

**COMMISSION OF INQUIRY INTO STATE CAPTURE**

**HELD AT**

**PARKTOWN, JOHANNESBURG**

10

**25 JUNE 2019**

**DAY 120**

20

**PROCEEDINGS ON 25 JUNE 2019**

**CHAIRPERSON:** Good morning Ms September, good morning everybody.

**ADV VERUSCHKA SEPTEMBER:** Good morning Chair.

**MS ESTELLE LOOCK:** Good morning Chair.

**CHAIRPERSON:** Good morning. Thank you. Are we ready?

**ADV VERUSCHKA SEPTEMBER:** Yes we are.

**CHAIRPERSON:** Let us proceed.

**ADV VERUSCHKA SEPTEMBER:** Chair with your leave would we need  
10 to just remind the witness that she remains under oath as of yesterday.

**CHAIRPERSON:** You know we have not been reminding them because  
it is the same oath.

**ADV VERUSCHKA SEPTEMBER:** As it pleases.

**CHAIRPERSON:** Especially when it – they are just continuing the  
following day. So it is the same oath.

**ADV VERUSCHKA SEPTEMBER:** As it pleases Chair.

**CHAIRPERSON:** Ja.

**ADV VERUSCHKA SEPTEMBER:**

**CHAIRPERSON:** After all she knows that she is still under that oath.

20 **MS ESTELLE LOOCK:** That is correct Chair.

**ADV VERUSCHKA SEPTEMBER:** Mr Loock your evidence concluded on  
page 8 of the bundle and to that extent you were referring to two letters  
that have been shown to you by the commission's investigators. In  
order to appreciate the gravity and also the consequences of these two  
letters we need to just highlight certain aspects of the evidence that

you gave yesterday. And so please correct me if I am wrong when I put the following to you. It was an operational requirement of SA Express that with its route from Cape Town to Pilanesberg its aircraft required to be refuelled in Pilanesberg in order to complete a return journey from Cape Town to Pilanesberg, is that right?

**MS ESTELLE LOOCK:** That is correct Chair.

**ADV VERUSCHKA SEPTEMBER:** Do you also confirm that it was this that then triggered a request of instruction from Mr Allanby to you to find a solution for this problem and in doing so you were not in a  
10 position to use the fuel from the existing licenced fuel service provider at Pilanesberg which was RSI Fuel because the fuel was found to be contaminated, Is that correct?

**MS ESTELLE LOOCK:** That is correct Chair.

**ADV VERUSCHKA SEPTEMBER:** And so in order to leverage from the economies of scale you were informed at the time that SA Express Technical was in the process already of engaging a company called or trading as EML Fuel regarding its maintenance requirement which was specific to defueling and refuelling two particular aircraft, is that correct?

20 **MS ESTELLE LOOCK:** That is correct Chair.

**ADV VERUSCHKA SEPTEMBER:** And off the back of the economies of scale benefit you approached EML for a quotation to transport fuel from Johannesburg to Pilanesberg and the specific requirement of SA Express as you communicated to Eric Motlhake of EML was that you required 8500 litres per week to be transported from Johannesburg to

Pilanesberg which translated to an approximate amount of 442 000 litres per annum, is that correct?

**MS ESTELLE LOOCK:** That is correct Chair.

**ADV VERUSCHKA SEPTEMBER:** And that was really the end of your involvement in that particular process when you then handed over to Doctor Vilakazi who was the Chief Procurement Officer.

**MS ESTELLE LOOCK:** Yes that is correct. According to the emails my GM Dave Allanby advised Doctor Vilakazi of our – the unearthed EML yes.

10 **ADV VERUSCHKA SEPTEMBER:** And was it then Mr – Doctor Vilakazi who became the custodian of dealing with this requirement as far as you are aware?

**MS ESTELLE LOOCK:** That is correct Chair.

**ADV VERUSCHKA SEPTEMBER:** Based then on the two documents that were provided to you not these letters but more particularly the Whatsapp resolution documents and also the memorandum of deviation. The Whatsapp resolution which was taken on the 1 July 2017 and the memorandum of deviation which was submitted on the 5 July 2017 according to the date of 1 – which accords to the date of the award  
20 letter you ended off with yesterday and which was signed by Mr Victor Xaba at least on the 1 August was confined to a very particular scope of service to be sourced. That scope of service was twofold.

1. It was the supply of jet fuel to the Pilanesberg airport and
2. It was to service the maintenance requirement of SA Express  
Technical specific to the defueling and refuelling of its two

aircraft.

Do I understand your evidence correctly on this aspect?

**MS ESTELLE LOOCK:** That is correct Chair.

**ADV VERUSCHKA SEPTEMBER:** So the scope was there for no different at the time that the Whatsapp resolution was taken and at the time that at the very least the memorandum of deviation was considered on the 5 July. Now if we look at quickly the award letter which you spoke about yesterday I can ask you to first turn to page 91. You there? So page 91 appears to be an enclosing email to the actual  
10 letter which you addressed yesterday being the award letter on page 93. Just for the record this email is sent from Sibongile Vilakazi on the 5 July 2017 at 12:32 to Eric at EML Energy.com and copied on this email is Samuel Vilakazi. The subject matter is “award letter, fuel supply”. And it simply reads:

“Good day Eric kindly receive attached letter for your signature. Details are enclosed. Regards Sibongile S Vilakazi Contracts Management.”

Who does Sibongile Vilakazi report to?

**MS ESTELLE LOOCK:** Sibokngile Vilakazi forms part of the  
20 procurement section that reviews and negotiate the agreements in line with legal – together with legal. But at this stage she reported to Sam Vilakazi.

**ADV VERUSCHKA SEPTEMBER:** Thank you. And so the letter on page 93 is the award letter that you referred to yesterday?

**MS ESTELLE LOOCK:** That is correct Chair.

**ADV VERUSCHKA SEPTEMBER:** Based on the evidence that you had given in relation to this award letter and so to the letter addressed to whom it may concern on page 96 if you could just go page 96 – thank you. It was your evidence yesterday that the – the contents of this letter is certainly beyond your understanding of what the scope of services was up and until this stage, is that right?

**MS ESTELLE LOOCK:** That is correct Chair.

**CHAIRPERSON:** Well you must just...

**ADV VERUSCHKA SEPTEMBER:** Let me rather...

10 **CHAIRPERSON:** You might – you might not be alive I think if you say beyond it might mean one thing but I think what you mean is does not accord with her understanding. Am I right?

**ADV VERUSCHKA SEPTEMBER:** Yes.

**CHAIRPERSON:** That is what you want to say.

**ADV VERUSCHKA SEPTEMBER:** Let me rephrase that.

**CHAIRPERSON:** Ja.

**ADV VERUSCHKA SEPTEMBER:** Let me rephrase sorry.

**CHAIRPERSON:** Okay.

20 **ADV VERUSCHKA SEPTEMBER:** In the context of the scope of service – services which were outlined on the request for quotation that you sourced which was outlined in the Whatsapp round robin resolution and which was outlined in the deviation memorandum which was specific to those two operational requirements alluded to earlier are the contents of the award letter and the letter addressed To Whom it may Concern true and correct?

**MS ESTELLE LOOCK:** Not in line with the deviation and the Whatsapps Chair.

**ADV VERUSCHKA SEPTEMBER:** And so would the contents of the – of both of these letters misrepresent the true state of affairs?

**MS ESTELLE LOOCK:** I would believe so Chair.

**ADV VERUSCHKA SEPTEMBER:** And in that – in that regard if any reliance were placed on these facts contained in these letters would it possibly prejudice anybody who relies on the contents of the letters in your view?

10 **MS ESTELLE LOOCK:** Yes it would Chair.

**ADV VERUSCHKA SEPTEMBER:** Do you know whether or not these letters were used or not?

**MS ESTELLE LOOCK:** Used in what context?

**ADV VERUSCHKA SEPTEMBER:** Do you know – do you know anything about the use of these letters?

**MS ESTELLE LOOCK:** No I do not Chair.

**ADV VERUSCHKA SEPTEMBER:** In that instance can I ask you to please go to page 9 of your statement. Because what you do know are certain communications that were provided to you by the commission's  
20 investigators relating to IDC funding that was requested by EML from the – from the IDC which for the record is the Industrial Development Corporation. You deal with a series of communications and that is documented from page – from paragraph 30 to 39 of your affidavit. Were you aware in your own knowledge whether or not Doctor Samuel Vilakazi had communication with Mr Eric Motlhake in relation to funding

sort by EML from the IDC?

**MS ESTELLE LOOCK:** No I did not Chair.

**ADV VERUSCHKA SEPTEMBER:** And in line with what you stated in your affidavit the communications on this topic is really what was given to you by the commission's investigators?

**MS ESTELLE LOOCK:** That is correct Chair.

**ADV VERUSCHKA SEPTEMBER:** If I could ask you to turn to page 11 please oh sorry not page 11 page 98. Chair you will recall that this is the page that was not included as part of the witness' bundle when she  
10 attested to the affidavit but she has since considered it. It is really an enclosing letter.

**CHAIRPERSON:** I do not recall.

**ADV VERUSCHKA SEPTEMBER:** Okay.

**CHAIRPERSON:** What was the context?

**ADV VERUSCHKA SEPTEMBER:** The context is that this was really just page 98 in particular is an enclosing email to page 99 which is a pricing schedule. The pricing schedule forms part of the witness' affidavit when she deposed to it. She did not have sight of the page 98 at the time she deposed to the affidavit but she certainly has since  
20 looked at it.

**CHAIRPERSON:** It was not there yesterday?

**ADV VERUSCHKA SEPTEMBER:** Yes it was Chair.

**CHAIRPERSON:** It was?

**ADV VERUSCHKA SEPTEMBER:** Yes Chair.

**CHAIRPERSON:** Okay alright.

**ADV VERUSCHKA SEPTEMBER:** Ms Loock ...

**CHAIRPERSON:** Ja no it is okay.

**ADV VERUSCHKA SEPTEMBER:** Thank you Chair. Ms Loock at page 98 appears an email from Eric of EML Energy sent on Friday 14 July 2017 at 15:49 and it is sent to Vimal Rama copied on this email is Tshenolo from EML Energy and the subject title which is a forward is Jet A1 Fuel Prices July. There appears to be two attachments to this email. For the record Chair the email reads:

10           “Best Vimal. I have sent same the SA Express pdf  
for approval. The spreadsheet is our document with  
differentials and overheads. Please note that the  
differential is a total of R1. Differential and mark-up  
on transport and into plane prices. Best regards  
EML Motlhaka.”

Below that is another email which outlines Jet A1 fuel prices for EML Engineering but more particularly on page 99 appears a pricing schedule. Is that right Ms Loock?

**MS ESTELLE LOOCK:** That is correct Chair.

**ADV VERUSCHKA SEPTEMBER:** Do you know who Mr Vimal Rama is?

20   **MS ESTELLE LOOCK:** No I do not Chair.

**ADV VERUSCHKA SEPTEMBER:** On page...

**CHAIRPERSON:** I am sorry. The email at the bottom of page 98 is it not the one to which the prices at page 99 were attached?

**ADV VERUSCHKA SEPTEMBER:** Excuse me Chair?

**CHAIRPERSON:** The email at the bottom of page 98.

**ADV VERUSCHKA SEPTEMBER:** Yes.

**CHAIRPERSON:** Is it not the email to which the prices at page 99 were attached?

**ADV VERUSCHKA SEPTEMBER:** It appears to be so Chair. And it appears to be the string of emails relevant to that attachment.

**CHAIRPERSON:** So the email at the bottom of page 98 is from Mr Marius Nortje and it is addressed to Mr Eric Motlhake and Mr [indistinct] Charlie is copied and then it has got the prices below it and the attachment – the letter attachment at page 99 belongs to it.

10 **ADV VERUSCHKA SEPTEMBER:** Thank you Chair.

**CHAIRPERSON:** Yes no it is just that you read the – you read first an email that was sent on 14 July 2017 and read – looked last at the one dated 3 July. And then you went over to the prices. But if the prices at page 99 are where an attachment to the email at the bottom of 98 then that is fine I understand.

**ADV VERUSCHKA SEPTEMBER:** Thank you Chair. Ms Loock if I could ask you to look at page or sorry to just to follow up on Mr Vimal Rama. On page 9 which is at paragraph 31 of your affidavit it informs that Mr Vimal Rama was an employee of the IDC and so when we go to page 99  
20 and look at this document on closer inspection the first striking aspect of the document is that it is unsigned. In your view Ms Loock what exactly would this document – does this document describe?

**MS ESTELLE LOOCK:** This document contains all the airports that were SA Express was operating to.

**CHAIRPERSON:** Please raise your voice a bit.

**MS ESTELLE LOOCK:** Apologies.

**CHAIRPERSON:** Thank you.

**MS ESTELLE LOOCK:** The document contains all the airports that SA Express operated to Chair.

**ADV VERUSCHKA SEPTEMBER:** And when you say all the airports that it operated to are you then including the ACSA airports as well?

**MS ESTELLE LOOCK:** That is correct Chair.

**ADV VERUSCHKA SEPTEMBER:** And just then for the record the airports as listed in this document on the far left hand side is  
10 Bloemfontein, Cape Town, Durban, East London, George, Johannesburg, Kimberly, Port Elizabeth, Richards Bay, Pilanesberg and Denel aviation. Below appears to be another tag on table which reads to Denel aviation and alongside that details a pump back per hour defuel per hour and a storage per day. Let us first deal with this aspect before we deal with the – all the airports. What in your understanding with the bottom part of this table represent where it details the Denel aviation and detail?

**MS ESTELLE LOOCK:** I am not that technically advanced on the – or can comment on a technical side that much however this looks like it  
20 relates to the requirements that technical had on the defueling and the refuelling of the aircraft.

**ADV VERUSCHKA SEPTEMBER:** And so that would be the one operational requirement that EML was required to provide services on to SA Express Technical, is that right?

**MS ESTELLE LOOCK:** That is correct Chair.

**ADV VERUSCHKA SEPTEMBER:** And then when we look at the balance of this table which is dated July 2017 in the second column reading this table from left to right there appears an IATA code for each airport, is that right?

**MS ESTELLE LOOCK:** That is correct Chair.

**ADV VERUSCHKA SEPTEMBER:** And the next column talks to – well it is titled SAX being presumably SA Express and it details a long list alongside – sorry not a long list – it details numbers alongside each airport, do you see that?

10 **MS ESTELLE LOOCK:** Yes I do Chair.

**ADV VERUSCHKA SEPTEMBER:** What would that mean to you?

**MS ESTELLE LOOCK:** In this context it seems like the litres of fuel to be supplied Chair.

**ADV VERUSCHKA SEPTEMBER:** And is it correct that this table represents litres of fuel to all of the airports including the ACSA airports?

**MS ESTELLE LOOCK:** That is correct Chair.

**ADV VERUSCHKA SEPTEMBER:** And who did SA Express obtain its supply of fuel at the ACSA airports?

20 **MS ESTELLE LOOCK:** We obtained via SAA Chair.

**ADV VERUSCHKA SEPTEMBER:** And that was in line with an existing agreement that was in place?

**MS ESTELLE LOOCK:** That is correct Chair.

**ADV VERUSCHKA SEPTEMBER:** So just to highlight two of these quantities. What is the quantity for Johannesburg?

**MS ESTELLE LOOCK:** 21 200 000 litres.

**ADV VERUSCHKA SEPTEMBER:** And the quantity for Pilanesberg?

**MS ESTELLE LOOCK:** 436 800 litres Chair.

**ADV VERUSCHKA SEPTEMBER:** How does the number 436 800 align or not align with the actual operational requirement of SA Express at Pilanesberg airport?

**MS ESTELLE LOOCK:** It does not align with the calculations that we did Chair.

**ADV VERUSCHKA SEPTEMBER:** Alongside the next column appears to  
10 be an index and then the following column lists...

**CHAIRPERSON:** Sorry. Ms Loock you indicated that you do not know the technical side that is required to deal with this document but you can talk to certain things, is that correct?

**MS ESTELLE LOOCK:** That is correct Chair yes.

**CHAIRPERSON:** Yes. Now I just want to make – to make sure that where you give evidence about it it is something that is not speculation, it is something that you are confident of, you are sure of okay. The figures that appear under the column that has got SAX can you see those?

20 **MS ESTELLE LOOCK:** Yes Chair.

**CHAIRPERSON:** Let us start first. SAX do you know what it stands for?

**MS ESTELLE LOOCK:** SA Express.

**CHAIRPERSON:** I see that the – the numbers that are written there at the bottom there is R which appears to be – that is Denel aviation this is R1 000,00, is that right? Is that R1 000,00?

**MS ESTELLE LOOCK:** Ja that is what I also saw Chair so it confuses me slightly it states R1 000,00.

**CHAIRPERSON:** Just repeat that?

**MS ESTELLE LOOCK:** It states R1 000,00.

**CHAIRPERSON:** Yes.

**MS ESTELLE LOOCK:** Under that column that is why I do not understand the reasoning behind that and I cannot comment.

**CHAIRPERSON:** Yes and interestingly while at the bottom the number that appears there is R1 000,00 it has got R for rands. The other  
10 numbers that appear above it do not have a R. So I do not know whether they are meant to be prices to be rands or whether it is meant to be something else like litres. Are you able to throw any light on that?

**MS ESTELLE LOOCK:** No Chair it is the same for me. There is no rand value next to it and there is no litre indication on it as well Chair so you cannot confirm establish with the table at the bottom Chair.

**CHAIRPERSON:** What is it that you are able to say about this document?

**MS ESTELLE LOOCK:** If I relay to the – the amount of litres that SA  
20 Express used with – within a year it relates close to the let us say an average of 24 million litres a year for the Johannesburg route so I am well aware of that quantities which then indicates to me that the table refers to litres. If I read 21 200 for OR Tambo or Johannesburg.

**CHAIRPERSON:** You say that – that figure next to Johannesburg is close to the amount of litres of fuel.

**MS ESTELLE LOOCK:** Yes.

**CHAIRPERSON:** That SA Express used for Johannesburg over what period?

**MS ESTELLE LOOCK:** During this period.

**CHAIRPERSON:** What is the period? Per year, per month, per what?

**MS ESTELLE LOOCK:** Yes I had a review. The calculations was based on the 2017 January to December usage which was around about 21 to 24 million litres. So if I look at this table it relates close to litres for me Chair.

- 10 **CHAIRPERSON:** Yes I do not know about you but I see that there is a reference to July 2017 but I do not know whether the intention is to say all this information here related to July 2017 or whether that is just indicates when this document was produced and other than that reference to a date I cannot see anything that indicates whether we are talking about one month or we talk about a year, we talk about six months, are you able to throw any light on that?

**MS ESTELLE LOOCK:** No Sir those were my comments as well to the team that there is no indication is this per annum, is this per month? So yes it is a very vague document Chair.

- 20 **CHAIRPERSON:** Hm. Okay what else are you able to say about this document other than that the – well that figure next to Johannesburg it is actually 21 200 000 is that right?

**MS ESTELLE LOOCK:** That is correct Chair.

**CHAIRPERSON:** And – and you are saying that figure is quite close to what you understand SAA to use – to have used in terms of the amount

of fuel for Johannesburg over what period?

**MS ESTELLE LOOCK:** A period from January to December 2017 it is fuel used...

**CHAIRPERSON:** For the year? Ja for the calendar year.

**MS ESTELLE LOOCK:** For Johannesburg.

**CHAIRPERSON:** Of 2017.

**MS ESTELLE LOOCK:** For SA Express.

**CHAIRPERSON:** Yes.

**MS ESTELLE LOOCK:** Yes Chair.

10 **CHAIRPERSON:** Okay. Ms September.

**ADV VERUSCHKA SEPTEMBER:** Yes Chair. If we could then just look at this table quickly. It is at then page – we still on page 100. Sorry just lost the page. Is it correct that this – the numbers that align – that is reflected in here is for Pilanesberg is nowhere near what the operational requirement was at the Pilanesberg airport however so calculated.

**MS ESTELLE LOOCK:** If you look at the calculation that we did at 8 500 litres per week it comes to 442 000 litres per annum. In – because there is no clarity on this document from EML specifying if it is  
20 litres or rands the quantity indicated next to Pilanesberg is 436 800 which is slightly less than the litres that was worked out Chair.

**ADV VERUSCHKA SEPTEMBER:** Okay. Thank you. But this document was in fact unsigned, is that right?

**MS ESTELLE LOOCK:** That is correct Chair.

**ADV VERUSCHKA SEPTEMBER:** Okay and just one last point. The

literage ali – the literage that appears next to Denel Aviation pump back and defuel. Is it correct that in providing the service of defueling and refuelling actual fuel would need to be provided to refuel the aircraft after it has been fixed?

**MS ESTELLE LOOCK:** Under my understanding on the defueling not because then you remove the fuel.

**ADV VERUSCHKA SEPTEMBER:** Yes.

**MS ESTELLE LOOCK:** But obviously with the refuelling or fuelling yes there would be fuel required Chair.

10 **ADV VERUSCHKA SEPTEMBER:** Can I then ask you to turn to page 102 please. At the bottom of the page – Chair this is again a string of emails which reads from bottom to top in line with the sequence of emails provided.

**CHAIRPERSON:** Ja at least if you read them bottom to top that shows how they happened in reality.

**ADV VERUSCHKA SEPTEMBER:** Yes Chair.

**CHAIRPERSON:** What I have a problem with is if you read first an email that came later and read last an email that came earlier. So but if you read bottom to – bottom to top that – that ensures you read first  
20 the email that came first and then the response. Is it not?

**ADV VERUSCHKA SEPTEMBER:** As it pleases Chair.

**CHAIRPERSON:** Yes.

**ADV VERUSCHKA SEPTEMBER:** Ms Loock the email at the bottom of page 1-0-2 is an email from Eric – EML Energy – sent on Thursday July, the 13<sup>th</sup> 2017 to Sibongile Vilakazi and Ms – Dr Sam Vilakazi appears to

be copied on this communication as well in addition to Tshenolo from EML Energy and its subject title is “Award Letter Fuel Supply”. It reads:

“Best Sibongile, please note that the scope of work is on the proposal but I have tried to summarise under correction on volumes and locations it as follows.”

EML scope of work is then documented on page 1-0-3 and it includes a range of services and if one were to look midway in this page it not only includes refuelling and defueling and on the ninth question mark or bullet point it reads:

“Monthly fuel price submission determined by the variants basic fuel price of refineries plus a margin based on overheads, operating costs and profits. Prices to be submitted, negotiated and approved by the Commodity Manager and/or procurement. A monthly forecast of volume is required from SA Express.”

And then it goes on to inform that:

“It also includes operate and maintain the fuel farms, bowsers and trailers at specified locations.”

Additional services below are informed to that which relate to diesel and petrol fuel and so on the last point under additional services it also records:

“Monthly fuel price to be determined by the landed

costs of depot supply plus a margin as determined based on overheads operating costs and profits.”

And it is sent by – signed off by Mr Eric Motlhake. In response to that email on page 1-0-2 or sorry a follow up email from Mr Eric Motlhake on the 14<sup>th</sup> which is the next day at 09:18. He sends an email again to Sibongile Vilakazi copying the same people with the same subject title and it says:

10 “Best Sibongile, please note the adjustments in red as per the requirement by IDC Funding which does require the drawdown for guarantees only done one.”

And a follow up email to that sent later on the same day is once again sent by Eric Motlhake to this time Samuel Vilakazi and Tshenolo is copied in on the email and it reads:

20 “Best Sam, in light with our submission we have attached the SA Express Pricing Scheduled Proposal which we need signed off if approved. We urgently need this document for submission for our funders to release guarantees.”

And so if I can then take you to page 1-0-9 and you will note there Ms Loock that this is an enclosing email by Dr Samuel Vilakazi three days later on 17 July 2017 at 15:57 which is sent to Eric of EML Energy and it forwards an attachment. The email reads:

“Mr Motlhake attached find the signed document as requested.”

And when you then go to page 1-1-1 ...

**CHAIRPERSON:** Ms September let the witness give evidence.

**MS ESTELLE LOOCK:** That is correct Chair.

**ADV VERUSCHKA SEPTEMBER:** As it pleases Chair. On page 1-1-1 there appears a table. Do you recognise this table relative to the documents that you have since seen?

**MS ESTELLE LOOCK:** That is correct Chair.

**ADV VERUSCHKA SEPTEMBER:** What is this table?

**MS ESTELLE LOOCK:** This table is the same table that was provided  
10 for the IDC Funding and ...

**ADV VERUSCHKA SEPTEMBER:** Is it – please continue.

**MS ESTELLE LOOCK:** And it has got a signature of Samuel Vilakazi on the document Chair.

**ADV VERUSCHKA SEPTMBER:** And the designation of Samuel Vilakazi as indicated on this document is?

**MS ESTELLE LOOCK:** The Chief Procurement Officer Chair.

**ADV VERUSCHKA SEPTEMBER:** And this table is dated what ...?

**MS ESTELLE LOOCK:** July 2017 Chair.

**ADV VERUSCHKA SEPTEMBER:** And how does this table compare to  
20 the previous table that you had a look at earlier?

**MS ESTELLE LOOCK:** It looks like the same table Chair.

**ADV VERUSCHKA SEPTEMBER:** By way of example if you look at the Johannesburg and Pilanesberg lines what is the litreage that is referenced in respect of these two stations?

**MS ESTELLE LOOCK:** Shall I read it Chair?

**ADV VERUSCHKA SEPTEMBER:** Please.

**MS ESTELLE LOOCK:** Johannesburg 21 200 000, Pilanesberg 436 800  
Chair.

**ADV VERUSCHKA SEPTEMBER:** And that is then no different from the  
previous table. Is that correct?

**MS ESTELLE LOOCK:** That is correct Chair.

**ADV VERUSCHKA SEPTEMBER:** Thank you. Are you aware as to  
whether or not an agreement was in fact concluded between SA  
Express and EML Energy?

10 **MS ESTELLE LOOCK:** Only at the later stage when it was sent to my  
Divisional Manager that I was aware that there was a contract signed  
Chair.

**ADV VERUSCHKA SEPTEMBER:** And if I can then ask you to turn to  
page 1-1-5 what document appears there?

**MS ESTELLE LOOCK:** This is an email from Sibongile Vilakazi to Eric  
from EML Energy copied in was Tshenolo from EML Energy. The  
subjected was "Agreement EML" and there was an attachment which  
reads:

20 "Agreement for EML 24 July 2017 PDF SAX Pricing  
Schedule."

Obviously two attachments to it and then:

"Good day again, kindly receive attached for  
signature. Regards, Sibongile S Vilakazi."

**ADV VERUSCHKA SEPTEMBER:** And this email is dated 24 July 2017  
sent at 14:23. Is that right?

**MS ESTELLE LOOCK:** That is correct Chair.

**ADV VERUSCHKA SEPTEMBER:** If one then turns to page 1-1-7 ...

**CHAIRPERSON:** Are you going to where the attachment is – is supposed to be?

**ADV VERUSCHKA SEPTEMBER:** Excuse me Chair.

**CHAIRPERSON:** 1-1-7 is that where we will find the attachment referred to in the email at page 1-1-5?

**ADV VERUSCHKA SEPTEMBER:** The attachment is not attached to this particular piece of correspondence.

10 **CHAIRPERSON:** Do we have it in the pack?

**MS ESTELLE LOOCK:** Yes.

**ADV VERUSCHKA SEPTEMBER:** I am informed that it certainly the same document that was signed.

**CHAIRPERSON:** You see that email saying kindly receive the attached for signature cannot be important for anything if there is no attachment. It can only be important if what is attached is important. So I would expect that the attachment is there but I see that I do not see it here. I thought maybe it is somewhere else in the bundle. Otherwise that email is not significant for anything.

20 **ADV VERUSCHKA SEPTEMBER:** As it pleases Chair.

**CHAIRPERSON:** Hm.

**ADV VERUSCHKA SEPTEMBER:** These particular documents we accept that Ms Loock does not have personal knowledge about and so these documents were certainly presented to her by the Commission's investigators. Having said that though I am informed that the same

signed document which appears at page 1-1-1 is in fact the document that is being referred to and I am led by the instructions that I have received from the investigators.

**CHAIRPERSON:** Yes but then why would we take her to an email about which she knows nothing? You understand my concern?

**ADV VERUSCHKA SEPTEMBER:** I do Chair.

**CHAIRPERSON:** Yes.

**ADV VERUSCHKA SEPTEMBER:** I fully understand.

**CHAIRPERSON:** But if the – if the attachment referred to in that email  
10 is in the bundle I think it would be important to refer to it but if also depends whether that attachment is of any importance and whether she has any evidence to give about it.

**ADV VERUSCHKA SEPTEMBER:** No problem Chair. I do not have the attachment to this particular email.

**CHAIRPERSON:** Hm.

**ADV VERUSCHKA SEPTEMBER:** And that is (intervenes).

**CHAIRPERSON:** Okay. Let us confine the witness to documents about which she can contribute something for the Commission in terms of her  
...

20 **ADV VERUSCHKA SEPTEMBER:** Agreed.

**CHAIRPERSON:** Personal knowledge.

**ADV VERUSCHKA SEPTEMBER:** Agreed Chair. If I can then take you to page 11 of your affidavit. You mentioned at some stage – sorry – you mentioned earlier that you had subsequently learnt that a contract was in fact signed between EML and SA Express. Is that right?

**MS ESTELLE LOOCK:** That is correct Chair.

**ADV VERUSCHKA SEPTEMBER:** If I can ask you to then go to page 1-2-2 of the bundle please? Do you recognise this document?

**MS ESTELLE LOOCK:** This document is the agreement Supply of Jet Fuel between SA Express and EML Engineers. That is correct.

**ADV VERUSCHKA SEPTEMBER:** Thank you. Can I ask you to turn to page 1-2-4 please and at paragraph 2.2.2 the commencement date is indicated as what date?

**MS ESTELLE LOOCK:** 2.2.2 reads:

10                   “Commencement date means 1 July 2017  
                          notwithstanding the signature date.”

Chair.

**ADV VERUSCHKA SEPTEMBER:** And to that end can I then take you to page 1-3-9? On what dates were – was this agreement signed firstly by SA Express?

**MS ESTELLE LOOCK:** This agreement was signed by SA Express on 7 August 2017.

**ADV VERUSCHKA SEPTEMBER:** And who signed on behalf of SA Express?

20 **MS ESTELLE LOOCK:** The – the name for the signature was Victor Xaba as Acting Chief Executive Officer but the signature on here is Merriam Mochoele. That I recognise Chair.

**ADV VERUSCHKA SEPTEMBER:** And who ...?

**CHAIRPERSON:** Okay. That is Victor Xaba – X-A-B-A, okay.  
Continue.

**MS ESTELLE LOOCK:** Xaba apologies Chair yes.

**ADV VERUSCHKA SEPTEMBER:** And you recognise that signature to be that of other than Mr Xaba?

**MS ESTELLE LOOCK:** Yes as there is a TP next to the signature which the signature looks like Merriam Mochoele's signature.

**ADV VERUSCHKA SEPTEMBER:** And who is Merriam Mochoele please – if you could remind us for the record?

**MS ESTELLE LOOCK:** She was the Chairperson of the BAC and also the General Manager for the Legal Department at SA Express Chair.

10 **ADV VERUSCHKA SEPTEMBER:** Thank you and then could I ask you to – it appears that the signature for SA Express was not witnessed but if you could then turn to the signature on behalf of EML. Can you identify who signs the document on behalf of EML please?

**CHAIRPERSON:** Would she know – would she know them?

**ADV VERUSCHKA SEPTEMBER:** Sorry?

**CHAIRPERSON:** Would she know people at EML?

**ADV VERUSCHKA SEPTEMBER:** No, she could she read the names as it appears below the signature.

**MS ESTELLE LOOCK:** I can see the name.

20 **CHAIRPERSON:** Well it does not necessarily mean – mean that is the same person.

**MS ESTELLE LOOCK:** The name as I can see it is Eric Motlhake – which I cannot read out – Legodi Motlhake Chief Executive Officer.

**ADV VERUSCHKA SEPTEMBER:** Thank you and that has been witnessed or rather those signatures have been witnessed and it is

signed on what date?

**MS ESTELLE LOOCK:** It is signed on 24 July 2017 Chair.

**ADV VERUSCHKA SEPTEMBER:** Thank you. Can I ask you to turn to page 1-2-6 please?

**CHAIRPERSON:** Did you say 1-2-6?

**ADV VERUSCHKA SEPTEMBER:** Yes Chair. At paragraph 3 the scope of work and description of services as outlined. Please read paragraph 3.1 into the record.

**MS ESTELLE LOOCK:** “To aggressively market SA Express  
10 with the aim of restoring the reputation of the brand  
as set out in Annexure A which is attached hereto.”

Chair.

**ADV VERUSCHKA SEPTEMBER:** And so can I then ask you to turn to page 1-4-0 which is Annexure A? You will note there that there are two categories of scopes. The first is highlighted as scope of work and below is a listing of additional services related to diesel and petrol fuel.

**MS ESTELLE LOOCK:** That is correct Chair.

**ADV VERUSCHKA SEPTEMBER:** Under the first bullet under scope of work please read that into the record?

**MS ESTELLE LOOCK:** “Guarantee the monthly availability of  
20 Jet A1 product to the value of R67 million at all  
locations required by SAX.”

**ADV VERUSCHKA SEPTEMBER:** And the third bullet please.

**MS ESTELLE LOOCK:** “Ordering, transporting and receipt of  
fuel from refineries into plane.”

Chair.

**ADV VERUSCHKA SEPTEMBER:** And two below that beginning with:

“Refuel ...”

**MS ESTELLE LOOCK:** “Refuel of aircraft at locations as determined by SAX.”

Chair.

**ADV VERUSCHKA SEPTEMBER:** And the next one as well please.

**MS ESTELLE LOOCK:** “Defuel of aircraft on call at a set charge for defuel and fuel storage costs. Fuel stored will be credited to client.”

10

Chair.

**ADV VERUSCHKA SEPTEMBER:** And having looked – have you looked at this agreement Ms Loock?

**MS ESTELLE LOOCK:** Yes I have gone through this agreement Chair.

**ADV VERUSCHKA SEPTEMBER:** Do you understand how the value of 67 million is computed?

**MS ESTELLE LOOCK:** No I do not Chair.

**ADV VERUSCHKA SEPTEMBER:** And then lastly if I could ask you to turn to page 1-2-7?

20 **CHAIRPERSON:** What is the page?

**ADV VERUSCHKA SEPTEMBER:** 1-2-7; paragraph 6 talks to the duration of the agreement. Please read paragraph 6.1 into the record.

**MS ESTELLE LOOCK:** “This agreement shall commence on 1 July 2017 and shall continue for a term of 36 months unless terminated in accordance with the

provisions of this agreement or otherwise in accordance with the law.”

Chair.

**ADV VERUSCHKA SEPTEMBER:** Now could I ask you to turn to page 12? Oops sorry – humble apologies. Last main important point is on page 1-4-3. Do you recognise this document Ms Looock?

**MS ESTELLE LOOCK:** Yes this is the same table that was sent to IDC and also then was the attachment – it is an attachment to the agreement this table Chair.

10 **ADV VERUSCHKA SEPTEMBER:** Thank you and who signs this agreement if you can recognise those signatures at all?

**MS ESTELLE LOOCK:** The signature here is a PP signature which looks like Merriam Mochoele. The name under there is V Xaba – if I correct that and designated Acting CEO Chair.

**ADV VERUSCHKA SEPTEMBER:** Thank you and just to look again to examples of similarity. If you look at Johannesburg and Pilanesberg what litreage is referenced there under each station?

**MS ESTELLE LOOCK:** Johannesburg once again is 21 200 000 and Pilanesberg 436 800 Chair.

20 **ADV VERUSCHKA SEPTEMBER:** Thank you. Can I then ask you to turn to page 12 of your affidavit please - paragraph 42? What happened around July/August 2017?

**MS ESTELLE LOOCK:** Because I and Gavin shared an office Gavin indicated to me during this period that he was requested by Dave Allenby to make a comparison of prices between the SAA Pricing

and EML. It was based on the EML Pricing Schedule that was provided by Mr Allenby to Mr Fourie. They – Mr Fourie went through the – the same – similar table that we just referred to now where there was nothing on that table.

It was an empty table with just all the - the numbers on and I can remember Gavin indicated by hand he did a pricing comparison on the right hand side of that table – SAA Pricing versus the EML Pricing and from that I know that Gavin concluded with that that there was a 30 percent hike in the price Chair.

10 **ADV VERUSCHKA SEPTEMBER:** Can I ask you to turn to page 1-4-5 please? Once again we have what appears to be exactly the same table. Is that correct?

**MS ESTELLE LOOCK:** That is correct Chair.

**ADV VERUSCHKA SEPTEMBER:** There is handwritten markings on the right hand side. Do you recognise that handwritten at all?

**MS ESTELLE LOOCK:** Yes that is Gavin Fourie's handwritten.

**ADV VERUSCHKA SEPTEMBER:** Chair for the – Chair for the record the affidavit of Gavin Fourie which forms part of this bundle under Tab three page 3 paragraphs 9 to 10 certainly corroborates what the – what  
20 the witness has said.

**CHAIRPERSON:** Okay, thank you.

**ADV VERUSCHKA SEPTEMBER:** If we could then go back to page 12. We are on page – paragraph 43. What happens on 18 October 2017 Ms Loock?

**MS ESTELLE LOOCK:** Around 18 October Mr Jacques Beck which is

the Divisional Manager for Airport Operations received the EML Contract as an attachment from Sibongile Vilakazi and then Mr Fourie printed this contract because he was also copied in on it and which I then saw basically for the first time that it was fully signed off and that reviewed the scope of service that was on the table that was signed off for SA Express Chair.

**ADV VERUSCHKA SEPTEMBER:** And was this – had you seen the contract before this date?

**MS ESTELLE LOOCK:** No I did not Chair.

- 10 **ADV VERUSCHKA SEPTEMBER:** So your involvement in this process ended after you requested the quotation – a copy of the quotation you have never seen if one was ever received at all. Is that right?

**MS ESTELLE LOOCK:** That is correct Chair.

**ADV VERUSCHKA SEPTEMBER:** And this is then the next occasion that you learn of any documentation in relation to this process?

**MS ESTELLE LOOCK:** That is correct Chair.

**ADV VERUSCHKA SEPTEMBER:** Thank you. What was your problem if you had a problem at all with this contract?

- 20 **MS ESTELLE LOOCK:** The problem with this was that the services that were required was only two which was on the technical side after refuelling and defueling and obviously on the Pilanesberg side where fuel was required for operation. However this contract contained every single station that SA Express operated to which was a concern as I was already – I was aware that there was an SAA Agreement for fuel at that ACSA airports. However all of those were included in this

agreement Chair.

**CHAIRPERSON**: Were two of the problems with regard to this contract that one it had not – its conclusion had not been preceded by compliance with any procurement processes and two the discussion had been in regard to only two stations but the agreement included all stations. Were those two of the problems that you – you highlight about this contract?

**MS ESTELLE LOOCK**: The biggest problem in this agreement that it contains other stations other than what was deviated for Chair.

10 **CHAIRPERSON**: Yes, *ja* that is – that is the second one that I mentioned.

**MS ESTELLE LOOCK**: Yes.

**CHAIRPERSON**: Is the first concern also applicable or not applicable?

**MS ESTELLE LOOCK**: The concern of ...?

**CHAIRPERSON**: Of whether procurement procedures were followed before the contract was concluded?

**MS ESTELLE LOOCK**: Whether the correct procurement procedures were followed?

**CHAIRPERSON**: Hm.

20 **MS ESTELLE LOOCK**: Yes Chair that is correct *ja*.

**CHAIRPERSON**: Is that one of your concerns ...

**MS ESTELLE LOOCK**: Yes.

**CHAIRPERSON**: About it?

**MS ESTELLE LOOCK**: That was also a concern yes Chair.

**CHAIRPERSON**: Okay, alright. Are there other concerns that you want

to articulate or to highlight about this contract other than those two?

**MS ESTELLE LOOCK:** No Chair.

**CHAIRPERSON:** Okay, alright.

**ADV VERUSCHKA SEPTEMBER:** Maybe just to amplify how does this agreement affect the SAA – SA Express Jet A1 Fuel Agreement if at all?

**MS ESTELLE LOOCK:** Personally for me is that not – may I say the word “breach of agreement”.

**ADV VERUSCHKA SEPTEMBER:** Can you speak a little louder please?

**MS ESTELLE LOOCK:** Can I say “breach of agreement” perhaps  
10 because we already have a service provider providing fuel through SAA  
to our ACSA stations. On to – on this agreement it puts all those  
stations on this agreement but supplied by EML which does not make  
sense. You cannot have two service providers providing the same  
service Chair.

**CHAIRPERSON:** So another concern was not that – not simply that it  
went beyond two stations but actually that it created duplications?

**MS ESTELLE LOOCK:** That is correct Chair yes.

**CHAIRPERSON:** You have situations where you have got two people  
how must do the same thing?

20 **MS ESTELLE LOOCK:** That is correct Chair.

**CHAIRPERSON:** Yes and then another concern was it not that in  
relation to either prices or litres of fuel required these were inflated  
either in all cases or in some cases?

**MS ESTELLE LOOCK:** Yes.

**CHAIRPERSON:** Just think carefully in terms of what you have said. I

am trying to recall what I thought you said. If you did not say that you must just say no, no that is not my understanding. My understanding is the following.

**MS ESTELLE LOOCK:** Chair how I would also have it is the 30 percent increase in the pricing.

**CHAIRPERSON:** Yes.

**MS ESTELLE LOOCK:** Second is the provision to stations where we already had an agreement with SAA ...

**CHAIRPERSON:** Yes.

10 **MS ESTELLE LOOCK:** And obvious – *ja* the escalation – the – the price the services to stations that were already supplied by SAA. Yes that is correct Chair.

**CHAIRPERSON:** Okay, thank you.

**ADV VERUSCHKA SEPTEMBER:** Thank you. So after you learnt about this agreement what steps did you take - if any? Did you raise anything with anyone within SA Express about this agreement?

**MS ESTELLE LOOCK:** Yes. I had discussions with my General Manager – Dave Allenby – about the concerns and as my affidavit states as well sharing an office with Gavin – Gavin Fourie also had a  
20 communication with Dave Allenby. We – concerns were raised with the pricing comparison especially on the 30 percent and there are emails confirming these conversations.

**ADV VERUSCHKA SEPTEMBER:** Thank you.

**MS ESTELLE LOOCK:** Chair.

**ADV VERUSCHKA SEPTEMBER:** On that can I then take you to page

1-4-8 please which actually begins at the bottom of 1-4-7? Were you aware of this email communication exchange Ms Loock?

**MS ESTELLE LOOCK:** Yes I was Chair.

**CHAIRPERSON:** Did you say 1-4-7?

**ADV VERUSCHKA SEPTEMBER:** 1-4-7 Chair and we will be reading the emails in – in order of sending not in order of print. In fact let us start rather on page 1- ...

**CHAIRPERSON:** Okay. Just repeat the question in relation to 1-4-7?

**ADV VERUSCHKA SEPTEMBER:** Yes. Can I perhaps let us start on  
10 1-4-8 Chair? In the middle of the page is an email sent from Jacques Beck on 18 October 2017 09:04 am and it is sent to Gavin Fourie. Subject title EML Contract and it appears to only read:

“EML Contract, signed.”

Ms Loock the next communication in response starts on page 147 at the bottom of the page, can you see that?

**MS ESTELLE LOOCK:** That is correct, that’s the email from Gavin Fourie to Dave Allenby Chair.

**ADV VERUSCHKA SEPTEMBER:** Yes and it’s sent on the 18<sup>th</sup> of October 2017 at 9.57 am is that right?

20 **MS ESTELLE LOOCK:** That is correct Chair.

**ADV VERUSCHKA SEPTEMBER:** On the next page, whose copied on this email?

**MS ESTELLE LOOCK:** It would be Ian Finlay, Captain Ian Finlay and Jacques Beck is copied on this email Chair.

**ADV VERUSCHKA SEPTEMBER:** Please read the contents of the email

into the record.

**MS ESTELLE LOOCK:** “Hi Dave, what am I missing here, with the price quoted in Annexure B, surely we can’t enter into a contract like this. Prices are approximately 30% higher than what we are currently paying at SAA, Regards Gavin”.

**ADV VERUSCHKA SEPTEMBER:** Then if you go to page 147, there appears an email from Mr Peter Culver to Matsietsi Mokholo on February 21<sup>st</sup>, 2018 at 10.52 am can you please read this email into the record

10 **MS ESTELLE LOOCK:** This email is only Peter Culver that forwarded all the below emails to our new acting CEO which was Matsietsi Mokholo which states,

“For your information madam”,

Below that was the email from Dave that responded to Gavin’s email that was dated on the 18<sup>th</sup> of October at 1.30 pm Chair, should I read that email?

**ADV VERUSCHKA SEPTEMBER:** Yes please.

**MS ESTELLE LOOCK:** “Afeternoon Gavin, before this concern grows legs allow me to clarify on what I have gleaned. 1) I too was taken  
20 aback but have subsequently seen the date of signature. 2) This was an approved contract via a Saturday Exco round robin in order for SACS to use the services of EML to defuel CRJ200 standing at Denel (the normal service providers required 24 hours’ advance notice in order to supply the dedicated bowser). 3) You will see that Peter Culver is to manage the relationship. 4) This is not a carte blanche

change of fuel service provider countrywide. 5) There are, however, ongoing discussions with EML with regards to the possible supply of fuel at our problematic stations NTY and HDS, NTY standing for Sun City and HDS standing for Hoedspruit. I hope this allays your fears, Regards Dave”.

**ADV VERUSCHKA SEPTEMBER:** Does that email communication talk about the supply of fuel at all in relation to the world – sorry not the world, the countrywide supply of fuel to all stations at which SA Express operates?

10 **MS ESTELLE LOOCK:** No it does not Chair.

**ADV VERUSCHKA SEPTEMBER:** Did you and Mr Fourie have any discussion about Mr Allenby’s email?

**MS ESTELLE LOOCK:** Yes we did ja.

**ADV VERUSCHKA SEPTEMBER:** And what was it about?

**MS ESTELLE LOOCK:** We were both concerned and regarding the reply and I remember that we said that we weren’t happy with the reply especially with the table that we saw, we weren’t happy Chair.

**ADV VERUSCHKA SEPTEMBER:** Were you involved in the implementation of this – or would you have been involved, sorry, in the  
20 implementation of this agreement?

**MS ESTELLE LOOCK:** No Chair.

**ADV VERUSCHKA SEPTEMBER:** And then lastly did you do anything or take any steps after learning about this agreement?

**MS ESTELLE LOOCK:** Yes I did, at the time then, after me and Gavin’s discussions I took this matter further to Mr Timothy Ngwenya

who is our head of security at SA Express and I advised of the document and our concerns relating to the matter and requested that it be further investigated Chair.

**ADV VERUSCHKA SEPTEMBER:** And did you raise any concerns to him about verification of invoices?

**MS ESTELLE LOOCK:** Yes I advised then – I advised my General Manager Dave Allenby that I would not be verifying any invoices for EML.

**ADV VERUSCHKA SEPTEMBER:** So you were then, in fact involved  
10 somehow, in the implementation of the agreement.

**MS ESTELLE LOOCK:** Yes in some sort of way because...(intervention).

**CHAIRPERSON:** Well she was saying she would refuse to be part of the implementation, that's what she's saying.

**MS ESTELLE LOOCK:** Ja.

**ADV VERUSCHKA SEPTEMBER:** Let me rephrase then, the role that you held and that you hold which is Airports Coordinator does that role require verification of any invoices that arise out of this agreement?

**MS ESTELLE LOOCK:** As part of my duties, I verify invoices which –  
20 in this case because it's a privately owned airport Chair, the invoices for the fuel would have come through operations who would have been me to verify which would then be going to our General Manager, Dave Allenby for authorisation and with this regard and notifying Timothy about the problem I advised my General Manager that I will not be verifying any invoices for EML Chair.

**ADV VERUSCHKA SEPTEMBER:** Thank you. Is Mr Xaba still part of SA Express?

**MS ESTELLE LOOCK:** No he's not he's left SA Express Chair.

**ADV VERUSCHKA SEPTEMBER:** And who became the acting CEO after Mr Xaba?

**MS ESTELLE LOOCK:** Around November 2017 a Ms Matsietsi Mokholo became acting CEO of SA Express.

**ADV VERUSCHKA SEPTEMBER:** Thank you and then do you know whether or not anything has arisen following your complaint that was  
10 laid to the head of security, Mr Timothy Ngwenya what was the outcome – was there any investigation conducted?

**MS ESTELLE LOOCK:** I did not get feedback as this investigation would have been on a higher level, for me I have advised them that they need to look into the matter, a couple of times I did touch base with Timothy to find out and it was indicated that they are busy looking into the matter and that is where I left it Chair.

**ADV VERUSCHKA SEPTEMBER:** Had there been any steps taken against any individuals arising out of this contract?

**MS ESTELLE LOOCK:** Yes some of the people that had been  
20 involved in this were suspended from SA Express Chair.

**ADV VERUSCHKA SEPTEMBER:** And lastly what has happened to this particular contract, that we've spoken about today concluded between South African Express Airways and EML?

**MS ESTELLE LOOCK:** For my own – for myself, after I reported the matter I did go to our finance department to double check and see if

there were any payments made to EML Chair and it was assured to me that there was only one payment around R90 000 I'm talking under correction R80 000/R90 000 that was made to EML with regards to the defueling and refuelling of aircraft, other than that no further payments were made Chair.

**ADV VERUSCHKA SEPTEMBER:** Thank you Chair, Chair that is certainly the evidence of this witness which is augmented by the signed affidavit of Mr Gavin Fourie found under tab 3 of the bundle and it's at least corroborated to the extent of where Ms Loock refers to it.

10 **CHAIRPERSON:** Well any affidavit that you want as corroboration will have to be 1) at least it's important features must be publicly read out or mentioned and to the extent that it may affect anybody else, it would have to be – copies would have to be sent to such persons so that they can comment or say if they want to dispute anything that he or she corroborates by way of an affidavit, then in that way if we don't call that person then we are able to say, those it refers to was given an opportunity to indicate if they have anything to challenge and they didn't but that's – the legal team is aware of that, it's not something new, I think Ms Hofmeyr wants to assure you that it will be taken care  
20 of.

**ADV VERUSCHKA SEPTEMBER:** If I can address you on the second point Chair.

**CHAIRPERSON:** Yes.

**ADV VERUSCHKA SEPTEMBER:** Although it may have been – I don't have the particular dates with me right now, it may have been shorter

notice than the 14-day period, notices have certainly been sent to persons who are or may be implicated by the affidavit of Mr Gavin Fourie.

**CHAIRPERSON:** Okay.

**ADV VERUSCHKA SEPTEMBER:** So we as the legal team are at least satisfied that those persons have been notified.

**CHAIRPERSON:** Yes.

**ADV VERUSCHKA SEPTEMBER:** I'm guided by you as to how you wish the affidavit to be read...(intervention).

10 **CHAIRPERSON:** No, no, if that's been done, it's okay, I'm simply saying that those affidavits where the intention is not to call the person to come and give oral evidence, at some stage they need to- the public needs to be told of, at least the main features of the affidavit that may not be done now, arrangements can be made for it to be done – for that to be done at a later stage.

**ADV VERUSCHKA SEPTEMBER:** As it pleases Chair, in conclusion then it's our submission that through the evidence that has been led through this witness, the three questions certainly arise, as I alluded to and the introduction...(intervention).

20 **CHAIRPERSON:** Before that, let me just say – you said that – did you say it's Mr Xaba who is no longer with SA Express?

**MS ESTELLE LOOCK:** That is correct Chair, yes.

**CHAIRPERSON:** What happened to him, did he resign, was he dismissed?

**MS ESTELLE LOOCK:** He did – yes he did resign sir

**CHAIRPERSON:** Was he suspended at any stage before he resigned?

**MS ESTELLE LOOCK:** No sir no he resigned.

**CHAIRPERSON:** And Dr Vilakazi is he still there?

**MS ESTELLE LOOCK:** No Dr Vilakazi was suspended sir – Chair.

**CHAIRPERSON:** How long ago was that – you can't remember...(intervention).

**MS ESTELLE LOOCK:** Beginning of 2018 Chair.

**CHAIRPERSON:** Beginning of 2018?

**MS ESTELLE LOOCK:** Yes Chair.

10 **CHAIRPERSON:** What has happened to that, has there been a hearing, has there been no hearing, is he still on suspension, has he resigned has he been dismissed, do you know?

**MS ESTELLE LOOCK:** Chair that is our Human...(intervention).

**CHAIRPERSON:** You don't know.

**MS ESTELLE LOOCK:** No I don't, the Human Capital can actually respond to that request Chair.

**CHAIRPERSON:** No then that's fine.

**ADV VERUSCHKA SEPTEMBER:** Thank you Chair.

**CHAIRPERSON:** You wanted to say something?

20 **ADV VERUSCHKA SEPTEMBER:** Just one concluding remark and that is through the evidence of Ms Loock together with evidence that is yet to be led the question shall remain as to whether or not the procurement processes relevant – relative sorry to the supply of jet fuel and the conclusion of the agreement with EML was borne out of fraudulent or even corrupt activities to the extent that proper

procurement processes were not followed or any other actions may or may not have been taken.

**CHAIRPERSON**: Thank you.

**ADV VERUSCHKA SEPTEMBER**: Thank you Chair.

**CHAIRPERSON**: Ms Loock thank you very much for having come forward to give evidence, thank you very much you are excused.

**MS ESTELLE LOOCK**: Thank you Chair.

**CHAIRPERSON**: Well it's time for the tea break so the change over can happen during the tea break, we'll take the tea adjournment, it's  
10 twenty past now we'll resume at twenty five to twelve, we adjourn.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON**: Ms Hofmeyr.

**ADV KATE HOFMEYR**: Thank you Chair

**CHAIRPERSON**: Are you ready?

**ADV KATE HOFMEYR**: We are indeed.

**CHAIRPERSON**: Yes thank you.

**ADV KATE HOFMEYR**: Chair we have Mr Mark Vaughan as our next  
20 witness on the topic of jet fuel procurement. If I may for record purposes request that we enter his bundle as Exhibit DD11 into the record?

**CHAIRPERSON**: The lever arch containing Mr Mark Vaughan's statement and annexures will be marked as Exhibit DD11.

**ADV KATE HOFMEYR**: Thank you Chair. And then if I could request the witness to be sworn in we can proceed?

**CHAIRPERSON:** Yes please swear in the witness or administer the affirmation.

**REGISTRAR:** Please state your full names for the record?

**MR MARK EDMUND VAUGHAN:** Mark Edmund Vaughan.

**REGISTRAR:** Do you have any objections to taking the prescribed oath?

**MR MARK EDMUND VAUGHAN:** I do not.

**REGISTRAR:** Do you consider the oath to be binding on your conscience?

10 **MR MARK EDMUND VAUGHAN:** I do.

**REGISTRAR:** Do you solemnly swear that all the evidence that you will give will be the truth, the whole truth and nothing but the truth if so please raise your right hand and say, so help me God.

**MR MARK EDMUND VAUGHAN:** So help me God.

**REGISTRAR:** Thank you.

**CHAIRPERSON:** Yes.

**ADV KATE HOFMEYR:** Thank you Chair. Mr Vaughan just to orientate you in relation to the two files you see in front of you at the witness table. The bigger file in front of you which I will refer to as Exhibit  
20 DD11 contains your affidavit and annexures and then next to that is the bundle from the preceding witness Ms Loock. I have asked that it remain there just because there was an aspect Chair in the evidence of Ms Loock where she indicated a limited personal knowledge of certain documents. Mr Vaughan expect will be able to fill in that gap for us

**CHAIRPERSON:** Okay.

**ADV KATE HOFMEYR:** So we will just take him there at the appropriate point.

**CHAIRPERSON:** Okay.

**ADV KATE HOFMEYR:** Mr Vaughan if you open up your file which is Exhibit DD11 you will see at page 1 and the pagination you will find at the top right hand corner of the page is a document headed “Affidavit” and it runs to page 21 of that bundle. Can you confirm that that is your affidavit deposed to on the 7 June 2019?

**MR MARK EDMUND VAUGHAN:** I do Chair.

10 **ADV KATE HOFMEYR:** Mr Vaughan I know that there is at least one correction you wanted to make on the affidavit which I propose to take you to when we get there in the evidence. But over and above that are there any other changes you wish to make?

**MR MARK EDMUND VAUGHAN:** No, no other changes Chair.

**ADV KATE HOFMEYR:** Thank you. If we can then begin on page 1 Mr Vaughan. Could you explain to us what your position is at SAA and the period for which you have been in SAA's employ?

**MR MARK EDMUND VAUGHAN:** I am currently the head of fuel at South African Airways and I have been in the employment of SAA for 36  
20 years.

**CHAIRPERSON:** You probably do not know any other employer?

**MR MARK EDMUND VAUGHAN:** You absolutely right. I joined SAA straight out of school and started as an apprentice aircraft mechanic.

**CHAIRPERSON:** Yes. Okay.

**ADV KATE HOFMEYR:** And Mr Vaughan for what period have you held

the position of head of fuel management?

**MR MARK EDMUND VAUGHAN:** It has been for five years now if I am not mistaken.

**ADV KATE HOFMEYR:** I think at paragraph 1 you say you occupied it from the end of 2013, correct?

**MR MARK EDMUND VAUGHAN:** Absolutely.

**ADV KATE HOFMEYR:** Thank you and then in paragraph 3 on that first page you detail what the functions of the head of – well the functions of fuel management are generally. Could you take us through those?

10 **MR MARK EDMUND VAUGHAN:** Okay so fuel management manages the fuel for South African Airways and the groups which will be Mango and SA Cargo as well as there is a contract in place to administer the fuel for SA Express and when we talk about the process that it involves it is to ensure the quality or the oversight of the quality of the fuel that is the main thing. Thereafter security of supply. Getting the fuel at the best prices and then of course paying for the fuel thereafter.

**ADV KATE HOFMEYR:** And you mentioned in your evidence a moment ago that there was some arrangement between SAA and SA Express in relation to fuel. If you turn over the page to page 2 as I have it you  
20 pick that up from paragraph 4 where you start to describe the nature of that relationship. Could you please explain it to us?

**MR MARK EDMUND VAUGHAN:** Okay so the relationship with SA Express as I say it is – had an administrative role Chair. There was an agreement the last agreement was signed in August of 2011 by my predecessor. There is a clause in there that it does renew on a yearly

basis if there is not any significant change to the management of this fuel and that admin fees that is just for the administration portion of the – of fuel will be reviewed on a yearly basis as inflationary pressures or the change in the – in the operation requires. If there is as I said if there is that is just on the payment on a yearly. If there is so significant change both parties can just carry on with that 2011 agreement which is in place to this day.

**ADV KATE HOFMEYR:** And you mentioned a moment ago that the agreement governs the administration of aviation fuel. If you look at  
10 paragraph 4 of your affidavit though you also indicate there that it includes the procurement of aviation fuel. How does that work?

**MR MARK EDMUND VAUGHAN:** Okay so it is – does include the procurement. So we look at that as part of the administration so the procurement process. So what we would do we procure for the group including SA Express we have got the economies of scale there. We come to an agreement with the most competitive fuel suppliers. We then give SA Express that fuel at the same price as what SAA gets it at. There is no mark-up or anything. The recovery of any funds for the work done is done through the administration, the administrative  
20 agreement.

**ADV KATE HOFMEYR:** And just if you may expand a little more on the economies of scale available to SAA?

**MR MARK EDMUND VAUGHAN:** Okay.

**ADV KATE HOFMEYR:** What does that mean ultimately for the price at which you can procure fuel?

**MR MARK EDMUND VAUGHAN:** Well SA Express – SAA procures significantly more fuel than SA Express. So with them coming or latching onto our contracts it gives them – it gives us the opportunity to negotiate better with the suppliers because of the volumes which would be a better price for SA Express as well. So they benefit from that.

**ADV KATE HOFMEYR:** Thank you. And then if we go to paragraph 6 on page 2. You indicate precisely which stations the SAA and SA Express agreement applied to. Could you also explain that to us?

**MR MARK EDMUND VAUGHAN:** Yes Chair I can do that. So the intent  
10 of the agreement from the beginning was for SAA to procure for SA Express at the ACSA locations and also airports that SAA also flew to. And that would be obviously so they shared locations. Any location that SA Express might have decided to go on their own for instance Pilanesberg, Mafikeng or – and Hoedspruit they – anything that was – came on afterwards they – SA Express went alone on that – that particular process. They did not – it did not form part of the SAA process. I do not know if that answers Chair?

**ADV KATE HOFMEYR:** Hm. Thank you. And so if you just go over the  
20 page to 3. As I have your evidence you have indicated at least three locations where SA Express was required to do its own procurement. That was Mafikeng, Hoedspruit and Pilanesberg but over the page at 3 you indicate the locations where they could rely on SAA as I have your affidavit, is that correct?

**MR MARK EDMUND VAUGHAN:** That is correct. Would you like me to...

**ADV KATE HOFMEYR:** Yes.

**MR MARK EDMUND VAUGHAN:** Mention the stations so...

**ADV KATE HOFMEYR:** If you would just give us those.

**MR MARK EDMUND VAUGHAN:** It is OR Tambo, it would be Richards Bay, Durban, East London, Port Elizabeth, George, Cape Town, Bloemfontein and Kimberley.

**ADV KATE HOFMEYR:** I did check to read that you got all of those. I noticed you did not need to read them you did it purely from memory.

**MR MARK EDMUND VAUGHAN:** That is correct.

10 **ADV KATE HOFMEYR:** But you have not left out any of them.

**MR MARK EDMUND VAUGHAN:** I do not think I have.

**ADV KATE HOFMEYR:** At paragraph 6. So we are indebted to you. Mr Vaughan if you do go over the page to page 3 you will see there a heading in your affidavit and that I understand it is where you would like to make one correction. Could you just tell us what you want that heading to read as?

**MR MARK EDMUND VAUGHAN:** That is correct Chair. I would like that heading to read as SAA Pushes for Transformation. There were obviously parties that were part of that transformation EML being one  
20 of them. So it was SAA pushes for transformation.

**ADV KATE HOFMEYR:** So we can just delete...

**CHAIRPERSON:** I am sorry is that the heading/

**ADV KATE HOFMEYR:** Yes Chair.

**CHAIRPERSON:** Oh okay how should it read?

**MR MARK EDMUND VAUGHAN:** I would say SAA pushes for

transformation.

**CHAIRPERSON**: Pushes for transformation?

**MR MARK EDMUND VAUGHAN**: Ja.

**CHAIRPERSON**: In other words deleting EML and...

**ADV KATE HOFMEYR**: Correct.

**MR MARK EDMUND VAUGHAN**: Ja.

**CHAIRPERSON**: Oh okay.

**MR MARK EDMUND VAUGHAN**: EML would probably form part of that transformation.

10 **CHAIRPERSON**: Yes.

**MR MARK EDMUND VAUGHAN**: But there is also other parties that Chair that form part of it.

**CHAIRPERSON**: Okay.

**ADV KATE HOFMEYR**: Thank you. And then if we go to paragraph 7 on that page. You start to deal with what you describe in paragraph 7 as huge pressure from the board in a push for transformation. Can you tell us about that and which board you speak of when you make these comments?

20 **MR MARK EDMUND VAUGHAN**: Okay first of all the board that I refer to is the Ms Meyene board, Doctor Thambi and Ms Kwinana.

**ADV KATE HOFMEYR**: And...

**MR MARK EDMUND VAUGHAN**: That is a particular board and that would be from 2013 – the end of 2013 when I took over as head of fuel through to the end of 2017.

**ADV KATE HOFMEYR**: Oh Mr Vaughan we will come back to the

change that occurs in the board in late 2016 but can I just get clear from you as chair – so far a chairperson of the board is concerned you mentioned Ms Meyene did she occupy that position for the period that you describe?

**MR MARK EDMUND VAUGHAN:** I believe so.

**ADV KATE HOFMEYR:** We will come back to the positions of Ms Kwinana and Doctor Thambi because as I have it from later in your affidavit there is a change, they do leave at a point in 2016. So they are not there for the full duration to the end of 2017 that you have  
10 described.

**MR MARK EDMUND VAUGHAN:** I believe so with – ja I believe so.

**ADV KATE HOFMEYR:** Well we will go to it at the appropriate point if we may?

**MR MARK EDMUND VAUGHAN:** I – the board – you are quite right with the change of board I think Ms Meyene only left towards the end of 2017 if I am not mistaken.

**ADV KATE HOFMEYR:** Indeed.

**MR MARK EDMUND VAUGHAN:** Ja.

**ADV KATE HOFMEYR:** So just to get the evidence clear if I may. Ms  
20 Meyene occupied the position of chair for the period that you describe...

**MR MARK EDMUND VAUGHAN:** You are quite right.

**ADV KATE HOFMEYR:** In paragraph 7. You however reference two other members of the board who occupied positions on the board for a substantial period within that, is that correct?

**MR MARK EDMUND VAUGHAN:** That is correct.

**ADV KATE HOFMEYR:** But there is a change that we will come to in due course towards the end of 2016, is that correct?

**MR MARK EDMUND VAUGHAN:** That is correct Chair.

**ADV KATE HOFMEYR:** Thank you. And you go on at paragraph a8 to talk about the significant barriers to entry for new participants in the jet fuel market. Can you take us through that? What are the issues?

**MR MARK EDMUND VAUGHAN:** The barriers of entry that I am referring to there are for a – if you have a look at the jet fuel industry  
10 across the world in actual fact you will see it is the big players that operate in this space. In other words the refiners, the big traders of the world and you see very few small companies that operate there. So the barriers to entry really for small companies is because they do not have the economies of scale. So that is the one thing you do not - the margins are so small for jet fuel that you generally have the big players there. So for a small company the barriers of entry would be first of all to get agreements in place to get the licences to operate at an airport so that comes at a cost which eats further into your margins which are very small in the first place. There is also a billion dollar insurance  
20 that is required to indemnify the – your person that you are contracting with. So that comes at a substantial cost as well. Then there are of course you also have to insure that you have the correct – the correct specification of fuel and the quality and there are agreements that need to be got as far as that is concerned in the form – well there are agreements that are needed and that comes at a cost as well.

**ADV KATE HOFMEYR:** Can we just pause for a moment on that one billion insurance. What is that required for?

**MR MARK EDMUND VAUGHAN:** Okay so the billion dollar insurance as I said it is in order for you to indemnify the party that you are contracting with in the event of a total loss of an aircraft due to sub-standard fuel or even the delivery of the fuel to an aircraft where you might have a fire. So if you have a look at an airline like South African Airways that operates large aircraft like the A3 40-600 the – in the – if you have – the insurers obviously look at what it would cost if there  
10 was any claim in the case of negligence and that would in most cases for an aircraft that size would equate to a billion dollars and sometimes even more depending on the passengers that you carrying and what the form of loss was. So that is where it is. So in order – so with SAA SAA hold third party liability insurance. We then expect through our legal and our procurement process that anyone that we contract with indemnifies us so they would have to hold the billion dollars and then going down the line it is goes further down the line. So it is the indemnification of the person that you contracting with in case of a claim.

20 **ADV KATE HOFMEYR:** It sounds from your answer that there are some risks associated with providing jet fuel to aircraft, is that the case?

**MR MARK EDMUND VAUGHAN:** There are risks and that is why there is a lot of rules in place and legislation.

**ADV KATE HOFMEYR:** And you mentioned fires, is that – is that one of the things that can happen?

**MR MARK EDMUND VAUGHAN:** That could be. As I mentioned fire and of course – because that would be – that would result in a total loss of an aircraft. So total loss of an aircraft would result of sub-standard fuel you have a flame out and the aircraft potentially crashes or on the delivery of fuel you working with volatile substances or liquids and if it is not delivered correctly and it is not earthed properly you could set the aircraft alight.

**ADV KATE HOFMEYR:** Thank you Chair we will in due course in Mr Vaughan's evidence go through that whole process of how you get jet  
10 fuel into an airplane. It does have some significance just to understanding the types of agreements that were being entered into but we will come to that in a moment if we may? Mr Vaughan at paragraph 10 on page 4 you do indicate there a sympathy on SAA's part to try and get new entrance into this field. Can you tell us about the origins of that sympathy and what was done to try and open up this market?

**MR MARK EDMUND VAUGHAN:** Chair there was sympathy from SAA's side on transformation. It was from I think a two tier approach obviously we wanted to see transformation in South Africa. Secondly it is also SAA's BEE scorecard was really bad if you look at it as a – and  
20 I think there was also pressure – there was pressure on to improve that. With jet fuel being one – the largest spend it takes – it is either salaries or jet fuel depending on the oil price but jet fuel being the largest procuring spend there was pressure on that we have transformation on who we are contracting with so that we could improve our scorecard. There were proposals made at various juncture where

we would speak to suppliers to see – because obviously that would be the one so if you have a look at who we procure fuel from is normally the oil majors or the big traders. So we were talking to the oil majors that have refineries in South Africa to encourage them to improve their scorecards so of course that helps SAA but it does not help us to the full extent because it is only a contracting party that has got a level 1 or a level 2 or a level 3 compared to what we were. So we did engage with them although – I mean I must say the oil majors had put a lot – I mean they have been looking at this for a long time and improving their

10 BEE status. So it would be for – so it made sense for us to do it for instance on the transport side that is where a small player SMME – SMNE can operate and very successfully and which a lot of the suppliers I think all the suppliers actually have that in place.

**ADV KATE HOFMEYR:** You have referred in your evidence to the oil majors.

**MR MARK EDMUND VAUGHAN:** Yes.

**ADV KATE HOFMEYR:** Can you tell those of us who are uninitiated in the jet fuel world who the oil majors are?

**MR MARK EDMUND VAUGHAN:** Okay so if we look in South Africa so

20 there is oil majors all across the world but the big oil majors in South Africa are Total, Sasol, Shell, BP, Engen, Chevron which is now Astron they have changed name to Astron so those would be the oil majors that we talk about and then the big traders would be for instance that are operating in South Africa is Puma under Traffic Euro so they would be also looked at as an oil major because they have refineries overseas

where they import from those refineries overseas.

**ADV KATE HOFMEYR:** Thank you. At page 4 you have a heading midway down the page entitled 2016 SAA Tender. Before we get into the detail of it and just jumping ahead in the evidence Chair if I may we will hear from Mr Vaughan as I read his affidavit about this tender process. As it so happens the tender is never awarded by SAA but we submit it is still relevant for the commission to hear about this context because it plays a role in due course on the IDC leg of this investigation and I just prefaced it so that we do not come to the end of  
10 the story and question why we have been told about it.

**CHAIRPERSON:** YEs.

**ADV KATE HOFMEYR:** It does have a significance in relation to later evidence.

**CHAIRPERSON:** No thank you.

**ADV KATE HOFMEYR:** So if we can begin at paragraph 11. You indicate there a decision by the board in January 2016 in relation to jet fuel procurement. What was that decision?

**MR MARK EDMUND VAUGHAN:** The 2016 was – 16 decision by the board was to set aside fuel for small entities for SMME's.

20 **ADV KATE HOFMEYR:** How much fuel?

**MR MARK EDMUND VAUGHAN:** It was at that particular if I am not mistaken was 15%.

**ADV KATE HOFMEYR:** And what does that mean? Set aside 15% of fuel?

**MR MARK EDMUND VAUGHAN:** So the way I understood it was to say

that we will still procure fuel from the majors but 15% of the domestic fuel requirement would go eventually to small entities.

**ADV KATE HOFMEYR:** Well just – just help us understand us that if you may because as I understand your evidence thus far. You are going to source your fuel from the oil majors who have refineries, is that correct?

**MR MARK EDMUND VAUGHAN:** That is correct Chair.

**ADV KATE HOFMEYR:** But some portion of that fuel that will come from the majors must be set aside so that other parties can come in  
10 and participate, is that right in providing jet fuel to SAA?

**MR MARK EDMUND VAUGHAN:** That is correct Chair.

**CHAIRPERSON:** So what you – you would do is will only allow majors to give us fuel up to 85% and 15% will be what we will get from smaller companies, is that a good understanding of what you are saying?

**MR MARK EDMUND VAUGHAN:** That would be correct Chair.

**CHAIRPERSON:** Okay.

**ADV KATE HOFMEYR:** And can I just clarify with a follow up point. Who would the small entities get their fuel from?

**MR MARK EDMUND VAUGHAN:** So the most logical place that it would  
20 come from especially in the beginning would be from the oil majors from the refiners in South Africa.

**ADV KATE HOFMEYR:** So as I understand the model the refiners are going to sell 85% of their fuel to SAA directly.

**MR MARK EDMUND VAUGHAN:** That is correct Chair.

**ADV KATE HOFMEYR:** They will then sell 15% of their fuel to the new

entrant who is then going to sell that fuel again to SAA, is that correct?

**MR MARK EDMUND VAUGHAN:** That is correct and it would come at a – obviously at a premium.

**ADV KATE HOFMEYR:** So if you compare the price at which SAA can get the fuel from the oil majors as compared with the price that it will get it from the small enterprises what is the distinction there?

**MR MARK EDMUND VAUGHAN:** Okay so if I understand you correctly Chair if what – are you asking for what percentage or are you asking...

**ADV KATE HOFMEYR:** I am asking for what the difference would be? I  
10 guess to be fair Mr Vaughan let me ask it this way. Would it not be cheaper for SAA to get a 100% of the fuel from the oil majors?

**MR MARK EDMUND VAUGHAN:** Of course most definitely Chair definitely.

**ADV KATE HOFMEYR:** And why is that?

**MR MARK EDMUND VAUGHAN:** Because the small companies would be purchasing that fuel from the oil majors and I believe at the prices that SAA gets their fuel from the oil majors the oil majors would not be able to give a discount any further to a small owned entity and that then – so there would definitely be – they would have to put a mark up  
20 to obviously cover their costs and to make profit.

**ADV KATE HOFMEYR:** So there would be a cost implication for adopting this approach to jet fuel, is that correct?

**MR MARK EDMUND VAUGHAN:** There – there would be.

**MR MARK EDMUND VAUGHAN:** Thank you. And if we go to paragraph 13 on page 5 of your affidavit.

**CHAIRPERSON**: Maybe before that.

**ADV KATE HOFMEYR**: Certainly Chair.

**CHAIRPERSON**: It seems logical that on that approach of obtaining the 15% of fuel that was needed SAA would have to be prepared to pay more?

**MR MARK EDMUND VAUGHAN**: That is correct Chair.

**CHAIRPERSON**: In other words would have to be prepared to pay for that fuel to smaller companies at a higher price than it did with regard to fuel it obtained from the majors.

10 **MR MARK EDMUND VAUGHAN**: That is correct.

**CHAIRPERSON**: Did SAA consider that in order to advance transformation that was justified?

**MR MARK EDMUND VAUGHAN**: I would believe that was the case.

**CHAIRPERSON**: Yes. Yes. But I am wondering whether it is the best way because – because really does it not amount to the major selling to you that 15% at a higher price via the smaller companies?

**MR MARK EDMUND VAUGHAN**: So I believe that would be the case  
Chair. So – with that being said if you developed the small owned  
companies eventually they possibly would have been more competitive  
20 and I believe that is probably what the transformation was looking at.  
But you are quite right that would have come across.

**CHAIRPERSON**: Yes. No there is no doubt that for a good cause you know certain measures may have to be taken you know to advance a good cause and – and sometimes there may be inconvenience, sometimes there may be costs involved but if the good cause is worth it

that maybe fine. But I am just wondering the way this would work it seems a little unusual. I wonder whether it would not have been better but you might not know to say – to require the majors to accommodate smaller companies within themselves in terms of BEE as opposed to having smaller companies separate and then they can – they can have some arrangements or was that explored and was found not to be sustainable?

**MR MARK EDMUND VAUGHAN:** Ja I believe Chair that the majors do engage with small companies on many fronts and of course that was a  
10 consideration if they had taken a company under their wing if you – in that sense but at the end of the day I do not believe it would have benefitted SAA's scorecard and I think that was really the drive behind is to improve the BEE scorecard of SAA.

**CHAIRPERSON:** But I do not understand that part of your evidence and I think it is the second time you mention it at least as I understand it. My understanding of improving BEE scorecard would it not be that you bring them within your business as SAA which I think you were not doing as such. What you were doing you were just doing business with them as opposed to bringing them within – where to be part of...

20 **ADV KATE HOFMEYR:** Chair ja.

**CHAIRPERSON:** Whatever SAA does they are part of that. If you want to explore new businesses you are – they are your partners.

**MR MARK EDMUND VAUGHAN:** Sure. I think the best person to answer that would be the transformation manager at SAA.

**CHAIRPERSON:** Yes okay no that is fine but certainly do – giving them

business is an important part as well it is just that in the context of jet fuel the way you say SAA decided to do it seems unusual but it might well be that if it is properly explained it was a good thing.

**ADV KATE HOFMEYR:** Chair we will certainly pick up if we may on that point?

**CHAIRPERSON:** Yes.

**ADV KATE HOFMEYR:** Because with respect the aspect that you have highlighted is the one that does trouble one immediately when you look at this arrangement for transformation because it is the same fuel.

10 **CHAIRPERSON:** Yes.

**ADV KATE HOFMEYR:** That you getting from...

**CHAIRPERSON:** From the same source.

**ADV KATE HOFMEYR:** From Engen or Total it is exactly the same fuel.

**CHAIRPERSON:** Yes.

**MR MARK EDMUND VAUGHAN:** You are adding a mark-up and you are paying more for it so that somebody can participate in a context in which Mr Vaughan as I have understood your evidence there were other efforts made to seek to make this industry more accessible, is that correct?

20 **MR MARK EDMUND VAUGHAN:** That is correct.

**ADV KATE HOFMEYR:** The one I have from your evidence and correct me if I am wrong is engagements directly with the oil majors to require them to transform themselves, is that correct?

**MR MARK EDMUND VAUGHAN:** That is correct.

**ADV KATE HOFMEYR:** To up their BEE status, is that correct?

**MR MARK EDMUND VAUGHAN:** That is correct.

**ADV KATE HOFMEYR:** The second one I have from your evidence is the point also referenced by the Chair that you would involve – you would ask the oil majors to involve them somewhere else in the value chain, is that correct?

**MR MARK EDMUND VAUGHAN:** That is correct Chair.

**ADV KATE HOFMEYR:** And the example as I have it that you gave was that transportation was quite an effective aspect of the value train when new entrants and transformed players could enter the market, is that  
10 correct?

**MR MARK EDMUND VAUGHAN:** That is correct Chair.

**ADV KATE HOFMEYR:** So Chair my suggestion would be in due course that we must look at this whole field and – and assess where the important pursuit of transformation by State Owned Entities can take place effectively and then look at where it might have been attempted in circumstances that may not have been as effective and this story will play out precisely why it was not effective in the jet fuel context.

So much so that when this very same tender comes back in 2018 that requirement is omitted but we will get to that in due course -  
20 if we may.

**CHAIRPERSON:** I think I just want to mention this and if you – you can – Mr Vaughn indicate whether you – you share the observation. On this approach that SAA was going to adopt the – those who have previously monopolised – if you like – the business of providing fuel to SAA are not prejudiced in anyway by this arrangement.

Instead they benefit more because although they do not – the – SAA has negotiated with them certain prices in terms of the 85 percent fuel that they will continue to provide to SAA when it comes to this 15 percent that SAA must add via smaller companies they get even more. It is – it is even a better arrangement for them – I would think.

**MR MARK EDMUND VAUGHAN:** This is true ...

**CHAIRPERSON:** Because if they – I am sorry.

**MR MARK EDMUND VAUGHAN:** *Ja.*

**CHAIRPERSON:** If they provide 100 percent fuel to SAA as they had  
10 always been – as they had always done before for that 100 percent fuel they changed at lower rates which have been negotiated with SAA but they provide 85 percent of fuel direct to SAA but provide the 15 percent via smaller companies they make more money because when they sell to the smaller companies they are not bound by this arrangement on prices with SAA.

Whereas when you look at transformation and that is part of the reason why some companies that have been enjoying – you know – monopoly of certain business in the past that is why sometimes they do not want transformation is that now that the cake must be shared they  
20 begin to get less because part of what they were getting needs to go somewhere else to others who have been excluded but in this arrangement those who have enjoyed benefits and monopoly just benefit from this arrangement.

**MR MARK EDMUND VAUGHAN:** So Chair to answer your question from my perspective is if they – the fifth – they would have been supplying

100 percent of the volume they wanted to SAA. By them taking 15 percent and supplying it through SMME and they supply to SMME at a higher price and obviously they would have benefitted from that but what I believe and especially in the 2018 tender they were prepared to give the SMMEs the fuel at the same price as they were give it to – give it to SAA.

So it was no benefit to them as far as that is concerned. So where the – where the premium came from was obviously the handling of the fuel and the invoicing of – of a SMME thereafter. So that is  
10 where the premium came from.

**CHAIRPERSON:** So they did not charge the SMMEs more than they charged SAA? They charged them at the same ...

**MR MARK EDMUND VAUGHAN:** That is correct especially in the 2018 tender.

**CHAIRPERSON:** Yes.

**MR MARK EDMUND VAUGHAN:** *Ja.*

**CHAIRPERSON:** So it is just that what it amounted to is in terms of the money that came to them for the 100 percent fuel. 85 directly to SAA 15 to SAA but via SMMEs they got the same as the arrangement they  
20 had with SAA?

**MR MARK EDMUND VAUGHAN:** That is correct Chair.

**CHAIRPERSON:** *Ja.*

**ADV KATE HOFMEYR:** Chair if I may just one follow up point there. Back to the Chair's point about well you do not break up the monopoly though by this arrangement. Do you because ...?

**MR MARK EDMUND VAUGHAN:** No.

**ADV KATE HOFMEYR:** The five or six oil majors are still supplying 100 percent of the fuel. You have not by this method enabled anyone else to take a portion of that market. Have you?

**MR MARK EDMUND VAUGHAN:** You are quite correct Chair.

**ADV KATE HOFMEYR:** Thank you.

**CHAIRPERSON:** They still have the whole cake.

**ADV KATE HOFMEYR:** They do.

**CHAIRPERSON:** Okay.

10 **ADV KATE HOFMEYR:** They do and SAA is paying a little bit more for one of the pieces.

**CHAIRPERSON:** Yes.

**ADV KATE HOFMEYR:** It would appear to be.

**MR MARK EDMUND VAUGHAN:** That is correct.

**ADV KATE HOFMEYR:** Mr Vaughan if we then go to the affidavit at page 5 at paragraph 13 you talk about some of the requirements of this tender that was to be awarded in 2016. The one that I would like to pick up on is that second bullet under paragraph 13 because there you tell us about what the envisaged duration was for this jet fuel supply  
20 arrangement. What was that?

**MR MARK EDMUND VAUGHAN:** Okay. The period is three years.

**ADV KATE HOFMEYR:** And how does that accord with previous jet fuel procurement until this point?

**MR MARK EDMUND VAUGHAN:** Okay. With procuring of jet fuel because of the volatility of the market and also fluctuations generally

fuel suppliers are reluctant to contract for period longer than a year. Although there have been periods where a supplier is pretty confident on their pricing and the market where they would give extended of up to two years and to my knowledge I have seen one for three years as well but that is really out of the ordinary. It is normally a year's contract  
Chair.

**ADV KATE HOFMEYR:** So what did you make of this period of three years?

**MR MARK EDMUND VAUGHAN:** The period of three years I believe  
10 would be to develop the – would be – because it is talking to the 20  
percent there and it is – well okay. It is – it is talking to the set aside  
and that would be in order to develop the supplier Chair.

**ADV KATE HOFMEYR:** Just to be clear there the – when the RFP went  
out – as I have your evidence – that three year duration would apply to  
everyone. Is that correct?

**MR MARK EDMUND VAUGHAN:** Yes that would apply to everybody  
correct.

**ADV KATE HOFMEYR:** And – and what I understand from your  
evidence is that that would be unusual in the market ...

20 **MR MARK EDMUND VAUGHAN:** Absolutely.

**ADV KATE HOFMEYR:** As it was at the time?

**MR MARK EDMUND VAUGHAN:** Yes.

**ADV KATE HOFMEYR:** But nonetheless that is how the RFP went out.  
Is that correct?

**MR MARK EDMUND VAUGHAN:** That is correct.

**ADV KATE HOFMEYR:** Thank you and then at paragraph 14 on that page you indicate the number of parties who responded to the RFP as well as those who met the criteria to be a supplier. Can you give us those figures?

**MR MARK EDMUND VAUGHAN:** Okay. So 96 parties and 74 responded satisfactorily.

**ADV KATE HOFMEYR:** And tell us what made them satisfactory respondents? What I am interested in here is what were the critical criteria for this particular RFP and for that purpose just to enable you  
10 to refresh your memory I propose that we go to page 54 – 5-4 of the papers. You will find it under Tab three in EXHIBIT DD11.

Chair and Mr Vaughan I have picked it up in the section which sets out the RFP requirements but I understand this not to have changed at the stage of submission of the bids. Is that correct Mr Vaughan?

**MR MARK EDMUND VAUGHAN:** That is correct.

**ADV KATE HOFMEYR:** So what were those requirements?

**MR MARK EDMUND VAUGHAN:** The requirements Chair was a valid Fuel Wholesale Licence from the Department of Energy, a letter to  
20 confirm product allocation from a refiner or supply – a jet fuel supplier for Jet A1.

**ADV KATE HOFMEYR:** Sorry let us just stop there. Not everyone knows what Jet A1 is. What is Jet A1?

**MR MARK EDMUND VAUGHAN:** Jet A1 is a specification of jet fuel used for jet aircraft.

**ADV KATE HOFMEYR:** Thank you.

**MR MARK EDMUND VAUGHAN:** And then also indicate how they would approach getting the third party liability insurance.

**ADV KATE HOFMEYR:** Could we pause there? You indicated earlier in your evidence that this requirement to have \$1 billion of insurance is necessary in order to be a jet fuel supplier. Did I understand the evidence correctly?

**MR MARK EDMUND VAUGHAN:** That is correct Chair.

**ADV KATE HOFMEYR:** Now this requirement as I read it did not  
10 stipulate that the bidder had to be in possession of that insurance. As I  
read point three in the table on page 54 it says:

“You had to provide an indication how you would  
approach the third party liability insurance.”

And then in brackets:

“(This will not necessarily be a qualifying criteria).”

Can you explain that to us? How could you ask for bids from  
entities who did not yet have the insurance that – I understand you to  
say – is a prerequisite to supply jet fuel?

**MR MARK EDMUND VAUGHAN:** Chair the insurance comes obviously  
20 – a billion Dollar insurance comes at pretty hefty cost. So if the  
requirement was for a SMME to procure that insurance and you are  
looking for 74 of these entities to procure that insurance and they do  
not get a drop of jet fuel that would be a problem. That could bankrupt  
them alone just by putting that type of money out to procure that type  
of insurance.

So we envisaged was that they need to show that they had done their homework – in essence – and grant to an insurer and a bank to say - and get a letter of reference to say that they were able to procure that type of insurance and if they were at any stage given the contract they would have to purchase that insurance before they could deliver the first drop of Jet A1 to South African Airways and the group.

**CHAIRPERSON:** I am not sure that I understand. What was required of the small companies to do under this requirement? To go to an insurance company and get a letter to say if they are granted the  
10 tender they would be provided with R1 billion insurance?

**MR MARK EDMUND VAUGHAN:** \$1 billion. You are correct Chair.

**CHAIRPERSON:** One – one - \$1 billion – US\$1 insurance?

**MR MARK EDMUND VAUGHAN:** That is correct Chair.

**CHAIRPERSON:** So the idea was not that they should secure the insurance before but to say if they are granted – awarded the tender such an insurance would be provided?

**MR MARK EDMUND VAUGHAN:** That is correct Chair.

**CHAIRPERSON:** In other words the – some homework would have had been done in advance so that the insurer – insurance company all that  
20 it would require is if you are granted - you are awarded the tender you are assured of this amount of insurance?

**MR MARK EDMUND VAUGHAN:** That is correct Chair.

**CHAIRPERSON:** How different was - was that to how – to what was required of the majors ...

**MR MARK EDMUND VAUGHAN:** The majors ...

**CHAIRPERSON:** In this type of situation?

**MR MARK EDMUND VAUGHAN:** Chair - sorry. The majors would require the billion dollar insurance because they are already in business.

**CHAIRPERSON:** Oh, okay. So they would be required to – or they would have it *ja*.

**MR MARK EDMUND VAUGHAN:** They would have it physically.

**CHAIRPERSON:** But if there was an - well I do not know – if there was a major who had not been doing business with SAA. So it is a major  
10 elsewhere other than at SAA you would require that they should have it before you consider their bid?

**MR MARK EDMUND VAUGHAN:** That is correct Chair.

**CHAIRPERSON:** Okay.

**ADV KATE HOFMEYR:** And can I just ask what is stated here under three is an indication how you would approach the third party liability insurance. Do you see that Mr Vaughan?

**MR MARK EDMUND VAUGHAN:** Yes.

**ADV KATE HOFMEYR:** Because that – with respect is slightly different to what I understood the proposition from the Chair to be to which you  
20 agreed because in your debate with the Chair you said they would need to have some letter – for example – from an insurer that said they will be given \$1 billion insurance if they get the award.

That seems to me at least to be different to simply requiring of them an indication about how they would go about seeking to secure it. Do you see that distinction?

**MR MARK EDMUND VAUGHAN:** I see the distinction Chair but I believe that they did produce letters from the insurers to say that they would be able to get it.

**ADV KATE HOFMEYR:** Okay, thank you and – and is that part of this process that you know for a fact?

**MR MARK EDMUND VAUGHAN:** I do not know it for a fact because we got a cross functional team that looks at that documentation ...

**ADV KATE HOFMEYR:** Hm.

**MR MARK EDMUND VAUGHAN:** And did not specifically look at that  
10 documentation.

**ADV KATE HOFMEYR:** You – would you agree with me that reading simply the words might have indicated that it would be sufficient to set out a sort of plan of action by a bidder as to the steps it would take to procure the third party liability insurance short of an actual undertaking from an insurer that it would be provided?

**MR MARK EDMUND VAUGHAN:** I do see that in the wording Chair.

**ADV KATE HOFMEYR:** Thank you. So that is the third requirement as you indicated it. If we then go to the forth ...

**CHAIRPERSON:** I am – I am sorry.

20 **ADV KATE HOFMEYR:** Apologies.

**CHAIRPERSON:** I am sorry. I am sorry Ms Hofmeyr and Mr Vaughn. The distinction that Ms Hofmeyr puts to you becomes even more important if you bear in mind that under number two it is clearly stated that under that a letter confirming is required. Whereas under three the requirement is not put in those terms. You see you would think that

assuming that it is the same person who wrote these requirements you would not think that after under two having set out that a letter would be required if under three a letter as also required he or she would decide to say something else other than the same thing that he said under two subject to a variation of the wording. You understand that?

**MR MARK EDMUND VAUGHAN:** I understand that.

**CHAIRPERSON:** Yes but you - you might not be able to assist ...

**MR MARK EDMUND VAUGHAN:** I cannot. I am sorry.

**CHAIRPERSON:** Yes. Okay, no that is fine.

10 **ADV KATE HOFMEYR:** If we go to the fourth requirement then at page 54 what was that?

**MR MARK EDMUND VAUGHAN:** Okay. There was also a fourth requirement as per this that they would need to put their value chain together. In other words how they would be – the way they understand it is the way they would be supplying the fuel to SAA.

**ADV KATE HOFMEYR:** And if we go over the page to page 55 if you will take us through the fifth and the sixth requirements there.

**MR MARK EDMUND VAUGHAN:** Confirmation of the B – the BBEE compliance certificate- copies of that - and – and a valid original tax  
20 clearance certificate – point six.

**ADV KATE HOFMEYR:** I think it is original tax clearance certificate.

**MR MARK EDMUND VAUGHAN:** What did I say?

**ADV KATE HOFMEYR:** I think you might have said regional.

**MR MARK EDMUND VAUGHAN:** Originally - I am sorry.

**ADV KATE HOFMEYR:** No that is fine. If we can then just go to the

note on that page. Can you recount what those notes – there are two notes there – record and what your understanding of them were?

**MR MARK EDMUND VAUGHAN:** The submission by companies owned by military veterans – okay and then submission of companies owned by people living with disability.

**ADV KATE HOFMEYR:** What did those two things mean in the context of this RFP?

**MR MARK EDMUND VAUGHAN:** I believe from what I read over here it would be I suppose beneficial that it would – well that would be - that  
10 would be one of the criteria that we are looking at is companies owned by military veterans and people living with disability.

**ADV KATE HOFMEYR:** Mr Vaughan if we can pick that up later in the actual recommendation that went to the Board and as it is contained in the RFP. You will find that at page 1-2-1. That is under Tab six. You indicated earlier that you understood the split for this RFP to be 85 percent/15 percent. Do you see that in the table on the middle of page 1-2-1 the split is actually 80 percent/20 percent? Do you see that?

**MR MARK EDMUND VAUGHAN:** You are quite correct Chair.

**ADV KATE HOFMEYR:** So do I take it that you correct your earlier  
20 statement that it was 15 percent set aside?

**MR MARK EDMUND VAUGHAN:** No initially the RF – the Board Resolution stated 15 percent and this states 80/20. Where that comes from I cannot – I do not know where – where the change came.

**ADV KATE HOFMEYR:** But are you confident that as far as the RFP was concerned it involved a 20 percent set aside as we have been

describing that?

**MR MARK EDMUND VAUGHAN:** That is correct.

**ADV KATE HOFMEYR:** Thank you and then if you read below that table it talks about this very point. Who was going to be given preference and what the criteria for that preference would be. Can you take us through that?

**MR MARK EDMUND VAUGHAN:** Okay. So if you look on the – on this over here the RFP process. 51 percent majority or more Black owned companies. A 30 percent majority or more Black women owned  
10 companies, Black youth owned companies. Companies owned by military veterans and companies owned by people with disability.

**ADV KATE HOFMEYR:** And what is your understanding of that criteria? How would they feature in the decision of who to grant the 20 percent set aside to?

**MR MARK EDMUND VAUGHAN:** In - what I read out of this over here is that that is that - the preference would be made according to that. I do not (intervenues).

**CHAIRPERSON:** I am sorry. I am lost where you are.

**ADV KATE HOFMEYR:** Apologies Chair. We are at page 1-2-1.

20 **CHAIRPERSON:** 1-2-1 okay.

**ADV KATE HOFMEYR:** And we are actually now looking at the final RFP as it was issued because I wanted to pick up with Mr Vaughan this point about how preference was to be given in the allocation of the 20 percent because as we understand the scheme at the moment you have got 80 percent going to the majors.

20 percent will be set aside for new entrants – SMMEs – and we were looking at page 1-2-1 to understand well how amongst those 20 percent are we going to select the successful bidders and Mr Vaughan was taking us through the five bullets there which as I understand your evidence Mr Vaughan were indicators of preference criteria that would – should we say – increase the chances of a bidder for the 20 percent. Is that a fair description of it?

**MR MARK EDMUND VAUGHAN:** I would believe so reading this yes.

**ADV KATE HOFMEYR:** And – and when you say I would believe so  
10 reading this I just want to understand what you can speak to in terms of your responsibilities in this process and what you cannot.

**MR MARK EDMUND VAUGHAN:** Okay. My responsibilities - as I say - it was a cross functional team that evaluates this and puts this document together and signs it off eventually and my responsibility as Head of Fuel is to ensure that we get the correct specification fuel Jet A1 as per DEF STAN 91/91. That this fuel is delivered to our aircraft safely.

That we have security of supplies the next thing and it is given to us at the best price possible. That is what it is.

20 **ADV KATE HOFMEYR:** So would you have been involved in the selection of the particular entities who would qualify for the 20 percent on the basis of these criteria that we see at page 1-2-1?

**MR MARK EDMUND VAUGHAN:** No I would not.

**ADV KATE HOFMEYR:** Was that somebody else in the team's responsibility?

**MR MARK EDMUND VAUGHAN:** That is correct.

**ADV KATE HOFMEYR:** And who was that person?

**MR MARK EDMUND VAUGHAN:** Okay. Mr Sogwazile would be involved on that. There would also be Mr Nico Moletsu who was the Transformation Manager and I think Mr Lehase Head of Fuel – of Transformation at SAA would also be involved as far as that is concerned.

**ADV KATE HOFMEYR:** Thank you. If we then go over the page in your affidavit if we can return there to page 7 ...

10 **CHAIRPERSON:** Ms – Ms ...

**ADV KATE HOFMEYR:** Apologies Chair.

**CHAIRPERSON:** May I with those – probably all of those names a spelling will be helpful ....

**ADV KATE HOFMEYR:** Yes.

**CHAIRPERSON:** To the ...

**ADV KATE HOFMEYR:** Indeed.

**CHAIRPERSON:** To the transcriber.

**ADV KATE HOFMEYR:** They would.

**CHAIRPERSON:** *Ja.*

20 **ADV KATE HOFMEYR:** If I can assist there. Mr Sogwazile you will find his name appearing back at page 55 and that surname is spelt S-O-G-W-A-Z-I-L-E. You mentioned – I think second – Mr Lehase.

**MR MARK EDMUND VAUGHAN:** *Ja.*

**ADV KATE HOFMEYR:** That is L-E-H-A-S-E ...

**MR MARK EDMUND VAUGHAN:** Yes.

**ADV KATE HOFMEYR:** As have it from elsewhere in your affidavit and I forget the name of the third person.

**MR MARK EDMUND VAUGHAN:** Moletsi.

**ADV KATE HOFMEYR:** Moletsi?

**MR MARK EDMUND VAUGHAN:** *Ja.*

**ADV KATE HOFMEYR:** And that is M-O-L-E-T-S-I?

**MR MARK EDMUND VAUGHAN:** I believe so.

**ADV KATE HOFMEYR:** Thank you. We will – we will make sure we pick that up Chair.

10 **CHAIRPERSON:** Yes thank you.

**ADV KATE HOFMEYR:** In case there are any variations.

**CHAIRPERSON:** Hm.

**ADV KATE HOFMEYR:** If we return to the affidavit at page 7 you are there at paragraph 23 talking about something called throughput status. We are at page 7 paragraph 23. Do you see that?

**MR MARK EDMUND VAUGHAN:** I do.

**ADV KATE HOFMEYR:** Thank you. I am going to ask that we come back to that in a moment so that you can explain to us precisely what throughput status is and what licencing is required in relation to that  
20 but I want to jump ahead so that you can give us a bit more insight into this process of jet fuel procurement. Chair and Mr Vaughan you will see at page 7 there is a diagram that has a big heading “Conclusion” that Mr Vaughan provided for the purposes of his affidavit.

That is not particularly clear as a document. So what we have done if you just turn over the page there is unnumbered page but

it just provides that picture in colour so that it could aid the evidence today and if you go over to page 8 you will see another diagram again probably even worse in ...

**MR MARK EDMUND VAUGHAN:** *Ja.*

**ADV KATE HOFMEYR:** Its decipherability but we have a better copy over the page again. So my suggestion Mr Vaughan is that we deal with the coloured pages that have been inserted in the bundle when you take us through what we are looking at there. So could we start with the diagram that appears at page 7 of your affidavit which if you turn  
10 over the page you have got the colour version? What is that showing us?

**MR MARK EDMUND VAUGHAN:** Okay. With this what I am endeavouring to show over here is the supply chain to deliver jet fuel into the wing of South African Airways aircraft. So which would be South African Airways, SA Express and Mango which is the group - they are all part of the group. So what we were requiring from our suppliers and that would include the SMMEs is that they would procure their fuel from a refinery or that they would ship it in from overseas.

So that is what it is showing over there. It would then be into  
20 storage and then of course they needed to take part – they needed to take – they needed to take part in the transport or contract in the transporting of that fuel either themselves or by any other party. That then would be into the storage of the air - airport and thereafter delivered to the aircraft.

Now looking at into the storage of the airport from where it

goes into storage at the airport that must be understood that that is owned by ACSA. There is then a pipeline or a hydrant system which runs underground. Now they call it a fuel hydrant system because that delivers fuel from the airport storage to each of the hardstands where the aircraft park.

**ADV KATE HOFMEYR:** Could we for that explanation go to the second diagram ...

**MR MARK EDMUND VAUGHAN:** Sure, okay. So that is ...

**ADV KATE HOFMEYR:** Because that will – what I understand  
10 Mr Vaughan is that where we see airport storage on the diagram at page 7 we in a sense must go to the next diagram which appears at page 8 to better understand how it works from storage into plane. Is that correct?

**MR MARK EDMUND VAUGHAN:** That is quite correct Chair.

**ADV KATE HOFMEYR:** So can you take us through that second diagram which appears at page 8 of your affidavit but we are looking at the better version over – overleaf.

**MR MARK EDMUND VAUGHAN:** Okay. So that is – you will see over  
20 there in the – there is a storage. The green tank is the storage. Let us take an airport like OR Tambo. So that is the storage at – at the airport and from that storage the fuel is filtered and then pumped into an underground pipeline which is called the hydrant – a fuel hydrant.

That fuel hydrant then as – as I said the pipeline that goes to each of the hardstands where the aircraft are standing as you will see there and then there is special equipment that would connect to the

hydrant system that is at high pressure and would then meter and filter that fuel that goes into the aircraft. There is also special equipment that is required for that Chair.

Then of course there are – there is also another way of delivering fuel to an aircraft which is through – so that one on the hydrant is called the hydrant dispenser. The one – the other one is called the refueler and that refueler is will uplift fuel at the depot from the tanks.

10 Also through a filtration system and then deliver fuel to smaller aircraft that are on the hardstand that do not necessarily have a hydrant pit connection and it is generally aircraft that requires smaller volumes. The – the equipment there is also much specialised because it is specialised filtration on there. There is metering and generally that equipment is about 20 000 litres.

So of course an aircraft that is flying to London that requires over 100 000 litres is not suitable to be refuelled with a refuel that is why you would need a hydrant system with a dispenser.

**ADV KATE HOFMEYR:** Thank you and can you then explain to us probably with reference to this diagram at page 8 what a throughputter  
20 is or why throughput status is relevant to jet fuel supply?

**MR MARK EDMUND VAUGHAN:** Okay. So ACSA in South Africa – Airports Company South Africa own the facilities at the airports. So they own the storage. They own the hydrant system. They then lease this to – to service providers and that is generally the oil majors that have got these agreements with ACSA. So the throughput status would

be that you need – that you need is to have that licence with ACSA to put a product or Jet A1 through their system. I am not sure if that answers your question.

**ADV KATE HOFMEYR:** Well let me just explore it a little bit further. Is there one pipeline network?

**MR MARK EDMUND VAUGHAN:** There is one pipeline network.

**ADV KATE HOFMEYR:** But you could have at any point in time various parties putting fuel into it. Is that correct?

**MR MARK EDMUND VAUGHAN:** That is quite correct.

10 **ADV KATE HOFMEYR:** So what – what is the licence driving at then? Is it – is it a quality control mechanism?

**MR MARK EDMUND VAUGHAN:** It is a quality control mechanism yes.

**ADV KATE HOFMEYR:** Explain how that works, if you will.

**MR MARK EDMUND VAUGHAN:** Any airport you want to have – you need to have fuel that is on specification and delivered to the aircraft safely so in order to have – to operate to have a through-put status at an airport there's also critical criteria that ACSA requires which is not dissimilar to what SAA requires so there would also be the billion dollar insurance, there would also be that the through-put adheres to certain  
20 standards and those standards are set out in African and Europe and most of the world under JIG, which is a Joint Inspection Group, if we move to the US they've got their own set of standards which is A4A 88103 as they call it but for Africa and most of the world and Europe there JIG requirements involved there. Now JIG stands for the Joint Inspection Group which is relevant at any airport that is operated by

multiple suppliers, so in other words joint ventures.

**ADV KATE HOFMEYR:** And again is that driving at a, sort of, quality assurance for the fuel?

**MR MARK EDMUND VAUGHAN:** That is correct.

**ADV KATE HOFMEYR:** So as I understand it there would need to be JIG compliance, Joint Action Group compliance in order to be eligible for through-put status, is that correct?

**MR MARK EDMUND VAUGHAN:** That would be – yes they would – they need to comply.

10 **ADV KATE HOFMEYR:** And who is the licensing authority for through-put status?

**MR MARK EDMUND VAUGHAN:** Is ACSA.

**ADV KATE HOFMEYR:** Thank you, if we could then move to page 9 of your affidavit, there you deal with the last of the requirements for the 2016 RFP and you describe an end-to-end process of fuel delivery, can you explain what that means?

**MR MARK EDMUND VAUGHAN:** End-to-end delivery would be that the company that we were entering the agreement – into a contract with to supply fuel to SAA would have to procure the fuel or manufacture the  
20 fuel, they would need to transport the fuel, they would need to store it, they would need to have the agreements with ACSA in place and they would also need to have equipment or an agreement to deliver this fuel to our aircraft and invoice us.

**ADV KATE HOFMEYR:** And how would an agreement work for that last part of the process?

**MR MARK EDMUND VAUGHAN:** For the into plane portion?

**ADV KATE HOFMEYR:** Yes.

**MR MARK EDMUND VAUGHAN:** The into plane portion, they would either – the entity would need to enter into a further license or agreement with ACSA or they could use the companies or company that has that agreement to perform that process for them.

**ADV KATE HOFMEYR:** So can I just get clear, if there was an SSME who benefited from the 20% set aside, might you have a scenario where they purchased fuel from one of the oil majors, they then had some arrangement to transport it into the airport but then depending on whether they were licensed themselves or not, they might have to re-engage that oil major at the end to actually do the into plane servicing, is that correct?

**MR MARK EDMUND VAUGHAN:** That is correct Chair.

**ADV KATE HOFMEYR:** And that would still, in the terms of the RFP be compliant with it's requirements, is that correct?

**MR MARK EDMUND VAUGHAN:** That's correct.

**ADV KATE HOFMEYR:** And for that purpose SAA would pay a premium for that fuel, is that right?

20 **MR MARK EDMUND VAUGHAN:** That is correct.

**ADV KATE HOFMEYR:** Thank you, if we go to the bottom of page 9 you commence a section entitled, The Bid Evaluation Process and EML Energy, and if we pick that up over the page, you detail on page 10 from paragraph 30 how EML Energy came to be one of the proposed successful bidders in the 2016 evaluation process, can you tell us how

that worked and how it was selected?

**MR MARK EDMUND VAUGHAN:** Okay it's – ELM at the time of this particular tender to my knowledge didn't have a refinery so they would be procuring fuel from one of the majors, what EML did have, they had storage and they had some equipment at the Denel facility, there was a – there is a small fuel farm, I can't give you the exact size of it but it is much smaller, well minute compared to the one at OR Tambo but they have got a fuel facility, that storage facility with some equipment where they operated on the eastern side of the airport precinct if you want to  
10 put it that way with the runway. So if you look at OR Tambo, OR Tambo has got a north/south runway, two of them, to the east of it is Denel and their facilities and to the west of that is SAA and also where all the hired stands are and where the commercial flights take place, so that's on the western side. So the runway really splits – well it splits the east from the west, so EML has got a facility at Denel.

**ADV KATE HOFMEYR:** And you make a point at paragraph 31 on that page about whether EML would have been able to transport fuel from the Denel fuel farm to where the planes had to be fuelled, what are your comments there?

20 **MR MARK EDMUND VAUGHAN:** Okay so on that, it was unlikely that EML would be able to transport fuel from that side because obviously you'd have to use public roads to do that and it's impractical and also given the large volumes they didn't – well the equipment to do that from that particular side, so it would make sense for them – or that they would have to go into agreement with a JV which had the facilities on

the correct side of the runway to deliver fuel at – on that scale.

**ADV KATE HOFMEYR:** Mr Vaughan you'll correct me if I'm wrong, but I understand the point that you make there, to be that there wasn't an advantage created for EML by the fact of it's Denel fuel farm resources, is that correct?

**MR MARK EDMUND VAUGHAN:** Well I believe so to my knowledge ja but that could have been a consideration by ACSA I'm not sure of that.

**ADV KATE HOFMEYR:** In relation to what, would it have been a consideration by ACSA?

10 **MR MARK EDMUND VAUGHAN:** Possibly because they had a facility already.

**ADV KATE HOFMEYR:** But what in decision making, in the licensing by ACSA...(intervention)

**MR MARK EDMUND VAUGHAN:** No I couldn't say by the licensing by ACSA because that's different.

**ADV KATE HOFMEYR:** Okay but as you understand it, if I have your evidence correct, EML notwithstanding it's Denel fuel farm was going to be utilising the hydrant system on the hard side on the west of the runways, is that correct?

20 **MR MARK EDMUND VAUGHAN:** That is correct Chair.

**ADV KATE HOFMEYR:** Thank you, and if we go down to paragraph 33 on that page you talk about the pricing that EML was able to achieve, what was that?

**MR MARK EDMUND VAUGHAN:** Again I maybe need to just give a bit of background as far as pricing is concerned. Jet fuel in South

Africa is not regulated but it's still based on BFP which is Basic Fuel Price which all our fuels in South Africa are based on as at the moment, because it's not regulated each company publishes their own Basic Fuel Price on a monthly basis. There is inherent imbalance if you want to put it that way because you have a refinery in Joburg or in Sasolburg which is called Natref. Natref Refinery produces about 60% of the fuel requirement for OR Tambo it is owned jointly by Sasol and Total and of course with it being 80 kilometres away and it's got a dedicated pipeline at the airport they have an advantage as far as transport is  
10 concerned. If you have a look at the entities or refiners that operate from the coast which is Sapref which is jointly owned by BP and Shell, they have to rail their product to Johannesburg and I'll get back to that now and then you've got Engen as well that's also got a refinery in Durban and the Puma who imports their fuel through Richards Bay at the moment but previously through Matola in Maputo in Mozambique, also have to rail their fuel in. So the railage of the fuel versus the dedicated pipeline from Natref gives you that their fuel comes at a slightly more expensive rate. Now given that you'll see EML parted with Total which is a refiner in Sasolburg and they would have – well  
20 their prices would have been better than anybody – anything coming from the coast.

**ADV KATE HOFMEYR:** And you explain at 33 how the arrangement would work between EML and Total so how would that work, the second sentence begins,

“EML would therefore purchase from Total”,

Take us through how the pricing would then be reflected on the SAA side.

**MR MARK EDMUND VAUGHAN:** Okay so they would then – they would purchase from Total, they would add their administration costs on to that, in other words whatever they needed for transport, for storage, for administration costs of the invoicing and – so they would be using the Total pricing and then add on their costs and then give that to SAA at a premium it came at a premium – it came at a premium, if you took – if you compared it to Total.

10 **ADV KATE HOFMEYR:** I think that's the point you make at paragraph 34, you say,

“At the end of the day the price EML charged SAA would be higher than what SAA would pay if they procured directly from Total”,

Is that correct?

**MR MARK EDMUND VAUGHAN:** That is quite correct.

**ADV KATE HOFMEYR:** And that is your understanding of the impact of the 20% set aside, is that correct?

20 **MR MARK EDMUND VAUGHAN:** The point was in the submission that was given we showed what we were purchasing fuel from the majors at and what it would cost us – additional cost that it would cost to purchase the 20% from the SSME's.

**ADV KATE HOFMEYR:** Thank you, and then if you go over the page to 11 you recount at paragraph 36 who the proposed successful 20% set-aside bidders were, who were they?

**MR MARK EDMUND VAUGHAN:** Okay they were EML, Dikopani and Infinity Energy Chair.

**ADV KATE HOFMEYR:** And in the end, Mr Vaughn were – was that proposal of those three successful 20% set-aside participants approved by the Board?

**MR MARK EDMUND VAUGHAN:** I don't believe so.

**ADV KATE HOFMEYR:** So what happened after the procurement processes had completed themselves?

**MR MARK EDMUND VAUGHAN:** The recommendation was made to  
10 the Board with what I said, just setting out what the cost of the 80% would be and the 20%, it went to Board and by that time we had a new Board in place and the Board didn't approve it.

**ADV KATE HOFMEYR:** Thank you, if we could just take a moment before we get to the final status of it at Board level, because at paragraph 38 at page 11 of your affidavit you indicate there that a change was made in relation to the duration of the supply agreement that would be concluded, what was that change?

**MR MARK EDMUND VAUGHAN:** The change was made – the  
20 approval was for three years and the recommendation was for – giving them five years to the BBE companies or the SSME's.

**ADV KATE HOFMEYR:** Mr Vaughan you said in your answer there that the approval was for three years.

**MR MARK EDMUND VAUGHAN:** Yes.

**ADV KATE HOFMEYR:** Can I just query that, as I understand it, it was the terms of the tender that it would be a fuel supply arrangement for

three years, is that correct?

**MR MARK EDMUND VAUGHAN:** That is correct Chair.

**ADV KATE HOFMEYR:** Because we didn't ever have approval, did we, ultimately?

**MR MARK EDMUND VAUGHAN:** You're absolutely right.

**ADV KATE HOFMEYR:** Thank you, just to be clear. So you had a tender for three years but at a point in the evaluation process what I understand you to be recording here is that there was a proposed increase to five years for – was it confined to the participants in the  
10 20%.

**MR MARK EDMUND VAUGHAN:** It was confined to the participants in the 20% and who they would be getting their supply from.

**ADV KATE HOFMEYR:** Oh so for example if they were getting it from Total then Total would be in for the five years insofar as the SSME was contracted for five years, is that correct?

**MR MARK EDMUND VAUGHAN:** That is correct.

**ADV KATE HOFMEYR:** So that means you might have had a situation where Total has a three-year arrangement insofar it supplying directly to SAA but a five year insofar as it's supplying through an SSME is that  
20 correct?

**MR MARK EDMUND VAUGHAN:** I believe so.

**ADV KATE HOFMEYR:** Chair with respect it does take us back to your original point which is there is certainly on that description a further benefit to the monopolies for want of a better description, those that dominated the market if they were to be the suppliers through the

SSME, do you accept that?

**MR MARK EDMUND VAUGHAN:** I accept that.

**ADV KATE HOFMEYR:** Did you have any input on this increase to five years in this decision making?

**MR MARK EDMUND VAUGHAN:** I didn't have input *per se* it was a recommendation from the transformation – head of transformation.

**ADV KATE HOFMEYR:** And was it that recommendation that went to the Board for approval?

**MR MARK EDMUND VAUGHAN:** That was part of the – yes.

10 **ADV KATE HOFMEYR:** Did anyone raise concerns that if you've gone out to tender for three years it may not be appropriate to award for five years?

**MR MARK EDMUND VAUGHAN:** Not to my knowledge.

**ADV KATE HOFMEYR:** Chair just to jump ahead to evidence that will come in due course the fact of that increase from three to five years had a substantial impact on the IDC funding that was ultimately obtained and so it's for that reason that we focus on it in this evidence.

**CHAIRPERSON:** No that's fine.

20 **ADV KATE HOFMEYR:** I we can then, Mr Vaughan, just pick it up at your point about whether this was ever ultimately approved by the Board, what is your evidence on that?

**MR MARK EDMUND VAUGHAN:** This was not approved by the Board there were (indistinct) that took place.

**ADV KATE HOFMEYR:** So what happened, you mentioned extensions, take us through that?

**MR MARK EDMUND VAUGHAN:** Okay so the – to my knowledge there was a lot of back and forth in the company but the Board – the then Board did not approve this with the 20% set-aside and there was an extension that was granted from the first and I’m just speaking – I just need to – it’s off the top of my head but from the beginning of January 2017 there was extension granted until – for six months, up until the end of June 2017 so that’s what happened there was extension on contracts that we had at that stage with the majors excluding the SSME companies.

10 **ADV KATE HOFMEYR:** And did that have any financial implication for SAA?

**MR MARK EDMUND VAUGHAN:** There could have been – yes there was but not at that point we had been going through month-on-month extensions so suppliers were adjusting their prices we hadn’t gone out to market so we couldn’t see if we were getting a fair price, I believe just due to the relationship that we had with our oil majors in the years that they didn’t increase their prices unduly and in most cases, not in all cases but in most cases where there were – because there were some companies that didn’t increase anything but there were  
20 companies that increased – but it was less than what inflation was.

**ADV KATE HOFMEYR:** And for what period did that extension arrangement persist?

**MR MARK EDMUND VAUGHAN:** Well if you take the six month extensions plus the month-on-month extensions, it was close to two years, if not slightly more.

**ADV KATE HOFMEYR:** Thank you we'll pick it up with the new Board that I said we would get to just to be clear on who was populating the new Board from September 2016 but before we go there, Mr Vaughan, I'd just like to ask you for your comment. I asked if you were involved in previously in the decision to extend the three years to five years and as I have your evidence you indicated you weren't involved in that, is that correct?

**MR MARK EDMUND VAUGHAN:** That is correct.

**ADV KATE HOFMEYR:** What was your view on the feasibility of a five-  
10 year period for these agreements?

**MR MARK EDMUND VAUGHAN:** On the face of it for developing a company it might have made sense but from the volatility of the market and the small margins that there are in this business, I know that the majors most probably wouldn't agree to anything more than a year and if anything more than a year not much more than that. So what you're doing is you're putting the companies at risk that you're entering into an agreement with for so long because you must remember one thing the fuel price – 95% of the fuel price is linked directly to the oil price so it fluctuates on a monthly/weekly basis. There's a very very small  
20 percentage that is a supplier's margin and because of unknowns in our industry to sign a contract and lock yourself in at those small margins for longer than a year is actually being foolish.

**ADV KATE HOFMEYR:** And just to conclude that for our benefit, is that because of the volatility in the oil price?

**MR MARK EDMUND VAUGHAN:** No, no that would be volatility in the

market, oil price is one of them because it is your refining margins playing to that but it would be volatility in our labour market in, we don't know what's happening with inflation.

**ADV KATE HOFMEYR:** And if I understand the evidence, the risk lies in being tied into a price that then reduces any profit that you may have in your business ultimately?

**MR MARK EDMUND VAUGHAN:** Absolutely right Chair.

**ADV KATE HOFMEYR:** Thank you, if we then go to page 14 of the affidavit at paragraph 49 you indicate there that a new Board took over  
10 in around early September 2016, I'd just like to go to the minutes of that next Board meeting that appear in the papers, that's Exhibit DD11 and you'll find that at page 204.

**CHAIRPERSON:** What's the page number?

**ADV KATE HOFMEYR:** 204 Chair it's under tab 9.

**CHAIRPERSON:** Thank you.

**ADV KATE HOFMEYR:** Now this document Mr Vaughan, as I have it, are minutes of a special meeting of the Board of Directors of SAA held on Friday the 7<sup>th</sup> of April 2017, do you see that?

**MR MARK EDMUND VAUGHAN:** I see that.

20 **ADV KATE HOFMEYR:** And in terms of the "new Board" if – with reference to this page who were the members of the new Board at that time?

**MR MARK EDMUND VAUGHAN:** Okay it will be Ms Ramano and please help me with the pronunciations, Mr Maluleka, Ms Tshabalala, Mr Malunga, Ms Sepamla, Mr Moosa, Ms Moola, Mr Thsisevhe and then

the acting group CEO Mr Zwane, is that correct?

**ADV KATE HOFMEYR:** But there are also some apologies for that meeting and those persons are also, as I have it recorded here non-executive directors of the Board that includes, as I read it, Ms Myeni, Mr Buthelezi, Dr Mbatha, Ms Mogoduso and then the interim CFO Ms Nhantsi, do you see that?

**MR MARK EDMUND VAUGHAN:** That is correct.

**ADV KATE HOFMEYR:** Are those names consistent with the persons, as you understood it who populated that Board from about September  
10 2016?

**MR MARK EDMUND VAUGHAN:** That is correct.

**ADV KATE HOFMEYR:** And you've taken us...(intervention).

**CHAIRPERSON:** I'm sorry would some of them not be members of the Board as such but be invited for specific issues to attend?

**MR MARK EDMUND VAUGHAN:** I believe so but that would be attendees if I'm not mistaken.

**CHAIRPERSON:** Yes so would it be, under where it says, in attendance?

**MR MARK EDMUND VAUGHAN:** In attendance yes.

20 **CHAIRPERSON:** Everyone under that wouldn't be a member of the Board but would be invited to attend a particular Board meeting.

**MR MARK EDMUND VAUGHAN:** That's the way I understand it Chair.

**CHAIRPERSON:** Okay.

**ADV KATE HOFMEYR:** Chair it's a point that we'll come back to in the evidence in due course but – and you would have seen it in the

15billion capital raising investigation, there's a period of time in the Board of SAA where the Board is extremely reduced in it's number, it's the Board of three persons that Mr Vaughan mentioned earlier and that changes around September 2016 when a much fuller Board is then constituted.

**CHAIRPERSON:** Yes, oh yes now I remember that three-member Board, Ms Myeni, Ms Kwinana and...(intervention).

**ADV KATE HOFMEYR:** And Dr Tambi

**CHAIRPERSON:** Yes.

10 **ADV KATE HOFMEYR:** So they were there for some period of 2015 and 2016 but then we have a fuller constitution of the Board thereafter.

**CHAIRPERSON:** Yes.

**ADV KATE HOFMEYR:** That will be, Chair, an aspect that we will pick up in the second evidence session because there were actual engagements between National Treasury, in particular and SAA about the depleted nature of the Board at a period in time.

**CHAIRPERSON:** Yes.

**ADV KATE HOFMEYR:** If we return to page 14...(intervention).

20 **CHAIRPERSON:** Yes I think it was during Ms Nhantsi's evidence, during the interactions in regard to the issues that she covered there, there were three members of the Board at the time, yes.

**ADV KATE HOFMEYR:** That's exactly right Chair, indeed, we've received that evidence already but now we've moved in time to September 2016, you'll recall the 15billion story ends in about July 2016 when they cancel the agreement with BnP, so if we move ahead in

the life of SAA by about two or so months, you now have a much fuller constituted Board that is appointed.

**CHAIRPERSON:** Yes, yes.

**ADV KATE HOFMEYR:** And at page 14 Mr Vaughan, you take us through, really the evidence you've already given, which is about the series of extensions and the non approval of the Board of that procurement process. Is there anything you'd like to add at that point?

**MR MARK EDMUND VAUGHAN:** Not at this point.

**ADV KATE HOFMEYR:** Thank you Chair, I see we are at one, and I'm  
10 about to move to another topic, so if it's convenient we may take the lunch break.

**CHAIRPERSON:** Yes we'll take the lunch break and resume at 2 o'clock, we adjourn.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** Let us proceed.

**ADV KATE HOFMEYR:** Thank you DCJ. Thank you Chair.

**CHAIRPERSON:** Thank you.

**ADV KATE HOFMEYR:** We were Mr Vaughan at page 15 of your  
20 affidavit before we broke for the lunch break and I had indicated that we were going to start with the 2018 process for jet fuel procurement. But before we get there there are two aspects just to tie up the previous part of the evidence that I would like to deal with you on. And the one of those relates to a document that was put to Ms Loock in her evidence this morning where she expressed some limitation to the

extent to which she could comment on it and I would like to ask you if you would to look at that document. It is in the bundle containing Ms Loock's evidence which is DD12 and you will find it in that file at page 99, 99.

**MR MARK EDMUND VAUGHAN:** Got it Chair. Got it Chair.

**ADV KATE HOFMEYR:** Thank you. And if you will just – this was a document that Ms Loock was being asked about by my learned friend Ms September and she had some limitations in her personal knowledge of these sorts of schedules. Could you take us through what your  
10 understanding of this pricing schedule is? What is it denoting in the left hand column for example?

**MR MARK EDMUND VAUGHAN:** Chair what we have in the left hand column is the location so that would be Bloemfontein, Cape Town, Durban, East London and so on. The second column will be the IATA code which is a three letter code that is published by IATA. In the case of Bloemfontein it is BFN, Cape Town is CPT and that is allocated to - so that is a three letter code that is allocated as per the International Air Transport Association. So every airport has got its own three letter code across the world. Then you have over there in column number 3  
20 where it says SAX it says there it gives the indicative volume per year at those different locations. So if you go down to Johannesburg JNB for instance it has got there 21.2 million litres is what is indicated there.

**ADV KATE HOFMEYR:** Can we just pause there. So just to be clear. Those are litres as specified there, is that correct?

**MR MARK EDMUND VAUGHAN:** That is correct.

**ADV KATE HOFMEYR:** And that applies over a year, is that right?

**MR MARK EDMUND VAUGHAN:** That is correct.

**ADV KATE HOFMEYR:** And is that the literage to be supplied to or required at the locations?

**MR MARK EDMUND VAUGHAN:** Well it is worked on an indicative volume. So it is indication of what SA Express would have needed there at that time.

**ADV KATE HOFMEYR:** Thank you.

10 **MR MARK EDMUND VAUGHAN:** So generally that is done – well how we do it in the industry we look at historic uplifts and then what we do then we have a look at any schedule changes and then work that into that but it is important to note that it is an indication of the volume.

**ADV KATE HOFMEYR:** Thank you.

**MR MARK EDMUND VAUGHAN:** It is not a fixed number.

**CHAIRPERSON:** So it is not exact?

**MR MARK EDMUND VAUGHAN:** It is not exact.

**CHAIRPERSON:** Yes.

**MR MARK EDMUND VAUGHAN:** The reason – sorry.

20 **CHAIRPERSON:** And the indication is based on?

**MR MARK EDMUND VAUGHAN:** On historic data plus how your schedule is going to work into the future.

**CHAIRPERSON:** Okay.

**MR MARK EDMUND VAUGHAN:** Why you work on historic data is because what you uplift is very dependent on weather and then

secondly also on the pay load that you carry. So if you got a full aircraft all the time you would obviously need slightly more fuel. If it is an aircraft flying at only 50% load factor it would be less. And that is why you always – you – we go to the industry and say it is an indication of volume. But obviously to the next best of our knowledge because the industry would need to although the suppliers would need to have an indication to know what they need to produce.

**CHAIRPERSON**: Okay.

**ADV KATE HOFMEYR**: And then if you could take us to that column  
10 reflecting base price, what do we understand that to mean?

**MR MARK EDMUND VAUGHAN**: Okay so if you have a look at the column the index before that.

**ADV KATE HOFMEYR**: Oh sorry.

**MR MARK EDMUND VAUGHAN**: It would be a [indistinct] so let us take Bloemfontein for instance they were saying there they were using a NATREF price so the NATREF refinery pricing and the NATREF refinery pricing as I understand this sheet that is in front of me was for the July 2017 and then they give a figure what the price would be, the base price in this case R6.06 for Bloemfontein.

20 **ADV KATE HOFMEYR**: And can I just clarify. The top of that column indicates it is a rand per litre amount, is that correct?

**MR MARK EDMUND VAUGHAN**: That is correct.

**ADV KATE HOFMEYR**: Thank you.

**MR MARK EDMUND VAUGHAN**: Okay and then...

**CHAIRPERSON**: I think ...

**MR MARK EDMUND VAUGHAN:** And then the price basis in the next column it goes to what is the invoice frequency so how often will they be invoicing. They would be invoicing on a weekly basis.

**ADV KATE HOFMEYR:** Hm.

**MR MARK EDMUND VAUGHAN:** With giving 30 days credit. So from every week they would for instance invoice on a Monday and then give 30 days' credit so SA Express would only need to pay within 30 days.

**ADV KATE HOFMEYR:** And then amount?

**MR MARK EDMUND VAUGHAN:** On day 30 at least.

10 **ADV KATE HOFMEYR:** What does the amount reflect?

**MR MARK EDMUND VAUGHAN:** Okay the amount there comes to – amount including VAT let me just see here – that is a little bit sketchy with that I – it is not clear to me but there is amounts. There is obviously add on costs onto that and then – so that would be – I would from this table here I would say that there is a base price of – let us take the first line R6.06 in Bloemfontein. They would be charging SA Express R7.98 so that would include transport, supplier margin, storage or whatever they added on to that. And then they gave an amount as well with the VAT because obviously 14% at – in 2017 would then come  
20 to R9.09.

**ADV KATE HOFMEYR:** And if we just go to the bottom of that table that you have read across on we were also querying in the evidence of Ms Loock what that pump back per hour defuel per hour and storage per day signifies, can you assist there?

**MR MARK EDMUND VAUGHAN:** Okay so my understanding of this

table again if I read this correctly is that SA Express if they require defueling at their maintenance facility EML Energy would extract that fuel from the aircraft and they would charge them R1 000,00 per hour in the defueling process. Then they would charge them R251.00 per day to store the fuel if they had to store it over any length of time and then pumping that fuel back onto the aircraft again after the storage they would charge that at R1 000,00 per hour.

**CHAIRPERSON**: Oh so there is significance in the absence of R for rand in the amounts on the third column because they relate to litres as opposed to R1 000,00 at the bottom and R251,00 because that is money and the other amounts are litres of fuel?

**MR MARK EDMUND VAUGHAN**: That is correct.

**CHAIRPERSON**: Yes just that they did not write ...

**ADV KATE HOFMEYR**: No.

**CHAIRPERSON**: Litre at the top unlike where in the column where you have got Rands/litre.

**MR MARK EDMUND VAUGHAN**: Chair I would believe if I understand what you saying correctly is it would have been better to separate those last two lines from the rest of the table put it – let it stand separately.

**CHAIRPERSON**: Well...

**MR MARK EDMUND VAUGHAN**: Because at the moment what you are looking at you are looking at it rand per litre and then it is showing you storage per day. So it should be disconnected.

**CHAIRPERSON**: Well that might be another point but the main point is

if you look at column 3 where you have got in regard to Johannesburg  
21 200 000.

**MR MARK EDMUND VAUGHAN:** Yes.

**CHAIRPERSON:** And in regard to Bloemfontein.

**MR MARK EDMUND VAUGHAN:** Yes.

**CHAIRPERSON:** 1 700 000 there is nothing that tells the reader what  
those are? Is it money or is it litres?

**MR MARK EDMUND VAUGHAN:** You are quite right.

**CHAIRPERSON:** Whereas when you go to the fourth or fifth column at  
10 the top at least it says ZAR/litres you know rands per litre you know  
then you can understand. So it caused at least me some confusion  
earlier and the previous witness was not sure also. So that is the one  
point. The second point therefore is that at the bottom you have got LR  
because that is now what you charge per hour and you have got per  
hour there.

**MR MARK EDMUND VAUGHAN:** Yes Chair.

**CHAIRPERSON:** Which makes it easier for us to understand.

**MR MARK EDMUND VAUGHAN:** You quite right Chair. You know the  
only reason why I know that it is litres because I have got a good  
20 knowledge.

**CHAIRPERSON:** Yes.

**MR MARK EDMUND VAUGHAN:** Of what SA Express uses.

**CHAIRPERSON:** Yes.

**MR MARK EDMUND VAUGHAN:** At the different locations.

**CHAIRPERSON:** No thank you.

**ADV KATE HOFMEYR:** Thank you Mr Vaughan. And then I would like to take you if I may just to the end of your evidence bundle which is DD11 because there are a few documents that were inserted right at the end of the bundle from page 310, 310 which we received this morning and which I understand was not part of your affidavit or its annexures. But Mr Vaughan are they documents that you are familiar with?

**MR MARK EDMUND VAUGHAN:** They are Chair.

**ADV KATE HOFMEYR:** Thank you. Once we have all got there I will  
10 ask you to take us through them.

**CHAIRPERSON:** 310?

**ADV KATE HOFMEYR:** 310 indeed Chair.

**CHAIRPERSON:** Ja okay.

**ADV KATE HOFMEYR:** And just before we go there just so we orientate ourselves in time in your evidence Mr Vaughan I have it before the break we concluded at the end of 2017 because your affidavit at page 15 at paragraph 53 talks about a further extension that occurred on the 11 December 2017, do you recall that?

**MR MARK EDMUND VAUGHAN:** That is correct.

20 **ADV KATE HOFMEYR:** And so now we move just a few days later in this correspondence at the 5 December as I see it there. What is this correspondence about?

**MR MARK EDMUND VAUGHAN:** On the 15 September...

**ADV KATE HOFMEYR:** December I have it.

**MR MARK EDMUND VAUGHAN:** Of December.

**ADV KATE HOFMEYR:** Thank you.

**MR MARK EDMUND VAUGHAN:** I am sorry. 15 December Doctor Sam Vilakazi sent me an email with a letter attached to it stating that SA Express had been contracted with EML since July on fuelling matters not necessarily all over the place – not in all areas and that he was informing or notifying once approvals had been gained that he – that SA Express would like to move 1.8 million litres if I am not mistaken to EML Energy.

**ADV KATE HOFMEYR:** Let us go to that letter if we may?

10 **MR MARK EDMUND VAUGHAN:** Yes okay.

**ADV KATE HOFMEYR:** Because it may be useful to look at it. It is at 312.

**MR MARK EDMUND VAUGHAN:** Ja so...

**ADV KATE HOFMEYR:** So can you confirm this is the letter attached to the email?

**MR MARK EDMUND VAUGHAN:** That is correct. So the letter – I got the letter in front of me and this is what – this is the letter that was attached to the email sent to me. So in that letter just specifies it says there 1.822357 monthly volume. So it does not say litres or whatever,  
20 that is what it says there. So 1.8 cubic meters, 1 822 cubic meters so going back to Doctor Vilakazi in an email that I went back to him on...

**ADV KATE HOFMEYR:** Mr Vaughan...

**MR MARK EDMUND VAUGHAN:** Yes.

**ADV KATE HOFMEYR:** If you do not mind just before you go there.

**MR MARK EDMUND VAUGHAN:** Sorry.

**ADV KATE HOFMEYR:** I do not have it yet from your evidence what precisely Doctor Vilakazi was communicating to you about their intentions in relation to that 1.822...

**MR MARK EDMUND VAUGHAN:** So from the letter his intention was that he would – SA Express would like EML to supply their volume in OR Tambo or at Joburg.

**ADV KATE HOFMEYR:** Thank you.

**MR MARK EDMUND VAUGHAN:** That is what the intention was.

**ADV KATE HOFMEYR:** And then if we go over to your response.

10 **MR MARK EDMUND VAUGHAN:** So in my response to him I just wanted some clarity on what the 1.822 was. I was assuming that it would be million litres 1.82 million litres or he need to specify whether it was volumetric as in cubic meters or whatever the case might be so we knew exactly what we were talking about. So that was just getting clarity on that and I said if it is 1.82 million litres that would equate to about 90% of the volume in Johannesburg just getting – just giving them that clarity and that we were in the process of an extension and we then would have GSM, the Global Supply Management [indistinct] Sogwazile would need to – would need to notify or take that our of the  
20 letters of extension that we were going to be giving to the suppliers that supplied SAA, SA Cargo and also then of course SA Express we would have to take their volume out of there if they were going to go alone.

**ADV KATE HOFMEYR:** So can I just get clarity on page 313 the last sentence there you say – in addition as per Tamies I take that to be a

reference to Mr Sogwazile, is that right?

**MR MARK EDMUND VAUGHAN:** That is right.

**ADV KATE HOFMEYR:** Mail we would need to exclude SA Ex volume from the LOE is that letter of extension?

**MR MARK EDMUND VAUGHAN:** Letter of extension.

**ADV KATE HOFMEYR:** That are going to current suppliers for extension 1 January 2018 to 30 June 2018. Mr Vaughan is that a reference to the evidence you have just given about the extension that happened in December 2027?

10 **MR MARK EDMUND VAUGHAN:** That is correct.

**ADV KATE HOFMEYR:** So just unpack that for me, why would you exclude SA EX Volume from the extensions if this were to go ahead?

**MR MARK EDMUND VAUGHAN:** Because they were asking that they get supplied through EML.

**ADV KATE HOFMEYR:** I see. Thank you.

**MR MARK EDMUND VAUGHAN:** Chair sorry.

**ADV KATE HOFMEYR:** And then if you go to 315 there is a response from Doctor Vilakazi. What was that response?

20 **MR MARK EDMUND VAUGHAN:** Okay so he says it should be litres that is the first thing. So to my first question. Can I revert back to you shortly about the timelines taking into account the holiday season or the holiday period which being December.

**ADV KATE HOFMEYR:** And what happens after that?

**MR MARK EDMUND VAUGHAN:** I am not sure what happened after that. There was correspondence between GSM and SA Express I do

not – well I believe I know that this did not go ahead.

**ADV KATE HOFMEYR:** It did not?

**MR MARK EDMUND VAUGHAN:** No.

**CHAIRPERSON:** And what – what did you think about the fact that he provide – about the clarification he provided that it should be litres? Did that say anything to you?

**MR MARK EDMUND VAUGHAN:** Well it does not really say anything to me because 1.8 litres is not very much Chair.

**CHAIRPERSON:** Yes.

10 **MR MARK EDMUND VAUGHAN:** Ja so it was 1.8 million litres. But it was volumetric so it gave me a good indication. And given the fact that I had gone back to him and saying it was 90% of the SAA volume that would have given that it was – so he was – in my opinion from this he was saying that is litres and I am correct with the 90%.

**CHAIRPERSON:** Oh okay.

**ADV KATE HOFMEYR:** If – if – it might just assist Mr Vaughan when we were looking at that pricing schedule a moment ago we – there was an indicative volume annually for each of the locations as I had it that was at page 99 of Ms Loock's evidence which is in DD12. If we look  
20 across at Johannesburg which I understand the engagements between yourself and Mr Vilakazi – Doctor Vilakazi were about, is that correct?

**MR MARK EDMUND VAUGHAN:** That is correct.

**ADV KATE HOFMEYR:** You will see an indicative annual volume as I understand the table through your evidence to indicate 21.2 million litres, is that correct?

**MR MARK EDMUND VAUGHAN:** That is correct but you must remember I never had sight of that table.

**ADV KATE HOFMEYR:** No indeed but you do I understand from your evidence have a sense of the indicative volumes at each of the locations.

**MR MARK EDMUND VAUGHAN:** Absolutely because I manage the accounts.

**ADV KATE HOFMEYR:** And do you know if you times 1.8 by 12...

**MR MARK EDMUND VAUGHAN:** That is exactly what it comes to.

10 **ADV KATE HOFMEYR:** It will come to about 21.2, is that right?

**MR MARK EDMUND VAUGHAN:** That is correct Chair.

**ADV KATE HOFMEYR:** So is that a further indication that you were speaking on the same terms when you went back and said well that is about 90% of the full volume requirement for SA Express at Johannesburg?

**MR MARK EDMUND VAUGHAN:** That is correct Chair.

**ADV KATE HOFMEYR:** Thank you. Thank you but as I have your evidence that extension did not take place, is that right to EML?

**MR MARK EDMUND VAUGHAN:** The award to EML did not take place.

20 **ADV KATE HOFMEYR:** Thank you. And if we then return to your affidavit at page 15 you will see a heading there the 2018 RFP, do you have that?

**MR MARK EDMUND VAUGHAN:** I do.

**CHAIRPERSON:** That is on page

**ADV KATE HOFMEYR:** 15, 15 Chair.

**CHAIRPERSON:** Oh okay.

**ADV KATE HOFMEYR:** And again to orientate ourselves in time we learnt of the extension of December 2017 which would have taken SAA to June 2018, is that correct?

**MR MARK EDMUND VAUGHAN:** That is correct.

**ADV KATE HOFMEYR:** And so if we pick it up at paragraph 54 what happens in May in relation to jet fuel procurement in SAA?

**MR MARK EDMUND VAUGHAN:** Okay on the 3 May a RFP was sent out for jet fuel supply and that would have been from – for the period  
10 from the 1 July 2018.

**ADV KATE HOFMEYR:** Until?

**MR MARK EDMUND VAUGHAN:** For one year.

**ADV KATE HOFMEYR:** Right.

**MR MARK EDMUND VAUGHAN:** So up until the end of this month, next week.

**ADV KATE HOFMEYR:** Right. And in the next paragraph you talk to us about the differences between the 2016 and the 2018 RFP that has gone out in May. What were those differences?

**MR MARK EDMUND VAUGHAN:** Okay so the differences really  
20 between 2016 and 2018 is that a billion dollar insurance was needed at that stage. There was also the difference between the two RFP's was that this time around it was purely on a commercial basis. So SAA was looking for the best priced fuel we were not looking at any transformation agenda at this stage we were looking at the best price. There was also that it will only be sent out to companies that had ACSA

throughput approval so that was the – and the billion dollar insurance was a critical criteria. The other critical criteria was not mentioned in the RFP because with a company having ACSA approval they would have automatically have had – had the correct specification of fuel. They would have had the ability to put it into the wing of the aircraft and so forth.

**ADV KATE HOFMEYR:** And would they also have had to be JIG compliant?

**MR MARK EDMUND VAUGHAN:** Absolutely.

10 **ADV KATE HOFMEYR:** Joint Inspection Group compliant?

**MR MARK EDMUND VAUGHAN:** Yes.

**ADV KATE HOFMEYR:** As you described earlier. Thank you Mr Vaughan you have indicated the differences I suspect it is an obvious difference but I would like your comment on it. The other one that occurs to me is that 2016 was for a period of three years it then of course became five but this was only for a year is that correct?

**MR MARK EDMUND VAUGHAN:** That is correct.

**ADV KATE HOFMEYR:** And as I understand your evidence earlier that year accords with your experience in the industry of the length of time  
20 that fuel supplies will be willing to bind themselves, is that accurate?

**MR MARK EDMUND VAUGHAN:** That is correct.

**ADV KATE HOFMEYR:** And what happened with that process?

**MR MARK EDMUND VAUGHAN:** Okay so the RFP was sent out and we had respondents – we had respondents know we must just bear in mind this was across the country. So we had respondents from let me just

think now the 6, 7, 8, 9 – we had 9 respondents. Of the 9 respondents there were 8 in Johannesburg. There in Johannesburg at OR Tambo you typically have – you would have had – well I will tell you what we had. In Johannesburg we had Total, Sasol. We had BP, Shell, Engen, Puma, Waza and EML that applied and they were licenced with ACSA. **ADV KATE HOFMEYR**: Right and there if you go over the page to 16 there was an evaluation of that tender as I have it from the heading there above paragraph 60 and what was the outcome of that evaluation process?

10 **MR MARK EDMUND VAUGHAN**: The outcome of that evaluation process is that Sasol came in with the best pricing. Thereafter we had Waza was in second position. Third position was Total and fourth position was EML. Then we had Puma Energy, we had BP, Shell and Engen coming in after that.

**ADV KATE HOFMEYR**: And what steps did you take in particular in relation to Sasol and Waza on the one hand and Total and EML on the other?

**MR MARK EDMUND VAUGHAN**: Okay so I think it is important to understand as we said earlier in the evidence today is that inherently  
20 the inland refiners have got an advantage because of where they are placed in relation to Jo – to OR Tambo. So we had Waza came in second because they were on the back of Sasol. Sasol being the best pricing with their mark-up onto that they still came in ahead of Total and Engen and so on. So what we did is because we were looking for the best pricing and we that Waza's fuel was coming from Sasol we

then approached Sasol directly. Sasol had bid on 13 million litres for SAA and for well SAA and SA Express which is a very small portion of that but for the group that we were negotiating for we said to Sasol are they prepared to give us the 2 million litres that they had allocated to Waza directly at the price that they had told us and they said they were. So on grounds of that we excluded Waza. We did exactly the same with Total. We went to Total, Total was prepared to give us 4 million litres and 2 million litres to EML. We said to Total are you prepared to – exactly the same as we did with Sasol – we asked them  
10 are they prepared to give us the 2 million litres instead of giving it to EML, they said they were not. So we enquired why they were not they said that they were already at the ceiling limit because companies also look at the exposure to SAA and to any other company but to SAA and they said the 4 million litres was the exposure ceiling to SAA and – so we said but then why can you give it to a small company like EML which is possibly risky they said it forms a different risk profile and that is why they are prepared to give to EML that would supply to us in any case. I think that basically covers that.

**ADV KATE HOFMEYR:** Thank you.

20 **MR MARK EDMUND VAUGHAN:** The reason for that. So we – so in other words you still had Sasol was in first place, Total second, EML was still the third best in pricing and we gave it to them on commercial terms.

**ADV KATE HOFMEYR:** Thank you. And then if we go to a document further on in your bundle DD11 you will find it at page 273. It is a

document dated 25 October 2017 that is Chair page 273 under Tab 14.

**CHAIRPERSON**: Thank you.

**ADV KATE HOFMEYR**: I would like to just spend a bit of time on this document with you Mr Vaughan. What is this document?

**MR MARK EDMUND VAUGHAN**: This is the throughput agreement that EML had received from ACSA.

**ADV KATE HOFMEYR**: And just help us to place it and its relevance in the context of the 2018 tender. I recall your evidence to be that you only issued the RFP to entities with this throughput status, is that  
10 correct?

**MR MARK EDMUND VAUGHAN**: That is correct.

**ADV KATE HOFMEYR**: So was this a document that you saw at the time of the evaluation?

**MR MARK EDMUND VAUGHAN**: I did not see this document.

**ADV KATE HOFMEYR**: So it is has subsequently been given to you by the commission's investigators, is that correct?

**MR MARK EDMUND VAUGHAN**: That is quite correct.

**ADV KATE HOFMEYR**: Would it have been a document that served before another group within the decision making or evaluating  
20 committee?

**MR MARK EDMUND VAUGHAN**: I believe so yes.

**ADV KATE HOFMEYR**: And what does ...

**CHAIRPERSON**: Mr Vaughan just wait for Ms Hofmeyr.

**MR MARK EDMUND VAUGHAN**: I am sorry.

**CHAIRPERSON**: To finish her question before you answer.

**MR MARK EDMUND VAUGHAN:** Ja thank you.

**CHAIRPERSON:** Otherwise..

**MR MARK EDMUND VAUGHAN:** Will do Chair thank you.

**CHAIRPERSON:** The transcript will look quite bad. Okay.

**ADV KATE HOFMEYR:** And there tend to be square brackets inaudible.

**CHAIRPERSON:** Ja inaudible.

**ADV KATE HOFMEYR:** Cross speaking or some such that.

**CHAIRPERSON:** Just wait for...

**MR MARK EDMUND VAUGHAN:** Sorry about that Chair.

10 **CHAIRPERSON:** Just wait for her to finish her question okay. Yes.

**ADV KATE HOFMEYR:** Thank you Chair. If we go to page 273 which I have as the beginning of the letter could you read to us what appears at paragraph 1 and 2 on that page?

**MR MARK EDMUND VAUGHAN:** Okay.

20                   “Reference is made to the application submitted by EML to become a throughput at OR Tambo. We confirm that same was considered and submitted to the airports’ manager committee meeting AM MANCO which commenced – committee sat on the 19 October 2019.”

**ADV KATE HOFMEYR:** Sorry 2017 as I see it.

**MR MARK EDMUND VAUGHAN:** 17.

**ADV KATE HOFMEYR:** Thank you.

**MR MARK EDMUND VAUGHAN:**

“We are pleased to announce that EML application to

become a through-putter has been approved by the AM MANCO. According to EML – accordingly EML will be able to provide service to the airlines you have and or will contract with. This approval is valid up until the 31 March 2019 which can be extended at the sole discretion of Airports Company South Africa.”

**ADV KATE HOFMEYR:** Thank you Mr Vaughan. What I am interested in receiving your comment on is just clarify for us what was the period  
10 for which this fuel supply agreement was going to be concluded with successfully tenderers in the 2018 tender process?

**MR MARK EDMUND VAUGHAN:** From the 1 July 2018 up until the 30 June 2019.

**ADV KATE HOFMEYR:** And with that in mind Mr Vaughan do you see at paragraph 2 that this letter is indicating that the throughput approval from ACSA will be valid until 31 March 2019?

**MR MARK EDMUND VAUGHAN:** I do Chair.

**ADV KATE HOFMEYR:** That on my calculation is short of the year for which the tender was going to be awarded, is that correct?

20 **MR MARK EDMUND VAUGHAN:** You are quite correct.

**ADV KATE HOFMEYR:** Is this an issue that to your knowledge was engaged with by the evaluators of the bids?

**MR MARK EDMUND VAUGHAN:** I would not think so – they would have looked to see if they had approval at time of award.

**ADV KATE HOFMEYR:** Would that have been an appropriate approach

to adopt Mr Vaughan?

**MR MARK EDMUND VAUGHAN:** Possibly not but it is done – well up until now that is – it has been done because if you take – if I can just give you an example if you do not mind Chair? The JV members which is Sasol, Total, Shell, BP and Engen their licence I – as far as I know have lapsed in – or would have lapsed in December which would also have been halfway through the contract, the SAA contract and it has been subsequently renewed. So it is in my view it is so – you know to line up contracts that SAA or airlines go out on with licence agreements  
10 is sometimes difficult. Whether that is prudent or not we need to review that.

**ADV KATE HOFMEYR:** Just I would be interested in your comment on it. It – it appears at least at face value to create some risk in your selection of successful bidders ...

**MR MARK EDMUND VAUGHAN:** Absolutely ...

**ADV KATE HOFMEYR:** Because ...

**MR MARK EDMUND VAUGHAN:** It is a risk.

**ADV KATE HOFMEYR:** As I read paragraph it is in the sole discretion of ACSA whether they are going to approve beyond 31 March. Do you  
20 see that?

**MR MARK EDMUND VAUGHAN:** That clause there makes it very risky.

**ADV KATE HOFMEYR:** So the upshot of it is this maybe common practice I understand your evidence to be it is but what would be your comment if I said there is an inherent risk that there will not be extension beyond the point that the approval is valid for at the time of

the tender?

**MR MARK EDMUND VAUGHAN:** You are quite right Chair.

**ADV KATE HOFMEYR:** Is that an issue that has arisen in the past at all?

**MR MARK EDMUND VAUGHAN:** Not at all.

**ADV KATE HOFMEYR:** Thank you and if we then move to your page 18 Mr Vaughan in your affidavit you commenced at paragraph 71 there indicating what occurred on 12 June 2018. What was that?

**MR MARK EDMUND VAUGHAN:** Is that point 74?

10 **ADV KATE HOFMEYR:** Seven – 71.

**CHAIRPERSON:** 71.

**MR MARK EDMUND VAUGHAN:** 71.

**ADV KATE HOFMEYR:** We start at 71.

**MR MARK EDMUND VAUGHAN:** Okay sorry. Okay. On 12 June there was a recommendation made to the BAC approving EML as one of the suppliers.

**ADV KATE HOFMEYR:** And when did the BAC take that forward?

**MR MARK EDMUND VAUGHAN:** 13 June Chair ...

**ADV KATE HOFMEYR:** And what ...?

20 **MR MARK EDMUND VAUGHAN:** 2018.

**ADV KATE HOFMEYR:** What was their recommendation?

**MR MARK EDMUND VAUGHAN:** Okay. Their recommendation was to approve BP, Shell, Chevron, Sasol, Protel, Puma, EML and Engen as fuel suppliers for a period commencing 1 July 2018 to 30 June 2019.

**ADV KATE HOFMEYR:** And what ultimately happened at Board level in

relation to that decision?

**MR MARK EDMUND VAUGHAN:** Okay. At Board level they approved it.

**ADV KATE HOFMEYR:** Thank you and on what date was that? You will find that at paragraph 73.

**MR MARK EDMUND VAUGHAN:** Thanks so much. That was 29 June.

**ADV KATE HOFMEYR:** And 2019 is that right?

**MR MARK EDMUND VAUGHAN:** Ja. That is correct.

**ADV KATE HOFMEYR:** No that cannot be correct.

10 **CHAIRPERSON:** That cannot be correct.

**MR MARK EDMUND VAUGHAN:** 2018.

**ADV KATE HOFMEYR:** It is – we will need to make a ...

**MR MARK EDMUND VAUGHAN:** You are right.

**ADV KATE HOFMEYR:** A correction there. Are you comfortable with that sentence reading:

“In their meeting dated 29 June 2018 ...”

**MR MARK EDMUND VAUGHAN:** Absolutely. That is the right date.

**ADV KATE HOFMEYR:** “...the Board took a decision.”

20 **MR MARK EDMUND VAUGHAN:** otherwise we would have been in a time ...

**ADV KATE HOFMEYR:** Or we teleported ourselves ...

**MR MARK EDMUND VAUGHAN:** Ja.

**ADV KATE HOFMEYR:** Forward in time right. If ...

**CHAIRPERSON:** Of course it is a meeting of the 29<sup>th</sup>?

**ADV KATE HOFMEYR:** Yes indeed.

**CHAIRPERSON:** Not a meeting dated the 29th.

**ADV KATE HOFMEYR:** No indeed. That is – that also we should have said in their meeting of 29 June. Is that accurate ...

**MR MARK EDMUND VAUGHAN:** *Ja.*

**ADV KATE HOFMEYR:** Mr Vaughan? Thank you. At 74 you talk about an article that appeared prior to that recommendation of EML being appointed from the BAC will you please tell us what that article indicated and what approach was taken to it within SAA?

**MR MARK EDMUND VAUGHAN:** Okay. On 28 May 2018 there was  
10 article that appeared in one of the Sunday papers stating that EML had got – they got – they were awarded by SA Express – they were awarded a contract by Express irregularly – irregular award it was a lucrative - that is basically what it said ...

**ADV KATE HOFMEYR:** And were you aware of the article at the time?

**MR MARK EDMUND VAUGHAN:** I was aware of it.

**ADV KATE HOFMEYR:** And did you take any steps in relation to it?

**MR MARK EDMUND VAUGHAN:** I did not because it said that it was  
irregular. There was not a proper procurement followed by SA Express. My question was to the team our process was regular. It was a tender  
20 process that took place and that we had evaluated EML – evaluated them with everybody else and they had come out with a competitive bid. So I did not take – I did not take that or I took it into account.

**ADV KATE HOFMEYR:** And if we go over the page to page 19 can you clarify was the article brought to the attention of the Board at all?

**MR MARK EDMUND VAUGHAN:** No it was not. Not to my knowledge

(intervenes).

**ADV KATE HOFMEYR:** But you would not know if any of them had independently been aware of it?

**MR MARK EDMUND VAUGHAN:** That is correct Chair.

**ADV KATE HOFMEYR:** Did you attend the Board Meeting at which the decision was finally made?

**MR MARK EDMUND VAUGHAN:** No.

**ADV KATE HOFMEYR:** Thank you and at page 19 you have a heading there “EML Performance”. Can you take us through after award the  
10 extent to which EML performed under the agreement?

**MR MARK EDMUND VAUGHAN:** EML with the other majors were awarded from 1 July 2018. EML started supplying us for the first 10 to 15 days of July. Thereafter they were unable to supply for the rest of the month. The reason being that we understood was that there was a deposit that needed to be paid to the JV in order to put through or to have a throughput and they had not paid that yet. So there they could not supply for the rest of the month.

**ADV KATE HOFMEYR:** And what happened thereafter?

**MR MARK EDMUND VAUGHAN:** In August EML approached us and  
20 said that they would be asking an IDC guarantee to be moved to Shell from Total because they wanted to change suppliers from Total to Shell. So that took place in the month of August – I believe. September and October they supplied us through Shell through the JV and in August in well when they approached us when they were moving it to Shell they wanted to meet with us to negotiate terms.

We did meet with them. We told them we cannot negotiate terms as the Letter of Award was given on the basis of them – well on the pricing that they had given and also the terms. So in other words payment terms and everything and we could not negotiate that midway through a contract. The supply then was given for two months on the pricing that was agreed to in the award – in the Letter of Award for September and October.

**ADV KATE HOFMEYR:** And what happened thereafter?

**MR MARK EDMUND VAUGHAN:** After September they approached us  
10 again and said that they would be moving their supply back to Total and they had approached the IDC I believe to then move the guarantee back to Total which was required before Total would give or supply fuel to them.

**ADV KATE HOFMEYR:** And were they able to supply fuel after that point?

**MR MARK EDMUND VAUGHAN:** Well since that point up until today we have not received anything from EML. So EML supplied fuel to SAA for two months and – call it – 15 days (intervenes).

**ADV KATE HOFMEYR:** Since their award in – that ought to have  
20 commenced from 1 July 2018. Is that correct?

**MR MARK EDMUND VAUGHAN:** That is correct Chair.

**ADV KATE HOFMEYR:** Thank you and then if you go over to page 20 at paragraph 84 there you talk about an interaction that occurred with the IDC. What happened there?

**MR MARK EDMUND VAUGHAN:** In the process of EML wanting to

move their guarantee back to Total we were informed by EML that the IDC would like to meet with us and on 30 November there was a meeting that took place where the – where employees of the IDC came to see us.

What they were asking for - they were asking for the performance of EML as well as were they invoicing us correctly. So our response to – to the IDC at that point was that we told them exactly what I have said now is that EML supplied us for 15 days in the first month of the contract.

10 August no supply and on 31 November for the month of November they had not – they had not supplied us either. On the point where they said was E – EML invoicing us correctly we said they had invoiced us correctly. So when they did supply they gave us the correct pricing and they charged us the correct amount.

**ADV KATE HOFMEYR:** And Mr Vaughan from paragraph 86 on that page you deal with the impact of EML's non-performance on SAA. Can you describe us – describe for us what that impact has been?

**MR MARK EDMUND VAUGHAN:** Okay. So if you look at SAA at the – when we out on tender it was for – I speak correction – it was four  
20 about call it 40 million litres. EML was supplying two percent - *ag* – 2 million litres per month which is less than three percent of the total volume. Now bearing in mind that when we talk about volumes it is indicative volumes so the R swings up and down.

There would not – if EML could not supply from a security of supply point of view it would not be a big problem because we could

spread that that those 2 million litres amongst the rest of the suppliers. That is also a reason why airlines generally around the world especially at their hub airport like Johannesburg – OR Tambo is would spread the risk amongst the multiple suppliers.

So that if one supplier cannot supply you can get the volume from other suppliers or get it easily but in – if you have a look at that – so there was from the spreading of the risk the 2 million litres was not an issue and to aid with it as well SA in this period has cut back on routes due to the position we are in at the moment.

10 So we have cancelled non-profit making routes and so our volumes are also lower than – that we had out on tender. So to replace 2 million litres in short was not a problem Chair.

**ADV KATE HOFMEYR:** And – and if I could just pick up a point there. I meant to actually ask it earlier. If you look at that ranking of the prices in the 2018 tender it does occur to one to ask well why did you not give the full volume to the cheapest provider or supplier of fuel. I understand you now to have explained that there is a need to spread the risk of supply. Is that correct?

**MR MARK EDMUND VAUGHAN:** That is correct. So what you do is –  
20 how do I answer this? First of all you have – you have multiple suppliers. You would like to have more supply than demand because then you can give to the most competitive suppliers. So in the case – and which we do – I mean we give to the – the first thing you look at it is security of supply.

Given the case of Johannesburg all the suppliers are – are

reputable suppliers. We have got security of supply from them. So the person who comes in or the company that comes in at the most competitive price for instance – Sasol – would get their full volume that they bid for. So in the case of Sasol they got 15 million litres and then you go down the scale and at the end the company that has got the most expensive falls off.

So that you will see that we do not supply – we do not – we do not award to – we do not award to all the companies that bid.

**ADV KATE HOFMEYR:** And you also I understand your evidence – we  
10 do not award to a sole supplier?

**MR MARK EDMUND VAUGHAN:** That is correct (intervenes).

**ADV KATE HOFMEYR:** That would increase your risk too much. Is that correct?

**MR MARK EDMUND VAUGHAN:** That is (indistinct) yes. So on all – all occasions where there are very small volumes where there only sole suppliers you then award to but you are quite right Chair you are quite right.

**ADV KATE HOFMEYR:** And if I just follow up on the point about the impact of EML's non-performance I understand you to say ...

20 **CHAIRPERSON:** Or maybe before that.

**ADV KATE HOFMEYR:** Apologies Chair.

**CHAIRPERSON:** Thank you. Where you spread your risk as you say to different suppliers would the agreement be generally that you are one of our suppliers. That does not mean we are obliged to get fuel from you all the time. We have a number of suppliers and we ask anyone of

them at any particular time to give us so much and obviously we will try and spread that because you do not want – want to be - on the panel as it were – but not get anything.

Would that be the basis so that no – no one can claim that so much must be – so much fuel must be obtained from them no matter what? In other words is there – is there a minimum or is there no minimum that you have got to get from each one or it is simply that you are on the panel and during the period when you are on the panel sometimes we will ask you for fuel sometimes we will not ask you.

10 **MR MARK EDMUND VAUGHAN:** Chair if I can maybe explain a little bit more ...

**CHAIRPERSON:** Yes.

**MR MARK EDMUND VAUGHAN:** It might give clarity.

**CHAIRPERSON:** Yes.

**MR MARK EDMUND VAUGHAN:** So what happens is we ask – we say this is what – this is the volume that is required. We then go out to the panel of companies – if you want to put it that way and we say to them please bid on the volume and give us your pricing.

**CHAIRPERSON:** Yes.

20 **MR MARK EDMUND VAUGHAN:** So with their appetite risk towards SAA or the airline they – and all what they have got available as well they would bid a certain volume.

**CHAIRPERSON:** Yes.

**MR MARK EDMUND VAUGHAN:** Now with that been said we would then – we go through the price or through the evaluation process ...

**CHAIRPERSON:** Hm.

**MR MARK EDMUND VAUGHAN:** And see who is the most competitive in their pricing.

**CHAIRPERSON:** Hm.

**MR MARK EDMUND VAUGHAN:** So the most competitive company then would get the full volume that they bid for.

**CHAIRPERSON:** Hm.

**ADV KATE HOFMEYR:**

**MR MARK EDMUND VAUGHAN:** So it is indicative volume. So they do  
10 not get exactly the same every month ...

**CHAIRPERSON:** Hm.

**MR MARK EDMUND VAUGHAN:** But they would get the full volume they ...

**CHAIRPERSON:** Hm.

**MR MARK EDMUND VAUGHAN:** Bid for. Company number two then would get most probably they would also get the full volume they bid for and so on down the list until we have made up the volume that was out on tender and then ...

**CHAIRPERSON:** Until you make up ...?

20 **MR MARK EDMUND VAUGHAN:** The last company would fall off or last two companies would fall off the list.

**CHAIRPERSON:** Would that would until you make up 100 percent of what you need?

**MR MARK EDMUND VAUGHAN:** That is right.

**CHAIRPERSON:** Yes.

**MR MARK EDMUND VAUGHAN:** That would make – sorry Chair.

**CHAIRPERSON:** Yes.

**MR MARK EDMUND VAUGHAN:** I spoke before you finished.

**CHAIRPERSON:** No that is fine.

**MR MARK EDMUND VAUGHAN:** Oh.

**CHAIRPERSON:** But is it on the basis that during the period of the agreement we expect you to have available to us at different intervals maybe different amounts but at the end of the period what we undertake to do is get from you not less than so much?

10 **MR MARK EDMUND VAUGHAN:** So it is not – not less than case Chair.

**CHAIRPERSON:** *Ja*.

**MR MARK EDMUND VAUGHAN:** It is an – an indication ...

**CHAIRPERSON:** It is the exact amount?

**MR MARK EDMUND VAUGHAN:** *Ja*. So it is indication. So at the end of the period there could be slight a fluctuation month to month ...

**CHAIRPERSON:** Oh.

**MR MARK EDMUND VAUGHAN:** But at the end of the period for instance it may ...

**CHAIRPERSON:** It is more or less?

20 **MR MARK EDMUND VAGHAN:** Yes more or less. Within – whether you can call it a five percent swing up or down.

**CHAIRPERSON:** Yes.

**MR MARK EDMUND VAUGHAN:** *Ja*.

**CHAIRPERSON:** So – so – but you – you – the volume you get from – you agree upon with a particular supplier is an – is a volume for the

whole period?

**MR MARK EDMUND VAUGHAN:** That is correct Chair.

**CHAIRPERSON:** And each month you might be asking for a portion of that?

**MR MARK EDMUND VAUGHAN:** That is correct.

**CHAIRPERSON:** Different portions?

**MR MARK EDMUND VAUGHAN:** That is correct.

**CHAIRPERSON:** As long as at the end of the period what you have asked from them is more or less the indication that had been agreed?

10 **MR MARK EDMUND VAUGHAN:** That is correct Chair.

**CHAIRPERSON:** Okay, alright and that that – that helps among other things that if the one supplier has a strike you are not stranded. Your – your aircrafts continue to fly because you go to anyone or more of the other suppliers?

**MR MARK EDMUND VAUGHAN:** So if there would be a strike or a shutdown or a – not a scheduled shutdown ...

**CHAIRPERSON:** *Ja.*

**MR MARK EDMUND VAUGHAN:** Anything like that or if ...

**CHAIRPERSON:** Yes.

20 **MR MARK EDMUND VAUGHAN:** If a pipeline failed or if ...

**CHAIRPERSON:** Yes.

**MR MARK EDMUND VAUGHAN:** A rail accident.

**CHAIRPERSON:** Yes.

**MR MARK EDMUND VAUGHAN:** Yes that is correct Chair.

**CHAIRPERSON:** Yes, okay and if you had one supplier then you would

have a problem in that situation?

**MR MARK EDMUND VAUGHAN:** Very true.

**CHAIRPERSON:** Okay.

**ADV KATE HOFMEYR:** And then to follow up on the impact of EML's non-performance I understand your evidence Mr Vaughan to be in summary that it did not have a negative impact. Is that correct?

**MR MARK EDMUND VAUGHAN:** That is correct.

**ADV KATE HOFMEYR:** But as I understand your evidence that is dependent on two conditions. The one was the small percentage of the  
10 total volume that they were going to be supplying. Is that correct?

**MR MARK EDMUND VAUGHAN:** That is correct.

**ADV KATE HOFMEYR:** Is it fair for me to say it would follow from that that the greater the proportion of the volume that they were supplying or any non-performing supplier was allocated would have a greater negative impact/

**MR MARK EDMUND VAUGHAN:** That is correct.

**ADV KATE HOFMEYR:** And then the second factor as I understood your evidence was that it so happened in the period that we are looking at here that SAA had cancelled certain routes and so its actual  
20 requirements were less than what you had estimated as the indicative requirements. Is that correct?

**MR MARK EDMUND VAUGHAN:** That is correct Chair.

**ADV KATE HOFMEYR:** And so similarly if you had not – I will not call it – had that fortune because it may not have been a fortune to SAA to cancel routes ...

**MR MARK EDMUND VAUGHAN:** You are right.

**ADV KATE HOFMEYR:** But if – if it had been the case and a given here that you had increased routes in fact then the impact of non-performance on any of the allocated suppliers – I assume – would have been greater?

**MR MARK EDMUND VAUGHAN:** That is correct.

**ADV KATE HOFMEYR:** Thank you for that and then the current status of that contract with EML if you can just conclude to give us a picture of that.

10 **MR MARK EDMUND VAUGHAN:** The current status of the contract is still running. It expires in a few days' time.

**ADV KATE HOFMEYR:** So it was not cancelled?

**MR MARK EDMUND VAUGHAN:** No it was not cancelled.

**ADV KATE HOFMEYR:** But there has not been performance as I understand your evidence since November 2018. Is that correct?

**MR MARK EDMUND VAUGHAN:** That is correct.

**ADV KATE HOFMEYR:** Thank you Chair. Those are the questions from our side.

**CHAIRPERSON:** Yes.

20 **ADV KATE HOFMEYR:** As I indicated at the outset of Mr Vaughan's evidence it plays an important part in linking what then happens in the later evidence that will be presented of the investigation on the IDC Funding side.

**CHAIRPERSON:** Yes. Thank you very much Mr Vaughan for coming to give evidence. If you required to come back we will ask you but

otherwise you are excused.

**MR MARK EDMUND VAUGHAN:** Thanks so much Chair.

**CHAIRPERSON:** Thank you. Is that what we have for today?

**ADV KATE HOFMEYR:** It is Chair.

**CHAIRPERSON:** Yes.

**ADV KATE HOFMEYR:** My proposal is that we should be comfortable to complete within the course of tomorrow with tomorrow's witness and so starting at 10:00 am should be convenient.

**CHAIRPERSON:** Okay. No that is fine. We will adjourn the  
10 proceedings for the day. We will adjourn the proceedings for the day  
and tomorrow we will start at 10:00 am. We adjourn.

**REGISTRAR:** All rise.

**INQUIRY ADJOURNS TO 26 JUNE 2019**