

Speculations in the Shadows of Shaik Case
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ONE of the questions routinely asked about the allegations of bribery raised at the trial of Durban businessman Schabir Shaik is why the amount of R500000 a year, mentioned in the notorious encrypted fax, is so modest - especially when the risk would be so great.

The state alleges that Shaik solicited a bribe of R500000 a year for Deputy President Jacob Zuma from French arms company Thomson-CSF, now known as Thales.

It is alleged that Shaik, Zuma's financial manager at the time, wanted the payment in exchange for protection during investigations into irregularities in SA's multibillion-rand arms deal.

The fax was handed to the National Prosecuting Authority by the former secretary of Alain Thetard, who headed the South African office of Thomson-CSF.

Thetard has refused to testify in SA about the fax, and is not available to testify on its authenticity. But Judge Hillary Squires has admitted it into evidence as an executive summary of a meeting on March 10 2000 involving Shaik, Zuma and Thetard.

To most South Africans, R500000 a year is a lot of money. But if a politician were to attempt to request a bribe from Thales, would either party take such a risk for such a small payoff?

By comparison with other reported cases involving arms-deal bribes, R500000 a year for a decade seems small change.

Thales is the largest supplier of defence electronics in Europe. The company has a market cap of \$7bn and has just reported excellent results. The company is not short of ready cash.

Another celebrated case involving Thomson-CSF arose in 1993 from a contract to sell frigates to Taiwan. The French frigates cost 50% more than a bid from South Korea, and their cost later doubled to Ff16bn.

According to some reports, Ff3,5bn (roughly R3,5bn), was paid in "commissions" to Taiwanese government officials.

The worldwide anticorruption body Transparency International says the arms trade is still one of the world's most corrupt business sectors, accounting for 50% of all corrupt international transactions.

"Commissions", a euphemism for bribes, paid by arms manufacturers to governments, usually constitute about 10% of the contracts - a whole lot more than R500000 a year for SA's R30bn contract, or even the R1,3bn of Thomson-CSF's share of the deal.

The Shaik trial is still under way, and Squires has yet to decide whether there was any bribery at all. But the quantum of the alleged bribe mentioned in the encrypted

fax has not been canvassed specifically in court.

It seems unlikely the issue will arise in court, given that the state has closed its case and that the defence's argument is that Shaik knows nothing about the fax and cannot explain its contents.

There is one, speculative, possible explanation for the "500k ZAR" mentioned in the fax. An answer may lie in France's decision to sign the Organisation for Economic Co-operation and Development (OECD) anti-bribery convention.

All 30 members of the OECD, representing the world's richest nations, and six nonmember countries, decided in 1997 to sign the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

The treaty followed a Transparency International report that found public officials in the world's poorest countries to be the most corrupt. It was an attempt at stemming bribery by instituting criminal sanctions on the "supply side" - the briber.

Until then, OECD countries typically outlawed bribery of, or by, their public officials, but the ambit of the law often excluded business transactions involving foreign public officials.

The convention was designed to plug this particular gap.

The convention was to come into effect when most OECD members passed appropriate legislation in their countries, and this point was reached in February 1999.

France formally registered its legislative changes a little later, in July 2000.

Still speculating, arms companies must have been shocked by this decision of OECD members.

International competition in arms deals gradually ratcheted up to the point of where "commissions" were swallowing large chunks of the contracts. A radical rethink was required.

From discussions with people in the industry, there is evidence of a rethink at some French arms companies.

They decided to offer "service providers" a fee for services including "public relations and lobbying" and believed that if the fee was Ff500000 (possibly per year), it would possibly slip off the radar of auditors seeking evidence of bribes.

It is also possible that this amount was the maximum a company representative in a foreign country would be able to pay without needing permission from a boss at head office.

As the OECD convention became law in France, Ff500000 was worth roughly the same as R500000.

Consequently, the unanswered questions are: following their disaster in Taiwan and the signing of the OECD convention, did Thomson-CSF review its commissions policy,

with a view to fitting into the convention?

And, did its legal advice result in financial guidelines that suggests they could pay "commissions" to "service providers" of up to that amount?

And is this why R500000 was all they were prepared to pay after the conclusion of the bidding process in the local arms deal?