

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 illum l-Gimgha 19 ta' Ottubru 2020, fid-9:30 a.m. fit-Tieni Sular, Awla 20, il-Qorti.

Judge Michael Mallia :

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

Judge Michael Mallia :

So, what information can you give us about the insurance cover for Electrogas?

The Witness :

The insurance covered of Electrogas from the date to the contract till the construction of the power station was a year.

Judge Michael Mallia :

Was..?

The Witness :

There was a year between ..

Judge A Lofaro :

There was a year in between

The Witness :

There was a year in between; so there was the sufficient time for the company to raise the insurance ...

Judge A Lofaro :

There was no insurance then? Is there any insurance of that all?

The Witness :

There is insurance; of course there is insurance.

Judge A Lofaro :

And what you going to tell us about it?

The Witness :

So it was raised..; I wasn't actually requested to bring for the insurance..

Judge A Lofaro :

I can't hear you properly. Try again please.

The Witness :

There is an insurance policy that was taken out ..

Judge A Lofaro :

Ok; I can hear you better now.

The Witness :

There was an insurance policy that was taken out when the project during the contract.. all.. to the project. So there is a one year period and so there was sufficient time to get the insurance in time for the project to be built.

Judge A Lofaro :

There was a one year period ..

The Witness :

Up until the point in time when the project was going to be built. When construction was going to start. So there was sufficient time to be able to get the insurance issued by the time the whole process will going to start.

Judge A Lofaro :

There was enough time.

The Witness :

Yes.

Dr Therese Comodini Cachia :

So what I understanding is that for the first year until the project was developed there was no insurance, but the insurance came it once the project was developed?

The Witness :

That exactly I am not aware of; and I don't the answer to that. In my list I wasn't asked to look into the insurance from what I have written on my list over here.

Dr Therese Comodini Cachia :

You are not going to be asked only on your list. So don't worry; you will be asked about everything else

The Witness :

So I understand I tell you what I know

Dr Therese Comodini Cachia :

So you were asked ..

The Witness :

But there were things that I was asked which I've got some documents over here.

Dr Therese Comodini Cachia :

Sure; and will go through those I'm sure. But the first question was about the insurance cover for Electrogas; and If I understood your reply well you said there was a year during which the insurance was being issued, so did we understand well that there was a year during which there was no insurance cover and then..

The Witness :

No what I said was.. what I said was there was sufficient time for the project to be insured when construction has started whatever; I know that part

Judge A Lofaro :

...

Dr Therese Comodini Cachia :

Yes.

The Witness :

So I know that part; the other part I don't know; I would have.. I would.. you know?

Dr Therese Comodini Cachia :

So there was insurance cover once the project was constructed.

The Witness :

No. During construction had to start from day one. So from day one of construction you meet to have insurance policies;

Dr Therese Comodini Cachia :

Agreed.

The Witness :

So there was sufficient time to raise the insurances from.. you know?

Dr Therese Comodini Cachia :

Ok.

Judge Michael Mallia :

So you do have an insurance.

The Witness :

Absolutely yes.

Judge A Lofaro :

... ..(at the moment Judge Lofaro is out of Mic)

The Witness :

Yes.

Judge A Lofaro :

Now let's talk about that.... the financial situation; when were you aware of the financial situation?

The Witness :

The financial situation of ..?

Judge Michael Mallia :

Gasol.

The Witness :

Of Gasol?

Judge A Lofaro :

...it wasn't very good

The Witness :

Of Gasol?

Judge A Lofaro :

Yes.

The Witness :

Gasol, we found out about the precarious situation of Gasol in July 2015.

Judge A Lofaro :

In July 2015.

Judge A Lofaro :

... ..government guarantee... in the consortium ... any documents.

Judge Michael Mallia :

Did you know of the need for a government guarantee at that stage?

The Witness :

The government guarantee as far as I am aware and from what I understand the government guarantee came in when the government needed to go to the process of State Aid.

Judge A Lofaro :

...to the process of State Aid

The Witness :

So for consortium to be able to raise the money with the banks they wouldn't not be able to raise the money from the banks, for close have financial close until there is State Aid clearance.

Judge Michael Mallia :

So at the beginning at the project when you were preparing it, at the beginning you are not aware that you would be needed a government guarantee.

The Witness :

I was no aware of that

Judge Michael Mallia :

You were not aware.

The Witness :

I was not aware of that

Judge A Lofaro :

....was ..; was not aware at all

The Witness :

I don't know.

Judge A Lofaro :

You don't know.

The Witness :

No.

Judge Michael Mallia :

So, the government guarantee was not indicated in the consortium's bid.

The Witness :

I do not know that so I couldn't answer it.

Judge Michael Mallia :

You don't know that either.

The Witness :

I don't know that so I can't answer it.

Judge J Said Pullicino :

Is it correct to say that success fees that had been mentioned recently were paying out of funds covered by this guarantee?

The Witness :

They were paid out of the project financing out of the whole project. It was in the project financing. So the government guaranteed was a guarantor; was a guarantor based on the financial model that was presented. And the financial model included all the aspects of the project.

Judge A Lofaro :

Yes but we are guarantee.

Dr Therese Comodini Cachia :

I think the specific question is the success fees that were received by the shareholders of Electrogas were they paid from money which was given to you by the lenders on a loan that was guaranteed by the government?

The Witness :

Judge J Said Pullicino :

... to say?

The Witness :

What? They guaranteed, they guaranteed they granted a lot, so I suppose indirectly yes that's the way..

Judge A Lofaro :

....

Dr Therese Comodini Cachia :

No I mean it can't be indirectly or directly!

The Witness :

The banks are the ones within the model that we presented to them where this is normal business commercial practices in a project like this that these development fees and the success fees were there, you know? And they were agreed upon with the banks. So they were paid by the banks ..

Dr Therese Comodini Cachia :

Yes, but they were paid to you from the loan of the bank and not from profits that Electrogas had somewhere else.

The Witness :

No.

Dr Therese Comodini Cachia :

From the loan.

The Witness :

Yes. Against.. against I must say, against a guarantee that was paid for.....

Dr Therese Comodini Cachia :

Of the government.

The Witness :

...that was paid for by Electrogas, to the tune of eleven (11) million Euros.

Judge J Said Pullicino :

There were 2 million development paid by Electrogas to Yorgen Fenech, no? That was ..

The Witness :

No.

Judge J Said Pullicino :

Do you agree that there was a development fee of 2 million payable by Electrogas to Yorgen Fenech, or to your company ..

The Witness :

No; it was paid.. it was meant to be paid to GEM

Judge J Said Pullicino :

To GEM?

The Witness :

Yes.

Judge J Said Pullicino :

To GEM. That will include you as well.

The Witness :

Yes.

Judge J Said Pullicino :

And that fee was due for services rendered before the information of the company?

The Witness :

It was for services rendered throughout the lifetime of the whole project getting to the finish stage of the project.

Judge J Said Pullicino :

.. since 2013

The Witness :

So from 2013 onwards.

Judge J Said Pullicino :

2013 onwards.

The Witness :

Yes.

Judge J Said Pullicino :

And perhaps even before?

The Witness :

No.

Judge J Said Pullicino :

Are you sure about that?

The Witness :

Hundred percent.

Judge J Said Pullicino :

You have to be careful now. And what you're saying now applies also to the success fee.

The Witness :

Yes.

Judge J Said Pullicino :

It was due for services rendered before the incorporation of the Company – of GEM or after?

The Witness :

It was agreed on by the shareholders when the shareholders got together and would had been agreed on, we didn't even have a consortium till; and I've got the emails which you asked for. We didn't even have a consortium to put together till March 25th. You know, we were still putting the consortium together, and I've got the emails here for you as you've requested them. So these would have been agreed on by the then consortium because it was all the members of the consortium that got an allegation of the success fee. *(recording failed for few minutes)*

Judge J Said Pullicino :

Now these amounts which are considerable; would the Electrogas have informed government of this commitment before the guarantee was agreed?

The Witness :

Yes they would have been.. as far as I understand they would have been in the models and they would have seen them.

Judge J Said Pullicino :

I don't know; you have to tell us..

The Witness :

They would have been in the financial models and they would have seen them.

Judge J Said Pullicino :

It should result from inquire into your account.. into Electrogas accounts.

The Witness :

Yes everything is.. everything is listed in the accounts as should be done, and as is done

Judge J Said Pullicino :

But my point is was government informed at the time it was agreeing to the guarantee of ..

The Witness :

To my understanding.. to my understanding yes.

Judge J Said Pullicino :

Yes. And have you given evidence before the Auditor General?

The Witness :

No.

Judge J Said Pullicino :

No. Was you ever questioned by the police on these things?

The Witness :

No.

Judge J Said Pullicino :

No. Have you ever been asked to or offered to the police on anything of this project?

The Witness :

No.

Judge J Said Pullicino :

No.

Dr Therese Comodini Cachia :

I have some particular questions to ask about the success fees and the development fees. If I can to those...

Judge J Said Pullicino :

...

Dr Therese Comodini Cachia :

Ok. So last time you also spoke of the success fee and you said it was in the total of 4.1 million and then 2 million as a separate fee, and that we counted would be a six point one (6.1) million fee. But there seems to be a difference or you are differentiating between a success fee and a development fee.

The Witness :

Yes.

Dr Therese Comodini Cachia :

What is the difference in nature between these 2 types of fees?

The Witness :

One is for the success of all the services provided putting the consortium together and getting the whole project put together. And the development fee from my understanding would refer to the development of then the project itself. To my understanding, I say to my understanding.

Dr Therese Comodini Cachia :

Ok; so when through an email of 31st July 2015 Mr Fenech who was your director on Electrogas asked Catharine Halpin, and I am going to quote : *all, please call it “development fee not success fee” Catharine it is important to refer to it that way even in Electrogas records.* Why would the company want success fee to be turned as a development fee when you as consortium members had already agreed on a distinction between development and success fees.

The Witness :

I don't know what's that written in that email and I was in privy to that email but I do have the contracts where the contracts actually stipulates both development fee and success fee.

Dr Therese Comodini Cachia :

So you are not aware on why there was the need to dress success fee..

The Witness :

No I wasn't.

Dr Therese Comodini Cachia :

...as development fee.

The Witness :

No I wasn't.

Dr Therese Comodini Cachia :

And have you questioned why since this was made known at least last Friday?

The Witness :

Internal no we haven't. No I haven't.

Judge A Lofaro :

Did it raise any concern when you saw it in newspapers?

The Witness :

The fact that .. we've got contracts in place where they actually stipulate that one is development fee and one is success fee. And the figures correspond, you know? I've got the documents; I mean I checked out the document like obviously and I saw.

Judge A Lofaro :

So you were concern when you went to check

The Witness :

So I saw the documents, I've seen the documents, and the documents I actually stipulate, so..

Dr Therese Comodini Cachia :

So when you define success fee as the fee due to the shareholders forgetting the project, do we understand that this was the success of the consortium to be awarded this project – this contract?

The Witness :

No it's a success fee based on bringing in all the contractors, the building of the consortium, getting the consortium, getting the consortium members together, you know? It's a vast project to be able to spend all this time working to get.. all the necessary technical skills etc to be able to build a team like this. So it's a long process, it's cumbersome, so that's why it's..

Judge J Said Pullicino :

This development team that you paid to Mr Fenech, I understand that is over and above of the 8 % shareholding that were agreed to give him because of his work

Judge A Lofaro :

It's over and above, isn't it? It's over and above.

Judge J Said Pullicino :

It's over and above?

Judge A Lofaro :

Are we correct?

The Witness :

No no, its in line. Its in line with that 8 %.

Judge A Lofaro :

No, but it's over and above the amount. It's a payment over and above.

Judge J Said Pullicino :

It's a plus of that 8 %? Is it incorporated or ...? I mean....it faces this is in line with.. .. I don't understand ..

The Witness :

Good question ..

Judge J Said Pullicino :

The amount has been paid.

Judge A Lofaro :

There are no 2 ways about this. Yes or no.

The Witness :

I will have to double check all that calculations on how..

Judge A Lofaro :

.. ..have to check for ...

Judge J Said Pullicino :

And there is another question on this....

The Witness :

That was the always contributions for all the work that he was doing throughout the building of the project

Judge J Said Pullicino :

Yes. And we are not questioning.. it could be perfect legitimate. We are not questioning that. I am asking whether that amount is over and above the 8 % share.. particular share to him personally in deposit .. Electrogas.

The Witness :

No I don't see that it is, but I will have to double check it.

Judge A Lofaro :

So you think you are saying it's included in the 8 %. It's very clear, that it's not included. It's over and above. Ok, check

Judge J Said Pullicino :

Another questions and close this part. And are you positive that this amount does not refer to initiative ... Mr Fenech prior to 2013? You have to be very careful, ok? Whether it... I mean it's a simple question, whether the amount refers to activities initiatives, promotion, whatever, that Mr Fenech might have had before 2013

The Witness :

Exactly as we said in the article over there. No, we don't think so.

Judge J Said Pullicino :

No.

Dr Therese Comodini Cachia :

So for you the success fee was paid for putting the project together and bringing the people together.

The Witness :

Yes.

Dr Therese Comodini Cachia :

Ok. Rather than for what I would understand as completion of the project to be where everything is in place, everything has been constructed and it is up and running, fully efficiently. So you issued 2 invoices, one invoice is dated 15th December 2014 and that's for 2 million plus three hundred sixty thousand Vat. And another invoice on the 30th of June 2015 which is for 4.1 million plus seven hundred fifty thousand Vat, and you can see the document if you want.

The Witness :

Yes.

Dr Therese Comodini Cachia :

At these particular dates what milestones had you achieved to receive the success fee.

The Witness :

Off the cuff I don't know.

Dr Therese Comodini Cachia :

Pardon?

The Witness :

Off the cuff I don't know

Judge A Lofaro :

Not even vaguely?

Dr Therese Comodini Cachia :

Why wouldn't you know while you are receiving 6.1 million?

Judge A Lofaro :

This is not a small amount is it?

The Witness :

Because the fund ..

Dr Therese Comodini Cachia :

Do you receive them every day! I mean ..

The Witness :

No, because as

Judge A Lofaro :

...so ... why..

The Witness :

No, because as I had mentioned in my earlier sitting, that at this point in time there is a team that is built around doing all of this, so these are our accountancies who would have had done this and wh. And at the time when the project was being set out and whatever, the lead person in all of this was Yorgen. So Yorgen would have been.. Mr Fenech would have been handling when these were coming and whatever. So I would have known they would have coming but they remain in the company because then I needed to see these moneys because then these moneys were used for paying all the expenses that who where been incurred by the company. Namely the government guarantee which was 3.6 million. There are four hundred thousand Euros in bank charges. So all of these moneys that came in went out to pay all the expenses.

Dr Therese Comodini Cachia :

Will see about that in other questions. But if I tell you the financial close of the project what you understand by financial close of the project?

The Witness :

Its when finally the banks had closed the financial close project.

Dr Therese Comodini Cachia :

And if I suggest to you that that is why you received four point one (4.1) million because the milestone reached then was the financial close of the project, is that correct? Would you remember that - that was the millstone then?

The Witness :

It may well have been.

Dr Therese Comodini Cachia :

So let me show you another document maybe this will help you remember. And this is the invoice that Siemens provided to Electrogas on the 28th of July 2015. And Siemens here is charging four point one (4.1) million and is saying this : *development fee in accordance with joint development agreement dated 30th August 2013 and facility agreement dated 28th July 2015, referring to financial close of the Enemalta project.* So did you receive four point one (4.1) million because you reached the target of financial close of the project?

The Witness :

I would assume so, so according to that invoice..

Dr Therese Comodini Cachia :

So four point one (4.1) million was paid from the bank loan guaranteed by the state because you actually got the bank loan.

The Witness :

No, once we've got ..

Dr Therese Comodini Cachia :

Isn't that the financial close?

The Witness :

Once we got the financial close the government guarantee wasn't there again. Because..

Dr Therese Comodini Cachia :

Yes. But you were paid four point one six (4.16) million upon having your bank loan approved.

The Witness :

According to that yes.

Judge A Lofaro :

Which you don't dispute. You don't dispute it, do you? Because if you do you must tell us.

The Witness :

I am not disputing ..

Judge A Lofaro :

Because you are saying according to you

The Witness :

According to the invoice over there then I am not disputing .

Judge A Lofaro :

So it is so then; right? ... then you have to reply ...and not according to you.

Judge Michael Mallia :

Excuse my ignorance, but it seems to be that you've started milking the cow before it actually produces milk!

The Witness :

But fundamental not; because we didn't take any moneys which we took for us. These moneys were used to pay back to the company

Judge A Lofaro :

Do you have any proof of what you are saying? Do you have a proof?

The Witness :

We have proofed that we've paid, we paid to ..

Judge A Lofaro :

That the money is coming from there - from those fees? The success fees?

The Witness :

Yes. Because they went into the company to GEM .

Judge A Lofaro :

So you have proof

The Witness :

Yes

Judge A Lofaro :

You will get it next time.

The Witness :

Yes sure.

Judge A Lofaro :

Can you please take a note?, because we need this proof.

Dr Therese Comodini Cachia :

So if the four point one (4.1) million was a success fee for financial closure what was the 2 million development fee for as a milestone?

The Witness :

I don't know off the cuff, I will have to check ..

Dr Therese Comodini Cachia :

How often was a development fee or a success fee due to you? Is this a one-time payment or does your agreement give you other milestones that you are still..

The Witness :

No it's a one time

Dr Therese Comodini Cachia :

It's a one-time payment. Was this success fee or development fee ever revised as an amount?

The Witness :

Not that I am aware of.

Dr Therese Comodini Cachia :

And what are reservation costs? I read you the sentence. This is an email from Catherine Halpin 3rd August 2015. Subject for car payments from Electrogas. It's addressed to Dear Ruston and that there are these 4 lines. In December 2014, two sponsors were paid development fees, that is Gasol and GEM. In the December 2014 each sponsor was repaid its respective amount of the EPC

reservation costs. So GEM must have received its respective amount of the EPC reservation costs. What were these reservation costs?

The Witness :

I don't know about them; I have to double check. But what I do know I do know about the success fee and the development fee, I don't know about the reservation costs. I would check on that but I am...

Dr Therese Comodini Cachia :

It continues further. In January 2015 the sponsor recharges were paid. What are the sponsor recharges that you received that you were repaid?

Judge J Said Pullicino :

Who are these sponsors?

The Witness :

We went ..

Judge J Said Pullicino :

Who are these sponsors?

Dr Therese Comodini Cachia :

Sponsors in this language are the shareholders of Electrogas. So they are GEM, Socar,..

Judge A Lofaro :

The investors, no?

Dr Therese Comodini Cachia :

The investors ehe.

Judge A Lofaro :

That's what I understand

Dr Therese Comodini Cachia :

Ehe. Sorry.

The Witness :

As far as I know the only 2 funds that came in were success fee and development fees into GEM. EPC is the EPC contractors, all right? And the EPC contractors you have Siemens which is a shareholder which is an ECP contractor. So those could be referring to cost that we've paid to Siemens for the contact....

Dr Therese Comodini Cachia :

Each concern

The Witness :

I have to double check about that. I don't know. I really don't know about them.

Dr Therese Comodini Cachia :

Ok. And the last one says this. In the next draw down, and this is why I asked if there was more than a one-time fee, in the next drawdown the revise sponsor success / development fee is to be paid.

The Witness :

I know about the .. one and the 2, you know? I don't know about that.

Dr Therese Comodini Cachia :

Before, Mr Justice asked whether the government was informed of the success fee and the development fee.

The Witness :

Yes.

Dr Therese Comodini Cachia :

And if I remember well you said you assumed they were.

The Witness :

Yes. And I was assumed that they were because these are figures which are in the financial models. These are figures which today would be in the audited accounts. Which I am very happy to say that. Ten days ago we had .. EGM, our audited accounts have been approved in 2018. The PWC audit report is not qualified. So our accounts...

Dr Therese Comodini Cachia :

I understand that PWC has signed the audited accounts after you undertook the forensic audit, right?

The Witness :

That's right.

Dr Therese Comodini Cachia :

Because that was a condition for their signature.

The Witness :

That's right.

Dr Therese Comodini Cachia :

So you refer to the accounts that the company would have had that would expose or show the success or development fee.

The Witness :

Yes.

Dr Therese Comodini Cachia :

Do those accounts refer or rather the accounts given to the government, do they refer to success fee or development fee, or do they refer to pre-constructions / development costs?

The Witness :

I wouldn't know about that.

Judge A Lofaro :

What was his answer?

Dr Therese Comodini Cachia :

He wouldn't know.

Judge A Lofaro :

He doesn't know.

Dr Therese Comodini Cachia :

So if there is an email from someone working with Siemens dated 12th April 2016 and this is sent to a number of people at Electrogas and it says this : the subject is Re-Malta Energy Project Financial Model. This is the financial model I assumed are you were referring to last time in your testimony when you told us the financial models changed.

The Witness :

The financial model is constantly changing

Dr Therese Comodini Cachia :

Constantly changing, good. So the financial model on the 12th of April 2016 included a number of items, lenders advisors, owners engineer, corporate costs; but then there is pre-construction / development cost 20.20 million.

The Witness :

Ehe.

Dr Therese Comodini Cachia :

Then there is an interesting question which this person from Siemens is asking Electrogas about; and it says : in the 20.20 million we have 16.86 million development fee for the sponsors. That is in the item named pre-construction / development costs we have a 16.86 million development fee for the sponsors. What should we say about this to Oxera as this might be overcompensation.

The Witness :

What I do know is that Oxera had come back with a quite a number of questions in different emails where they specifically wanted breakdowns of the information, and that was followed by a workshop that was held in Malta as well. And I believe and I understand that the information would have been given to Oxera.

Dr Therese Comodini Cachia :

Let's explain who Oxera is. Was Oxera the consultant the government's consultant assisting the government for the State Aid process?

The Witness :

That's right.

Dr Therese Comodini Cachia :

Yes. So you are right, there was a day meeting for this and there were email request with a number of questions.

The Witness :

Yes.

Dr Therese Comodini Cachia :

And you are also right that one of the questions was specifically about the pre-construction and development costs.

The Witness :

Yes.

Dr Therese Comodini Cachia :

The email that I just read to you with that question, that question was raised internally by Siemens to Electrogas, asking Electrogas what should we say about this to Oxera as this might be overcompensation. Do you know whether this information was given to Oxera the government consultant?

The Witness :

To my understanding all the information that are requested there when they queried that, that information was given to him to my understanding .

Dr Therese Comodini Cachia :

And what if I tell you that on the same day just 3 hours later the replies were sent to the government including Ronald Mizzi excluding the description of the 16.86 development fee.

The Witness :

What I am aware of the reply were back to Oxera and what happened in the meeting in Malta when they had their workshop. So I can't elaborate further then what I know.

Dr Therese Comodini Cachia :

Do you exclude that that information was in fact not given to the government?

The Witness :

I can't elaborate on that; like I said because I don't know.

Dr Therese Comodini Cachia :

These emails will be presented to the Board for the Board to than drawn some conclusions.

Judge J Said Pullicino :

Can you specify that a couple of words what that reasoning is leading to. I mean what is the end result of that?

Dr Therese Comodini Cachia :

The end result was that in reality Oxera were assisting the government in the process of State Aid; and there was a big concern that then receiving success fees; would be considered by the commission as being overcompensation, and therefore the European Commission would not approve the funding or the project as delivered by the government.

Judge A Lofaro :

Exactly.

Dr Therese Comodini Cachia :

What Electrogas did, it appears from these emails, was that when Oxera questioned and asked for details, at least this email exchange indicates that Electrogas is decided not to provide this detail.

Judge J Said Pullicino :

But was the money paid?

The Witness :

Pardon?

Judge J Said Pullicino :

Was the money paid? I mean the ..

Dr Therese Comodini Cachia :

The money was paid; he just said he received a success fee.

Judge J Said Pullicino :

How can you delete an item if you have already paid it?

The Witness :

It's not deleted.

Judge A Lofaro :

They omitted

The Witness :

It's not deleted.

Judge J Said Pullicino :

..... to government

The Witness :

It's not deleted.

Dr Therese Comodini Cachia :

Let me explain. And you can have the document. So the accounts indicate 20.20 million, and they are put down as a development costs.

Judge A Lofaro :

Exactly.

Dr Therese Comodini Cachia :

The question of this person was within what we marks as 'costs' there are the success fees, should we explain the success fees or should we simply say – development costs? And the reply from that thread of emails was you don't need to mention this. Don't explain.

Judge A Lofaro :

Because they are excessive

Judge J Said Pullicino :

The amount remained 20-20

Dr Therese Comodini Cachia :

The amount remained 20 - 20

Judge A Lofaro :

The... was ..

Dr Therese Comodini Cachia :

Accounted for as development costs not fees for the shareholders; so ..

The Witness :

Yes but that is an assumption also being made, because I don't know what happened ..

Judge A Lofaro :

.....state aid.

The Witness :

I don't know what happened in the meetings in Malta.

Dr Therese Comodini Cachia :

So this is why I asked you last time; the forensic audit that you undertook, did it verify whether this would have made a difference to the European Commission?

The Witness :

The report.. the ... reviewed that we did. They had unfettered access to all the documents from day one to present day; so they' ve gone in everything, they've gone into ..

Judge A Lofaro :

I don't thing they have those emails did they?

The Witness :

They were given access to everything.

Judge A Lofaro :

Those emails too?

Dr Therese Comodini Cachia :

Who sent those terms of reference? You did, right? Who sent the terms of reference for the forensic audit?

The Witness :

We've gave them carte blanche. We've gave them card blanche to .. and

Dr Therese Comodini Cachia :

I that carte blanche ..

The Witness :

And in that carte blanche was also guided by PWC who wanted certain information.

Dr Therese Comodini Cachia :

So the guidance that they were provided with and the report that they finally gave you, did it review your position on state aid? Did it review your risk of losing State Aid? Basically of losing the commission's approval?

The Witness :

The review went through the review of the project documents, finance documents, statutory and regulatory filings, shareholders agreements, previous due diligence, original tender process, gas price mechanisms, a full forensic review. So I would assume that, I would assume I'm understanding would be that it would be full statutory and regulatory filings so they would have looked into everything.

Dr Therese Comodini Cachia :

I believe I would be correct to say that you've read the report of the forensic audit, right?

The Witness :

I've read the report but very very briefly because ..

Dr Therese Comodini Cachia : 14.51

Do you always read everything briefly?

The Witness :

Can I explain please?

Dr Therese Comodini Cachia :

Ehe.

The Witness :

Because the report is privileged.. is client and privileged secured, so it's sitting in the UK, and I

Dr Therese Comodini Cachia :

Aren't you the client?

The Witness :

I am the client but I had... we had a very limited access towards that report. Because as we wanted to give the report a completely unconditional complete transparent report the shareholders and directors .. were not involved in getting this report out together. It was simply the CEO and the CFO, and legal. So they did .. that report, and then I had.. we had a very short window to get through this report because we needed to get the 18 audited accounts drawn up and finished.

Dr Therese Comodini Cachia :

I believe lawyers would understand a very short window to read a report. So I ask you again did you read that report in full the report you asked for yourselves?

The Witness :

Yes I did.

Dr Therese Comodini Cachia :

Yes. And does that report indicate whether it has verified your risks vis a vis state aid?

The Witness :

I went through all the scenarios ..

Dr Therese Comodini Cachia :

On state aid?

The Witness :

I need to double check. I am not sure that it did.

Dr Therese Comodini Cachia :

I understand that to mean it didn't.

The Witness :

Pardon?

Dr Therese Comodini Cachia :

I understand that to mean that it did not?

The Witness :

Yes.

Dr Therese Comodini Cachia :

Was the government aware that 16.86 million was being paid out to the shareholders as success fee at a time when it was providing its bank guarantee?

The Witness :

You are asked me a question at a time where I wasn't involved in that processes with the submission of all documents to.., so I am going on information that I have which I've pulled out which is as I mentioned.., no, the documents.. they would have got our financial models; they would have been in discussions with the banks and the banks had given us a proof for those success fees.

Dr Therese Comodini Cachia :

The success and the development fee that was received by GEM from Electrogas was this divided between its 3 shareholders equally? So did Fenech, Gasan and Apap Bologna receive a third each?

The Witness :

It was relative to your shareholding within GEM

Dr Therese Comodini Cachia :

So you receive according to the shareholding in the company.

The Witness :

Yes.

Dr Therese Comodini Cachia :

So if you receive according to the shareholding in the company this means that family Fenech receive a share representing their shareholding in GEM

The Witness :

Ehe.

Dr Therese Comodini Cachia :

And Mr Yorgen Fenech received 2.5 million separately from the families..

The Witness :

No, all the funds came into GEM. These funds were used to pay all the expenses that we had, and ..

Dr Therese Comodini Cachia :

Pardon?

The Witness :

The funds were used to pay the expenses that we had. And the first.. the nest funds that would come in and which could have been hopefully profits from the company would have gone to paid of the shareholders loans. And it has been then after that - that then the profits ... disbursed.

Dr Therese Comodini Cachia :

So the agreement that was signed between GEM Holdings Limited and New Energy Supply Limited the agreement that refer to in the article..

The Witness :

Yes.

Judge J Said Pullicino :

In May 2014.

Dr Therese Comodini Cachia :

1st June 2014.

Judge J Said Pullicino :

1st June

The Witness :

Yes.

Dr Therese Comodini Cachia :

Last time when you were testifying you said that you had originally come up with this idea together with a friend of yours that were studying with you aboard.

The Witness :

Yes.

Dr Therese Comodini Cachia :

Who was this friend?

The Witness :

Pardon?

Dr Therese Comodini Cachia :

What was the name of the friend?

The Witness :

Obermay, Constantine Obermay.

Dr Therese Comodini Cachia :

And he was connected to Gasol, no? You said.

The Witness :

He was the legal board member.

Dr Therese Comodini Cachia :

At that point in time way back in 2017, were you the only one with this project or had you already started a partnership or an agreement with Mr Yorgen Fenech?

The Witness :

No Mr Yorgen Fenech didn't even know about it.

Dr Therese Comodini Cachia :

He didn't know about it.

The Witness :

No.

Judge J Said Pullicino :

One moment; I am not correct in saying that in 2007 you entered into an agreement between GEM and New Energy Supply.

The Witness :

No I didn't.

Judge J Said Pullicino :

No?

The Witness :

No.

Dr Therese Comodini Cachia :

Are you saying that no agreement was signed by you on the 1st of June 2014 an agreement between GEM Holdings Limited and New Energy Supply Limited?

The Witness :

No no, in 14 it was.

Dr Therese Comodini Cachia :

It was.

The Witness :

But I had no agreement with Yorgen Fenech in 2007. And in 2007 Mr Yorgen Fenech didn't even know about this project. And like I've always said ... last time that the first time that Mr Fenech knew about this project was back in January 2013.

Dr Therese Comodini Cachia :

Am I right to say that New Energy Supply Limited belongs to ..

Judge J Said Pullicino :

If you say... because now you are going to produce the agreement, there is no reference in the agreement through this ..?

The Witness :

There is a mis-drafting actually in the agreement, yes there is.

Judge J Said Pullicino :

There is a..?

The Witness :

There is a mis-drafting.

Dr Therese Comodini Cachia :

Eh! This is one agreement you've read.

Judge J Said Pullicino :

Mis-draft? What is a mis-draft? How can you mis-draft an agreement?

Dr Therese Comodini Cachia :

Shall I quote a mis-draft?

The Witness :

You can drafting yes because I know

Dr Therese Comodini Cachia :

Is this the mis-draft you are referring to whereas as NES - New Energy Supply Limited and GEM first started developing the project in 2007, and among other things presented the project to the government of Malta who did not proceed with the project at that time. Is this this mis-agreement the mis-drafting?

The Witness :

Yes ..

Dr Therese Comodini Cachia :

And you didn't read this agreement before signing it?

Judge J Said Pullicino :

Excuse me ta; you have to be careful because now we are on a slippery ground; you can't ..

Judge A Lofaro :

...I am not warning him again.

Judge J Said Pullicino :

...you are now on a very slippery ground .

The Witness :

I am saying.. I am telling what the honest truth is. I can't say any more then what the honest truth is

Judge J Said Pullicino :

This is your agreement? You had a part to it and now you are telling us that it is whatever it is ..

Judge A Lofaro :

...all those players involved and nobody noticed the mis-drafting? You've just noticed now? When did you notice? When?

The Witness :

About 2 weeks ago

Judge A Lofaro :

Two weeks ago; I see.

Judge J Said Pullicino :

It makes specific reference to the project being presented in formal administration which ... what you said, what other people said? I mean how can this be a mis-draft?

Judge A Lofaro :

Exactly.

Judge J Said Pullicino :

How can? You did not been on facts that will not involve you in any way. There is nothing untoward or else strange in you having the projects that started of with a ... government, and that was strange. I mean there is nothing specially

Judge A Lofaro :

And it's approved already anyway

Judge J Said Pullicino :

Why is this ..? are you withholding this sort of information ..

The Witness :

I am not holding any information

Judge A Lofaro :

...saying it's a mis-drafting!

The Witness :

I am not holding ..; because that is the case.

Judge A Lofaro :

How can the truth be is a mis-drafting? Can you please explain?

The Witness :

That was badly drafted in that contract which was missed by us.

Judge A Lofaro :

Which..? The whole part is not true then?

The Witness :

It is not true because I didn't present the project. Mr Fenech till 2013.

Judge A Lofaro :

So why did you no pointed out to the notary who was drafting the agreement?

The Witness :

Because we missed it; not only I missed it.

Judge A Lofaro :

You all missed it! All of you.

The Witness :

Even my partner missed it ..

Judge A Lofaro :

So it's not just you, its all of you. All .. involved missed it, right?

The Witness :

I said I missed it

Dr Therese Comodini Cachia :

Who drafted then?

Judge A Lofaro :

No no. And the others .. would have .. no?

The Witness :

..

Judge A Lofaro :

We are talking about millions here. This is not a contract which is worth nothing! I mean, and you missed it! All of you!! Ok, that's what you are saying under oath. Ok.

Dr Therese Comodini Cachia :

Do you remember who drifted this agreement for you?

The Witness :

No I don't.

Dr Therese Comodini Cachia :

Do you remember the day when you signed this agreement?

The Witness :

The date? No I don't know off...

Dr Therese Comodini Cachia :

The day.

The Witness :

No I don't.

Dr Therese Comodini Cachia :

Do you remember who you were when you signed this agreement?

The Witness :

I would presume Mr Mark Gasan, Mr Yorgen Fenech and myself.

Dr Therese Comodini Cachia :

So this agreement was not important for you; this is why you don't remember.

Judge A Lofaro :

And these millions, you know?

The Witness :

It goes back to 2014, and we are 2020; I have to go back. The dates I don't know, I know it was signed in '14 but I don't know the exact date

Dr Therese Comodini Cachia :

When was the payment affected to Mr Fenech?

The Witness :

Which payment please?

Dr Therese Comodini Cachia :

The payment under the 2014 agreement.

The Witness :

I don't remember.

Dr Therese Comodini Cachia :

Pardon?

The Witness :

I don't remember .

Dr Therese Comodini Cachia :

Do you remember if it was affected?

The Witness :

The one million?

Dr Therese Comodini Cachia :

The 2.5 million.

The Witness :

GEM paid one million to New Energy, and there is an invoice for it, and that is what GEM paid to New Energy.

Dr Therese Comodini Cachia :

So do you remember when that payment was affected to New Energy?

The Witness :

No I don't because I didn't check..; I know that .. been paid; I didn't know that ...being asked about this. But obviously we do have an invoice for it.

Dr Therese Comodini Cachia :

Were you aware that you still have a balance of 1.5 million to pay?

The Witness :

Yes we are aware about the 1.5 million balance to pay; the funds did not come into GEM so Gem did not pay the 1.5 million.

Dr Therese Comodini Cachia :

How can you explain that you identified a mistake in the drafting only 2 weeks ago if this was signed 6 years ago?

Judge A Lofaro :

Were you reading it again ... 6 weeks ago. How did you notice 2 weeks ago?

Dr Therese Comodini Cachia :

What made you go back to read this agreement after 6 years?

The Witness :

Because I started going through all the agreement because obviously there are... that were coming out about..; we were asked questions by the media about the success fees development fees etc; so we started, we. .. to the contracts to go through them to see, you know?

Judge A Lofaro :

When you say 'we', who is we?

The Witness :

Myself and Mr Gasan Mark.

Judge A Lofaro :

You and Mr Gasan.

Judge J Said Pullicino :

Mr Apap Bologna, it's not a question of which split in a year! Its not a question of 2007 instead of 2017; it's a question of a date and a number of circumstances which had happened because we are all agreed in agreement that you presented some sort of project to the previous government and now you are saying it was written there by mistake; and you signed it. I mean how can ..

The Witness :

No, I presented. I Paul Apap Bologna yes. Mr Yorgen Fenech did not know about this project till January 2013.

Judge J Said Pullicino :

Till January now; it's not March. Till January.

The Witness :

No. I'm sorry, I've always said it was January ..

Judge A Lofaro :

Yes. But now the contract states otherwise. And you are saying it's a mis-drafting. And nobody noticed. Nobody. It wasn't just you. There were other people involved. Why would somebody right something which is not true? A contract, you know, of this accent, so important. Involving so much money. Why would someone mis-draft? Why? And why would nobody noticed? Did you all have your own legal representatives with you when the contract was being signed? Didn't no one notice? No lawyer notices? No one?! This is what you want us to believe, right? No one notice.

The Witness :

..

Judge A Lofaro :

Did you have your lawyer with you or not?

The Witness :

No I didn't.

Judge A Lofaro :

You didn't. Did the others have their lawyers with them?

The Witness :

No.

Judge A Lofaro :

They all came without lawyers.

The Witness :

We had a mutual trust and respect, because we trust each other, so you know?

Judge A Lofaro :

Ok. No lawyers; lawyers. Who drafted it? How did? Accountant, auditors..

The Witness :

If I knew who drafted I have to get back to tell, but I don't now at this point in time

Judge A Lofaro :

You don't really know; ok; you will tell when you remember or whatever

Dr Therese Comodini Cachia :

The fees that were due to New Energy Supply Limited what was the scope for paying this fees? What were they covering?

The Witness :

They were covering all the parts of putting the.. all the different components of the project together. So it was a services agreement.

Dr Therese Comodini Cachia :

Did the services agreement include (and I am quoting) interphasing with authorities on the project?

The Witness :

It does.

Dr Therese Comodini Cachia :

Before, when I asked you if you each divided the success fee between you as shareholders of GEM you referred to the payment of the shareholders loans.

The Witness :

Yes.

Judge A Lofaro :

And payment for bank guarantees, bank fees.

Dr Therese Comodini Cachia :

Am I correct in saying that there was an instance when GEM had to provide a shareholder's loan to Electrogas?

The Witness :

I think so.

Dr Therese Comodini Cachia :

Was this an interest fee loan to Electrogas or do you receive interests on that loan from Electrogas?

The Witness :

I am not aware. I don't know.

Dr Therese Comodini Cachia :

You are not aware if you receive interest?

The Witness :

No I am not.

Dr Therese Comodini Cachia :

Who takes care of your accounting?

The Witness :

We had an accountant at ..

Dr Therese Comodini Cachia :

Are you aware that there was actually an issue raised by HSBC and PNB Paribas about the interest that you were receiving on this shareholder's loan?

The Witness :

No because I haven't seen that email.

Judge A Lofaro :

So there was interest then.

Dr Therese Comodini Cachia :

So there is an email dated 12th December 2017, the subject matter is - EGM Financial Model. And in that email it says as follows : *please see below the email from HSBC re-interest on existing permitted subordinated loan. We understand the currently inveigled mechanics in the financial close agreement may lead to double counting.*

Judge A Lofaro :

Double counting?

Dr Therese Comodini Cachia :

Were you aware that the banks your lenders had issued query whether this would actually be a case of double counting?

The Witness :

I am not in copied in the email so no I am not.

Dr Therese Comodini Cachia :

And for example you wouldn't even know that GEM received something like three hundred and fifty thousand in shareholder loans interest charge in 2017?

The Witness :

I told you I'm gone to have to bring the accounts with me for that.

Judge A Lofaro :

So you are unaware of receiving interest fees, right? You are unaware. You don't know.

The Witness :

No I have to get the accountant ..

Judge A Lofaro :

You are not aware, you don't even know there wasn't ..

The Witness :

That accountant looks after the accounts....

Judge A Lofaro :

Nothing.

The Witness :

... so I have to go back to the accounts to find out.

Dr Therese Comodini Cachia :

Why did Electrogas need a shareholder's loan?

The Witness :

Because there was probably some suppliers and needed to be paid.

Dr Therese Comodini Cachia :

Last time in your testimony when I asked you if Electrogas was facing financial difficulties or funding difficulties your reply was – no, nothing big; we were paying our service providers. Am I right to say that you needed a shareholder’s loan to be able to address your funding problem at Electrogas?

The Witness :

There could have been a temporary period very very short; because if you see the expenses that spent out three hundred thousand Euros is literally a stop gap till the financial is closed.

Judge J Said Pullicino :

But three hundred thousand Euros were interest?

Judge A Lofaro :

Were interest fees.

Judge J Said Pullicino :

What was the amount of the loan?

Dr Therese Comodini Cachia :

What was the amount of the loan that GEM provided Electrogas for with? Do you remember how much you loaned Electrogas?

The Witness :

No ..

Dr Therese Comodini Cachia :

No.

Judge J Said Pullicino :

A couple of hundreds?

The Witness :

I don’t remember

Judge J Said Pullicino :

... you should know.

The Witness :

I don’t remember.

Dr Therese Comodini Cachia :

Would this have been money that you contributed to through your company or would this have been profit standing in the bank account of GEM?

The Witness :

That's would have been moneys in GEM.

Dr Therese Comodini Cachia :

These would have been moneys in GEM?

The Witness :

Yes.

Dr Therese Comodini Cachia :

And GEM would automatically give it to Electrogas on a shareholder's loan?

The Witness :

To my understanding.

Dr Therese Comodini Cachia :

Without you as its director knowing?

The Witness :

No I am sure that it had been told about it. But all what I am saying is that I don't remember what the amounts were etc at the time.

Dr Therese Comodini Cachia :

And GEM didn't require the approval of its 3 directors to provide a shareholder's loan to Electrogas?

The Witness :

Yes absolutely. I am not saying that.. you know? I am saying I don't know what the values are.

Dr Therese Comodini Cachia :

You just don't remember how much you loaned to Electrogas.

The Witness :

Yes, because obviously.. we were paid it back. So once we were paid it back, then, you know?

Judge A Lofaro :

They got the interest as well. They got the interest charges.

Dr Therese Comodini Cachia :

And until you were paid it back did you also received interest fees?

Judge A Lofaro :

He doesn't remember that

The Witness :

I am not aware of

Dr Therese Comodini Cachia :

So let's go back to the purpose for the shareholder's loan. There is an email in which you are copied. And its dated 15th February 2017, and it says this : *Dear Yorgen and Turab, actually EGM – Electrogas, has a serious funding problem, therefore we need an urgent board call to discuss and solve the following issues : 1) garnishee order and way forward with the Ocean Installer; 2) waiver letter and tgovernment of Malta consent; 3) urgent funding requirement of Electrogas via shareholder's loan.*

The Witness :

Yes, at the time there was an issue with Ocean Installer. And Ocean Installer had put a garnishee order on one of our accounts so they blocked the money that we had in our accounts. And therefore we needed to put money in till the garnishee order was then moved to carry on being able to pay.

Dr Therese Comodini Cachia :

So that was the only reason for you shareholder's loan?

The Witness :

No. I am referring to the Ocean Installer. I do know the Ocean Installer. Then we had an issue with them, and obviously this would bring an issue with certain financial constrains because the garnishee order.

Dr Therese Comodini Cachia :

And did you also have funding problems because the government consent had not as yet be given to you on a waiver letter?

The Witness :

I don't recollect.

Dr Therese Comodini Cachia :

Even though it was mentioned in the email which you received?

The Witness :

I don't. I mean it's an email it was dated when?

Dr Therese Comodini Cachia :

Pardon?

The Witness :

When is the email dated?

Dr Therese Comodini Cachia :

15th February 2017.

The Witness :

No I don't remember. I know the issues to the Ocean Installer, but I don't remember apart...

Dr Therese Comodini Cachia :

Were you involved in the administration of Electrogas in 2017?

The Witness :

What do you mean by 'administration'?

Dr Therese Comodini Cachia :

In the operation of Electrogas; in the administration of Electrogas.

The Witness :

No I wasn't.

Dr Therese Comodini Cachia :

Did you know what was happening at Electrogas in 2017?

The Witness :

I was not involved in the administration of Electrogas

Dr Therese Comodini Cachia :

If you were not involved in the administration of Electrogas in 2017 why did you write this in your email of 29th December 2017 addressed to Catherine Halpin? "*Dear Catherine, I trust you are well and you had a great Christmas. Many thanks for all your support in 2017 which has been challenging and exhausting, least to say. We ended the year on a great note with all your help and hard work. Thanks again.*" Were you involved in the operation and administration of Electrogas in 2017?

The Witness :

No I wasn't. So I sent that email to Catherine to thank her for everything that she did for the group.

Dr Therese Comodini Cachia :

What did she do Catherine for the group in 2017?

The Witness :

Catharine was the operation's manager so she was doing a lot of work.

Judge A Lofaro :

Then why did you say that it was an exhausting...?

Dr Therese Comodini Cachia :

So what was so challenging and exhausting in 2017?

Judge A Lofaro :

Because you don't know what was happening. How can you say it was exhausting, challenging ..?

Dr Therese Comodini Cachia :

If you don't have an idea of what was happening in Electrogas how do you know it was a challenging and exhausting year?

The Witness :

Because its an extremely challenging project put together. So..

Judge A Lofaro :

For the project, not the year. Ok.

Dr Therese Comodini Cachia :

So I assume that every year you send the same wording.

Judge A Lofaro :

I suppose so.

The Witness :

I send very often to people who were done.. the work

Judge A Lofaro :

And you write the same things right? You write challenging, you write exhausting; you write that every year? Is it standard for you to write this every year?

The Witness :

It is depending on the work that we done.

Judge A Lofaro :

Were you involved? We are asking you again; were you aware of what was going on? Of how exhausting and challenging....

The Witness :

I was not involved in the admin. I obviously attended in number of meetings where I had to .. was going on ..

Judge A Lofaro :

Did you know what was exhausting and challenging? Or is this your standard email?

Dr Therese Comodini Cachia :

If you say you obviously attended a couple of meetings, what meetings? Were these board meetings of Electrogas?

The Witness :

Yes I would attend some board meeting as an observer.

Dr Therese Comodini Cachia :

You realized that in your last testimony you ..

The Witness :

I realizedreported... .

Dr Therese Comodini Cachia :

...clearly told us you never attended a board meeting at Electrogas..

The Witness :

As a director.

Dr Therese Comodini Cachia :

....and only your colleague told us that you did.

The Witness :

As a director. As a director I never attended a board meeting at Electrogas. I didn't ..

Dr Therese Comodini Cachia :

So in what other function did you attend board meetings of Electrogas?

The Witness :

As an observer.

Dr Therese Comodini Cachia :

And how often did you attend board meetings of Electrogas as an observer?

The Witness :

Exactly how many I don't know; but not as many as I should have.

Dr Therese Comodini Cachia :

And was this when Mr Fenech was still director?

The Witness :

Yes. In actual fact it became more frequent that we go to meeting when Mr Fenech wasn't around.

Dr Therese Comodini Cachia :

We have.. I believe in your last testimony we've already spoken of the excise tax when waiver.

The Witness :

Yes.

Dr Therese Comodini Cachia :

Was that the only tax concession that Electrogas was provided with? And I am not asking because I am interested in the concessions given to Electrogas; I am asking because I am interested on how the government runs its tax department, its tax issues.

The Witness :

From my understanding the excise tax was a tax that meant to be paid by the consumer therefore Enemalta. That is my understating and has always been my understanding.

Dr Therese Comodini Cachia :

I am not asking about the excise tax. That something we discussed last time and there are emails to show the contrary to what your understanding is. My question is were there other tax concessions provided by the authorities?

The Witness :

Not that I believe so.

Dr Therese Comodini Cachia :

So are you aware that in 2017 an important document was actually forwarded to Electrogas which included the following. The email says read as following : *Dear all, the attached exchange of emails is important and need to be carefully retained. As its said out the Inland Revenues agreement to the key issues that we had written to confirm and which are reflected in the model namely : 1) that the 30 million upfront payment is tax deductible for Electrogas; that the Vat chargeable on the 30 million would be accounted by Enemalta directly to government (rather than it being billed to EGM and then EGM having to apply for a Vat refund) as all other businesses is normally do. 3) That any compensation due to Electrogas in respect of the gas exit option would not be taxable. 4) That the payment of this compensation is actually outside the scope of Vat.* Were you aware that Electrogas also has these tax concessions?

The Witness :

No I am not.

Dr Therese Comodini Cachia :

But doesn't this affect your financial model?

The Witness :

I would have to go back and speak to PWC because the other ones who had put it together now I am sure they would have advice and the legal and lawyers would have advice on all those subjects and topics.

Dr Therese Comodini Cachia :

So when were given a financing model you were not told on what basis your profit has changed?

The Witness :

We don't.. it's the team, the team that are involved ... that would be doing with that sort of stuff. We are presented the model as shareholders; we are presented the models.. the models at high level.

Judge J Said Pullicino :

You understand that all these questions are referring to a period immediately before the assassination, 2017. And the fact that Mrs Caruana Galiza had in hand a leak of these emails could have been a road certain actions. And therefore we require to have a clear answers

Judge A Lofaro :

This is why we are asking these questions ..

The Witness :

Yes, but as I stated.. as I stated earlier, and I had document that proof that Electrogas acutely didn't find out till the breach of our servers till December 26th

Judge J Said Pullicino :

I am not referring to Electrogas, ok? But the fact is that there was a leak and that the information was in the hand of Mrs Caruana Galizia. And had she had given indication of this leak. The problem is, because we are not here to judge whether the project of Electrogas is good or bad, whether there was irregularity, these are incidental issues. The only reflect a modus superandi ok?

The Witness :

Yes.

Judge J Said Pullicino :

And therefore we are trying to sort out this thing by arriving at specific incidents of, of.. and even not saying the truth is the problem with us.

Judge A Lofaro :

Of course. Its just problem we are facing here.

The Witness :

So what you are telling me is that I am not saying the truth. I am telling you.. I am telling exactly what I know; more than that I cannot tell you then I know.

Judge A Lofaro :

Some things you know, some things you don't know; some things you have to check.

The Witness :

Pardon?

Judge A Lofaro :

How could you not know about these things? Were you negligent? Were you careless? Is this how you handle your business?

The Witness :

I was not involved in the day-to-day of all of this.

Judge A Lofaro :

But why did you say it was an exhausting and challenging year?

The Witness :

Its certain was an exhausting and challenging year for Catharine.

Judge J Said Pullicino :

Let me ask a specific question towards a specific answer and emanation to a definite its circumstances. In 2013, pre-election, have you attended a lunch with Mr Fenech and other persons relating to this project in Portomaso Tower?

Judge A Lofaro :

Relating to anything really

Judge J Said Pullicino :

At Portomaso Tower

Judge A Lofaro :

Relating to anything.

The Witness :

No. Absolutely not.

Judge J Said Pullicino :

You never was for lunch

Judge A Lofaro :

You are sure about this?

The Witness :

Yes.

Judge J Said Pullicino :

Can you mention people who were present with you?

The Witness :

.. I wasn't there

Judge J Said Pullicino :

The Prime Minister. I mean he was the leader of the opposition there?

The Witness :

No I have never had a lunch

Judge A Lofaro :

.. never?

The Witness :

No. Not at all.

Judge J Said Pullicino :

Not even Gasan; Mark Gasan?

The Witness :

No at all.

Judge A Lofaro :

Joe Gasan was there

Judge J Said Pullicino :

We have the list to specify the persons exactly; if we have a define proof on this you are .. ok? If you don't have it..

Dr Therese Comodini Cachia :

I could have been a dinner; and it was a dinner not a lunch

Judge A Lofaro :

Yes. It was a dinner yes.

The Witness :

I was never at a dinner

Judge A Lofaro :

It was a dinner yes.

Dr Therese Comodini Cachia :

So let me go back to the concessions to the financial concessions, ok? And let me go back to the excise tax issue. Am I correct in saying that excise tax if you had to pay it excise tax would be due on every importation.. every shipment of LNG, right?

The Witness :

Like I said my understanding is that....

Dr Therese Comodini Cachia :

I didn't ask you about your understanding. We've got in that. My questions is - excise tax had you not the approval from Enemalta excise would be due on every shipment of LNG. Right? Is that correct?

The Witness :

I would assume so.

Dr Therese Comodini Cachia :

So we are speaking of an exemption that did not apply simply to one shipment but to every shipment.

Judge A Lofaro :

To all of them.

The Witness :

...we are calling in an exemption when Electrogas always believe from day one that the excise tax should be paid by the consumer therefore Enemalta.

Dr Therese Comodini Cachia :

Are you aware that in the original agreement you had with Enemalta excise tax was actually to be paid by Electrogas?

The Witness :

No because I am..

Dr Therese Comodini Cachia :

No.

The Witness :

...I am under what I am understand.

Dr Therese Comodini Cachia :

Then you need to go and check that agreement

The Witness :

Ok.

Dr Therese Comodini Cachia :

If Excise Tax had to be paid by Electrogas what would be its effect on your rate of return?

The Witness :

If it wasn't worked into the model then it would have return.

Dr Therese Comodini Cachia :

With Enemalta, did Electrogas also have to pay Enemalta liquidated damages?

The Witness :

ELDs yes.

Dr Therese Comodini Cachia :

And interest on those liquidated damages?

The Witness :

Yes.

Dr Therese Comodini Cachia :

Have you paid liquidated damages to Enemalta?

The Witness :

The liquidated damages are paying over the life span of the.. I understand that the liquidated damages are being paid over the lifetime of the project.

Dr Therese Comodini Cachia :

Are they being paid over the life span of the 18-year term or they will be paid at the end of the 18-year term?

The Witness :

May I check that please?

Dr Therese Comodini Cachia :

Sure. Can I also bring to your attention an email dated 5th January 2017 sent by Mark Gasan. The subject is replied to your letter first gas availability and forecast operations, and part of it says as follow : *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 a 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; b) Interest on liquidated damages due to Enemalta; c) Liquidated damages in general and ; d) This ridiculous letter.*

So I ask you again what was the impact of having the Excise Tax taken in by Enemalta on your rate of return?

The Witness :

Like I said if the Excise Tax was not worked into the model then it would have had a negative impact. It would have had a decrease of a negative impact.

Dr Therese Comodini Cachia :

On the 10th January 2017 there was another email. The subject was 'Idea'. *Please find here attached as per your request. I have modified the following*

input for sponsor case at this stage. Heat rate margin included, the second one is energy excise duty to zero (assumed to be paid by Enemalta). The reply to that just half an hour later was this : shareholders IRR, that is rate of return, went up to nine point eight percent (9.8 %). Do you have any comments on this?

The Witness :

It's a very low

Dr Therese Comodini Cachia :

Is it still that low?

The Witness :

No it's lower actually.

Dr Therese Comodini Cachia :

It's actually lower.

The Witness :

Yes.

Dr Therese Comodini Cachia :

What other concessions have you ask for?

The Witness :

I have asked for any concessions.

Dr Therese Comodini Cachia :

Electrogas has asked for no further concessions?

The Witness :

Not that I know of. Not that I know that they ask for concessions.

Dr Therese Comodini Cachia :

How reliant was this project the fulfillment of this project and the financial close of this project on the support of Minister Konrad Mizzi and his perm sec?

The Witness :

I don't know.

Dr Therese Comodini Cachia :

Pardon?

The Witness :

I don't know. Like I have already said I didn't meet Mr Mizzi till March .. March later on, and on a completely different subject.

Dr Therese Comodini Cachia :

So you are not aware of a number of emails of which I will only bother to read one in the following sense. This is one email dated 12th July 2017. *Dear Franz, Frederick,.. referring to Frederick Azzopardi of Enemalta, who was then refusing to give his approval; Frederick has to be instructed by Konrad Mizzi first. Don't concede anything on the billing issue if possible. Blame Frederick that in case we have to stop LNG supply this is also to the disadvantage of Enemalta. Not sure on whether he can risk to take the blame for that.*

Judge J Said Pullicino :

Who sent this email?

Dr Therese Comodini Cachia :

This was sent by Gerald Banner of Siemens to Electrogas and the people working in Electrogas. Were you not aware of the reliance on Minister Konrad Mizzi to obtain such concessions and to obtain such approvals?

The Witness :

I was never involved with Minister Mizzi; I have never had a meeting with Mr Mizzi. So I couldn't know; so I wasn't privy to any discussions; if there were.

Dr Therese Comodini Cachia :

Were you aware of interference by the office of the Prime Minister on how Electrogas deals with the media?

The Witness :

I know because I read in an article recently that there was; but no I didn't know.

Dr Therese Comodini Cachia :

Are you aware that there are volumes of emails indicating persons from the office of the Prime Minister like Lindsey Gambin, Alexander Cutajar...

The Witness :

I don't know any of these people.

Dr Therese Comodini Cachia :

Keith Caruana...?

The Witness :

I don't know who they are.

Dr Therese Comodini Cachia :

Actually telling Electrogas how to reply to questions from journalist?

The Witness :

No I don't know, and I don't know who these people are.

Dr Therese Comodini Cachia :

Actually telling Electrogas not to exceed to an interview?

The Witness :

No I don't know.

Dr Therese Comodini Cachia :

Even telling Electrogas which interviews to do to prepare for PBS, TVM and ONE?

The Witness :

No.

Dr Therese Comodini Cachia :

Were you aware that Electrogas was actually instructed on how to answer the guardian for questions that the guardian sent it? And I read you the email exchange. So the guardian actually sent Electrogas a list of questions and this was in the beginning of 2018, 17th April 2018, and they were sent to Franz Dorfler from Electrogas and Siemens, and they were copied to Times of Malta, Reuters and other journalists. And Turab Musayev says – *yes we received these questions as well; I believe it was sent to Siemens as well. Can you please check whether any of the factual information below is not in public knowledge. Yurgen, and if ... whether EGM should reply.* A couple of minutes later the reply comes from Franz Dorfler from Electrogas and he says this : *Dear all, I have just got a call from the secretary of Ronald Mizzi. We will receive a proposal how to answer from GOM – Government of Malta. I will distribute it then to you; please see below also the email from Chris.* Do you still seek permission from OPM and the ministry before you issue any replies to the Press?

The Witness :

No.

Dr Therese Comodini Cachia :

When did this stop?

The Witness :

Well, I've been a director for nearly 11 months. And it has never happened under my watch.

Dr Therese Comodini Cachia :

Were you aware that OPM was also involving itself in what campaign merchandise on Electrogas orders? And I'll read you an email 13th September 2016, ok? Sent by your service provider to Catherine Halpin and some other people in Electrogas. *I would suggest the power packs, recycled pencils and bags. These were very much liked by OPM too, in a proportion 20 40 40 respectively.* Were you aware of this involvement of the government in company?

The Witness :

No.

Dr Therese Comodini Cachia :

Were you aware that the involvement of the government had also reached to the level of selecting your service providers or influencing the selection of your service providers?

The Witness :

No.

Dr Therese Comodini Cachia :

This took place in March 2017 when you were selecting your security service provider. Where Mr Fenech asks Catharine and Franz Dorfler : *Is there some sort of security tender going on? I was asked trying to give a push to...*, and the name of the company he was pushing, *if the prize is right.* The reply a few minutes later.. the following day was – *Hello Yorgen, the hourly rate is much too high; and he gives the hourly rate eight point three five (8.35), competitor is as six point five (6.5).* Mr Fenech's reply. *I can ask him to reduce. Who is the competitor?* Then, that same day he is told who the competitor is, and Mr Fenech's reply is - *please hold on, as request was form GOM – government of Malta, and I don't want to upset them.*

Judge J Said Pullicino :

Therefore these emails were Yorgen Fenech and Electrogas.

Dr Therese Comodini Cachia :

Yes, internal emails.

Judge J Said Pullicino :

Were you aware of these exchanges?

The Witness :

No I wasn't.

Judge J Said Pullicino :

No. Is the first time you are hearing them here?

The Witness :

Absolutely.

Judge J Said Pullicino :

The first time. And if you had known about them what would have been your reaction? I mean it seems very strange ... the company.

The Witness :

Would have certain question them. We would have questioned them.

Judge J Said Pullicino :

..question them. What was the function of Yorgen Fenech in Electrogas after he was...? What was his connection? Just a director like you?

The Witness :

He was a director on the company and very much involved in ..

Judge J Said Pullicino :

In the running of the business?

The Witness :

In the running.

Judge J Said Pullicino :

Of Electrogas.

The Witness :

Yes.

Dr Therese Comodini Cachia :

Before I asked you about the ..

Judge J Said Pullicino :

Sorry; therefore, if you know, apart from what he received through these special payments you've mentioned before, did you .. have any sort of retainer or payment from Siemens for Electrogas for .. services?

The Witness :

No he didn't.

Judge J Said Pullicino :

No.

The Witness :

No.

Judge J Said Pullicino :

Again, we are not discussing Mr Fenech or his activities. But we are discussing here the administration

The Witness :

None of the directors were paid

Judge J Said Pullicino :

..none of the directors

Dr Therese Comodini Cachia :

Before I asked whether you - you were aware.. whether the project.. the financial close of the project was heavily dependent on the support of Konrad Mizzi. And I think you said – you weren't aware?

The Witness :

Yes.

Dr Therese Comodini Cachia :

So 31st October 2017 which is just a few days after the assassination, there is an email which says – summery of call with Enemalta. *Dear Yorgen and Turab, according to Husain's email as of today are worst expectations have materialized. It is very disappointing that Enemalta and government of Malta are now in total disagreement to any joint compromise. We had agreed upon over the last couple of days. Frederick is acting in bad faith. I am not sure whether Alfred Camilleri and Konrad Mizzi are fully aware of what is going on here. Unless we do not take Frederick and David out of the game we will never reach financial close as they are not interested in any pragmatic*

solution. Am I right to say that financial close was an important millstone for you?

The Witness :

Financial close certain it was yes; we have to get the project..

Dr Therese Comodini Cachia :

It is also the milestone against which you were to receive success and development fees no?

The Witness :

It was important for the project.

Dr Therese Comodini Cachia :

It continues to say this “*Moreover I am not sure on whether Konrad have still enough political power and influence to help us here. Do we know if prim minister is well informed about the overall situation and aware of all negative consequences if we do not reach financial close right in time? Time is running.*” Were you aware that you were having difficulties to reach financial close to the extent that you needed the support of Konrad Mizzi?

The Witness :

No.

Dr Therese Comodini Cachia :

There is something that last time in your testimony you did not tell us. And maybe because we did ask directly; so I’ll ask directly. On the 20th of August 2019 GEM Holdings Limited ended up with 6 directors instead of 3 directors. So Raymond Fenech, Joseph Gasan and Michael Apap Bologna also became directors with you as their sons on the company.

The Witness :

Yes.

Dr Therese Comodini Cachia :

What gave rights to this addition of directors?

The Witness :

Because we wanted to make.. we wanted of directors on the Board so that when we do have meeting if one of us can be there then somebody else who can sit in the meeting to make sure that the meeting can go-ahead.

Dr Therese Comodini Cachia :

And this had nothing to do with the allegations that were being published about the project about your investment?

The Witness :

It all started it always triggered from that and then obviously we had our meetings, and then Mr Fenech resigned from everything; and the new.. there was Mark and myself and then we started..Mr Fenech came on board and we decided to increase the number of board members. And fundamentally the principle reason for increasing of number of board members is like I said so that we can have a quorum if one of us cannot be there.

Dr Therese Comodini Cachia :

Last time you said that if was Ray Fenech who informed you of Yorgen Fenech's resignation.

The Witness :

That's right.

Dr Therese Comodini Cachia :

Did he give you a reason for his resignation?

The Witness :

No he didn't.

Dr Therese Comodini Cachia :

Did you know the circumstances that were happening at GEM which preceded Mr Fenech's November resignation?

The Witness :

Which circumstances?

Dr Therese Comodini Cachia :

Were you aware that for example Mr Gasan was actually asking for his resignation or that Siemens were asking for his resignation? Were you aware that Yorgen Fenech had himself way back in May and not in November sent an email of resignation appointing Mark Gasan as the director?

The Witness :

Yes I was aware of that and then Mr Fenech didn't action his resignation.

Dr Therese Comodini Cachia :

Pardon?

The Witness :

I was aware of that; I was aware of the email and Mr Fenech didn't action his resignation. And then we ended up.. and then it took a while for the GEM Board meeting to take place.

Dr Therese Comodini Cachia :

So what was the nature of this email? Because your colleague tells us he resigned in May and appointed me as director and I refuse.

The Witness :

And he refuse – and Mark refuse. So we didn't have a director ..

Dr Therese Comodini Cachia :

So was that a resignation of Mr Fenech or not in May ...?.

The Witness :

The actual resignation happened when he resigned and when we were informed by Mr Fenech in the GEM board meeting that he had resigned. And he had signed all the documents and resigned.

Dr Therese Comodini Cachia :

Where there investors who were interested in.. investing in Electrogas?

The Witness :

I think at some point.. some of the shareholders were exploring it. But there was nothing which was really in substance.

Dr Therese Comodini Cachia :

At which point were you exploring getting in more investors? Was this in 2017?

The Witness :

No I wasn't involved in discussions. So I don't know the dates when....

Dr Therese Comodini Cachia :

Pardon?

The Witness :

I wasn't involved in the discussions when the dates were.. and when there were talking about, but I just know about that there were certain discussions with certain companies that were interested in coming onboard. But nothing really evolved.

Dr Therese Comodini Cachia :

You weren't involved in these discussions?

The Witness :

Directly with these people no.

Dr Therese Comodini Cachia :

So when on the 20th of March 2017, you, from your email at adc.com.mt you sent an email to Catherine Halpin, Yorgen Fenech and Ray Sladden and you told them this : *Dear Catharine, I hope you are well. I would be grateful if you could organize a site visit for interested investors on Wednesday 22nd March at one thirty (1:30). Those who will be attended are as follows... Many thanks in advance.*

The Witness :

Ok.

Dr Therese Comodini Cachia :

So how if you weren't involved in looking for investors who did you put these investors in touch with Electrogas yourself?

The Witness :

These investors they would have been passed down to me as I was in Malta, so they would have been passed down possibly from SOCAR or somebody for some people who were coming to Malta. There were many people who came who wanted to see the site. People who wanted to look to investors or whatever; and I would to get a request saying - listen can you speak to Catherine and organize for these people to come have a look.

Dr Therese Comodini Cachia :

What is your experience in planning?

The Witness :

In planning?

Dr Therese Comodini Cachia :

Yes.

Judge J Said Pullicino :

...in planning ...?

Dr Therese Comodini Cachia :

Planning, MEPA

The Witness :

A little bit?

Dr Therese Comodini Cachia :

None?

The Witness :

None.

Dr Therese Comodini Cachia :

So why did you accept your appointment on the board of MEPA in April 2013 if you have no experience on planning?

The Witness :

Because I though it would be a good experience and I might be able to....

Dr Therese Comodini Cachia :

...the job.

The Witness :

I might be able to.. you learn on the job and might be able to contribute something.

Dr Therese Comodini Cachia :

And who approached you for this appointment?

The Witness :

Michael Farrugia.

Dr Therese Comodini Cachia :

Is that because you knew Michael Farrugia before 2013?

The Witness :

I knew.., yes of course I did because I am in the pharmaceutical industry, and he was a doctor.

Dr Therese Comodini Cachia :

Pardon?

The Witness :

I am in the pharmaceutical industry and he is a doctor.

Dr Therese Comodini Cachia :

So you knew Michael Farrugia and that is how he became to you.

The Witness :

Yes yes

Judge J Said Pullicino :

And you had spoken to him about the?

The Witness :

About the...?

Judge J Said Pullicino :

.....?

The Witness :

No;

Judge J Said Pullicino :

No?

The Witness :

not at all.

Judge J Said Pullicino :

Not at all. How did you come to know him?

The Witness :

Who?

Judge J Said Pullicino :

How did you come to know Mr Farrugia

The Witness :

Mr Farrugia, I got to know him because I am in the pharmaceutical industry.

So I know ..

Judge J Said Pullicino :

....

The Witness :

..so I know most of the doctors..

Judge J Said Pullicino :

But it was strange, I mean for him to ask you toyou had absolutely no experience! I mean.. if had ask you to say to sit onboard in pharmaceutical ... of that I will understood that, but if he had asked Mr Gasan about such an appointment I would have understood it; but I mean if you had no experience what was the point?

The Witness :

He obviously felt that I could contribute something.

Dr Therese Comodini Cachia :

I have 2 last questions from my end. So how did you know that Gasol was facing financial difficulties? How did you find out?

The Witness :

We found out because when we came the first bridge they weren't able to raise the finance, which was in July.

Dr Therese Comodini Cachia :

In July.

The Witness :

And we closed of the first bridge on the 27th of July if I am not mistaken.

Dr Therese Comodini Cachia :

And when did you sign your consortium agreement with Gasol?

The Witness :

I don't know that date.

Dr Therese Comodini Cachia :

Would that have been when you presented the bid in 2013? Or when you were awarded the bid in 2013?

The Witness :

I can't answer that question if I don't know the date; so..

Dr Therese Comodini Cachia :

So when you agreed to accept in a project which was your concept to start with Gasol as a member of the consortium did you check their financial accounts were published?

The Witness :

Gasol were coming in with SOCAR, ok? And when they were coming in with 50% partners together. And Socar had a financial means to be able to come for both of them; and they were securing their guaranteeing.

Dr Therese Comodini Cachia :

So I am assuming from your answer that back then you were already aware that Gasol's financial public accounts were a disaster?

The Witness :

I am telling you no I didn't.

Dr Therese Comodini Cachia :

You didn't.

Judge J Said Pullicino :

...

The Witness :

No. I didn't. And I tell you that we found out ..

Judge J Said Pullicino :

You did not say that.

Dr Therese Comodini Cachia :

That's why I asked.

The Witness :

We found out in July.

Dr Therese Comodini Cachia :

So when Gasol was accepted as a member of your consortium you hadn't check Gasol's accounts.

The Witness :

No I haven't.

Dr Therese Comodini Cachia :

Ok.

Judge J Said Pullicino :

At what point did Siemens come into the picture.

The Witness :

Siemens came into the picture very late in the day.

Judge J Said Pullicino :

Very late, ehe.

The Witness :

Very late in the day. As the emails that you had asked me to provide you which I have over here; on the 25th of March we were still in discussions with Siemens, GE and EDP. So even till then 25th of March we sill hadn't.

Judge J Said Pullicino :

Of March of the year two thousand ...

The Witness :

2013?

Judge J Said Pullicino :

2013. After you .. the bid ... after your ...

The Witness :

It was just before

Judge J Said Pullicino :

Just before.

The Witness :

Because we needed to put the consortium together before and something like that. Would like me to give you these?

Judge J Said Pullicino :

Yes I think you can produce them. Did you conduct negotiations with Siemens?

The Witness :

Pardon?

Judge J Said Pullicino :

Did you conduct the negotiations with Siemens?

The Witness :

Yes, initially yes. I met them in London and I met them in Malta. And I was involved in the discussions with them. Initially they started out as suppliers and then they came on as equity shareholders.

Judge J Said Pullicino :

And what made these so affected to the company? Was it a multinational company and.. ok, I mean.

The Witness :

Absolutely it's a multinational company ..

Judge J Said Pullicino :

What was what made these ..?

The Witness :

There is multinational company, there is energy sector. There is strong, financially strong. They renowned. As much as GES I mean we approached quite a number of companies, we approached Rolls Royce, we approached Mitsui; there were quite a number of different of companies.

Judge J Said Pullicino :

Did you fix a meeting with Minister Mizzi with them?

The Witness :

Pardon?

Judge J Said Pullicino :

Did you fix a meeting with Minister Mizzi?

The Witness :

No. I absolutely not.

Judge J Said Pullicino :

No? No.

The Witness :

Like I said I did meet Mr Mizzi till years later. I met him once; I met him once after the bid and it was at a social event.

Judge J Said Pullicino :

Have you any comments to make about the concerns of the Auditor General on the project?

The Witness :

Yes, my biggest concern is that.. you know, there is a lot being said about the project and its being.. the figures being pointed at the project with regards to the very said killing of Mrs Caruana Galizia; and it does concern me because.. you know.., I don't believe that Electrogas is the cause for the motive..

Judge A Lofaro :

Have you heard the emails? Some of them at least which were read out to you Dr Therese Comondini Cachia.

The Witness :

I've done.. we got an international friends company we paid them seven (7) million Euros. They did a whole .. from day one to present day, you know?

Judge A Lofaro :

But you have heard her reading emails. They not concern you?

The Witness :

Of course; I 've already said; of course they do concern me.

Judge A Lofaro :

They concern you.

The Witness :

Yes of course they concern me.

Judge A Lofaro :

So you know, how do you explain all this then? How do you explain all this?

The Witness :

How do I explain.. how do I explain what?

Judge A Lofaro :

...said while people putting the .. on the project. We aren't; but you are saying that some people are. Now you can't understand why. It is perhaps because of the context of all these emails? They were in Daphne Caruana Galizia's possession. You know that.

The Witness :

Yes I know that but like.. we only found out ..

Judge A Lofaro :

Yes yes, ok; but why are you surprised that some people might think that there is a connection somewhere. I am not saying that there is.

The Witness :

You asked me of what concerns me and this concerned me. Of course it concerns me.

Judge A Lofaro :

Yes. But are saying if you don't think so you dint think so; you did say that.

The Witness :

Yes ..

Judge A Lofaro :

You said I don't think so; and I am asking you whether you still don't think so when she read just a fraction of those emails to you

The Witness :

I don't believe so..

Judge A Lofaro :

You still think.. you know. Those emails are ok, right? There is nothing .. nothing fishy about them.

The Witness :

I didn't say that at all.

Judge A Lofaro :

But we are asking you now; can you please reply? I am asking you.

The Witness :

Yes of course; those emails.. those emails.. you know?..

Judge A Lofaro :

Yes, what?

The Witness :

Would bring up to concern ..

Judge A Lofaro :

So do you blame people for thinking.. what they thinking? Some people you said that some people are blaming this deal. You said it, not I .

The Witness :

Or course I do.

Judge A Lofaro :

So could that be the reason then.

The Witness :

Because more of the work that we've done and all..

Judge A Lofaro :

..all the work that you've done ..

The Witness :

And whatever..

Judge A Lofaro :

You know... you've heard of those emails.

The Witness :

Yes.

Judge A Lofaro :

Do you blame some people for thinking what they thinking, even though if they could be wrong. We don't know if they are right or wrong. But how can you blame people for.. you know, people have a right to think.

The Witness :

Of course everybody has a right to think.

Judge A Lofaro :

I should hope that people have a right to think!

The Witness :

Yes.

Judge A Lofaro :

And to express themselves. So do you.. are you still.. you know, perhaps angry at these people for thinking so or you still disagree with them?

The Witness :

I never said I was angry. I' ve said I was never angry. I just said I was very sad of the fact ..

Judge A Lofaro :

You are sad...

The Witness :

..that affect that there is a situation when with all the work that we have done and with everything we've gone through.. you know?

Judge A Lofaro :

Yes, go on please.

The Witness :

...have done etc. I would very much like the.. that Electrogas nothing to do with this.

Judge A Lofaro :

Even though you've read all those emails; you still believe that there is nothing fishy, there is nothing wrong; everything was correctly done..

The Witness :

I would certainly hope that even with those emails they ... it was in the motive.

Judge A Lofaro :

We are not saying it is, you know.

The Witness :

No. But you tell me what those emails like ..

Judge A Lofaro :

Would agree that things were not done as they should have been done? After having read just a tiny fraction of those emails? Do still think that everything was done as it should have been done? Properly, correctly...

The Witness :

Things can always been done better, certainly.

Judge A Lofaro :

But I am talking about this case; not about other cases. This case; this huge contract for 18 years, all those millions of Euros. All those tax deductions. You have nothing to say?

The Witness :

No I've already said. I said I am very sad ..

Judge A Lofaro :

You are sad and ..

The Witness :

..what is being...

Judge A Lofaro :

.. and you still want to remain in the project, right? You still believe in it.

The Witness :

No. I ..

Judge A Lofaro :

You do.

The Witness :

I said I believe...

Judge A Lofaro :

Mr Gasan took him stand..

The Witness :

I believe in the project as a project for Malta certainly, you know? And it is a project that has done a lot of good....

Judge A Lofaro :

You have no reservations; nothing.

The Witness :

No I never said that and I never said I don't want to get out. On the contrary, you know?

Judge A Lofaro :

You have reservations.

The Witness :

You know? Reservations.. and reservations about what?

Judge A Lofaro :

She did read it a tiny fraction of the emails. She read them in open court. You must have heard her.

The Witness :

Yes, I heard her.

Judge A Lofaro :

And yet you have no reservations.

The Witness :

I .. have ... reservations.

Judge A Lofaro :

You do.

The Witness :

I have already said I ... reservations

Judge A Lofaro :

You have reservations.

The Witness :

But.. you know?

Judge A Lofaro :

Yes.

Judge J Said Pullicino :

The point today is at Mr Gasan and his companies would like to get out.

Judge A Lofaro :

And he doesn't want to get out.

Judge J Said Pullicino :

Siemens seems to be ..

The Witness :

No I never said that. In my last testimony I never said that.

Judge J Said Pullicino :

But they said it. That they ... of ..themselves on the projectas far as I am..

The Witness :

Yes.

Judge J Said Pullicino :

.... and Siemens apparently have the same intentions; you do not ...

Judge A Lofaro :

.share their views. Does he shared their views?

The Witness :

We have a huge financial investment in there and I don't have the luxury of walking away; ok? With a financial investment in that. If an opportunity came up I would certainly look at the opportunities, without doubt. Did I ever say that I wasn't getting away? No I never say that I will not get away from the project.

Judge A Lofaro :

Ok.

Judge Michael Mallia :

Dr Azzopardi..?

Dr Jason Azzopardi :

Was your family in 2013 given a direct order by Ms Michelle Muscat in for works in Girgenti Palace?

The Witness :

My company?

Dr Jason Azzopardi :

No; your better half.

The Witness :

I don't know

Dr Jason Azzopardi :

You don't know.

The Witness :

I have no idea.

Dr Jason Azzopardi :

No idea.

The Witness :

No.

Dr Jason Azzopardi :

As far as the insurance cover its concern, when in April 2013 the expression of interest was issued, the cost involved for the insurance cover where they factored in?

The Witness :

I have to go back and check up; I can't remember in 2013 if.... Insurance company ..

Dr Jason Azzopardi :

Don't tell me you wait a bid for such a project without factoring in such a cost.

The Witness :

I am sure those who put this together would have put it in.

Dr Jason Azzopardi :

No; at the beginning of your testimony ..

The Witness :

I would assume so.

Dr Jason Azzopardi :

You presume so, exactly. So in the beginning of your testimony you mentioned one year; you remember you mentioned one year?

The Witness :

Yes.

Dr Jason Azzopardi :

It took one year.

The Witness :

..it was one year to get the insurance ... in place, in time for..

Dr Jason Azzopardi :

Are you in a position to supply the board, not now of course, by next sitting even informally to the board, documentation showing the timeline when the insurance company was contacted? And the amount of time it took, the detail timeline please. Thirdly and finally, you and Yorgen Fenech had a group chat

The Witness :

Yes.

Dr Jason Azzopardi :

Are you in a position to exclude to the Board any PEPs?

The Witness :

.... chat?

Dr Jason Azzopardi :

Ehe.

The Witness :

I was never in a chat with a PEP.

Dr Jason Azzopardi :

So you and Yorgen no PEPs.

The Witness :

No.

Dr Jason Azzopardi :

Ok; thank you.

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

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

Saviour Scicluna

Traskrittur