.... I understand that this is a joint venture between you and the Fenechs.

The Witness :

But you are talking about a meeting Yorgen had with the minister.

Dr Therese Comodini Cachia :

Yes.

The Witness :

He ... to ask; who ... ask?

Dr Therese Comodini Cachia :

So you did not question his uncle maybe?

The Witness :

If he met the minister?

Dr Therese Comodini Cachia :

What Yorgen Fenech's meeting with the minister was, if he had any involvement in changing the ..

The Witness :

With he who discussed it .. wasn't aware of it.

Dr Therese Comodini Cachia :

Ok.

Dr Jason Azzopardi :

Mr Gasan, were you.. did you use to read the blog of Mrs Caruana Galizia?

The Witness :

Yes.

Dr Jason Azzopardi :

How many years you recon you've been in business yourself?

The Witness :

I came back to Malta in 2003.

Dr Jason Azzopardi :

2003? Ok, so that's makes it almost 17 years. Now, if somebody had to come up to you proposing a business venture, proposing you join up with a partner who or which company cannot pay its bills and cannot get a bank loan would you go for it?

The Witness :

Which company cannot pay its bills and cannot..; no.

Dr Jason Azzopardi :

No. Naqbel mieghek. Trid tkun mignun biex taghmilha, mhux hekk? Mr Gasan, Sinjuri tal-Bord, I am making reference to a 24th July 2015..

Madam Justice A Lofaro :

Ehe, running commentary.

Dr Jason Azzopardi :

Blog of Mrs Caruana Galizia entitled *30 % shareholder in power station company is technically bankrupt*. I will quote. *Gasol is on the skids; its published accounts revealed disastrous results already in 2013; it is now technically bankrupt. And industry media reports reveal that it has had to borrow one million dollars from Socar to be able to pay its most pressing bills. Its latest annual report puts its negative equity at twelve point eight million accumulated loses of ninety-six million. Its independent auditors have said that “the group does not currently hold sufficient cash or liquid assets in order to meet its commitments as they fall due in the next 12 months”. Translation, Gasol is dire financial straits; it is desperate for cash, can't pay its bills, can't get a bank loan or overdraft and has had to turn to Azerbaijan for a bailout.* This is the most important part I will not read the whole commentary. Were you aware? Did you read this particular article of Mrs Caruana Galizia

The Witness :

But I can't recall.. , I can't recall this particular article but I was..

Dr Jason Azzopardi :

Skuzani?

Madam Justice A Lofaro :

He can't recall reding that particular..

Dr Jason Azzopardi :

You can't recall

The Witness :

I can't recall reading that but...

Dr Jason Azzopardi :

Fair enough, you can't recall reading that..

The Witness :

But ..

Dr Jason Azzopardi :

But? Sorry.

The Witness :

But I was aware obviously at some point that Gasol were having financial difficulties as I said earlier, but I was always informed that Gasol were backing them completely.

Dr Jason Azzopardi :

No no. Gasol has the problems. Gasol was technically bankrupt.

The Witness :

Yes yes, but Socar were.. backing them.

Dr Jason Azzopardi :

Yes but you come from a family with a long-standing reputation and experienced entrepreneurship investments and business.

The Witness :

Yes.

Dr Jason Azzopardi :

A simple google search would have showed ..

Mr Justice J Said Pullicino :

Dr Azzopardi, the witness has said he was aware of the financial difficulties of Gasol and that's as far as he was concerned Gasol was being backed complete by Socar

Dr Jason Azzopardi :

By Socar.

Mr Justice J Said Pullicino :

I mean that is the situation. But what you would have done....

Madam Justice A Lofaro :

But you were not worried, no? Because there was Socar,

Dr Jason Azzopardi :

Socar gave you the peace of mind

The Witness :

Yes, that was being informed to me.

Dr Jason Azzopardi :

Now, during your previous questioning by Dr Therese, you remember being asked about the cut off year by when it was expected for Electrogas to start to start making profits. Mr Apap Bologna mentioned 2023. More or less if I remember correctly it was after the five years. He said after the first 5 years.

The Witness :

I think if I can just clarify that, I think Paul and myself were probably referring to different financial models; because the models changes, because of..., Paul most probably was referring to the first financial model and I was referring to the one with the cost of ...

Dr Jason Azzopardi :

Fair enough, first financial model cut-off 2023? More or less, yours for the second one.

The Witness :

Late

Dr Jason Azzopardi :

Later.

The Witness :

Late.

Dr Jason Azzopardi :

After 2023

Madam Justice A Lofaro :

He said towards the end of the decade. That's what he said.

Dr Jason Azzopardi :

Now with the Board's permission I am referring and tabling a blog by Mrs Caruana Galizia of October 25th, 2013.

Madam Justice A Lofaro :

October what?

Dr Jason Azzopardi :

25th October 2013. She is quoting from a very reputable energy news site Energy Intel. A person by the name of Alan Buxton, you know Buxton.

The Witness :

Ehe.

Dr Jason Azzopardi :

Gasol chief operating officer? Yes?

The Witness :

Yes yes.

Dr Jason Azzopardi : SOCAR

Sinjuri tal-Bord. Quote “we hope to have the project particular finalized by March 2014, said Buxton. By September 2015, delivery of the first LNG shipment is expected and the consortium should start seeing returns on its investment.” He said. So, return on investment was according to this Gasol chief operating officer predicted to be round about September 2015, make it end of 2015. How does this tally with the financial models you and Mr Apap Bologna were referring to?

The Witness :

Dr Azzopardi, I think here his is meaning... because you focused on the words ‘return on its investment’; return on its investment is the project would start and returns on its investment. I don’t think it mean physical returns; I am understanding ..

Dr Jason Azzopardi :

So this doesn’t mean profit.

The Witness :

Returns; and there he is not being specific; I am not sure.

Dr Jason Azzopardi :

But you do agree return on investment is equivalent to profit, no?

The Witness :

Or it can mean you’ve started operating so you can get investment.

Dr Jason Azzopardi :

Ok.

The Witness :

It doesn't mean a physical profits or physical dividends.

Dr Jason Azzopardi :

It does not mean physical profits.

The Witness :

It doesn't necessarily mean.

Dr Jason Azzopardi :

Ok.

Mr Justice J Said Pullicino :

Dottore, these questions are balanced to see when the project...; these questions can lead to assessment whether the project was valid or not. And for us is irrelevant hux.

Dr Jason Azzopardi :

Yes yes. Iktar kwistjoni ta' krebibbilita` ta' certu nies. Imma niehu l-ispunt tas-Sur Imhallef. During 2013 were you aware that Malta or rather the European Union announced that the proposed gas pipeline between Malta and Sicily had qualified for funding. There was a basically six billion pot. U dan il-progett ikkwalfika. Were you aware Mr Gasan....

The Witness :

When was this?, sorry.

Dr Jason Azzopardi :

When I say 'were' I am not mean you, Electrogas,

The Witness :

When was this sorry?

Dr Jason Azzopardi :

So during ..

The Witness :

October you said?

Dr Jason Azzopardi :

...October 2013, (halli nkun iktar leali mieghek u mal-Bord f' dan l-istess blog Mrs Caruana Galizia qalet hekk) : *the decision to award the LNG tender coincides with the EU announcing on Monday that a proposed gas pipeline*

between Malta and Sicily has qualified for funding from a five point eighty five billion Euro pot.” The question is not about the funding pot u mhux pot. Were you aware or was it.. would you agree with it or was it your interest, ‘your’ - is Electrogas, for the proposed gas pipeline between Malta and Sicily not to take place in order for your project to take of the ground, were you aware of any discussions between members of Electrogas with government on his?

The Witness :

No... of that.

Dr Jason Azzopardi :

No. During your testimony, I would like to clarify something you said about PWC. PWC presented financial figures at the expression of interest stage you said. Your potential investment was.., correct me, and please clarify if I am wrong or if the reports picked up wrongly this fact. A potential investment of 5 million returns where is to pay to debt two hundred fifty million. These were the figures you quoted; hekk hu, sounds.. you know? Can you clarify? Because this was in your testimony, so it’s better to clarify it because the return on its...

The Witness :

I am not sure which journalist reported that, no. I said the capital forecast the cost to develop the.. to build the power station was two hundred and fifty million as per the expression of interest documents..

Mr Justice J Said Pullicino :

Then it...?

The Witness :

Eh?

Mr Justice J Said Pullicino :

Then it shot up to four hundred?

Dr Jason Azzopardi :

Later...

The Witness :

With the RFP later. And at that point our forecasted equity investment was five million.

Dr Jason Azzopardi :

Thanks for the clarification. It will be useful. Final question by Dr Therese about meeting Joseph Muscat causally socially. You remember there was a dinner 3 fridays before the March 2013 election, Portomaso? Yes or no?

The Witness :

Not me, no.

Dr Jason Azzopardi :

Pardon?

The Witness :

Not me.

Dr Jason Azzopardi :

Not you?

The Witness :

No I wasn't present.

Dr Jason Azzopardi :

Do you recall being present for a dinner 3 fridays, which was the friday 15th February 2013. George Fenech's residence in Portomaso, and you, your dad, Yorgen, George Fenech, Joseph Muscat, Carmelo Vella, John Vella son of Carmelo Vella were present. Do you recall that?

The Witness :

No I don't recall that.

Dr Jason Azzopardi :

Recall well there are eyewitnesses. Recall well, Friday 15th, February, 3 weeks before the March election.

The Witness :

No I don't recall that.

Dr Jason Azzopardi :

No?

The Witness :

No.

Dr Jason Azzopardi :

Ok. Xejn aktar.

Mr Justice J Said Pullicino :

Let's ask a couple of small questions. I go back for a second to the NAO report; that was a very serious report for your company and it could have..; can you confirm whether that report or its conclusions at least, were discussed in your GEM general meetings?

The Witness :

No. I don't believe so. I read that on my own.

Mr Justice J Said Pullicino :

You never discussed that in your board meeting?

The Witness :

I think we might would have done it..., as GEM no. I mean ..

Mr Justice J Said Pullicino :

With Socar?

The Witness :

Sorry; as GEM I don't think so; whether they discussed it at AGM I cannot recall, no myself.

Mr Justice J Said Pullicino :

Even though it's had such a ..

The Witness :

I assume, I hope that they did, but I can't..

Mr Justice J Said Pullicino :

You can't recall.

The Witness :

I can't recall this specific discussion.

Mr Justice J Said Pullicino :

And was it the connection between Socar and Azerbaijan?

The Witness :

Socar is owned I believe by ..

Mr Justice J Said Pullicino :

By Azerbaijan government.

The Witness :

Yes yes.

Mr Justice J Said Pullicino :

And how that does relate to your company?

The Witness :

As in Electrogas?

Mr Justice J Said Pullicino :

As Socar ehe, Electrogas. At Electrogas

The Witness :

Socar are 33 % shareholders of Electrogas.

Mr Justice J Said Pullicino :

And therefore Electrogas buys something from supplies ..?

The Witness :

Electrogas buys the LNG from Socar.

Mr Justice J Said Pullicino :

LDG ehe. And are you aware of any meetings that happened in Azerbaijan with the government than in any impacts on the purchase of gas?

The Witness :

I am aware through the media that

Mr Justice J Said Pullicino :

Just through media.

The Witness :

Through the media .. ; otherwise I was not aware ..

Mr Justice J Said Pullicino :

Therefore you had no feedback from a meeting that was held in Azerbaijan in which Joseph Muscat was present and Keith Schembri, and you have no feedback on that?, through Electrogas; I am saying to Electrogas now.

Madam Justice A Lofaro :

If there were journalists present?

The Witness :

No I wouldn't have anything no.

Mr Justice J Said Pullicino :

And if were looking for feedback from that meeting?

The Witness :

....

Mr Justice J Said Pullicino :

....would might have to look in the records of Electrogas?

The Witness :

Yes. I mean ..

Mr Justice J Said Pullicino :

If there was I mean. We don't know

The Witness :

If there was; I don't think so, no one ever had mention it to me, but yes..

Mr Justice J Said Pullicino :

It would have to search for written Electrogas

The Witness :

Yes yes.

Mr Justice J Said Pullicino :

What I am after is if there is an agreement with the Malta government on the purchase of a .. of which Socar had been involve in. I mean I would be interest for us to know.

The Witness :

I don't know but .

Mr Justice J Said Pullicino :

That could be traced to Electrogas.

The Witness :

Yes

Mr Justice J Said Pullicino :

Fair enough. Thank you very much for today.

Din hija s-sustanza tax-xhieda ta' **Mark Gasan** 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