



**DUDUZILE MYENI  
SOUTH AFRICAN AIRWAYS  
DELINQUENT DIRECTOR CHARGES,  
MARCH 2017 - BEN THERON**

# AGENDA – PRESS CONFERENCE

8 MARCH 2017

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- 10:00am Arrival and registration
- 10:30am Welcome, from OUTA Chairperson, Mr. Wayne Duvenage
- 10:45am SAAPA Media statement:
  - Mr Jimmy Conroy – Chairperson - SAAPA
- 11:15am OUTA media release and presentation.
  - Mr. Ben Theron – OUTA Portfolio Director for Transport,
- 11:45am Questions
- 12:00pm Close

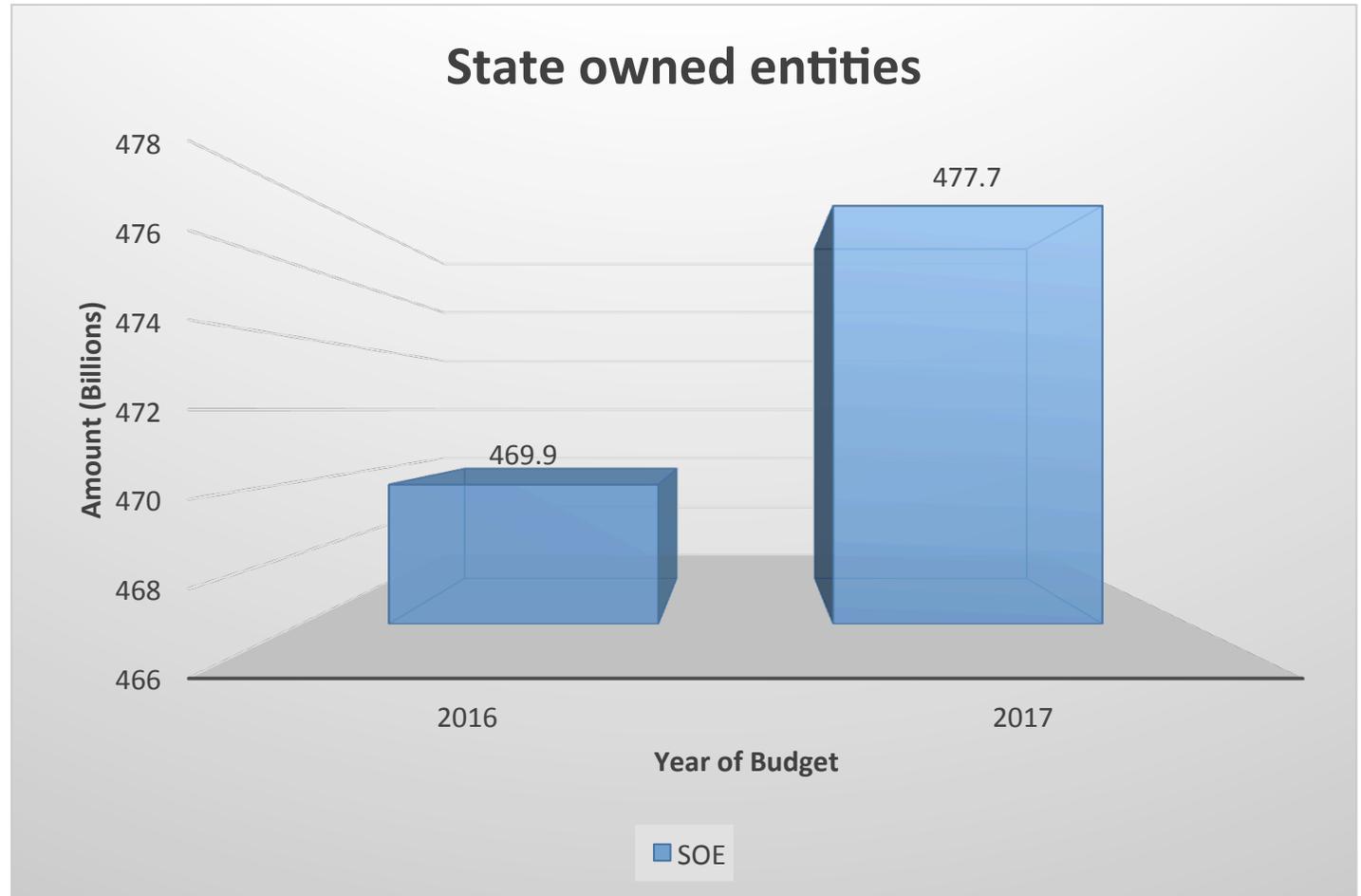
# INTRODUCTION: STATEMENT BY MINISTER OF FINANCE

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- The reformation of state-owned companies is critical to restructuring and strengthening the economy. They need:
  - Governance by a strong legal framework;
  - A cabinet that reinforces governance and accountability;
  - Commitment to obligations and responsibilities of boards as well as senior managers;
  - Highest standards of ethical leadership and understanding.

# STATEMENT BY MINISTER OF FINANCE

- Government  
(National Treasury)  
have increased  
guarantees from  
**R469.9 billion to**  
**R477.7 billion**



# STATEMENT BY MINISTER OF FINANCE

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- Quarter of government's total national debt.
- SOE's have **borrowed R308bn against this guarantee** to date.
- SOE's R1.2 trillion asset base to leverage private investors to improve the productive capacity of the economy.
- **“State-owned enterprises are the major risk we face.”**

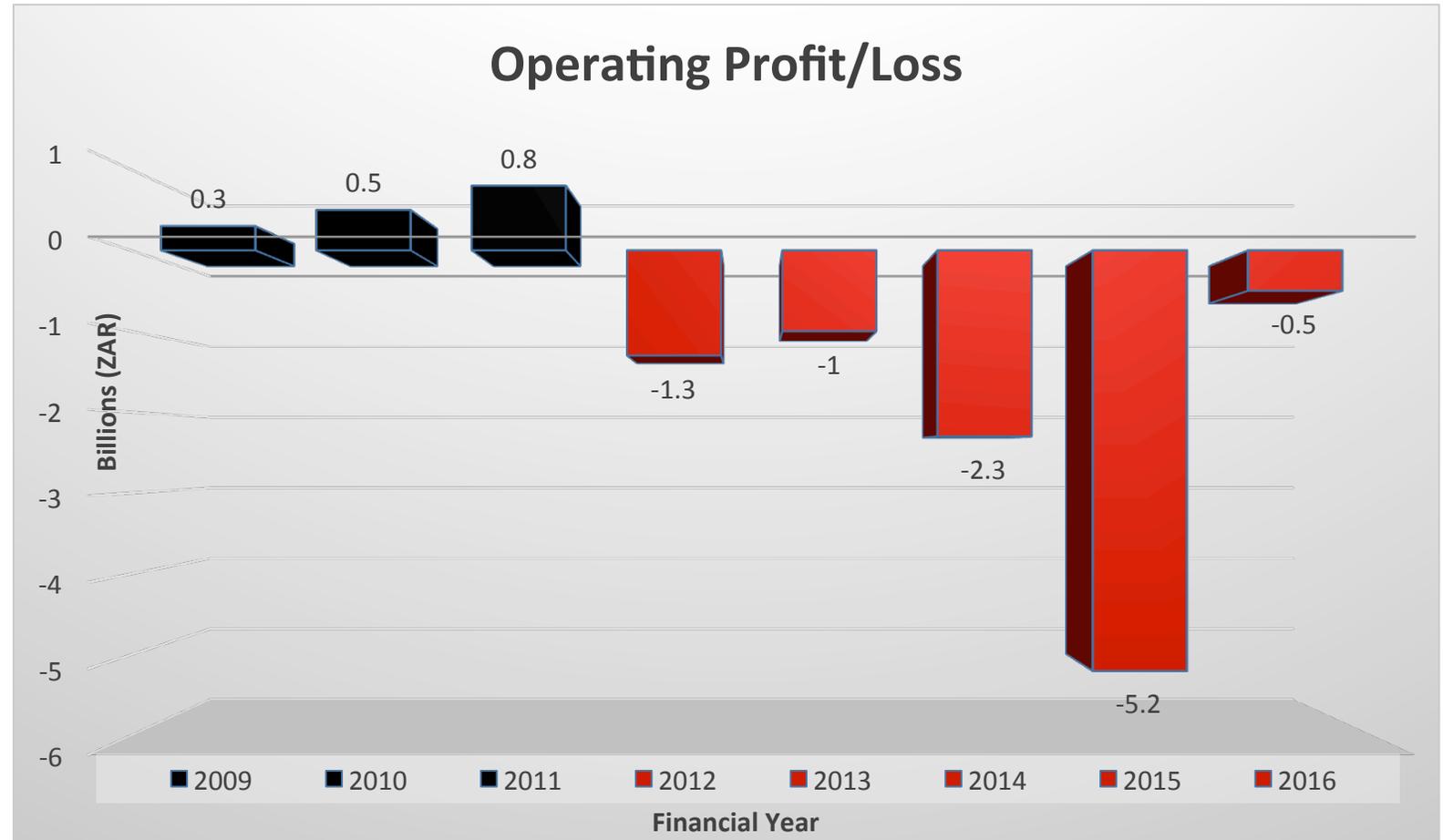
# WHO IS DUDUZILE (DUDU) MYENI?

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- Chairperson of Jacob Zuma Foundation.
- Chairperson of the Mhlathuze Water Authority Board (under review).
- Appointed as SAA Chairperson on 28<sup>th</sup> September 2012, after resignation of Chairperson Cheryl Carolus and eight other members.

# SAA UNDER DUDU MYENI LEADERSHIP

- SAA has lost an estimated R10.6bn over a 5 year period despite being profitable between 2010 and 2012.
- Not only due to incompetence or negligence - compounded by misconduct by the Board including and lead by Ms. Myeni.



# DUDU MYENI – THE ALLEGATIONS

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- OUTA have instituted an action against the Chairperson based on her following actions:
  - Illegal appointment of BnP Capital as transaction advisor;
  - Illegally extending BnP Capital mandate to include sourcing of funds;
  - Attempting to pay a cancelation fee of R49.9 million to BnP Capital;
  - Illegally interfering with the Board approved Emirates deal;
  - Misrepresenting the Board by informing the Minister of Finance that the Board approved two (2) Airbus aircraft and not ten (10);
  - Ignoring the findings of the EY report despite damning findings requiring urgent action.

# ALLEGATION 1: ILLEGALLY APPOINTING BNP CAPITAL AS TRANSACTION ADVISOR

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- BnP Capital appointed as transaction advisor 14 April 2016, despite SAA's Treasurer's objection.
- Financial Services Board suspended BnP Capital's FSP Licence (required to operate).
- SAA behaviour reflects gross negligence or even worse corruption.
- However, later events would cast the awarding of this contract in a far more sinister light.

# ALLEGATION 2: ILLEGALLY EXTENDING BNP CAPITAL MANDATE TO INCLUDE SOURCING OF FUNDS

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- On 21 April 2016, the Board resolved to extend BNP contract to include funding services (R15bn).
- Resolution taken without due process (Adjudication Committee of SAA) and tender process.
- **Contract terminated on 20 July 2016 after OUTA initiated legal action.**

# ALLEGATION 3: ATTEMPTING TO PAY A CANCELLATION FEE

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- Despite cancellation of the contract, BNP sought a cancellation fee of **R49.9 million** from SAA.
- A round robin draft written resolution circulated on 7 July 2016.
- The CFO and the chairperson of the audit and risk committee advised the Board that the cancellation fee was irregular and unlawful.
- **Only Ms Myeni voted in favour of the resolution.**

# ALLEGATION 4: ILLEGALLY INTERFERING WITH THE EMIRATES DEAL APPROVED BY THE BOARD

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- Emirates proposed an Enhanced Strategic Partnership on 19 January 2015, it would:
  - benefit SAA;
  - strengthen the existing relationship between SAA and Emirates;
  - ensure greater access and connectivity to global flight routes for SAA;
  - facilitate the expansion and growth of SAA; and
  - result in direct financial gain of approximately R2 billion for SAA.
- Board approved the proposal on 2 April 2015, subject to an MOU (except Ms Myeni).

# ALLEGATION 4: ILLEGALLY INTERFERED WITH THE EMIRATES DEAL APPROVED BY THE BOARD

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- On 16 June 2015, Ms Myeni instructed Mr Nico Bezuidenhout not to sign it (discussion with President Jacob Zuma was cited as reason).
- Neither she nor The President had any authority to intervene in this matter.
- As a result of this instruction:
  - The deal never came to fruition;
  - Emirates threatened to reconsider the entire strategic cooperation agreement signed between Emirates and the Minister of Tourism in early in May 2015;
  - SAA forfeited significant financial and strategic benefits; and
  - SAA's relationship with Emirates was compromised

# ALLEGATION 5: MISREPRESENTING A BOARD RESOLUTION ON THE AIRBUS DEAL TO THE MINISTER

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- CIPC ruled Ms Myeni had contravened Companies Act and that she “acted in a manner materially inconsistent with the duties of a director”.
- Based on the claim of former SAA chief executive Monwabisi Kalawe, Ms Myeni had attempted to split an Airbus deal for ten (10) new aircraft.
- Ms Myeni attempted to mislead the Minister and misrepresented a Board resolution to lease only two (2) aircraft from Airbus instead of ten (10).

# ALLEGATION 6: DISREGARD OF EY REPORT DESPITE FINDINGS

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- Ernst & Young delivered a report in December 2015 (commissioned by the Board) covering procurement and contract management practices at SAA and Air Chefs, Mango and SAA Technical (SAAT).
- Covered numerous examples of overpayment, irregular tender practices, conflicts of interest and informal and suspicious contracts.
- **Despite the significance of the issues raised, Ms Myeni and the Board have yet to address any of them.**

# OUTA & SAAPA'S ACTION - DUDU MYENI

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- The totality of the evidence indicates that Ms Myeni has breached:
  - The Companies Act;
  - The Constitution of the Republic of South Africa;
  - The Public Finance Management Act;
  - The Supply Chain Management Policy of SAA.

# ...OUTA & SAAPA'S ACTION - DUDU MYENI

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- Consequently, OUTA and the SAAPA will ask the court to declare Ms Myeni a delinquent director in term of section 162(5) of the Companies Act, as she has:
  - Grossly abused her position of a director;
  - Intentionally or by gross negligence, inflicted harm upon SAA;
  - Acted in a manner that amounted to gross negligence, willful misconduct or breach of trust in relation to the performance of a director's functions within, and duties to, SAA.

# THE CONSEQUENCES - DUDU MYENI

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Should our action prove successful,

**Ms Duduzile Myeni**

shall be

**disqualified from being a Director or holding senior / executive  
management positions within any South African company  
for a minimum of 7 years (potentially permanently).**

# THE GREATER CONCERN

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- SAA is not the only SOE in a crisis. Irregularities, non-compliance and sub-standard performance are fast becoming the norm at most South African SOEs, including:
  - DWAF: Water quality, infrastructure and transparency.
  - Eskom: Public Protector and Dentons reports.
  - Gauteng DoH: Esidimeni deaths.
  - SABC: Ad-hoc Committee confirmation of the Public Protector report about the lack of governance.
  - SANRAL: E-tolls, irregular expenditure, collusion in road construction.
  - SASSA: Major crisis with social grant administration (17 million recipients).
  - PRASA: Locomotive scandal.

# THE GREATER CONCERN

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This state of affairs related to growing debt, maladministration and corruption within SOE's and state departments, will continue if all South African's don't work together and take positive action.

OUTA's desire is that accountability becomes the norm, instead of the exception - and that state officials come to respect the power the public can bring to bear.

# CONCLUSION

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We need to ask ourselves, if we really want  
to live in a country where  
**the business decisions we make  
are faced with moral dilemmas?**