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PROCEEDINGS ON 27 JUNE 2019

CHAIRPERSON: Good morning Ms Hofmeyr, good morning everybody.

ADV KATE HOFMEYR: Good morning DCJ – Chair apologies.

CHAIRPERSON: Thank you. Yes are we ready?

ADV KATE HOFMEYR: We are indeed Chair. If I may just deal with one or two procedural aspects before we swear in today's witness Mr Mahlangu. Mr Mahlangu provided us with his statement on the Friday before he was originally scheduled to give evidence and he was sent pursuant to our receipt of that certain further documents. I have
10 engaged with him and his attorneys about those documents. There is one in particular in which he has requested further time to address certain aspects. At that point in time I indicated that as a - the legal team we would have no difficulty with that and as a consequence I will not ask him about those aspects of the documents until we have the fuller version from him.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: It is not necessary for today's proceedings that I do so but we will look forward to the fuller account in due course. Chair I have also been alerted to the fact that there are about three
20 changes or corrections that Mr Mahlangu wishes to make in his statement. I am aware that he did then provide a fuller copy with the changes but I am going to request that we work off the original version because that is the version we have all been working with until now but we will make the relevant corrections where they arise in the course of his evidence. If that is satisfactory?

CHAIRPERSON: Okay that is fine.

ADV KATE HOFMEYR: And Chair the final thing is there are three affidavits of witnesses who – to whom reference and to which affidavit reference will be made in the course of Mr Mahlangu's evidence today. They have been sent to the relevant persons implicated by those affidavits and they have been provided to Mr Mahlangu in advance of today. Chair we do so only provisionally of course. It is simply that they are very small aspects of the evidence that fill a gap somewhere but if at any point they are disputed or contentious of course we will
10 approach you again to make – to take steps to then call those witnesses. But just for the purposes of getting Mr Mahlangu's comment on and reaction to some of them I propose to deal with them in the course of today.

CHAIRPERSON: Okay that is fine.

ADV KATE HOFMEYR: Thank you. Then without further ado if the witness could be sworn in?

CHAIRPERSON: Thank you please administer the oath or affirmation?

REGISTRAR: Please state your full names for the record?

MR DANIEL PHOLISANI MAHLANGU: Daniel Pholisani Mahlangu.

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

MR DANIEL PHOLISANI MAHLANGU: Nope.

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

MR DANIEL PHOLISANI MAHLANGU: Yes.

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, is so please raise your right hand and say, so help me God.

MR DANIEL PHOLISANI MAHLANGU: So help me God.

REGISTRAR: Thank you.

CHAIRPERSON: Yes you may proceed.

ADV KATE HOFMEYR: Thank you Chair if we could just for record purposes enter Mr Mahlangu's file containing his statement and annexures as Exhibit DD4.

10 **CHAIRPERSON:** The lever arch file containing Mr Pholisani Daniel Mahlangu's affidavit will be marked Exhibit DD4.

ADV PHILLIP MOKOENA: Mr Mahlangu just to orientate you in terms of what is in front of you today at the witness table. You have in the file immediately in front of you your statement as it was provided to the commission on the 14 June.

MR DANIEL PHOLISANI MAHLANGU: Yes.

ADV KATE HOFMEYR: You also have set of files on the chair next to you. Those are the files containing the evidence of previous witnesses and there will be points in the course of the evidence today where I will
20 ask you to take one of them and find a page in it for the purposes of the evidence. And then there are also a soft file in front of you which will become relevant later. Chair just to explain the soft file because I also have a copy that I would like to hand up to you. What happened with the BNP bid that went in for the transaction advisor services tender was that it was partly located in Ms Stimpel's annexures and

then partly located in Ms Nhantsi's annexures. What I have endeavoured to do to ease today's proceedings is put them together in a single place so that we do not have to keep moving between those two files at the relevant point. And so I beg leave if I may just to hand up that version of yours? You will see Chair that it actually contains the pagination from Ms Nhantsi's and Ms Stimpel's bundles.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: But they have been consolidated in one place.

CHAIRPERSON: Yes.

10 **ADV KATE HOFMEYR**: Just to ease the evidence.

CHAIRPERSON: No that is fine

ADV KATE HOFMEYR: So if I may beg leave to hand that up and then that is the other document in front of you Mr Mahlangu it is not anything you have not seen it is just pulling those various parts together in one place.

CHAIRPERSON: This need not go into record.

ADV KATE HOFMEYR: No.

CHAIRPERSON: Because it is already...

ADV KATE HOFMEYR: It is there.

20 **CHAIRPERSON**: In here it is just for convenience.

ADV KATE HOFMEYR: It is for convenience for today.

CHAIRPERSON: Ja. Okay.

ADV KATE HOFMEYR: Indeed thank you Chair.

CHAIRPERSON: Thank you.

ADV KATE HOFMEYR: Mr Mahlangu I would then like to take you to

your statement if we may that is in Exhibit DD4 and you will find it commencing on page 1 and as I have it it runs all the way to page 54. If you could turn up page 54 in Exhibit DD4. Mr Mahlangu.

MR DANIEL PHOLISANI MAHLANGU: Yes.

ADV KATE HOFMEYR: Can you confirm that that is your signature on page 54?

MR DANIEL PHOLISANI MAHLANGU: Yes it is.

ADV KATE HOFMEYR: Thank you. And...

CHAIRPERSON: I think maybe you can bring the microphone a little
10 closer to you. Just a little closer. Ja.

MR DANIEL PHOLISANI MAHLANGU: Thank you Chair.

ADV KATE HOFMEYR: And can I take it that now being oath you confirm that the statement you provided is true and correct barring the three corrections that I know you want to make to it and we will deal with in the course of evidence?

MR DANIEL PHOLISANI MAHLANGU: Through you Chair yes it is my – it is true. It is my statement.

ADV KATE HOFMEYR: Thank you. And could I just ask one other point of clarification just in terms of the way your statement is
20 structured as I have it you begin with the background section, you then detail really the interactions between BNP and SAA and then towards the end of the statement you actually deal with a series of questions that were put to you at a prior meeting with the commission's investigators and legal team, is that correct?

MR DANIEL PHOLISANI MAHLANGU: Through you Chair yes it is.

ADV KATE HOFMEYR: Thank you. And can I confirm that the answers that you give to those questions towards the end of the statement are your answers to those questions?

MR DANIEL PHOLISANI MAHLANGU: Yes through you Chair yes indeed they are my answers.

ADV KATE HOFMEYR: Thank you. Can I just be clear as to why I ask? On occasion in those answers you refer to yourself in the third person and so – whereas previously I later you say Mr Mahlangu so I just needed to be clear that whatever we see in this statement is in fact
10 your account of the facts, is that right?

MR DANIEL PHOLISANI MAHLANGU: Yes through you Chair yes it is.

ADV KATE HOFMEYR: Thank you so much. Mr Mahlangu also before I get into the detail there were just two parts in your statement where you indicated that certain documents has been indicated would be made available to you after that meeting with the commission. The two sets that you refer to were correspondence from the FSB to the commission and also correspondence relating to Grissag Investors meetings. I can tell you where you take those up if you would like to go to it. But the upshot of my question is you indicate in the statement
20 that they were not provided. I will take you to where they were in the documents that were provided to you if you persist with the concern that they were not provided to you prior to your statement being produced. Or can I take it that you are satisfied that those two sets of documents were provided to you?

MR DANIEL PHOLISANI MAHLANGU: I – through you Chair – I guess

what we can do is as we progress.

ADV KATE HOFMEYR: Hm.

MR DANIEL PHOLISANI MAHLANGU: And aspects of the questions that relates to them we can actually you know...

ADV KATE HOFMEYR: Deal with it certainly.

MR DANIEL PHOLISANI MAHLANGU: Yes.

ADV KATE HOFMEYR: I am happy to do that and I can show you then where they were in the documents that were sent to you.

MR DANIEL PHOLISANI MAHLANGU: Yes.

10 **ADV KATE HOFMEYR:** Thank you so much. Mr Mahlangu then I would like to start if we may at page 2 of your statement because there you detail for us your role in BNP Capital and some of your background. Could you please take us through that?

MR DANIEL PHOLISANI MAHLANGU: Through you Chair. I am basically the CEO of BNP Capital which is the company formed in 2010 and basically I think for as I indicated in this particular statement that in 2017 we actually changed a [indistinct] sign for rebranding. But for purposes of this discussion we are actually name it BNP Capital for consistency. As I have actually indicated in my statement that I am
20 basically responsible – in charge of actually running all the activities of BNP Capital. That is being a director and involved with the day to day running of the business. Must I actually proceed because I think...

ADV KATE HOFMEYR: Well let me if I may ask one or two follow up questions.

MR DANIEL PHOLISANI MAHLANGU: Yes.

ADV KATE HOFMEYR: I understand at page 2 from paragraph 1.2 you are the sole director of BNP Capital is that correct?

MR DANIEL PHOLISANI MAHLANGU: Yes I am.

ADV KATE HOFMEYR: And at paragraph 1.3 you talk about your responsibilities and amongst them I have it there that you indicate that it is your duty to run the company and ensure that it complies with all relevant laws and corporate governance requirements, is that correct?

MR DANIEL PHOLISANI MAHLANGU: Through you Chair definitely.

ADV KATE HOFMEYR: Thank you. And then Mr Mahlangu in terms of
10 your own qualifications and experience you will find those beginning over the page at page 3. Can you please take us through what those are?

MR DANIEL PHOLISANI MAHLANGU: I have got a Bachelor of Business Science which is at the Wits University and Honours in Mathematics which was done at Wits University and Advanced [indistinct] Company Law.

ADV KATE HOFMEYR: Thank you. And then if we can progress down that page, page 3. At paragraph 2.2 you describe the nature of BNP Capital's business, what is that?

20 **MR DANIEL PHOLISANI MAHLANGU:** It is – through you Chair it is actually an independent advisory and investment company which is 100% black owned and managed. And the company offers basically advisory services which are built on foundation of efficiency and effective delivery investment solutions – services and solutions.

ADV KATE HOFMEYR: Thank you. And then if we go over the page to

page 4 you detail some of your experience and the experience of BNP Capital under paragraph 2.5, do you see that?

MR DANIEL PHOLISANI MAHLANGU: Yes I do – yes through Chair I do.

ADV KATE HOFMEYR: And as I understand that paragraph at paragraph 2.5.1 you are detailing individual experience, is that your experience Mr Mahlangu?

MR DANIEL PHOLISANI MAHLANGU: Through you Chair yes it is my experience.

10 **ADV KATE HOFMEYR:** I will come back to what it is in a moment if I may but then under paragraph 2.5.2 you detail BNP Capital's experience as distinct from your own, is that correct?

MR DANIEL PHOLISANI MAHLANGU: Through you Chair yes it is correct.

ADV KATE HOFMEYR: Thank you. And in terms of individual experience what I would like to focus on Mr Mahlangu is what experience you and BNP Capital had in 2016? Because 2016 February/March is when the bid for the transaction advisory services was submitted. So what I just want to be clear about in this paragraph
20 is which is experience you had or BNP Capital had at the time and which is experience that may have been obtained since then? So if you could assist us with that.

MR DANIEL PHOLISANI MAHLANGU: Okay through you Chair. I think – okay what is happening is on this particular page what I have detailed it is only my experience but not the experience of the company. I show

it [indistinct] [mumbling].

CHAIRPERSON: That is on page 4?

MR DANIEL PHOLISANI MAHLANGU: Yes on page 4.

CHAIRPERSON: Okay. Well Ms Hofmeyr I do not know if you are still going to come to this but at 2 – at page 3.

ADV KATE HOFMEYR: Yes.

CHAIRPERSON: I think it will be important for him to give that – the length of experience that he gives.

ADV KATE HOFMEYR: Indeed.

10 **CHAIRPERSON**: there but obviously point you make about 2016

ADV KATE HOFMEYR: Yes.

CHAIRPERSON: Is important.

ADV KATE HOFMEYR: Indeed.

CHAIRPERSON: So...

ADV KATE HOFMEYR: Thank you Chair if I may I will come to it at the end because it is something of a conclusory aspect in 2.3.

CHAIRPERSON: Ja that is fine ja.

ADV KATE HOFMEYR: But let us go through if we can focus for now Mr Mahlangu at 2.5. I understand your evidence to be what you actual
20 set out there is own experience not BNP Capital's experience, is that right?

MR DANIEL PHOLISANI MAHLANGU: Yes that is true.

ADV KATE HOFMEYR: So where it says at paragraph 2.5.2 BNP Capital experience must we take that actually to be your individual experience?

MR DANIEL PHOLISANI MAHLANGU: Okay 2.5 is actually – through you Chair – it is done in two ways.

ADV KATE HOFMEYR: Hm.

MR DANIEL PHOLISANI MAHLANGU: The first part which is 2.5.1 that is individual experience. And when you go down to 2.5.2 that is a company experience.

ADV KATE HOFMEYR: Thank you. Let us focus then first at individual experience. Of that experience that you list there please tell us you had a – by 2016?

- 10 **MR DANIEL PHOLISANI MAHLANGU:** I think I agree with the Chair for obvious reasons when he actually mentioned page 3 because on – because what basically 2.5 has done is the summary of the experience I did not actually list everything that pertains to my experience. It is just a summary of a few transactions that I think were key as far as this commission is concerned. However if I may – if you may indulge me to actually just...

CHAIRPERSON: You want to start at 3?

MR DANIEL PHOLISANI MAHLANGU: Yes.

CHAIRPERSON: Okay that is fine. Ja start at 3.

- 20 **MR DANIEL PHOLISANI MAHLANGU:** As far as 2.3 – sorry as far as 2.3 is concerned there is an...

CHAIRPERSON: If you feel that is too close you can move it a little bit.

MR DANIEL PHOLISANI MAHLANGU: Yes.

CHAIRPERSON: I may have asked you to bring it too close so just... ja

okay.

MR DANIEL PHOLISANI MAHLANGU: There is a correction that I want to make where it is written 2.3 I have a decade's experience which is actually it is not true I have more than close to two decades of experience in the investment space.

CHAIRPERSON: Oh where it says I have more than a decade.

MR DANIEL PHOLISANI MAHLANGU: More than a decade's experience.

CHAIRPERSON: Experience

10 **MR DANIEL PHOLISANI MAHLANGU:** Yes.

CHAIRPERSON: You say it should say more than two decades.

MR DANIEL PHOLISANI MAHLANGU: Close, close to two decades.

CHAIRPERSON: Close to two decades?

MR DANIEL PHOLISANI MAHLANGU: Yes – decades of experience.

CHAIRPERSON: Okay.

MR DANIEL PHOLISANI MAHLANGU: Basically I think I have touched as far as my qualifications are concerned which is – it is merely a Bachelor of Economic Science and Honours in Mathematics and also company law. As I have indicated before that BNP Capital was actually
20 – it is an independent and advisory firm which was started in 2010. In essence it was started by three individuals we all actually came from different financial institutions which was senior guys were actually working at Deloitte which is Vonani Mathebula the guy which we are actually going to talk about and the guy – the other guy was Thuso Sencho which was – actually came from Kagiso Investments. So when

we started that company our main objective of that particular company was to actually form a private equity fund because based on my experience I will actually go through it here given that I have been actually in the private equity space for a while and as 2.5 indicate I have been engaged with different financial institutions myself and basically I have been involved with huge blue chips companies as far as transaction is concerned and basically done so many private equity transactions. And as far as just to give a summary of my experience – the experience as far as 2.3 as I have indicated we – as an individual
10 or actually a company because as far as the statement is concerned it was basically saying you Mr Mahlangu not a company so now I had to actually be careful as to how I cut it out.

CHAIRPERSON: Yes I guess that some of the experience that you have you acquired before BNP was formed?

MR DANIEL PHOLISANI MAHLANGU: Definitely.

CHAIRPERSON: But when you – when BNP was formed and you being the sole director that – that experience benefitted the company?

MR DANIEL PHOLISANI MAHLANGU: I agree with...

CHAIRPERSON: Your personal experience would benefit the company?

20 **MR DANIEL PHOLISANI MAHLANGU**: Yes I agree with you Chair.

CHAIRPERSON: Yes.

MR DANIEL PHOLISANI MAHLANGU: Yes.

CHAIRPERSON: The company might not have been involved in all the things that you have been involved but the company does benefit from the fact that its sole director is somebody with that kind of experience.

MR DANIEL PHOLISANI MAHLANGU: Definitely Chair I agree with you Chair but just to add on that Chair as I said that there were actually three gentlemen that were involved and ...

CHAIRPERSON: Oh okay.

MR DANIEL PHOLISANI MAHLANGU: Yes and those gentlemen were actually very senior guys. As I said that they were actually senior and you know one of the...

CHAIRPERSON: At the time when BNP was formed?

MR DANIEL PHOLISANI MAHLANGU: Definitely so...

10 **CHAIRPERSON:** Oh you are the sole director now but you have not always been the sole director?

MR DANIEL PHOLISANI MAHLANGU: Okay let me just give a background as far as that aspect is concerned.

CHAIRPERSON: Oh okay.

MR DANIEL PHOLISANI MAHLANGU: When the BNP Capital – when BNP was formed ...

CHAIRPERSON: Which was in 2010?

MR DANIEL PHOLISANI MAHLANGU: 2010

CHAIRPERSON: Ja.

20 **MR DANIEL PHOLISANI MAHLANGU:** So the idea was to actually incorporate other members you know to actually make them directors but it could not happen in that particular fashion for obvious reasons that as time progressed some guys you know realised actually identified certain aspects within the business to say they actually want to run with certain you know part of the business on their own because

they have actually identified a niche for themselves. And some of them actually – one of them actually left but other – one person – it was a senior guy that remained actually [indistinct] out of the business and actually formed his own and then he said this is where he actually focus. So however when we started at the beginning it was – it was experience which basically was brought by three individuals not one individual.

CHAIRPERSON: But did the other two ever become part of BNP formerly?

10 **MR DANIEL PHOLISANI MAHLANGU:** Yes, no, yes they were.

CHAIRPERSON: Ja at the – oh so when BNP was formed they were directors?

MR DANIEL PHOLISANI MAHLANGU: Not necessarily directors.

CHAIRPERSON: Not directors.

MR DANIEL PHOLISANI MAHLANGU: Yes they...

CHAIRPERSON: Oh what positions did they occupy?

MR DANIEL PHOLISANI MAHLANGU: They were quite senior in a sense that...

CHAIRPERSON: They are senior officials of the company?

20 **MR DANIEL PHOLISANI MAHLANGU:** Definitely.

CHAIRPERSON: Okay. Were you the only director even at that time?

MR DANIEL PHOLISANI MAHLANGU: Yes I think the mere fact is we just took things lightly then.

CHAIRPERSON: Yes.

MR DANIEL PHOLISANI MAHLANGU: Because all of us came from

different institutions.

CHAIRPERSON: Yes, yes.

MR DANIEL PHOLISANI MAHLANGU: So we were busy trying to find our footing.

CHAIRPERSON: Okay.

MR DANIEL PHOLISANI MAHLANGU: As far as this business you know space is concerned.

CHAIRPERSON: Okay.

MR DANIEL PHOLISANI MAHLANGU: So when – while time – you
10 know as time progressed it is only then that we realised that you know what we actually have not formerly actually engaged ourselves what is the plan going forward? And one individual which is Thuso actually left.

CHAIRPERSON: And when did they leave? Because we just want to see when you became alone and when they left?

MR DANIEL PHOLISANI MAHLANGU: Thuso left if –

CHAIRPERSON: We do not need the actual date just around about – an estimate of month or whatever.

MR DANIEL PHOLISANI MAHLANGU: I think one started running this
20 business on my – or as a sole director so to speak in 2000 and – because 2016 one of the guys was still there.

CHAIRPERSON: Was still there?

MR DANIEL PHOLISANI MAHLANGU: Yes.

CHAIRPERSON: Okay the other one had left?

MR DANIEL PHOLISANI MAHLANGU: The other one had left.

CHAIRPERSON: Oh okay.

MR DANIEL PHOLISANI MAHLANGU: Ja.

CHAIRPERSON: So by 2016 there were only two of the three who were still with BNP?

MR DANIEL PHOLISANI MAHLANGU: Definitely.

CHAIRPERSON: Okay and when did the other leave?

MR DANIEL PHOLISANI MAHLANGU: Formerly.

CHAIRPERSON: The one who was still there in 2016?

MR DANIEL PHOLISANI MAHLANGU: Formerly sometime in 2016 yes.

10 **CHAIRPERSON**: Okay no that is fine.

MR DANIEL PHOLISANI MAHLANGU: I cannot ...

CHAIRPERSON: So you became – but throughout this period you were the director?

MR DANIEL PHOLISANI MAHLANGU: Yes.

CHAIRPERSON: You were the – ja they had positions but the – you were the director?

MR DANIEL PHOLISANI MAHLANGU: Definitely but at the same time we all running management so we are all.

CHAIRPERSON: Yes.

20 **MR DANIEL PHOLISANI MAHLANGU**: Yes.

CHAIRPERSON: Okay, okay.

ADV KATE HOFMEYR: Mr Mahlangu if I may just clarify one or two things. When did you obtain your advanced diploma in company law?

MR DANIEL PHOLISANI MAHLANGU: While I was at PIC which is – ja – it was ...

ADV KATE HOFMEYR: Some years before 2016

MR DANIEL PHOLISANI MAHLANGU: Yes ages ago. Ja before that.

ADV KATE HOFMEYR: Right so you understand the position of a director in a company, correct?

MR DANIEL PHOLISANI MAHLANGU: Definitely through you Chair.

ADV KATE HOFMEYR: So it was only you who was the sole director of BNP Capital at any point prior to 2016?

MR DANIEL PHOLISANI MAHLANGU: Definitely.

ADV KATE HOFMEYR: The people that you refer to I would like to get
10 their names on the record please. I understand one of them was Mr Vonani Mathebula, is that correct?

MR DANIEL PHOLISANI MAHLANGU: That is true.

ADV KATE HOFMEYR: And tell us was he an employee of the company then?

MR DANIEL PHOLISANI MAHLANGU: I think as the facts stands now yes he was an employee.

ADV KATE HOFMEYR: Can you help us with that? What does it mean to say as the facts stands now?

MR DANIEL PHOLISANI MAHLANGU: Yes I mean I think through you
20 Chair you just mentioned something very critical as far as company law is concerned. Given that he was not a director the only thing that he can be is an employee.

ADV KATE HOFMEYR: Was he remunerated by the company?

MR DANIEL PHOLISANI MAHLANGU: Yes, yes.

ADV KATE HOFMEYR: Thank you. And then you mentioned a third

person who was that?

CHAIRPERSON: I am sorry – I am sorry.

ADV KATE HOFMEYR: Apologies Chair.

CHAIRPERSON: I am sorry. I get the impression that the status of those two might not have been very clear at the time. You seem to hesitate to define them or describe them in any particular fashion maybe because the three of you had discussed forming this entity and so on, is my impression correct? That their status might not have been as clear as all that in terms of what they were formally?

10 **MR DANIEL PHOLISANI MAHLANGU**: Not true Chair.

CHAIRPERSON: Yes.

MR DANIEL PHOLISANI MAHLANGU: I think when things started ..

CHAIRPERSON: You might not have bothered about titles and job titles?

MR DANIEL PHOLISANI MAHLANGU: Yes because when we started unfortu – okay when we started we actually wanted to go within an entity that has already been registered and when you actually go to CIPC and that particular individual that provided that details becomes a director. So when we actually formed this company then they – the
20 idea was to – the idea was to let us grow this company together.

CHAIRPERSON: Hm.

MR DANIEL PHOLISANI MAHLANGU: Yes. So we were clear at the beginning as far as what is it that we wanted to do. But as time progressed you know and when people who realise that – because – you know to actually form a black advisory firm especially in the

financial services space it is very tough core given that opportunities were fine between so it was very tough people actually were – I mean these guys were qualified CA's a lot of them. So they – they were used to actually getting a salary and suddenly you know their lives were actually at risk. So there was actually that thinking when we actually doing this in their minds.

CHAIRPERSON: Yes. Ja.

MR DANIEL PHOLISANI MAHLANGU: Yes. And then...

CHAIRPERSON: Okay.

10 **MR DANIEL PHOLISANI MAHLANGU**: And hence at the beginning things were not that straightforward, clear.

CHAIRPERSON: YEs.

MR DANIEL PHOLISANI MAHLANGU: As to whether we going to continue with this thing. Because I remember when we started to actually operating at the restaurant yes it was very difficult.

CHAIRPERSON: Okay. Thank you.

MR DANIEL PHOLISANI MAHLANGU: Yes.

ADV KATE HOFMEYR: Thank you Mr Mahlangu.

MR DANIEL PHOLISANI MAHLANGU: And – yes – sorry – sorry
20 through you Chair I think I was still going through this yes before...

CHAIRPERSON: Yes okay.

ADV KATE HOFMEYR: Mr Mahlangu if we can just...

CHAIRPERSON: Okay she might wish to help you with that.

ADV KATE HOFMEYR: Indeed. Just because we mentioned three people and I would like to get the third person's name clear, who was

the third person who joined you?

MR DANIEL PHOLISANI MAHLANGU: It is Thuso Sencho.

ADV KATE HOFMEYR: Could you spell that for us?

MR DANIEL PHOLISANI MAHLANGU: The Sencho or the Thuso?

ADV KATE HOFMEYR: Both please just for the record.

CHAIRPERSON: Ja.

MR DANIEL PHOLISANI MAHLANGU: It is T – I mean Thuso

ADV KATE HOFMEYR: Thank you. And the surname?

MR DANIEL PHOLISANI MAHLANGU: Sencho. It is Sencho. Sencho.

10 **CHAIRPERSON:** Sencho.

ADV KATE HOFMEYR: Thank you. And was he in BNP Capital at the time that you bid for the transaction advisory services tender?

MR DANIEL PHOLISANI MAHLANGU: No Thuso was not.

ADV KATE HOFMEYR: And just finally on this point I know you do want to return in terms of fiduciary responsibilities to the company only you had those, is that correct as its sole director?

MR DANIEL PHOLISANI MAHLANGU: As far as – obviously the responsibilities as far as the company law is concerned I was but we were sharing them to get [indistinct] Mr Mathebula.

20 **ADV KATE HOFMEYR:** But he was not a formerly appointed director?

MR DANIEL PHOLISANI MAHLANGU: Yes.

ADV KATE HOFMEYR: Thank you. If you would like to return to paragraph 2.3 on page 3 you were taking us through that?

MR DANIEL PHOLISANI MAHLANGU: On 2.3 in essence what – through you Chair – what I was basically saying there is I have worked

with prominent you know South African companies especially in the financial services space. I am involved in private equity, project finance, corporate finance and project management analysis and I have got my experience ranges across road, transport, mining, health, energy and other related services and at below is if I can just zoom in there or rather maybe just run – discuss the point below as you know I started at NEF as a project manager as a senior product manager and then I moved to PIC as also a project manager there. And on page 4 it is – on – basically detailed some of the experiences that one actually
10 has done.

CHAIRPERSON: You – if you want you can read there you know whatever you want to highlight there because it is nothing controversial. If you want to refresh your memory but if you can just run through it without doing that it is fine. I just want to – you to know that you can read this part of your evidence.

MR DANIEL PHOLISANI MAHLANGU: Okay thank you Chair. So I will jump to 2.5 now yes. In 2.5 as I have actually – as it has actually been indicated that one has been involved in financial advice and capital raising project for both public and private sector. Also of individual and
20 also – you know – get involved in partnerships with other entities.

For instance as I have indicated below here that we have – as – as basically as an individual one has – you know – worked with so many – you know – so many projects especially the public investment corporation. If I can ...

CHAIRPERSON: I am sorry Mr Mahlangu. I think I have an

understanding of why you say one and not I. You remember Ms Hofmeyr was saying in part of your statement you speak in the third person and you say Mr Mahlangu this Mr Mahlangu that.

MR DANIEL PHOLISANI MAHLANGU: Oh, okay.

CHAIRPERSON: No I am saying I under ...

MR DANIEL PHOLISANI MAHLANGU: Oh.

CHAIRPERSON: I think I understand. I may be wrong but I know that – I know when people put it that way they do not want to say I because it is like you are saying this is how good you are. This is all the
10 experience you have.

MR DANIEL PHOLISANI MAHLANGU: Okay. I understand you Chair.

CHAIRPERSON: My own impression is – is when people do that is normally because they do not want to be seen to be trying to highlight how good they are and so on but I may be mistaken. So I am just saying I know that you say – you say one – one.

MR DANIEL PHOLISANI MAHLANGU: Okay. No I understand Chair.

CHAIRPERSON: But I – I understand yes.

MR DANIEL PHOLISANI MAHLANGU: Yes. I will try and be consistent.

20 **CHAIRPERSON:** *Ja*, but when you say one you mean yourself?

MR DANIEL PHOLISANI MAHLANGU: Yes. I will try and say I.

CHAIRPERSON: Okay.

MR DANIEL PHOLISANI MAHLANGU: Yes. At PIC I was Head of Funds meaning I was responsible for all the private equity firms that – you know – that you see – that are actually out there. I was sitting on

the Advisory Boards. So I would actually go and attend meetings, give us feedback.

If there is any – any documentation that needs to be done they will be sent to me and basically (indistinct) me that as far as drawdowns are concerned as well as investment that needs - they need to be deposited or whatever – you know – issues or management issues that are actually going on in that particular firm then I will actually run with that. I just highlighted a few of – of the transactions ...

CHAIRPERSON: Yes.

- 10 **MR DANIEL PHOLISANI MAHLANGU:** That I got involved in. I think for the sake of – of this particular ...

CHAIRPERSON: Hm.

MR DANIEL PHOLISANI MAHLANGU: Exercise.

CHAIRPERSON: Hm.

MR DANIEL PHOLISANI MAHLANGU: I was also involved unwinding of 24 billion MTN scheme which basically we run along together with Nedbank and Allenby where they actually remain our sponsor and – and an advisor to – to MTN – to MTN and also refinancing of (indistinct) when I was actually also involved. I was also Board Director of that.

- 20 I sat as a Director representing on behalf of the PIC on that particular transaction but over and above that I was involved in so many of these transactions meaning in the corporate finance transaction in the PIC side in the project finance transactions I was actually also involved in the private transactions.

I mean some of them are huge transactions I can mention but

I think for the sake of time I will just highlight these ...

CHAIRPERSON: Yes.

MR DANIEL PHOLISANI MAHLANGU: And – yes and I will jump to the BNP Capital experience ...

CHAIRPERSON: Hm.

MR DANIEL PHOLISANI MAHLANGU: And the first we actually raised the fund which is up and running as we speak. It is a health fund which we assisted to raise 1.7 billion. I just highlight fees.

ADV KATE HOFMEYR: Mr Mahlangu I do apologise. It is just fairly
10 important for us to understand whether this experience was obtained prior to or after your bid for transaction advisor services in March 2016. So could we go through each of them? The one you have just referenced at paragraph 2.5.2.1 raising capital for health fund of approximately 1.7 billion.

When did BNP Capital acquire that experience? You can just indicate before or after.

MR DANIEL PHOLISANI MAHLANGU: That was – I need to come back to it as far as the dates are concerned.

CHAIRPERSON: Okay.

20 **MR DANIEL PHOLISANI MAHLANGU:** Yes.

CHAIRPERSON: Okay.

MR DANIEL PHOLISANI MAHLANGU: Because – yes; but I will highlight the one that I have remembered vividly.

CHAIRPERSON: Ja.

MR DANIEL PHOLISANI MAHLANGU: Yes.

CHAIRPERSON: *Ja.*

MR DANIEL PHOLISANI MAHLANGU: As far as the national treasury 16 billion transactions that we have raised together with Citibank – yes that was before.

ADV KATE HOFMEYR: Before?

MR DANIEL PHOLISANI MAHLANGU: Yes.

ADV KATE HOFMEYR: Thank you.

MR DANIEL PHOLISANI MAHLANGU: As far as the Total transaction the few transactions that we have done as a business that was actually
10 running concurrently because you can appreciate that this – this transaction was actually in for jurisdiction. So we had to actually get approval – a special competition approval – in for jurisdiction. So we actually took entire to actually complete this one.

CHAIRPERSON: You said concurrently.

MR DANIEL PHOLISANI MAHLANGU: Yes.

CHAIRPERSON: Did you mean?

MR DANIEL PHOLISANI MAHLANGU: While we ...

CHAIRPERSON: It started before 2016 and went to – into 2016 and beyond or you mean it happened in 2016?

20 **MR DANIEL PHOLISANI MAHLANGU:** In 2016.

CHAIRPERSON: Okay.

MR DANIEL PHOLISANI MAHLANGU: Yes.

CHAIRPERSON: Thank you.

ADV KATE HOFMEYR: So had it commenced before March 2016?

MR DANIEL PHOLISANI MAHLANGU: March 2016 – because I

remember – can I - remember when I was – when we busy with the – the SAA advisory work this transaction we were busy with as well.

ADV KATE HOFMEYR: Okay.

MR DANIEL PHOLISANI MAHLANGU: Yes. So I cannot and now I need to ...

CHAIRPERSON: Yes. Would you say it is unlikely to have been completed by March 2016 if it started in 2016?

MR DANIEL PHOLISANI MAHLANGU: No – yes it is unlikely.

CHAIRPERSON: *Ja.*

10 **MR DANIEL PHOLISANI MAHLANGU:** It was – it was completed in December.

CHAIRPERSON: Yes. If it started before March only a small portion of it would have been done?

MR DANIEL PHOLISANI MAHLANGU: Definitely.

CHAIRPERSON: Most part would have happened after?

MR DANIEL PHOLISANI MAHLANGU: Yes. I remember it was actually done in December.

ADV KATE HOFMEYR: Of 2016?

CHAIRPERSON: Oh in December 2016?

20 **MR DANIEL PHOLISANI MAHLANGU:** Yes it was completed.

ADV KATE HOFMEYR: Thank you.

CHAIRPERSON: When you say done is that when it was finished?

MR DANIEL PHOLISANI MAHLANGU: Financial close - money exchanged hands.

CHAIRPERSON: Oh, okay. Okay, alright thank you.

MR DANIEL PHOLISANI MAHLANGU: We also involved as part of our business we actually get involved with – as I have indicated before – it is either with law firms – with huge law firms on a particular transaction, with engineering firms. We have done such beautiful work especially for water treatment plants with a huge engineering firm.

With audit firms - I think we have been actually working to get – I mean – on a larger scale with audit firms. We have been partnering with them on many of the projects we implemented them together and on ...

10 **CHAIRPERSON:** *Ja* just remember that Ms Hofmeyr wants you to ...

MR DANIEL PHOLISANI MAHLANGU: Yes.

CHAIRPERSON: Always say whether it is before or after March 2016 when you mention experience. Where you remember and where you need to come back to us you can mention ...

MR DANIEL PHOLISANI MAHLANGU: Yes. Especially this was actually before that.

CHAIRPERSON: Okay, oh.

MR DANIEL PHOLISANI MAHLANGU: Yes, yes.

20 **ADV KATE HOFMEYR:** Which one are we referring to now Mr Mahlangu?

MR DANIEL PHOLISANI MAHLANGU: The – the academic hospital.

ADV KATE HOFMEYR: So you have done down to paragraph 2.5.2.5. Is that correct?

MR DANIEL PHOLISANI MAHLANGU: Oh sorry. The (indistinct) one was – was also in 2016. It was running concurrently together with the

Total transaction. The – the one 2.5.2.5 was also a feasibility study which was actually done prior to 2016.

ADV KATE HOFMEYR: Mr Mahlangu if I may just stop you there because that is your list of particular BNP Capital experience. What I am interested in is that most of these – as I understand your evidence - are occurring concurrently with the work on the transaction advisory services for SAA or have been completed before. Is that correct?

MR DANIEL PHOLISANI MAHLANGU: Some concurrently ...

ADV KATE HOFMEYR: Huh-uh.

10 **MR DANIEL PHOLISANI MAHLANGU:** But some is – I think what I want – I do not want to do is to actually mislead this Commission ...

CHAIRPERSON: Yes.

MR DANIEL PHOLISANI MAHLANGU: As far as the dates are concerned.

CHAIRPERSON: Yes.

MR DANIEL PHOLISANI MAHLANGU: And I just need to map out the dates as to when – so that ...

CHAIRPERSON: No that – that is – that is fine.

MR DANIEL PHOLISANI MAHLANGU: Yes.

20 **CHAIRPERSON:** I have not followed as closely as we – as I should have. Maybe what – what we should do Ms Hofmeyr ...

ADV KATE HOFMEYR: Hm.

CHAIRPERSON: Is we should actually go ...

ADV KATE HOFMEYR: (Intervenes).

CHAIRPERSON: Experience one by one ...

ADV KATE HOFMEYR: Indeed.

MR DANIEL PHOLISANI MAHLANGU:

CHAIRPERSON: And you say before you say after before after. When you cannot remember you say I will come back. I will back to you on that ...

MR DANIEL PHOLISANI MAHLANGU: Definitely yes.

CHAIRPERSON: But where you can remember you tell us before or after or during 2016 because I understand some are during 2016. Okay I think let us do it.

10 **ADV KATE HOFMEYR:** Chair I am indebted. I am indebted for that ...

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: And maybe I should jump ahead.

MR DANIEL PHOLISANI MAHLANGU: Okay.

CHAIRPERSON: Hm.

ADV KATE HOFMEYR: So that we – we understand why this is of some importance.

CHAIRPERSON: Yes, yes.

20 **ADV KATE HOFMEYR:** Mr Mahlangu when you bid for the transaction advisory services tender at SAA I have not seen in that bid any of this experience referred to and that is why it is of some importance for the Commission to understand whether you had the experience before and it was not referenced in the bid in which case we will explore that further or whether this is experience you could not have referenced in the bid because you acquired it only after March 2016. So in fairness to you that is where the question comes from.

MR DANIEL PHOLISANI MAHLANGU: I understand.

ADV KATE HOFMEYR: So let us with that in mind look at each of them. Let us go back to page 4 if we may. We start at the bottom. You detail at paragraph 2.5.2.1 BNP Capital's experience in raising capital for a health fund of approximately 1.7 billion. Did you have that before March 2016?

MR DANIEL PHOLISANI MAHLANGU: Through you Chair as I have indicated I just need to actually finally check the dates.

CHAIRPERSON: You will check and come back?

10 **MR DANIEL PHOLISANI MAHLANGU:** Yes.

CHAIRPERSON: *Ja*, okay.

ADV KATE HOFMEYR: We will make a note, thank you.

MR DANIEL PHOLISANI MAHLANGU: Yes; or maybe what I can do is I – I would actually verify it is maybe during the break.

CHAIRPERSON: No that is fine.

MR DANIEL PHOLISANI MAHLANGU: So that ...

CHAIRPERSON: Yes.

MR DANIEL PHOLISANI MAHLANGU: You know – we do not delay.

CHAIRPERSON: I ...

20 **ADV KATE HOFMEYR:** Indeed.

CHAIRPERSON: I think probably you will spend the whole day with us. So during the tea break or during the lunch break ...

MR DANIEL PHOLISANI MAHLANGU: Yes.

CHAIRPERSON: You – you can check if you are able to.

ADV KATE HOFMEYR: Chair I have got no difficulty with that

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: And maybe we leave this paragraph then so we can get clarity after the break ...

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: From Mr Mahlangu.

CHAIRPERSON: No that - that is fine. So ...

ADV KATE HOFMEYR: Just to be clear what we are interested in.

CHAIRPERSON: Yes, *ja*.

ADV KATE HOFMEYR: It is paragraph 2.5.2. Each of the five bits of
10 experience that are listed there as BNP Capital experience. If you will assist us after the break to tell us which of that experience BNP Capital had prior to March 2016. We will be indebted.

CHAIRPERSON: So in other words we leave this part of the experience for now.

MR DANIEL PHOLISANI MAHLANGU: For now.

CHAIRPERSON: So that you are able during the break to check whatever information you need and then so that when we come back to it you have the information.

MR DANIEL PHOLISANI MAHLANGU: Yes I agree with you.

20 **CHAIRPERSON:** We will deal with it later, *ja*.

MR DANIEL PHOLISANI MAHLANGU: Thank you.

ADV KATE HOFMEYR: Thank you and then at that page still page 5 at paragraph 2.5.3 as I have it you reference various partnerings with commercial banks on various projects. Chair with your leave I am going to suggest the same approach be taken there. That we just

enable Mr Mahlangu to get clarity over the break as to which ...

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: Experience was before or after.

CHAIRPERSON: That is fine *ja*.

ADV KATE HOFMEYR: Thank you and then Mr Mahlangu I would like to take you – if I may – before we get into more of the detail of the engagement with SAA to the actual bid that BNP Capital submitted for the transaction advisor services. You would have heard from my introduction this morning I have attempted to collate the various parts
10 of that bid into one document and you will find it in the soft file in front of you and Chair as we indicated earlier no need to enter this in the record. It is just going to be for our convenience ...

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: And just to orientate everyone Chair the – the pagination and Mr Mahlangu the pagination in the top right hand corner of each page is either going to reference a page preceded by PN which is a reference to Ms Nhantsi's bundle which is EXHIBIT DD2 or it is going to reference CASS which is a reference to a paginated page of Ms Stimpel's bundle which is DD1 ...

20 **MR DANIEL PHOLISANI MAHLANGU:** Okay.

ADV KATE HOFMEYR: But because we alternate between them in this document I am actually going to ask - if I may - that both of you look at the bottom of the page because what is useful there is you get on the bottom right hand side page 1 of 55 ...

MR DANIEL PHOLISANI MAHLANGU: Okay.

ADV KATE HOFMEYR: Page 2 of 55. That is – that referencing is how I have been able to compile this from the two sources and so the reference I will use for now I will always give the paginated reference Chair for the record but in order for us navigate I will ask you to go for example to page 15 of 55 and then we will find it fairly easily.

MR DANIEL PHOLISANI MAHLANGU: Okay.

CHAIRPERSON: Oh. I – I thought if you simple said something like CASS 3-7-3.

ADV KATE HOFMEYR: It is not as easy Chair because it does not run
10 sequentially in CASS.

CHAIRPERSON: Oh is that so, okay.

ADV KATE HOFMEYR: So I – I endeavour to do it this morning myself
...

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: And I realised the easier reference is at the
bottom ...

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: But I will always give for record purposes ...

CHAIRPERSON: Yes.

20 **ADV KATE HOFMEYR:** What the paginated page reference is.

CHAIRPERSON: At the top, okay.

ADV KATE HOFMEYR: So just that we can find it a bit more easily.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: Mr Mahlangu as I have it there are various
parts of the bid that BNP Capital put together that you signed and I

would like to take you to those parts that you appended what I take to be your signature to. The first one you will find at page 20 of 55 in that pack in front of you. So if you go to page 20 of 55 its reference for the record is C-A-S-S-3-9-1. Do you see that Mr Mahlangu?

MR DANIEL PHOLISANI MAHLANGU: Yes I do through you Chair.

ADV KATE HOFMEYR: And can you confirm that that is your signature on that page?

MR DANIEL PHOLISANI MAHLANGU: Yes it is.

ADV KATE HOFMEYR: So this is a declaration if you go back the - a
10 page previous which is in fact for the paginated record to be found at P-N-2-1-2 but on the internal referencing it is page 19 of 55. That is a declaration of interest. We will look at it in due course but for present purposes I just wanted to confirm you have signed that declaration of interest on behalf of BNP Capital. Is that correct?

MR DANIEL PHOLISANI MAHLANGU: That is true.

ADV KATE HOFMEYR: Thank you. The next one I would like to take you to is page 27 of 55 and for the purposes of the record that appears in P-N-2-1-6 which is a reference to Ms Nhantsi's bundle DD2. Again I see a signature there Mr Mahlangu. Is that your signature?

20 **MR DANIEL PHOLISANI MAHLANGU:** Yes it is.

ADV KATE HOFMEYR: As I have it you are confirming the bank details of BNP Capital there. Have I understood that ...?

CHAIRPERSON: I am sorry. I think there are two signatures on that page.

ADV KATE HOFMEYR: Ah, indeed.

CHAIRPERSON: There is one – or actually there are three.

ADV KATE HOFMEYR: Yes.

CHAIRPERSON: There- there is the first one immediately after – soon after the first date stamp there. Then there is one in the middle. There is one at the bottom.

ADV KATE HOFMEYR: Indeed Chair.

CHAIRPERSON: Hm.

ADV KATE HOFMEYR: I should have been much more precise.

CHAIRPERSON: Hm.

10 **ADV KATE HOFMEYR:** If we can go through them Mr Mahlangu. Do you see the one under the stamp of the bank which says signature bank official? Do you see that?

MR DANIEL PHOLISANI MAHLANGU: Yes I do through you Chair.

ADV KATE HOFMEYR: Is that your signature?

MR DANIEL PHOLISANI MAHLANGU: Yes. It is my signature.

ADV KATE HOFMEYR: Well let us go above – if we may. Do you see the stamp in the middle of the page referencing 4 Merchant Place?

MR DANIEL PHOLISANI MAHLANGU: Yes I do.

20 **ADV KATE HOFMEYR:** Do you see below there – there is a line that says initials and surname bank official? Do you see that?

MR DANIEL PHOLISANI MAHLANGU: Yes I do through you Chair.

ADV KATE HOFMEYR: And what is referenced there? What appears on that line?

CHAIRPERSON: The name that is written there?

MR DANIEL PHOLISANI MAHLANGU: You mean for the – for the bank

official?

ADV KATE HOFMEYR: Yes.

CHAIRPERSON: Hm.

MR DANIEL PHOLISANI MAHLANGU: It is P M (indistinct).

ADV KATE HOFMEYR: Right and below that there appears to be a space for a signature of a bank official. Do you see that?

MR DANIEL PHOLISANI MAHLANGU: Yes I do.

ADV KATE HOFMEYR: Is the signature that appears on that line your signature?

10 **MR DANIEL PHOLISANI MAHLANGU:** As far – the bank?

ADV KATE HOFMEYR: Yes.

MR DANIEL PHOLISANI MAHLANGU: No.

ADV KATE HOFMEYR: Thank you. We are just trying to get ...

CHAIRPERSON: Initially you said yes.

ADV KATE HOFMEYR: Yes.

CHAIRPERSON: That is why she is going back to try and help you ...

MR DANIEL PHOLISANI MAHLANGU: Oh.

CHAIRPERSON: Because she realises you did not understand.

ADV KATE HOFMEYR: Yes.

20 **MR DANIEL PHOLISANI MAHLANGU:** Okay.

CHAIRPERSON: Ja.

ADV KATE HOFMEYR: I know – you and I Mr Mahlangu went straight for your signature on the page but ...

MR DANIEL PHOLISANI MAHLANGU: Yes.

ADV KATE HOFMEYR: The Chair has pointed out with respect entirely

correctly that there are three signatures on this page. So we are just trying to get for clarities purposes ...

MR DANIEL PHOLISANI MAHLANGU: Oh, okay.

ADV KATE HOFMEYR: Which is yours and which the signatures of others are.

MR DANIEL PHOLISANI MAHLANGU: Okay.

ADV KATE HOFMEYR: So as I have your evidence under the line signature of bank official that is not your signature. Correct?

MR DANIEL PHOLISANI MAHLANGU: Correct.

10 **ADV KATE HOFMEYR:** Then slightly below that under the line that says:

“Telephone number bank official.”

There is then an entry that says:

“Signature.”

And then there is a space and then what is recorded is:

“Duly authorised to sign on behalf of ...”

And if you carry on the next line.

“...BNP Capital.”

20 The signature that appears on that signature line is that your signature?

MR DANIEL PHOLISANI MAHLANGU: Yes it is my signature.

ADV KATE HOFMEYR: Thank you and then at the bottom of the page under a capitals heading reading COMMISSIONER OF OATHS there is then the third signature on that page. Is that your signature?

MR DANIEL PHOLISANI MAHLANGU: No Chair. I am not a

Commissioner of Oaths.

ADV KATE HOFMEYR: Thank you. So as I understand this page – and correct me if I am wrong – when you sign at the place that you have identified as being your signature you were doing so as the duly authorised representative of BNP Capital to confirm its banking details which appear higher on that page. Have I understood that page correctly?

MR DANIEL PHOLISANI MAHLANGU: Yes through you Chair.

ADV KATE HOFMEYR: Thank you and then if we go to page 51 of this
10 pack that page for the record will be found in EXHIBIT DD2 Ms Nhantsi's bundle at page 2-2-7. I think I am correct in saying there is only one signature on this page. Can you identify Mr Mahlangu whether that is your signature?

MR DANIEL PHOLISANI MAHLANGU: Yes it is. It is Chair.

CHAIRPERSON: I think Mr Mahlangu agrees with you.

ADV KATE HOFMEYR: Yes. We – we are on the same page at this point. Mr Mahlangu if you just go back one page to page 50 of 55 which for the record will be found in DD1 – EXHIBIT DD1 which is
20 Ms Stimpel's bundle at page 4-2-1. You will see that that is a declaration of what is called Independent Bid Adjudication and as I have it that is what you sign at page 51 of 55 on the internal numbering. Can you confirm that?

MR DANIEL PHOLISANI MAHLANGU: Yes that is true.

ADV KATE HOFMEYR: Thank you. Mr Mahlangu before we go into the actual details about how the whole idea of BNP Capital bidding for the

services at SAA arose I would just like to clarify BNP Capital's BBEE status in March 2016. What level contributor was it?

MR DANIEL PHOLISANI MAHLANGU: Three.

ADV KATE HOFMEYR: Level three?

MR DANIEL PHOLISANI MAHLANGU: Yes.

ADV KATE HOFMEYR: Thank you. I would then like to look in some detail Ms Mahlangu at the relationship that developed between BNP Capital on the one hand and Mr Mngadi and Inline Trading on the other hand ...

10 **MR DANIEL PHOLISANI MAHLANGU:** Okay.

ADV KATE HOFMEYR: And for that purpose I would like to take us – if I may - to page 11 of your affidavit. Apologies – your statement which has now been confirmed under oath.

MR DANIEL PHOLISANI MAHLANGU: Through you Chair ...

CHAIRPERSON: Yes.

MR DANIEL PHOLISANI MAHLANGU: On sometime in February 2016 a gentleman by the name of (indistinct) gave me a call and then he said a friend of his wanted actually my details for – for us to actually sit down and explore in doing business together and then he – he asked me
20 whether I can actually give this gentleman my – my email address and I then agreed to say you can because I trusted him because we have actually – we have been working with him for some time because I have actually even while I was at PIC funded some – some of their transactions.

So on 9 February I then received an email and that email

says ...

CHAIRPERSON: I am – I am sorry. You say on 9 February?

MR DANIEL PHOLISANI MAHLANGU: Yes.

CHAIRPERSON: Okay but the guy who had called you ...

MR DANIEL PHOLISANI MAHLANGU: At the beginning of February.

CHAIRPERSON: At the beginning?

MR DANIEL PHOLISANI MAHLANGU: Yes.

CHAIRPERSON: Okay, alright.

MR DANIEL PHOLISANI MAHLANGU: On 9 February I then got a call
10 – got an email actually not even a call because he did not have my
contact details. So that email is actually - it reads under 5.2 and then
just to summarise it says:

“(Indistinct) - a mutual friend – referred me to you.

I would like us to actually work join – together
jointly by submitting a response to the TARFI which
came to market this past Sunday to perform this
role for SAA. The timing is of essence. This RFI
closes next Tuesday which is 16 September.”

ADV KATE HOFMEYR: Apologies.

20 **CHAIRPERSON:** Of February.

MR DANIEL PHOLISANI MAHLANGU: I mean – yes of February sorry.

CHAIRPERSON: Yes.

MR DANIEL PHOLISANI MAHLANGU: Yes; and – and I think what then
transpired then - without actually going word for word – what then
transpired then Mr Mngadi sent - sent us an email together with his –

with his detail. I mean basically introducing himself.

CHAIRPERSON: When you say sent us you mean sent you?

MR DANIEL PHOLISANI MAHLANGU: No send an email.

CHAIRPERSON: BNP?

MR DANIEL PHOLISANI MAHLANGU: Yes BNP an email ...

CHAIRPERSON: *Ja*.

MR DANIEL PHOLISANI MAHLANGU: And basically introducing himself. At the same time forwarded – forwarded and RFI which basically he – he got from – if you can actually go to - I am not sure
10 how the appendix is actually done here especially the annexure.

CHAIRPERSON: Okay. Ms Hofmeyr will help you.

ADV KATE HOFMEYR: Mr Mahlangu I can assist you.

MR DANIEL PHOLISANI MAHLANGU: Yes.

ADV KATE HOFMEYR: That is part of my role today.

MR DANIEL PHOLISANI MAHLANGU: Yes.

ADV KATE HOFMEYR: If you would like to go to the first email ...

MR DANIEL PHOLISANI MAHLANGU: Yes.

ADV KATE HOFMEYR: Which is at P-D-M-1 – it is under Tab 1 and you find it at page 55 – 5-5.

20 **MR DANIEL PHOLISANI MAHLANGU:** 55.

ADV KATE HOFMEYR: If you follow under Tab 1 you should find it immediately.

MR DANIEL PHOLISANI MAHLANGU: Tab 1.

CHAIRPERSON: *Ja*, page 55 has been ...

ADV KATE HOFMEYR: It has been written over.

CHAIRPERSON: *Ja.*

ADV KATE HOFMEYR: Unfortunately if you go to the next page you see the next page is very clearly ...

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: 56.

CHAIRPERSON: Yes. No.

ADV KATE HOFMEYR: But the tabs are also useful Mr Mahlangu just to orientate us.

MR DANIEL PHOLISANI MAHLANGU: Yes. On – I am actually on
10 there on – it is P-D-M-0-5-6.

ADV KATE HOFMEYR: Yes.

MR DANIEL PHOLISANI MAHLANGU: Yes and – and in essence through you Chair what I was trying to highlight was how we actually summarised this – this email that he sent to us.

CHAIRPERSON: Yes.

MR DANIEL PHOLISANI MAHLANGU: Yes; and – and basically in the same email he actually attached even the RFI that he actually ...

CHAIRPERSON: Yes.

MR DANIEL PHOLISANI MAHLANGU: That we were supposed to work
20 on ...

CHAIRPERSON: Hm.

MR DANIEL PHOLISANI MAHLANGU: And if you actually – what – what is interesting about this ...

CHAIRPERSON: Was it an RFI or already an RFP?

MR DANIEL PHOLISANI MAHLANGU: An RFI.

CHAIRPERSON: It was still an RFI, okay.

MR DANIEL PHOLISANI MAHLANGU: Yes. What basically is interested is actually if you flip over to page 3 you could even tell that Mr Mngadi himself actually purchased this RFI. At the bottom it says:

“Good day sellers, kindly email me the RFP first.”

CHAIRPERSON: I am sorry - I am sorry. You might be too fast. The first email you wanted to draw my attention to at page 55 is it the top one on the page or bottom one?

MR DANIEL PHOLISANI MAHLANGU: Yes. It is P-DM-0-5-6.

10 **CHAIRPERSON:** Oh you are on the next page? *Ja*, okay.

MR DANIEL PHOLISANI MAHLANGU: There is the first one. The first one is the ...

CHAIRPERSON: Is the one greeting you as:

“Hi (indistinct) ...”

MR DANIEL PHOLISANI MAHLANGU: Yes.

CHAIRPERSON: Okay. Yes that is fine.

MR DANIEL PHOLISANI MAHLANGU: “(Indistinct) a mutual friend referred me to you.”

And then it goes on:

20 “I would like us to actually work together jointly by submitting a response to the transaction advisor which came to market this past Sunday to perform this role for SAA. The timing is of essence. This RFI closes next Tuesday which is 16 February and I understand that you are currently in George.”

Okay. That is a ...

CHAIRPERSON: *Ja.*

MR DANIEL PHOLISANI MAHLANGU: “Below that is attached under cover here for please find a transaction advisor RFI for your perusal. When you are back in Sandton tomorrow morning kindly can we meet to discuss this opportunity?”

CHAIRPERSON: Okay. I can see that yes.

MR DANIEL PHOLISANI MAHLANGU: Yes and then I think on the
10 same page at the top that was my response:

“I would like to acknowledge receipt of your email. I am keen for us to submit a joint bid on this assignment. Unfortunately I will be available on Thursday morning. In the meantime we will start working on the proposal.”

CHAIRPERSON: Yes.

MR DANIEL PHOLISANI MAHLANGU: Yes.

ADV KATE HOFMEYR: And then Mr Mahlangu if we go back to your statement at page 11. I understand that you did then meet with
20 Mr Mngadi. Is that correct?

MR DANIEL PHOLISANI MAHLANGU: Definitely we did through you Chair.

ADV KATE HOFMEYR: I would like to ask some specific questions about that meeting. When did it occur?

MR DANIEL PHOLISANI MAHLANGU: On Thursday as I have

mentioned in this – now on that I have to go back to that because that is when I referred to him that I will be available but on that particular day which was Thursday.

ADV KATE HOFMEYR: Right. So it is the Thursday after 9 February email is that correct?

MR DANIEL PHOLISANI MAHLANGU: That is correct.

ADV KATE HOFMEYR: And where did you meet?

MR DANIEL PHOLISANI MAHLANGU: At the – there is – what is the name of that place? Let me remember – Fairlands - at the Fairlands
10 Hotel.

ADV KATE HOFMEYR: Fellows Hotel?

MR DANIEL PHOLISANI MAHLANGU: Yes Fairlands.

ADV KATE HOFMEYR: And where is that? Sorry – Fairlands?

MR DANIEL PHOLISANI MAHLANGU: Yes Fairlands.

ADV KATE HOFMEYR: Okay. Where is that?

MR DANIEL PHOLISANI MAHLANGU: Where is Fairlands? I will have to – I know where it is ...

CHAIRPERSON: Yes, *ja*.

MR DANIEL PHOLISANI MAHLANGU: But the area.

20 **CHAIRPERSON:** Oh, the area.

MR DANIEL PHOLISANI MAHLANGU: I am not sure what it is called.

CHAIRPERSON: You would have to check, okay.

ADV KATE HOFMEYR:

MR DANIEL PHOLISANI MAHLANGU: Yes. You just have to ...

CHAIRPERSON: Yes.

MR DANIEL PHOLISANI MAHLANGU: It is Fairlands Boutique Hotel.

CHAIRPERSON: Hm, okay.

ADV KATE HOFMEYR: You can give us that after the break if that is useful and who was at that meeting?

MR DANIEL PHOLISANI MAHLANGU: It was me and him.

ADV KATE HOFMEYR: Just the two of you?

MR DANIEL PHOLISANI MAHLANGU: Yes.

ADV KATE HOFMEYR: Thank you and then Mr Mahlangu in paragraph 5.4 on page 11 of your statement you detail what Mr Mngadi told you at
10 that meeting.

MR DANIEL PHOLISANI MAHLANGU: Yes.

ADV KATE HOFMEYR: Can you take us through that?

MR DANIEL PHOLISANI MAHLANGU: When we actually met with Mr Mngadi he then actually mentioned an opportunity that wa available at SAA and mind you actually before we could even meet through you Chair he already forwarded an RFI which I've actually asked the guys at the office to look at it and work and see what is it that is required on that RFI so that we can try and comply as much as we can and basically he gave us a back – a sort of an overview of the opportunity
20 and his experience as far as the client is concerned, which is SAA, so basically narrated you know story to the effect that he is you know he is well versed with the issues that SAA is facing and even some of the issues that we understand currently that basically SAA is in the clutches of the big banks that are slowly squeezing it out as far as you know the terms of the funding that is actually SAA through those banks

and he actually has been – he came up with a solution to actually come to try and assist SAA to breathe firstly because some of the banks actually are driving you to a point of insolvency as we currently know the status of SAA as we speak now and also he inherited his actual understanding of the aviation space, and basically gave us sort of a deep understanding of some of the issues what needs to be done and how those things needs to be done and based on our discussion he then mentioned you know a company ...(intervention)

ADV KATE HOFMEYR: Mr Mahlangu if you don't mind just before you
10 get to the company I have a few follow up questions in relation to what you've said, did you enquire from Mr Mngadi how he had acquired that wealth of experience?

MR DANIEL PHOLISANI MAHLANGU: Not necessarily, I didn't actually, I think in our space if I meet the – I think it's business entrepreneurs, if I meet someone who says to me he is actually a miner and the basis of that, and that miner was actually referred by another miner to me who I actually trust and I've worked with on so many mining transactions if they come and actually present a story to me and I will actually believe it on the basis of who referred that person to me.

20 **ADV KATE HOFMEYR:** Understood, I'm not suggesting at that point that you weren't to believe it, I'm asking what information you had at the time of that meeting because as I understand your statement you said he informed you, this is at paragraph 5.4, of his longstanding client consultant relationship with SAA.

MR DANIEL PHOLISANI MAHLANGU: Yes.

ADV KATE HOFMEYR: So what I would just like to understand did you probe that any further did you probe what transactions he had been involved in with SAA, in what capacity, how he had come to acquire all of this knowledge?

CHAIRPERSON: And like what do you do for a living, what do you do, that kind of thing.

MR DANIEL PHOLISANI MAHLANGU: Yes, through you Chair it's unfortunate because in our space we need so many people and it depends on how that individual you know – how you meet that particular individual. For instance if I meet someone on the street and then they start telling me about things that they are good at and opportunities that they've got and they want my participation or business participation I would definitely probe further, because I've never seen, no one has referred me to this particular individual, but in our investment and advisory space it's a question of referral, if someone, I mean we get referrals on a daily basis, and I would meet people, big clients that I will sit in front of them, because someone has referred me to them, they wouldn't ask me what is it that I have done, they would just say you've got an opportunity here, please come up with a solution, let's move forward.

So it's not the nature of our business where we actually question, if for instance I just met him on the street definitely I would have asked that particular question.

CHAIRPERSON: Yes, no but you assumed that Ms Hofmeyr wants to criticise you, all she wanted is whether by any chance you might have

asked certain questions to Mr Mngadi but you say this particular type of question you did not ask, and you have explained why you did not ask.

MR DANIEL PHOLISANI MAHLANGU: Yes just to add that through you Chair, I think what I'm trying to highlight was when Mr Mngadi was referred to us he was referred by a very reliable friend and a partner and a guy who has got massive experience in the deal making space.

CHAIRPERSON: No, no I understand that.

MR DANIEL PHOLISANI MAHLANGU: Yes.

CHAIRPERSON: You have told us that because of the person who
10 referred Mr Mngadi to you, you regarded Mr Mngadi as somebody that you could deal with and you were not going to necessarily ask certain questions, at least at that time.

MR DANIEL PHOLISANI MAHLANGU: Yes I guess you're right Chair, I think at that point in time he – when we actually sat down he just gave a whole of a view of the issues and some of the issues which basically were well documented in the news articles which we all knew about with the issues ...(intervention)

CHAIRPERSON: Yes, no, no, no I just want to understand that at least
20 at this stage Ms Hofmeyr is not necessarily seeking to criticise you for not asking. I'm trying to make sure that we make progress.

MR DANIEL PHOLISANI MAHLANGU: Okay.

CHAIRPERSON: She was just asking did you ask him such and such a question.

MR DANIEL PHOLISANI MAHLANGU: No, I didn't Chair.

CHAIRPERSON: And if you didn't you say no I didn't, if she takes it

further you can then justify yourself if it's necessary but if not you just answer the question.

MR DANIEL PHOLISANI MAHLANGU: Thanks for guidance Chair, thank you.

CHAIRPERSON: Okay, alright.

ADV KATE HOFMEYR: Thank you Chair, we're indebted. Did you ask Mr Mngadi where he was employed?

MR DANIEL PHOLISANI MAHLANGU: No I didn't.

ADV KATE HOFMEYR: And I understand from your testimony you did
10 however leave that meeting with an understanding that he had a long-standing client or consultant relationship with SAA, is that correct?

MR DANIEL PHOLISANI MAHLANGU: That's correct.

ADV KATE HOFMEYR: And I also understood from your evidence a moment ago that he had particular knowledge of the aviation space, is that correct?

MR DANIEL PHOLISANI MAHLANGU: That's correct.

ADV KATE HOFMEYR: And he also spoke to you as I have your evidence about the unfavourable terms that banks were lending to SAA at the time, is that correct?

20 **MR DANIEL PHOLISANI MAHLANGU:** That's true, that's correct.

ADV KATE HOFMEYR: Did you probe how he had knowledge?

MR DANIEL PHOLISANI MAHLANGU: No I didn't.

ADV KATE HOFMEYR: Thank you. And now there will be a follow up question, did you not deem it necessary to find out how he would have that particular information which ordinarily would be confidential to

SAA, the terms on which banks are lending to it?

MR DANIEL PHOLISANI MAHLANGU: Through you Chair, I think it's – as I have indicated before it's the nature of our business, if someone comes to you and basically says I am involved with a particular client and they give you an overview of that particular client and a deep understanding of the issues, unfortunately when we do business we don't do business with a view that we're going to actually audit ourselves in the process and ask you know the questions that you are asking, but it's what's supposed to be achieved at that point in time so
10 when he gave me the information to say this is – because some of the information as I said that was actually well publicised in the news articles so you know we understand that this person says this is my client, it's like if someone – if I tell somebody that I've got – this is my particular client they know that okay fine perhaps I've got intimate knowledge about that client, I've worked with that client at some point, I understand some of the detail at least as far as that client is concerned, so I didn't actually probe any further when he told me that this is the client, I just believed that whatever that he told me so I didn't actually ask any further. Thank you.

20 **ADV KATE HOFMEYR:** And the level of information he had about the client SAA did that raise any concerns for you that he may have been directly connected to anyone in decision making role at SAA?

MR DANIEL PHOLISANI MAHLANGU: Through you Chair, no.

ADV KATE HOFMEYR: So you didn't enquire as to whether he did have personal relationships with anyone at SAA?

MR DANIEL PHOLISANI MAHLANGU: No, because I think just to add on that and the level of information that he provided obvious I think at this point in time he was dealing directly with the office and in that particular office I had CA's, I had Masters guys that have got you know Masters in investments and basically was dealing directly with them, I was not actually involved at that level. There was actually a huge exchange of information, however when one looks at that particular information it's basically an analysis of you know of what basically what he said he actually understands SAA and SAA has been his client so I

10 wouldn't actually try and second guess and say perhaps this is how – how did you actually get this information because it was just information to say this is how things are going to go, this is the rate, this is that, this is that. So, and, and, based, and given, you know what has actually transpired now I don't think you know as far as the line of business is concerned we actually sceptical about whoever that you deal with. You know maybe it's in hindsight when and all the information is presented in front of you, or a commission of this sorts that comes to you and says actually we've got a different understanding based on yours, then it's only then that one who would actually move

20 back and review things differently, but at that point in time we didn't actually, we're not sceptical about whatever things that were happening.

ADV KATE HOFMEYR: Thank you Mr Mahlangu. Chair I see we're close to the tea break but I have one follow-up question in relation to this line and then it might be appropriate.

CHAIRPERSON: Ja.

ADV KATE HOFMEYR: Mr Mahlangu as I understand your evidence Mr Mngadi left you with a clear sense that he had a lot of experience with SAA, is that correct?

MR DANIEL PHOLISANI MAHLANGU: Through you Chair, he left me with a clear sense that he understands our requirements and that SAA has been his client.

ADV KATE HOFMEYR: Thank you. He was approaching you though as I understand your evidence to bid for the transaction advisor services
10 tender, is that correct?

MR DANIEL PHOLISANI MAHLANGU: What do you mean, me as an individual or as a company?

ADV KATE HOFMEYR: Apologies, he had approached you on the email but as I understand it, it was for BNP Capital to bid for the tender.

MR DANIEL PHOLISANI MAHLANGU: Yes, that's correct.

ADV KATE HOFMEYR: Did you enquire of him in this meeting when he told you about SAA as his client and his previous experience in aviation why he didn't just bid for the tender?

MR DANIEL PHOLISANI MAHLANGU: He did actually mention his,
20 because I'm not sure whether we're going to talk about Inline Trading here.

ADV KATE HOFMEYR: Now is appropriate, thank you Mr Mahlangu.

MR DANIEL PHOLISANI MAHLANGU: Yes, so he did mention to us an Inline Trading Company that he said we're actually go and partner with, if you can actually go through the same pages, I think it's PDM – let me

just familiarise myself, where he actually provided that information for Inline Trading.

ADV KATE HOFMEYR: I can find that for you if you just give me the description then I know what you're referring to, it's the email in which he doesn't want his name to appear in the bid?

MR DANIEL PHOLISANI MAHLANGU: Definitely yes.

ADV KATE HOFMEYR: Yes, you will find that under tab 22 at page 144.

MR DANIEL PHOLISANI MAHLANGU: 22, let me get there.

10 **ADV KATE HOFMEYR:** Mr Mahlangu before we go to it I just would like to orientate ourselves in time, if we may.

MR DANIEL PHOLISANI MAHLANGU: Yes.

ADV KATE HOFMEYR: You first get the communication from him on the 9th of February , correct.

MR DANIEL PHOLISANI MAHLANGU: Definitely.

ADV KATE HOFMEYR: Then you have a meeting on the next Thursday and then what we're looking at at page 144 I understand to be an email dated 13 February 2016, is that correct?

MR DANIEL PHOLISANI MAHLANGU: That's correct.

20 **ADV KATE HOFMEYR:** Thank you please tell us what the email contains?

MR DANIEL PHOLISANI MAHLANGU: This email, through you Chair, this email is an email that he sent to, as I have indicated that I hardly get involved at the bidding stage, I've got a huge team that is involved, the CA's, the Masters guys that actually get involved. You know my

responsibility at the end is to actually either sign off or have an engagement with one of the senior guys to see where the issues, how can we actually move around those issues. So this is the email that he sent to one of the guys at the office.

ADV KATE HOFMEYR: Can you give us the person's name?

MR DANIEL PHOLISANI MAHLANGU: It's Ivan Moyo at the office, and then he says:

“Hi Ivan,

I recommend the following amendments ...”

- 10 Because when we actually met just to tie up with the discussion as far as Inline Trading he actually mentioned that he's got an entity called Inline Trading and he wishes us to actually partner with that entity. So as time progressed then the office, my understanding was his details was actually in the bid document, so as time progressed so he sends this email to one of the employees on Saturday and then he says:

“Hi Ivan,

I recommend the following amendments ...”

- And unfortunately I was not even cc'd on this, I just got an email, actually for my – I just got this – through you Chair, given this
20 commission I just got this from Ivan, I think about two weeks ago.

CHAIRPERSON: About two weeks ago?

MR DANIEL PHOLISANI MAHLANGU: Yes, trying to prepare for this to say I don't understand what is happening because I don't get involved right at the bottom where things are done but what has actually happened.

CHAIRPERSON: Yes.

MR DANIEL PHOLISANI MAHLANGU: Yes, and then he actually had to send me, come up with this email.

CHAIRPERSON: Yes.

MR DANIEL PHOLISANI MAHLANGU: So this email says please delete the reference to my (indistinct) in its entirety and in its place kindly include Brendan King. Please include the following as the company profile of Inline Trading Limited Company profile, I cannot insert as the document you sent is a read-only document. Inline Trading which is

10 Ten Property Limited expertise in funds management so basically he was giving us an overview of the Inline Trading which is in fund management, automotive and the aviation sector. Inline Trading expertise and track record has been (indistinct) for a period of in excess of ten years. So I just wanted to actually highlight to you Chair to say this is how I actually got, we got involved with Inline Trading and to what extent and what information was exchanged during that particular course, when the tender was actually put together.

ADV KATE HOFMEYR: Mr Mahlangu thank you for that, I do just want to round off on my question which was did you probe with him why he

20 wasn't through his entity, now we understand it to be Inline Trading, tendering itself for this transaction advisory services tender because he told you as I understand the meeting by that point about extensive experience that he and his company had.

MR DANIEL PHOLISANI MAHLANGU: He actually did mention it, the first point, through you Chair, he said he was looking for a credible

advisory firm that had massive experience in the investment space, with a track record that is necessary, with expertise, with execution and capabilities so hence he wanted to partner with us. On the other hand you know as he mentioned in the email he was going to bring in you know the aviation expertise, which is what is required as far as this particular RFI was required and basically those two, if you put those two companies together then we can actually be compliant as far as the request for information is concerned.

ADV KATE HOFMEYR: Thank you Chair. I have a number of follow up
10 questions, but we should probably take the break and then we can deal with them after.

CHAIRPERSON: Yes, we will take the tea break and we will resume at twenty five to twelve. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Ready?

ADV KATE HOFMEYR: We are indeed Chair.

CHAIRPERSON: Thank you.

ADV KATE HOFMEYR: Thank you. Chair I know we asked Mr
20 Mahlangu to get us some information over the break but my proposal is that we deal with that when it becomes pertinent again and when we look at the bid so that we can continue with the topic we left on just before the break.

CHAIRPERSON: That is fine.

ADV KATE HOFMEYR: With your leave.

CHAIRPERSON: That is fine.

ADV KATE HOFMEYR: Thank you.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: Mr Mahlangu before the break we had ended on your testimony that I understood to be explaining to us what Mr Mngadi had relayed to you was his plan for this partnership between Inline Trading and BNP Capital, is that correct? If you will just turn it on yes press that button in front of you. That is perfect. Thank you. And Mr Mahlangu we can pick that up at page 12 of your statement. And I have
10 it that at paragraph 5.5 on that page you start to explain precisely what we were exploring before the break. The sentence introducing that paragraph reads:

“The nature of the joint venture to be formed was on the basis of the following considerations.”

And at 5.5.1 you write there:

“That Mr Mngadi was approaching myself and BNP Capital on the basis of mine and the company’s experience in the financial advisory and capital raising field.”

20 I would like to stop there just so that we can explore that basis for the partnership if we may? Explain to me Mr Mahlangu what was your understanding of the RFI at the time? What services was SAA looking for?

MR DANIEL PHOLISANI MAHLANGU: Through you Chair. They have requested an entity or a service provider that would come in and assist

them as far as debt consolidation is concerned and basically do an analysis as far as the financials are concerned.

ADV KATE HOFMEYR: And Mr Mahlangu do you understand there to be a difference between transaction advisory services and sourcing of funds or capital raising?

MR DANIEL PHOLISANI MAHLANGU: Yes those are completely different.

ADV KATE HOFMEYR: They are completely different?

MR DANIEL PHOLISANI MAHLANGU: Thank you.

10 **ADV KATE HOFMEYR:** We have had previous evidence clarifying that it is useful to know that you and I on the same page about that. So the transaction advisory services that you were bidding for had nothing to do with capital raising did it?

MR DANIEL PHOLISANI MAHLANGU: Through you Chair yes.

ADV KATE HOFMEYR: But then I just want to go back to what is said at page 12 paragraph 5.5.1 because as I understand what you have recorded there Mr Mngadi said he wanted your and BNP Capital's experience in the financial advisory and capital raising fields. I would like to probe that further. Capital raising was not relevant though was
20 it?

MR DANIEL PHOLISANI MAHLANGU: As far as the bid was concerned it was not.

ADV KATE HOFMEYR: Right so that would not have been a reason for the two entities to partner that experience that your company had?

MR DANIEL PHOLISANI MAHLANGU: I would not say that though.

Because our company by its nature does both. Yes.

ADV KATE HOFMEYR: But Mr Maglangu we are exploring why Mr Mngadi suggested the two entities should come together to bid for this tender?

MR DANIEL PHOLISANI MAHLANGU: Okay.

CHAIRPERSON: Correct?

MR DANIEL PHOLISANI MAHLANGU: Correct I understand.

ADV KATE HOFMEYR: So you accept at that stage capital raising was irrelevant.

10 **MR DANIEL PHOLISANI MAHLANGU:** Yes I accept.

ADV KATE HOFMEYR: Thank you. The second explanation you give in paragraph 5.5.1 is that he was approaching you and BNP Capital I am picking it up in the third line of that paragraph because of your broad based black economic empowerment credentials, do you see that?

MR DANIEL PHOLISANI MAHLANGU: Yes – yes sorry.

ADV KATE HOFMEYR: Did you explore that with him and why his company did not have those credentials?

MR DANIEL PHOLISANI MAHLANGU: As far as the discussion through you Chair with Inline Trading. Inline Trading was according to
20 understanding not a company that was actually fully fledged especially in this particular space as far as the requirements I mean the RFI requirements were concerned. So when he actually approached us it was based on a question of what Inline Trading had at that point in time and what we had as a company. So the difference between Inline Trading when you actually had to – when we explored you know what is

that was available at Inline Trading. What is basically in an entity that was not trading at that point in time and the only thing that it had was basically the aviation experience and basic individuals with that particular experience. Not necessarily that the company has actually been in that particular space for long.

ADV KATE HOFMEYR: Mr Mahlangu I want to follow up on that but I will return to my question about BEE credentials because I am not certain that that answer relates to the comparative BBBEE credentials of the two entities. But let me follow up on what you have testified to.

10 I have your evidence to be that you had understood at the time that Inline Trading was not fully fledged and that it had not been trading at that point in time, is that correct?

MR DANIEL PHOLISANI MAHLANGU: That is correct.

ADV KATE HOFMEYR: Okay could we then return to annexure 22.

CHAIRPERSON: I am sorry just before that.

ADV KATE HOFMEYR: Apologies.

CHAIRPERSON: Did you understand whether it had ever commenced trading?

20 **MR DANIEL PHOLISANI MAHLANGU:** Obviously Inline Trading had a what you call it a statement which is a SARS statement it means it was actually operational. But as to whether activities in that particular company took place it was not a – it was not a - it was a different discussion.

CHAIRPERSON: You did not know or you did know?

MR DANIEL PHOLISANI MAHLANGU: No we did not know.

CHAIRPERSON: You did not know whether it had any trading activities?

MR DANIEL PHOLISANI MAHLANGU: Yes I think through you Chair that information came through when ...

CHAIRPERSON: Later.

MR DANIEL PHOLISANI MAHLANGU: Later when we actually seek certain information. I think maybe that point we going to discuss later as to...

CHAIRPERSON: No that is fine.

10 **MR DANIEL PHOLISANI MAHLANGU:** As to how we then you know had to actually restructure our arrangement.

CHAIRPERSON: No that is fine.

ADV KATE HOFMEYR: Mr Mahlangu I would like to be very clear here because it is of some importance. At the time that you were meeting with Mr Mngadi in preparation for putting in the bid we are now at about a13 February did you understand the position to be that Inline Trading did not have trading experience?

MR DANIEL PHOLISANI MAHLANGU: Through you Chair hence I am saying trading experience might be maybe in this particular case not an
20 appropriate word in a sense that it has a tax clearance certificate. So by virtue of it having a tax clearance certificate it means there has been some activity in there however as to in the space that we act that was actually required which is the balance sheet optimisation and debt consolidation whether it had that experience in the advisory space it is something that is what I am actually to referring to here.

ADV KATE HOFMEYR: Because Mr Mahlangu you indicate in your statement later on that the reason why you did not submit any financials for Inline Trading is because it had no trading experience, do you recall that?

MR DANIEL PHOLISANI MAHLANGU: Yes I...

ADV KATE HOFMEYR: So it had no trading experience to your knowledge?

MR DANIEL PHOLISANI MAHLANGU: Definitely it had – it could have – sorry it could have trading experience but I do not know I cannot
10 actually vouch for it. However given that it is a small entity the difference is whether it had financials is another – it is a different story because some companies they are not actually not actually compelled to actually financials especially when they are actually small entities or start up entities.

CHAIRPERSON: Well part of this questioning arises from your own evidence. I asked you whether you knew whether it had commenced trading at some stage and you said it had a tax number and but you said as to whether it had any activities you did not know, did I understand your evidence correctly?

20 **MR DANIEL PHOLISANI MAHLANGU:** That is true.

CHAIRPERSON: Yes. And I – my – I understood that to be a reference to trading activities of any kind not necessarily in the – in the sector in which BNP was involved. Was my understanding correct of what you intended to say? In other words when you say you did not know whether it had any activities was I correct to think you were talking

about trading activities?

MR DANIEL PHOLISANI MAHLANGU: Yes basically what I am referring to you Chair is given that Inline Trading when – when they got information at the office I think the issue was financials but as far as other documentation were concerned they could actually provide. And my take as far as that is concerned is if a company does not have financials.

1. There is either there are two possibilities – or a couple of possibilities. But the main one is it is either it has been trading
10 in that particular company meaning activities in that company.
2. Or this company does not see a need of it having financial statements.

Yes but as far as the aspect of as I mentioned the aspect of what the RFP required that is what I was actually referring to to say I do not think they had much experience in that area.

CHAIRPERSON: Yes no no I just want to make sure we are speaking on – on – we are not speaking at cross purposes. There is the question whether that entity had experience or had been involved in activities that are immediately relevant to the bid.

20 **MR DANIEL PHOLISANI MAHLANGU:** That is true.

CHAIRPERSON: Okay. That is what you may have been talking about. But also I would imagine it would be important to first know whether what activities – what business activities it has been involved in if it does not – it has not been involved in the sector that you are in because if you find out that this is an entity for example that was just

registered and has never done anything of any part that might be relevant to the question of how legitimate is it for me to get to undertake this kind of project or job with an entity which has never been involved in any business activity at all. Did you understand what I mean?

MR DANIEL PHOLISANI MAHLANGU: I understand you Chair.

CHAIRPERSON: So I was asking in regard to that.

MR DANIEL PHOLISANI MAHLANGU: Okay.

CHAIRPERSON: Ja whether in terms of your knowledge at that time
10 covered that or whether you say no I actually did know you might have got to know that later.

MR DANIEL PHOLISANI MAHLANGU: Yes I think – through you Chair I think the latter is true at that point in time one did not know.

CHAIRPERSON: Okay thank you.

ADV KATE HOFMEYR: Mr Mahlangu I would like to probe that a bit further. You needed to submit the financials for both entities that formed the JV when you bid for the tender at SAA did you not?

MR DANIEL PHOLISANI MAHLANGU: That was the initial thought at the beginning.

20 **ADV KATE HOFMEYR:** No I am asking was it a requirement of the bid that you submit the financials of both entities in the JV who were bidding for the tender.

MR DANIEL PHOLISANI MAHLANGU: Yes we are not a JV. Can I just maybe talk about it?

ADV KATE HOFMEYR: Yes indeed.

CHAIRPERSON: Hm.

MR DANIEL PHOLISANI MAHLANGU: Okay. I am not sure whether I am going to be jumping around here. In – as we actually explored with Inline Trading as far as what is it that they have, what is that they do not have, obvious I think in this document we have actually loosely used the word JV and the consortium. Yes. And in our understanding as especially in our market space as far as these terms are concerned sometimes it depends – because in – you know some – some – some companies come together and form a consortium and in then that
10 consortium is basically the company that gets it registered and their interest actually gets known up front and then the same company that is you know that it owns by these different parties...

CHAIRPERSON: This formal arrangement.

MR DANIEL PHOLISANI MAHLANGU: Definitely.

CHAIRPERSON: Hm.

MR DANIEL PHOLISANI MAHLANGU: Yes. But in some instances especially given that there was just – at the beginning there was just request for information. So when we engaged with Inline Trading the understanding at the beginning was let us form a JV but as my team
20 actually went through the documentation and realised that that particular structure will not actually work with us yes based on some of the information that these guys did not have. So the – then the conclusion that was taken was let us form a consortium but it actually it is unincorporated consortium which we have actually done it in many of these transactions. I mean even in – in this bid that I am – I mean the

one that I am – it is part of the experience where we actually had to do an exercise for – for the health department that 400 billion on – Academic Hospital that was arrangement. So we have got a lead which actually leads – lead a consortium and the consortium in essence what then they do is they submit minimum information to that as far as you know the requirements are concerned. So in this particular case that is the route we took. As given the information that was available at that point in time.

CHAIRPERSON: I just want to understand. You decided that a joint
10 venture would not be suitable.

MR DANIEL PHOLISANI MAHLANGU: Yes.

CHAIRPERSON: Yes. And you decided that BNP

MR DANIEL PHOLISANI MAHLANGU: Be the lead.

CHAIRPERSON: Would be the bidder?

MR DANIEL PHOLISANI MAHLANGU: Yes the lead bidder.

MR DANIEL PHOLISANI MAHLANGU: The lead bidder?

MR DANIEL PHOLISANI MAHLANGU: Yes.

CHAIRPERSON: And you decided what status or role did you then assign to Mr Mngadi's entity?

20 **MR DANIEL PHOLISANI MAHLANGU**: Yes I think it is actually detailed here as to when – when we sort of carved out the responsibilities as to who was going to what as far the responsibilities are concerned in the ...

CHAIRPERSON: Okay no that is fine we will come to that. The reason why I am interested in how you decided to what role or status you gave

to your relationship is because I saw that it looks like the correspondence between SAA and yourselves and I use that in the plural and from you, yourselves to SAA and from SAA to yourselves seemed to have been on the letterheads of BNP only. And no other entity was mentioned in any way.

MR DANIEL PHOLISANI MAHLANGU: That...

CHAIRPERSON: And that would suggest to me – that would suggest to me that as far as SAA is concerned BNP was the bidder and nobody else. And that you yourselves knew that there is only one bidder. You
10 might have other – some arrangements between yourselves I mean BNP and Mr Mngadi's entity but really if the question is asked who is the bidder the answer would be BNP if the truth were to be told. That – that is what I began to think when I so looked – looked at the correspondence.

MR DANIEL PHOLISANI MAHLANGU: Okay.

CHAIRPERSON: That is why I am asking the question, if you decided that you were not going to be – to form a joint venture because you had decided that would be not – that would be unsuitable what is it then was the nature of the relationship and what was the role of Mr Mngadi's
20 entity?

MR DANIEL PHOLISANI MAHLANGU: Okay thank you Chair for the clarity. What I would like to do Chair just to put that is to give you experience in this particular space because as far as this SAA tender is concerned that is not the only structure that is being used in that particular arrangement. I am actually going to mention a couple of

structures that we have actually we have done which includes for instance we partnered – I have mentioned – I did not want to mention some of the audit firms here.

CHAIRPERSON: Yes.

MR DANIEL PHOLISANI MAHLANGU: But we partnered with – with Deloitte.

CHAIRPERSON: Hm.

MR DANIEL PHOLISANI MAHLANGU: Yes to actually – to vet the sinking fund which is – was run by Regiments at City of Johannesburg.

10 And that arrangement when you look at it Deloitte was the lead so as far as the letter of appointment is concerned in the correspondence Deloitte actually was receiving all the information even on the letterhead. However when the submission was made Deloitte actually did say BNP Capital is actually it is a sub-contract and then as far as the responsibilities of that are concerned then – got mapped out between us and Deloitte to say this is how we are going to – this is how we going to actually regulate this particular relationship. So even in this particular case I mean there are so many even in the hospital – in hospital there were sub-contractors – we were sub-contractors. Yes. I
20 remember in this...

CHAIRPERSON: No I do not have a problem with what you are explaining and with sub-contractors.

MR DANIEL PHOLISANI MAHLANGU: Yes.

CHAIRPERSON: I just want us to get it right.

MR DANIEL PHOLISANI MAHLANGU: Okay.

CHAIRPERSON: As to whether we are dealing with a situation where there was a joint venture between BNP and Inline Trading or where we are – whether we are dealing with the situation where the bidder was BNP but it had some arrangement between itself and Inline Trading which did not raise Inline Trading to the level of being a bidder or a joint bidder itself but simply to have an arrangement with BNP which would assist BNP to carry out or execute the bid if it got the tender.

MR DANIEL PHOLISANI MAHLANGU: Yes through you Chair. As I said at the beginning when this thing was actually craft out and the
10 thinking was we are going to work together as partners however when certain information was actually requested by my office that need to come through and then we realised that in this particular case – because remember when we actually form a JV it is – it comes with a whole lot of responsibilities and given the timeframes that were actually available so we did not have any time. So hence I think there was a chopping and changing as far as the strategy as to how do we – how to then position this entity so that at the same time we do not prejudice you know the opportunity that is there by actually putting a structure that which is not – which is not working. Yes.

20 **CHAIRPERSON:** Okay no that is fine. Ms Hofmeyr you might wish to continue?

ADV KATE HOFMEYR: Indeed.

CHAIRPERSON: Ja.

ADV KATE HOFMEYR: Mr Mahlangu you bid as a consortium/joint venture with Inline Trading 10 PTY Limited, did you not?

MR DANIEL PHOLISANI MAHLANGU: That is true.

ADV KATE HOFMEYR: Correct. Let us go to that page you will find it in your soft file which comprises your bid submission and you will find it at internal page 22 of 55 which Chair for the record comes from Ms Stimpel's exhibit DD1 at page 393.

CHAIRPERSON: Yes thank you.

ADV KATE HOFMEYR: You will see there. Sorry Mr Mahlangu let me let you get to it. You will see there the first bold entry on that page about a third of the way down requires the bidder in case of a
10 consortium or joint venture to provide the full details on the consortium or joint venture members if applicable. And do see that entered there is Inline Trading 10 PTY Limited?

MR DANIEL PHOLISANI MAHLANGU: Yes.

ADV KATE HOFMEYR: So it is correct you bid as a joint venture?

MR DANIEL PHOLISANI MAHLANGU: Okay in the understanding that I have yes.

ADV KATE HOFMEYR: Thank you. Let us then go to the financial position of Inline Trading because that is actually where we started these questions. You said that the financials of Inline Trading were not
20 provided because you were told that they were not trading, is that correct?

MR DANIEL PHOLISANI MAHLANGU: It is the assumption I have made. Because their financials were not available.

ADV KATE HOFMEYR: Oh I see.

MR DANIEL PHOLISANI MAHLANGU: Yes so what I said was they

were – there are a couple of options as far as that aspect is concerned. Either these guys did not see a need for them to prepare any financials or there was no activity.

ADV KATE HOFMEYR: Well as I understand your statement you say it is because of the latter that they had no activities. You did not enquire of them whether they did not have financial statements because they decided not to compile them, did you?

MR DANIEL PHOLISANI MAHLANGU: As I have indicated through you Chair that I do not deal at that level it is my actually my – the guys at
10 the office that actually says this company has got this and this is how we are going to move forward. So I do not deal at that level as to enquire you know about the financials of a particular company that you dealing with.

ADV KATE HOFMEYR: You signed the bid submission though, did you not?

MR DANIEL PHOLISANI MAHLANGU: Yes I did.

ADV KATE HOFMEYR: In all its respects. So did you content yourself as to the accuracy of the information contained in that bid submission before you submitted it?

20 **CHAIRPERSON:** Sorry Ms Hofmeyr I think counsel wishes to say something – please come forward.

ADV KATE HOFMEYR: Oh apologies.

CHAIRPERSON: Let us hear.

UNKNOWN COUNSEL: Your Worship just – there is a misunderstanding that is taking place.

CHAIRPERSON: Yes.

UNKNOWN COUNSEL: The witness has clarified that even though and these are his words, even though there is loose reference to expressions of joint venture and consortium what in actual effect took place with this bid they used a structure where there is a primary bidder, a lead bidder and the other party comes as a sub-contractor. And in that structure it is his evidence that how it is treated some of the documents that would ordinarily be required if it is a joint venture in the proper sense they are not required in relation to sub-contractors.

10 They are only required in terms of the primary bidder but when the entity is viewed in terms of his technical expertise and ability to deliver all the parties and the CV's of the members are looked at by the – by the entity that would have issued the RFP. So it is not a – an arrangement where the sub-contractor is completely behind the scenes. It is not behind the scenes. The entire venture, the entire – the entire team is evaluated on the strength of the CV's of all the members but documents like your it would depend [indistinct].

CHAIRPERSON: Yes no, no, no that is fine I think...

UNKNOWN COUNSEL: That is what is being missed.

20 **CHAIRPERSON:** I think that – I think make notes and in due course give them to Ms Hofmeyr at some stage of areas where you think there should be some clarification where you think there might be misunderstanding and if having seen your notes and asked whatever question arising from your notes you are still not happy that you are covered then you can raise it with me. Okay thank you.

ADV KATE HOFMEYR: Thank you Chair I am indebted. It is of course important for the purposes of the commission's proceedings that we receive evidence from the witnesses.

CHAIRPERSON: Yes, yes.

ADV KATE HOFMEYR: And it is those answers that we probe with further questions.

CHAIRPERSON: Ja.

ADV KATE HOFMEYR: Mr Mahlangu you were indicating your state of knowledge at the time that you submitted the bid submission about the
10 trading activities of Inline Trading. Is it correct that you understood that they did not have trading activities and that is why you did not submit financials for them?

MR DANIEL PHOLISANI MAHLANGU: That is incorrect through Chair that is incorrect. What I said – I said the assumptions as far as that aspect is concerned. It is either the guys they decide not to do financials 1. Or I am making assumptions here yes – in essence what I am doing here is in hindsight where I am sitting now I am making assumptions because I do not want – I did not think that I was going to be in this... yes.

20 **CHAIRPERSON:** Yes, no but let me just explain. My understanding of the question is that it seeks to establish what your understanding was and your understanding would be based in part on assumptions that you made.

MR DANIEL PHOLISANI MAHLANGU: Yes.

CHAIRPERSON: Which might turn out to have been wrong but those

are the assumptions on which you based your decisions and how you interacted with [indistinct].

MR DANIEL PHOLISANI MAHLANGU: Yes that is true.

CHAIRPERSON: So – so that is – she is not saying what was the position but she is saying what was your understanding of what the position was?

MR DANIEL PHOLISANI MAHLANGU: Yes and hence thank you Chair. Hence I said I was not actually responsible for that however based on information before me.

10 **CHAIRPERSON**: Yes.

MR DANIEL PHOLISANI MAHLANGU: When we actually engage with entities because we engage such entities on you know – on a continuous bases. When an entity does not have financials it is either they are not in a position to be – the financials are not ready or secondly there has not been any activity for them to actually to say this is [indistinct] any financials.

CHAIRPERSON: No, no that is fine.

MR DANIEL PHOLISANI MAHLANGU: So those are the assumptions that we were making yes.

20 **CHAIRPERSON**: Yes. No that is fine but it will help us to make progress if you just answer the question as to the best of your ability and if you are required to justify why you did or did not do any particular thing then you justify. So for example at this stage the question was simply as to what your understanding was at the particular time on a particular issue all you say is my understanding

was a, b, c, d.

MR DANIEL PHOLISANI MAHLANGU: Okay.

CHAIRPERSON: Ja. Okay.

MR DANIEL PHOLISANI MAHLANGU: Maybe – thanks Chair for guidance.

CHAIRPERSON: Yes, yes.

MR DANIEL PHOLISANI MAHLANGU: Maybe – what I – I would respond to this issue because – with – you know – without skating around you know

10 **CHAIRPERSON:** Yes.

MR DANIEL PHOLISANI MAHLANGU: To be honest I did not know what [indistinct].

CHAIRPERSON: Yes no that – that is the important – sometimes you know, sometimes you do not know and when you are the head of an organisation there will be things that you do not know which you should know. There will be things that you do not know which you do not need to know and so on but I think Ms Hofmeyr will talk to you because her question may have a link with the – with the fact that you signed certain documents so maybe you should repeat your question.

20 **ADV KATE HOFMEYR:** Indeed.

CHAIRPERSON: Ja.

ADV KATE HOFMEYR: Thank you Chair. Mr Mahlangu as I understand your evidence now it is that you did not know at the time of submitting the bid whether Inline Trading had financials. Is that correct?

MR DANIEL PHOLISANI MAHLANGU: Okay. Can I go back through

the Chair? I think now the question keeps on changing now. The question – the first question that I understood was did – did – for the mere fact that the financials were not available did I know that there was no activity in the business. So hence I said the reason for some of the financials not available I was making assumptions.

CHAIRPERSON: Yes, *ja*.

MR DANIEL PHOLISANI MAHLANGU: Yes.

CHAIRPERSON: *Ja*.

MR DANIEL PHOLISANI MAHLANGU: But for – for – the question
10 Ms Hofmeyr has just asked me now is whether did I know at the time of submission whether the financials were not available.

CHAIRPERSON: Yes.

MR DANIEL PHOLISANI MAHLANGU: Yes. Yes I did know the financials were not available.

ADV KATE HOFMEYR: Thank you.

CHAIRPERSON: *Ja*.

ADV KATE HOFMEYR: That is consistent with what you say at para – at page 44 of your statement. We can just go there to refresh your memory. If we go to page 44 of your statement. You will see at the
20 bottom there at paragraph 11.3.8 you are responding to a question that the Commission had asked of you. The question is:

“Why is it that only the financials of BNP Capital
were submitted and not for Inline Trading?”

And the response as I have it to be your response is:

“Inline Trading had not trading experience.”

Correct?

MR DANIEL PHOLISANI MAHLANGU: That is true.

ADV KATE HOFMEYR: Thank you. Why then did the bid submission indicate that it had 10 years of experience in funds management and the aviation and automotive sectors? I will take you to that reference for your convenience. You will find it in Ms Nhantsi's bundle which is EXHIBIT DD2 and if you turn up page 2-7-2 in that bundle.

CHAIRPERSON: I do not have that bundle.

ADV KATE HOFMEYR: Ms Nhantsi. I understood that ...

10 **CHAIRPERSON:** I – I have this one.

ADV KATE HOFMEYR: Yes – but the original DD2 Chair I have requested was with you today. I think it might be with you on the side – might it?

CHAIRPERSON: Oh. Nobody told me anything.

ADV KATE HOFMEYR: Apologies. Apologies Chair.

CHAIRPERSON: And it should have been here?

ADV KATE HOFMEYR: Yes.

CHAIRPERSON: DD2?

ADV KATE HOFMEYR: Correct Chair.

20 **CHAIRPERSON:** DD2. Am I going to need all these other ones?

ADV KATE HOFMEYR: At points yes Chair.

CHAIRPERSON: Oh, okay.

ADV KATE HOFMEYR: Apologies that that was not conveyed.

CHAIRPERSON: Yes. What is the page number?

ADV KATE HOFMEYR: 2-7-2. You will find it right towards the end of

the file Mr Mahlangu.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: If you found it there you will see a heading at the top of that page - 2-7-2 - that reads:

“1.2.2 Introduction to the Company...”

And then it says:

“Inline Trading 10 (Pty) Ltd.’s experience ...”

Sorry.

10 “...expertise is in funds management, automotive
and the aviation sector. Inline Trading’s expertise
and track record has been accumulated for a period
in excess of 10 years.”

Do you see that?

MR DANIEL PHOLISANI MAHLANGU: Yes through Chair yes I do.

ADV KATE HOFMEYR: That is inconsistent with it not having had any trading activities for the past 10 years. Is it not?

MR DANIEL PHOLISANI MAHLANGU: That is true.

20 **ADV KATE HOFMEYR:** Thank you and Mr Mahlangu you have given evidence previously about the wording that Mr Mngadi wanted inserted into the bid. Do you recall that? It was the email between himself and Mr Moyo.

MR DANIEL PHOLISANI MAHLANGU: Through you Chair yes.

ADV KATE HOFMEYR: We can go there again but you may recall this is the exact wording that Mr Mngadi wanted inserted in the bid. Do you recall that?

MR DANIEL PHOLISANI MAHLANGU: Yes. I was – I was about to take you there ...

ADV KATE HOFMEYR: Hm.

MR DANIEL PHOLISANI MAHLANGU: To say this is basically the information that we got from Inline Trading about their experience.

ADV KATE HOFMEYR: So did anyone in BNP Capital query how it could be that Inline Trading had 10 years of experience in these three sectors and yet have no financial because it was not trading?

MR DANIEL PHOLISANI MAHLANGU: Through you Chair unfortunately
10 in our space you find companies – when – when someone does not actually have the financials now it does not mean that they never had any financials yes. It means at that point - particular point in time the financials were not ready for – for the submission.

So that is – that is our understanding. So it is not a question of whether these people have – have been trading for the past couple of years whatever the case is and having had any financials. Hence I said some people see a need for them to actually have their financials ready on a consistent basis some do not for – for obvious reasons but in this particular case my assumption when I looked at it I just – as I
20 said there was no trading here.

Maybe trading was actually one/two. These guys were not ready just to put out their financials or financials were not ready or the auditors or whatever the case is. So – so that was my position as far as this point is concerned.

ADV KATE HOFMEYR: Mr Mahlangu then the answer that you gave at

page 44 of your statement should have been different. Should it not?

MR DANIEL PHOLISANI MAHLANGU: In light of this yes.

ADV KATE HOFMEYR: It should have been there were not financials because they did not have any ready at that time for submission?

MR DANIEL PHOLISANI MAHLANGU: Through you Chair I do not want to harbour on this issue but I am just saying at that point in time I was – I do not actually deal with such issues. However in hindsight now when I look at my – my thinking here was if they do not have the financials it means that no trading activity or one, never should have
10 actually put that option in my – in my response.

Maybe that was – you know – amiss of me to say I should have actually put that possibility that one it is either there is no trading. Two, it is either – you know – the financials are not ready for that particular entity because I was just answering because this thing happened in 2016. So I cannot remember all the details. I was just answering – answering to the best of my ability.

CHAIRPERSON: Well maybe let me ask this question and maybe Ms Hofmeyr was still going to come to it. I – I would have thought that if you are going to have a working relationship with somebody else that
20 involves something like jointly tendering for business and so on together – excuse me – there would be a certain minimum homework that you would want to do on that person or that entity just to see whether this is the type of entity you would like to be associated with or this is the type of entity or person that you would like to be seen to be working with by other people and of course maybe most importantly

what value they would bring to the table as far as you are concerned but some of the answers you have given to some of the questions seem to suggest that BNP might not have done that kind of homework both about Mr Mngadi and about Inline Trading. Am I right?

MR DANIEL PHOLISANI MAHLANGU: That is true Chair. In our line of business it depends what – what is it that you guys get involved in. Some audit firms they basically run the process on us yes before we actually get involved with us and – and for obvious reasons and that particular – for reasons that we all know – you know – reputation, what
10 the guys are involved in and to have all – all these statutory requirements blah, blah, blah but as far as the I think this particular bid was concerned because it was a request for information.

So we had the bare minimum information – you know at our disposal that we could actually use to submit and secondly is as far as – as far as the due diligence on individuals and companies hence – hence we did not actually have time. I think what we had is – was the – I think we had about a week or so.

CHAIRPERSON: A few days?

MR DANIEL PHOLISANI MAHLANGU: Yes. To actually ...

20 **CHAIRPERSON:** Yes.

MR DANIEL PHOLISANI MAHLANGU: To actually put together because – you know – start – to start with we not even interested in the tender because ...

CHAIRPERSON: Hm.

MR DANIEL PHOLISANI MAHLANGU: We just forwarded the tender

document.

CHAIRPERSON: Hm.

MR DANIEL PHOLISANI MAHLANGU: We did not want to go for it. We were not – our interest was not even there.

CHAIRPERSON: Hm.

MR DANIEL PHOLISANI MAHLANGU: So come – you know – comes a particular sort of potential – you know – partner says you know I have got this in place.

CHAIRPERSON: Hm.

10 **MR DANIEL PHOLISANI MAHLANGU:** I think we can work together. You guys have got this expertise. I have got that ...

CHAIRPERSON: Hm.

MR DANIEL PHOLISANI MAHLANGU: And then we are to deal with admin issues because I mean I think what we are talking about now it is admin issues.

CHAIRPERSON: Hm.

MR DANIEL PHOLISANI MAHLANGU: Where we said okay fine what is it that we have. How – how can we properly put the structure in place so that we respond appropriately to – to this particular opportunity. I
20 think at that point in time given the time constraints and everything ...

CHAIRPERSON: Ja.

MR DANIEL PHOLISANI MAHLANGU: There was no - any time to be – to be – so – so to speak quoting each other.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR:

MR DANIEL PHOLISANI MAHLANGU: To say who are you, where are you from – you know (intervenes).

CHAIRPERSON: So – so you accept that what I refer to as basic homework is something that should be done but you say there were time constraints before you had to submit the information?

MR DANIEL PHOLISANI MAHLANGU: I agree Chair.

CHAIRPERSON: It is correct?

MR DANIEL PHOLISANI MAHLANGU: Yes it is correct. Just to add on that I think also what provided sort of not any suspicion. Hence I said
10 it is how we actually met this individual ...

CHAIRPERSON: Hm.

MR DANIEL PHOLISANI MAHLANGU: And how the introduction was done.

CHAIRPERSON: Hm.

MR DANIEL PHOLISANI MAHLANGU: Hence I said if it was someone that we met on the street ...

CHAIRPERSON: Hm.

MR DANIEL PHOLISANI MAHLANGU: It was going to be a different ball game.

20 **CHAIRPERSON:** Okay thank you.

ADV KATE HOFMEYR: Mr Mahlangu I would like to pick up on that question of timing. As I have your evidence Mr Mngadi's first approach to you was on 9 February. That is the email that we looked at. Is that correct?

MR DANIEL PHOLISANI MAHLANGU: That is correct.

ADV KATE HOFMEYR: And in that email it talks about the need to be quick because the responses to the RFI had to be in – I think it was by the next Tuesday – 16 February. Do you recall that?

MR DANIEL PHOLISANI MAHLANGU: That is true.

ADV KATE HOFMEYR: Do you know when the actual bids had to be submitted in response to the RFP?

MR DANIEL PHOLISANI MAHLANGU: Sorry through you Chair. Now you are confusing me. Are you – are you talking about the RFI or the RFP?

10 **ADV KATE HOFMEYR:** I am now talking about RFP.

MR DANIEL PHOLISANI MAHLANGU: Alright, then.

ADV KATE HOFMEYR: Because remember you engage initially on the RFI and there is a short period of time because Mr Mngadi approaches you on the 9th and those have to be in by the – apologies – it is Tuesday 16 February.

MR DANIEL PHOLISANI MAHLANGU: Yes.

ADV KATE HOFMEYR: So that is a matter of seven days later but the RFP process then follows and what – the documents we have been looking at are the documents that you submitted pursuant to the RFP
20 process. They are your bid submission ...

MR DANIEL PHOLISANI MAHLANGU: (Intervenes).

ADV KATE HOFMEYR: After you have submitted a response to the request for information. Are you on the same page as me?

MR DANIEL PHOLISANI MAHLANGU: Yes. I am not sure how – I think I am but I cannot – I am not following you yet. Maybe I will follow you.

ADV KATE HOFMEYR: There is a difference between the RFI and the RFP. Do you understand that?

MR DANIEL PHOLISANI MAHLANGU: I know that, yes.

ADV KATE HOFMEYR: Right. The RFI's deadline was 16 February 2016. Correct?

MR DANIEL PHOLISANI MAHLANGU: Yes.

ADV KATE HOFMEYR: Let me assist. The RFP's deadline was 18 March 2016. You are aware of that?

MR DANIEL PHOLISANI MAHLANGU: Yes. This process I ...

10 **ADV KATE HOFMEYR:** Are you aware of that? That the RFP required you to submit your bids by 18 March 2016. Are you aware of that?

MR DANIEL PHOLISANI MAHLANGU: Yes. I am just trying to understand your questioning because now you are talking about RFI and you are talking about RFP.

CHAIRPERSON: Mr Mahlangu please when Ms Hofmeyr asks questions do not think about where is she going or anything like that. Just look at the question and just answer it to the best of your ability. She has just said the date by when your proposals – your bid had to be delivered to SAA in response to the RFP - not the RFI – in response to
20 the RFP.

She has said that date – the closing date was 18 March 2016 and her question is are you aware that that is the date by when your bid had to be submitted in response to the RFP and you are either aware that that was the date or you are not aware that that was the date.

MR DANIEL PHOLISANI MAHLANGU: Thank you Chair for clarity. I think what confused me was moving from the RFI to the RFP yes because ...

CHAIRPERSON: Yes.

MR DANIEL PHOLISANI MAHLANGU: We have not submitted the RFP yet. This was ...

CHAIRPERSON: Remember you asked her whether her question related to the RFI or RFP and then she was clarifying to you. She clarified to you to say no I am talking about the RFP. You had the RFI
10 first. You had the – then you had the RFP.

MR DANIEL PHOLISANI MAHLANGU: (Intervenes).

CHAIRPERSON: She even asked you do you understand the – do you know the distinction and you said yes you know it. So then she said in effect I am talking about the RFP now.

MR DANIEL PHOLISANI MAHLANGU: Okay.

CHAIRPERSON: So are – are you aware that 18 March 2016 was the deadline for submitting the bid in response to the RFP?

MR DANIEL PHOLISANI MAHLANGU: I cannot say that because I do not – I cannot remember now the details.

20 **CHAIRPERSON:** You cannot remember?

MR DANIEL PHOLISANI MAHLANGU: Yes.

CHAIRPERSON: That is fine.

ADV KATE HOFMEYR: Let me take you to it. You will find it in your soft file in front of you which contains the BNP bid. You will recall that is the one we have created for today's purposes and if you go to the

internal numbering on that page 10 of 55 which Chair for the record is in Ms Stimpel's bundle which is EXHIBIT DD1 at page 3-8-1.

CHAIRPERSON: I have got it.

ADV KATE HOFMEYR: Thank you. Mr Mahlangu you will see there it is the third line done. It says:

“Closing date or time 18 March 2016.”

Do you see that?

MR DANIEL PHOLISANI MAHLANGU: Yes I do.

ADV KATE HOFMEYR: Are you satisfied that that was the closing date
10 then for bid submissions in response to the RFP?

MR DANIEL PHOLISANI MAHLANGU: Yes I am.

ADV KATE HOFMEYR: Thank you. Mr Mahlangu let me explain why that line of questioning is relevant because it is a follow on from the Chair's question earlier.

The Chair's question was what level of integration did you engage upon before you entered into this joint venture with Inline Trading and I understood your answer to be well there was little time in which we could do extensive checking and that is why I needed to put to you that it is certainly the case that there was a short period of time
20 for as sponsors to the RFI but the actual bid submission occurred a full month later and so in fairness to you I would like to ask whether it was not available to you in that month between 16 February 2016 and 18 March 2016 to get more information about Inline Trading before you submitted your bid?

MR DANIEL PHOLISANI MAHLANGU: Thank you Chair. Now I

understand where the confusion comes from. As far as the RFI was – you know – it is concerned the RFI had to be concerned as a matter of urgency yes and – and already Inline Trading was part of that process – the detail and during that period obviously the – the SAA officials had actually gone through a particular process and then when that process was done it is only then that they issued to – to companies an RFP yes.

I understand what Ms Hofmeyr is asking me but the difficult part is we have already started this journey with Inline Trading right at the beginning from the RFI stage. So we – we are not dealing with
10 Inline Trading with a view – with a suspicious view that there is something untoward. In ...

CHAIRPERSON: May – may I stop you there Mr Mahlangu? Take your time and just listen to the question carefully, okay. The only question that Ms Hofmeyr has asked you now is whether the month that is from 16 February to 18 March was not enough for you to obtain whatever information you might have wished to obtain about Inline Trading.

So your answer should be yes it was enough or no it was not enough and if you are then asked a follow up question then you can deal with that or you can explain if there is a need for explain but let us
20 first get the answer to whether that was not enough time.

MR DANIEL PHOLISANI MAHLANGU: Hm.

CHAIRPERSON: From 16 February to 18 March to get whatever information you may have wished to get about Inline Trading.

MR DANIEL PHOLISANI MAHLANGU: Yes thank you Chair. I think between that time and 18 March BNP Capital had no – any – we were

not actually in a position – we did not actually set – set forward to look for any other information from Inline Trading because it was just a follow on – on ...

CHAIRPERSON: Yes but no you are not answering the question again - as least as formulated by me. If you wanted to get more information on Inline Trading between 16 February and 18 March would you accept that that would have been enough time or do you say that that would have not been enough time for you to try and get more information from - about – or about Inline Trading?

10 **MR DANIEL PHOLISANI MAHLANGU:** Through you Chair now I am lost. There you can assist me again, yes.

CHAIRPERSON: Well I am trying to assist but maybe ...

MR DANIEL PHOLISANI MAHLANGU: Yes.

CHAIRPERSON: And I am confusing you.

MR DANIEL PHOLISANI MAHLANGU: Yes I am confused because remember the beginning when we – when we actually entered when we had an arrangement ...

CHAIRPERSON: No I think let us forget the beginning.

MR DANIEL PHOLISANI MAHLANGU: No, okay.

20 **CHAIRPERSON:** No, no let us forget the beginning.

MR DANIEL PHOLISANI MAHLANGU: Yes.

CHAIRPERSON: We – we are going to keep on going back for too long.

MR DANIEL PHOLISANI MAHLANGU: Yes.

CHAIRPERSON: Just wait – just wait. Is it – is it correct that you said

the time you had to obtain information about or from Inline Trading before submitting the response to the RFI was too short?

MR DANIEL PHOLISANI MAHLANGU: True – true.

CHAIRPERSON: You said that?

MR DANIEL PHOLISANI MAHLANGU: Definitely.

CHAIRPERSON: Yes, okay. That was – that means you did not have enough time to try and get whatever information you may have wanted to get about Inline Trading. Is that correct? That is what – that is the significance or your answer that the time was short.

- 10 **MR DANIEL PHOLISANI MAHLANGU:** Yes. Through you Chair if you remember what led to that question – what led to that question is you have asked me – you said to me in most instances before a business enters into a partnership with another business ...

CHAIRPERSON: Hm.

MR DANIEL PHOLISANI MAHLANGU: You guys do a sort of a due diligence ...

CHAIRPERSON: Ja.

MR DANIEL PHOLISANI MAHLANGU: HR.

CHAIRPERSON: Yes.

- 20 **MR DANIEL PHOLISANI MAHLANGU:** Yes; and then my response was in this particular case one we did not have time yes. Two, we - some companies – I will give an example. For – when – before we enter into any arrangement with that company we have already done a due diligence in advance.

CHAIRPERSON: Yes.

MR DANIEL PHOLISANI MAHLANGU: So there is a time – yes.

CHAIRPERSON: Yes you did say that *ja*.

MR DANIEL PHOLISANI MAHLANGU: Yes besides doing due diligence in advance ...

CHAIRPERSON: Yes.

MR DANIEL PHOLISANI MAHLANGU: We have already worked with this – some of – some of these companies. We might be sitting on different sides of the table.

CHAIRPERSON: Yes.

10 **MR DANIEL PHOLISANI MAHLANGU:** So they knew that we exist.

CHAIRPERSON: You did say that, yes.

MR DANIEL PHOLISANI MAHLANGU: Yes; but in this particular case firstly we did not actually – to respond to your question – we did not have time to – for that. Actually it did not even hit us that point in time given the rate things were moving ...

CHAIRPERSON: *Ja*.

MR DANIEL PHOLISANI MAHLANGU: To say wait I think let us check out who you are. They have actually – perhaps they have done – they have done that to us – you know – because - you know – they had to ...

20 **CHAIRPERSON:** Yes.

MR DANIEL PHOLISANI MAHLANGU: Yes.

CHAIRPERSON: Yes.

MR DANIEL PHOLISANI MAHLANGU: But we had not – we did not do to that to them.

CHAIRPERSON: Yes; but hand on Mr Mahlangu – you know – if we are

going to spend so much time on one question we will not finish today. We will not finish tomorrow okay. Let us – let us try again, okay. You have repeated your evidence that at least one of the reasons why you did not do any homework on Inline Trading before you submitted your response to the RFI was that the time was limited.

Is that right? You have repeated. That is one of the reasons at least. Am I right?

MR DANIEL PHOLISANI MAHLANGU: Hm

CHAIRPERSON: Okay.

10 **MR DANIEL PHOLISANI MAHLANGU:** Yes.

CHAIRPERSON: Is one of the reasons why you did not do what you call due diligence on Inline Trading before responding to the RFI – was one of the reasons that the time available you - to you to do that was short?

MR DANIEL PHOLISANI MAHLANGU: Yes. Yes Chair but can I qualify it?

CHAIRPERSON: Oh *ja*. What is the qualification?

MR DANIEL PHOLISANI MAHLANGU: The question is I think we are making an assumption here and that is assumption is can I finish Chair
20 just one second?

CHAIRPERSON: Okay, finish.

MR DANIEL PHOLISANI MAHLANGU: Yes.

CHAIRPERSON: Yes.

MR DANIEL PHOLISANI MAHLANGU: That assumption is when we enter with any business we do a due diligence and that assumption –

that is an assumption we making and we do not. I do not think all these companies do that otherwise we will not move forward. So that is an assumption you are making.

So now I am – am put in a corner where I am supposed to – I am supposed to actually respond to say I was supposed to admit a due diligence but there is a question of time but perhaps maybe I had more time why did I not do it.

CHAIRPERSON: Okay alright. Let us – let us do this. I think I did ask you the question after you had responded to this. I think I did ask you
10 the question whether you agreed that that homework should have been done but that there was no time. I may have misunderstood your answer but I thought you accepted that that kind of what I called homework should have been done. That is – that is not what you said? I misunderstood?

MR DANIEL PHOLISANI MAHLANGU: What basically I meant is invariably people actually do that.

CHAIRPERSON: *Ja.*

MR DANIEL PHOLISANI MAHLANGU: We do it yes.

CHAIRPERSON: *Ja*; but would BNP do that on somebody that ...

20 **MR DANIEL PHOLISANI MAHLANGU:** Hm.

CHAIRPERSON: Who wants to work with them as a joint venture?

MR DANIEL PHOLISANI MAHLANGU: Definitely but not – we do not actually do that on all of our potential sort of partners.

CHAIRPERSON: But normally you would do that?

MR DANIEL PHOLISANI MAHLANGU: Definitely.

CHAIRPERSON: But sometimes you do not?

MR DANIEL PHOLISANI MAHLANGU: Yes definitely.

CHAIRPERSON: Okay, alright. Now are you able to tell us when you do it and when you do not? Is that a particular criterion that you use to say well we will not do it if – if the entity is this type of entity or miss these kinds of requirements? How do you decide yes we must do it here? No we must not do it here?

MR DANIEL PHOLISANI MAHLANGU: Through you Chair it – it actually usually through the business requirements at that point in time.

10 So whatever opportunity that is there if for instance we get opportunities on a continuous basis when we get people to – you know – phoning us and say I am so and so I need advice on this particular issue. I come from this particular company.

Then you are able to sit back and say who are these guys. Who do they come? I mean – if they – if they came through just calling us to say no so and so gave me your number and – you know – and they said I must actually talk to you blah, blah, blah. So in essence if we had the time then we will look at this company and engage further if there is no opportunity – if for instance there is no opportunity but they
20 opportunity it is – it is going to be concluded far down the line.

Then we have the time to sit down and say and engage with those people further but in some instances few – you know – it is an opportunity and – and you know certain individuals and actually you move at given the time constrains and everything else you move but it not like – it is not like it is a prerequisite to say before we engage with

anyone we have to actually make sure that we understand who you are where you come from because we all put ourselves separately – differently.

CHAIRPERSON: So would it be correct then to say what you are saying is that normally do that homework?

MR DANIEL PHOLISANI MAHLANGU: Yes Chair.

CHAIRPERSON: But sometimes you do not?

MR DANIEL PHOLISANI MAHLANGU: That is true.

CHAIRPERSON: And that a lot depends whether you do it or not. A lot
10 depends on the circumstances at the time?

MR DANIEL PHOLISANI MAHLANGU: Definitely.

CHAIRPERSON: Is that right?

MR DANIEL PHOLISANI MAHLANGU: Definitely.

CHAIRPERSON: And those circumstances would largely be whether there is enough time to do the homework ...

MR DANIEL PHOLISANI MAHLANGU: Hm.

CHAIRPERSON: And other – and other factors maybe?

MR DANIEL PHOLISANI MAHLANGU: I agree with you Chair.

CHAIRPERSON: But that would be one of the factors?

20 **MR DANIEL PHOLISANI MAHLANGU:** Definitely.

CHAIRPERSON: Yes. Now in the case of Inline Trading before the submission of your response to the RFI my understanding is that – my understanding was earlier that you were saying because of time constraints at least as one of the reasons maybe there – there may be others – you – you did not do that homework?

MR DANIEL PHOLISANI MAHLANGU: No we did not.

CHAIRPERSON: Yes but that part of the reason why you did not was that there was little time to do it before you – you had to deliver the response to SAA. Is that right?

MR DANIEL PHOLISANI MAHLANGU: Yes there was – through you Chair – there was little time to actually – to be in courtship with - with Inline Trading ...

CHAIRPERSON: Yes.

MR DANIEL PHOLISANI MAHLANGU: Because most of the guys – you
10 know – in courtship we know them and ...

CHAIRPERSON: Yes.

MR DANIEL PHOLISANI MAHLANGU: Yes.

CHAIRPERSON: Yes. Okay, alright. Was the other reason why you did not do that homework about Inline Trading before submitting your response to – to the RFI was one of the reasons that Mr Mngadi had been referred to you by somebody that you knew quite well and knew as credible?

MR DANIEL PHOLISANI MAHLANGU: That is one of the reasons.

CHAIRPERSON: That's one so we have got at least two reasons why
20 you didn't do it, one time constraints, two the fact that Mr Mngadi had been referred to you by somebody that you trusted.

MR DANIEL PHOLISANI MAHLANGU: Definitely, that's correct.

CHAIRPERSON: Okay, now going back to Ms Hofmeyr's question let's confine ourselves for now only to the question of whether there was enough time between the 16th of February and the 18th of March 2016

to do that homework, whether there may be other reasons why you might decide not to do it, we can deal with that. Was a month enough time to do whatever homework you might have wished to do on Inline Trading?

MR DANIEL PHOLISANI MAHLANGU: Through you Chair, I think the time was sufficient and I mean a month is a sufficient time, however, we did not set forth at the beginning that we were going to do that.

CHAIRPERSON: No that's fine so is my understanding correct that this was a case that you decided that you were not going to do that
10 homework in regard to Inline Trading, is my understanding of what you're saying correct. My understanding is that you are saying or you may be saying that in the case of Inline Trading you decided that you were not going to do the homework that we are talking about?

MR DANIEL PHOLISANI MAHLANGU: Through you Chair, it's not like we decided, yes it's not like we consciously sat down and said as far as this company is concerned we're actually not going to do this.

CHAIRPERSON: Yes you didn't make any specific decision?

MR DANIEL PHOLISANI MAHLANGU: No it was – as I said Chair it was based on what was available, I mean, even in his email Mr Mngadi
20 will tell you time is of essence so when we actually got there, we were just running, there was no question of okay first, before we run, by the way who you are let's understand where you come from because we didn't have that luxury of time.

CHAIRPERSON: Okay, alright so I think we have Ms Hofmeyr I've taken over your question but I think that what you are saying is, one,

you didn't do any homework about Inline Trading both before you submitted your response to the RFI and before you submitted your bid in response to the RFP is that correct, you did not, as a matter of fact you did not do it.

MR DANIEL PHOLISANI MAHLANGU: That's true Chair.

CHAIRPERSON: And you did not make a specific decision not to do it, it just didn't happen.

MR DANIEL PHOLISANI MAHLANGU: That's true Chair.

CHAIRPERSON: Okay.

10 **ADV KATE HOFMEYR:** Mr Mahlangu, I'd just like to follow up on something you said in your answer to the Chair's questions I think you said something about you knew the guys or you were in courtship, I'm not sure I got the word correctly in relation to Inline Trading did I misunderstand your evidence, I thought you gave that as a reason for why you didn't do homework?

MR DANIEL PHOLISANI MAHLANGU: Through you Chair, yes that's a misunderstanding yes.

ADV KATE HOFMEYR: What did you say about...(intervention).

MR DANIEL PHOLISANI MAHLANGU: I said there was not enough
20 time to be in courtship.

ADV KATE HOFMEYR: Right I understand, not enough time, thank you. Mr Mahlangu, you were the person who signed at the various points we've gone to in the bid submission for BnP Capital is that correct?

MR DANIEL PHOLISANI MAHLANGU: That's correct.

ADV KATE HOFMEYR: Did you satisfy yourself as to the correctness

of the facts that were presented in that bid submission before you signed in those places and before you submitted the bid?

MR DANIEL PHOLISANI MAHLANGU: Yes I did.

ADV KATE HOFMEYR: Thank you, just to pick up the point that your legal representative took up about a sub-contractor role between BnP Capital and Inline Trading just as a matter of fact, is your reading of your bid submission the same as mine, in that at no point in that bid submission is Inline Trading ever referred to as a sub-contractor?

MR DANIEL PHOLISANI MAHLANGU: Are you asking whether it's yes
10 or no, through you Chair?

ADV KATE HOFMEYR: Yes let me – sometimes two negatives is unhelpful, is there anywhere in the bid submission where Inline Trading is referred to as a sub-contractor?

MR DANIEL PHOLISANI MAHLANGU: I don't remember.

ADV KATE HOFMEYR: Okay take it for now, Chair if it becomes contentious I'm sure my learned friend will direct me to it, as I read the bid submission, there's no indication ever that it is a sub-contractor, I've taken you to the page, we looked at it just now where it is clearly referenced as either your consortium or your JV partner, do you recall
20 that?

MR DANIEL PHOLISANI MAHLANGU: Yes through you Chair, people can be in a consortium but in that consortium there can be sub-contractors but I concur with Ms Hofmeyr that there was no point where Inline Trading was actually mentioned as sub-contractor.

ADV KATE HOFMEYR: Thank you and are you aware that the bid

referred to it as BnP's partner at various points?

MR DANIEL PHOLISANI MAHLANGU: Yes.

ADV KATE HOFMEYR: Thank you, then I don't need to take you to that page but you certainly defined them as your partner and you referred to both of yourselves as the parties who were submitting the bid but that's not contentious so we don't need to go there, thank you. Mr Mahlangu we were at the point of your testimony where we were trying to understand why Inline Trading wanted to partner with you to make this bid submission, you'll recall that and the question that I was
10 actually asking, if we go back to page 12 of your statement you'll recall we were at paragraph 5.5.1 on that page and I was breaking it up because it contains important information about what Mr Mngadi said to you, as I understand your evidence, for justifying the partnership and the one we were concerned about was your Broad-Based Black Economic Empowerment credentials and I asked you why Mr Mngadi needed BnP for that purpose and the question followed from that, did Inline Trading not have those credentials, what is your answer to that?

MR DANIEL PHOLISANI MAHLANGU: Inline Trading did have.

ADV KATE HOFMEYR: It did have?

20 **MR DANIEL PHOLISANI MAHLANGU:** Yes.

ADV KATE HOFMEYR: Thank you, so that wouldn't have been a reason for them needing to partner with you, correct?

MR DANIEL PHOLISANI MAHLANGU: Yes some of the reasons, yes correct.

ADV KATE HOFMEYR: Thank you so we've already eliminated that

they needed you for capital raising experience because that was not part of the tender, we've eliminated that they needed you for Broad-Based Black Economic Empowerment credentials and then the third on that page is the credibility of your firm and competency and proven track record to execute similar transactions or projects as the, then intended project, correct?

MR DANIEL PHOLISANI MAHLANGU: That's true.

ADV KATE HOFMEYR: Did you enquire...(intervention).

CHAIRPERSON: I'm sorry Ms Hofmeyr, I just want to mention this,
10 earlier on you referred Mr Mahlangu to – I don't remember the page but I think it was the proposal that they submitted to SAA and somewhere at the top of the page to which you referred us there was a reference to, I think Inline Trading having had something like certain experience of over ten years or something like that. I don't know whether you were going to deal with that later but I thought there was something that still needed to be tied up there so I'm just saying if it's in your plan it's fine.

ADV KATE HOFMEYR: Yes, indeed, Chair it actually comes in right now because it's part of this third justification right.

CHAIRPERSON: Yes.

20 **ADV KATE HOFMEYR:** the third justification as I understand it, and Mr Mahlangu, in fairness to you, the reason why these questions are being asked is because, as I understand your engagement with Mr Mngadi on that 9th of February, he presented to you as though he had a wealth of experience about SAA, is that correct?

MR DANIEL PHOLISANI MAHLANGU: He had – wealth, I'm not sure

what that means...(intervention).

ADV KATE HOFMEYR: Fine let's confine it, experience...(intervention).

CHAIRPERSON: Lets say a lot of experience, is that good enough.

ADV KATE HOFMEYR: Yes thank you. SAA was his client.

MR DANIEL PHOLISANI MAHLANGU: Yes.

ADV KATE HOFMEYR: So what I'm probing is, why then, does Mr Mngadi and his company, Inline Trading need BnP Capital, that is where this line of questioning is going an the third that you've offered is because your entity – I'm at page 12, had competency and a proven
10 track record to execute similar transactions, right do you see that?

MR DANIEL PHOLISANI MAHLANGU: Yes.

ADV KATE HOFMEYR: And Chair that is, in fact, with respect precisely where this point comes in because according to the information that Mr Mngadi had given your colleague, Mr Moyo, Inline Trading had that very experience, do you remember that page that we went to, it's the page that copy and pasted what Mr Mngadi had said in that email on the 13th of February, do you recall that.

MR DANIEL PHOLISANI MAHLANGU: Yes I recall but it doesn't have similar experience to us.

20 **ADV KATE HOFMEYR:** Take us through that, let's just remember what was said, if you go to – it's page 144 of your statement under tab 22, that is the email that we've looked at previously where Mr Mngadi tells Mr Moyo what description he proposes be included in the proposal and at the bottom there in quotations, is the language that we later saw in the proposal that the Chair was referring to. Inline Trading 10

Proprietary Limited's experience is in funds management, automotive and the aviation sector, Inline Trading's expertise and track record has been accumulated for a period in excess of ten years, are you saying that is not the credentials and experience and track record you would bring?

MR DANIEL PHOLISANI MAHLANGU: Through you Chair, the experience that has actually been highlighted in that email were not the experience required by the RFP.

ADV KATE HOFMEYR: So experience in the aviation sector was not
10 relevant to the RFP?

MR DANIEL PHOLISANI MAHLANGU: Aviation sector it was relevant yes, but it was not the crux of it, it was just one of those.

ADV KATE HOFMEYR: Thank you, we'll follow that up later in terms of the roles that each of you were to play in performing the work but for now, there was also an indication in your meeting, as I have your statement, what Inline Trading was going to bring to the JV do you recall that?

MR DANIEL PHOLISANI MAHLANGU: Yes I do.

ADV KATE HOFMEYR: If we go to page 13 for that, you'll pick it up at
20 paragraph 5.6.

MR DANIEL PHOLISANI MAHLANGU: Yes.

ADV KATE HOFMEYR: You see there you begin with,

“On the other hand Mr Mngadi offered to be involved through his company, namely Inline Trading on the basis that Inline Trading”

And then you set out the series of things as I read your statement that Inline Trading was going to bring to the JV, is that a fair reading of that paragraph?

MR DANIEL PHOLISANI MAHLANGU: It is.

ADV KATE HOFMEYR: Thank you, so the first is that it had knowledge of SAA and its financial needs, is that correct?

MR DANIEL PHOLISANI MAHLANGU: That's true.

ADV KATE HOFMEYR: And had you established whether it had contracted before with SAA?

10 **MR DANIEL PHOLISANI MAHLANGU:** No Chair.

ADV KATE HOFMEYR: But certainly you understood Mr Mngadi had been a consultant to SAA is that right?

MR DANIEL PHOLISANI MAHLANGU: Yes through the information yes, through our discussions.

ADV KATE HOFMEYR: Yes that's what he said absolutely. It – at 5.6.2 had knowledge of the requirements of the RFI and would therefore provide the input – provide input in the proposal for transaction advisory work as required by SAA, is that what he conveyed to you at that meeting?

20 **MR DANIEL PHOLISANI MAHLANGU:** Yes.

ADV KATE HOFMEYR: And then the one I'd like to just spend a bit of time on at 5.6.3,

“Inline Trading would be the primary contact person between the consortium and SAA”,

Do you see that.

MR DANIEL PHOLISANI MAHLANGU: Yes Chair I do.

ADV KATE HOFMEYR: And it goes on to say,

“This meant that Inline Trading would handle all the necessary communication with SAA on behalf of the consortium”,

Is that what was conveyed to you at that meeting with Mr Mngadi?

MR DANIEL PHOLISANI MAHLANGU: Yes.

ADV KATE HOFMEYR: As a matter of fact Mr Mahlangu, Inline Trading didn't ever once communicate with SAA did it?

10 **CHAIRPERSON:** At least formally.

MR DANIEL PHOLISANI MAHLANGU: Yes formally, yes they couldn't have done so because they were part of the team.

CHAIRPERSON: Because they were?

MR DANIEL PHOLISANI MAHLANGU: Part of the team, what I'm understanding is – the question is, Inline Trading has never actually had any communication with SAA yes as Inline Trading on it's own. What I'm saying is they were part of the team.

ADV KATE HOFMEYR: Yes but then what did it mean when Mr Mngadi said to you Inline Trading will handle all the necessary communication
20 with SAA?

CHAIRPERSON: What was your understanding of that statement from Mr Mngadi, that's the question?

MR DANIEL PHOLISANI MAHLANGU: My understanding was given that he understand all the – you know the client he's closer to the client to understand their needs so he's actually well positioned to actually

talk to the client, understand what the client needs and come and feedback to us and what basically this – what he actually asked to do it's not in any way different from our day-to-day business where we actually enter into this kind of arrangement we actually cover our responsibilities and one of the responsibilities – some of the responsibilities would be actually a person who's closer to the client to understand the client's needs and actually communicate back to the team and this is what – this is the role that actually Mr Mngadi played in this assignment.

- 10 **CHAIRPERSON:** Was your understanding that this would relate to – if for the period after the bid would have been given to you if you were successful, after the tender would have been given to you if you were successful, that's the communication period that this was talking about.

MR DANIEL PHOLISANI MAHLANGU: Yes that's true sir.

ADV KATE HOFMEYR: And after the bid was submitted was it going to be responsible for all the communication?

MR DANIEL PHOLISANI MAHLANGU: Yes I think we can – through you Chair, yes I mean it's evident in the emails that followed after the submission of that particular bid.

- 20 **ADV KATE HOFMEYR:** And Mr Mngadi – I'll come back to that in a moment but if you go to page 16 of your statement, you are summarising there the dominant role at the bottom of the page, paragraph 5.12 that Mr Mngadi assumed in relation to the preparation of the bid and other later work at paragraph 5.12 you say,

“Mr Mngadi assumed a dominant role in respect of the

following, the first is preparing the sourcing of funds proposal and over the page, drafting relevant correspondence which I would, in most instances sign off under the BnP Capital logo or letterhead and send off to client”,

Can we stop there for a moment, did you look at those letters carefully before you sent them off?

MR DANIEL PHOLISANI MAHLANGU: Through you Chair, yes I think – not necessarily careful because some – I had a team of about three individuals who were actually responsible for this so Mr Mngadi was
10 communicating with them so as and when they're satisfied with the content of it then they would actually send it to me just for me to forward it and in some instances I'll look at it and in some instances I'd say – and the question but in most instances I'd actually look at it given the risk and reward of the proposal.

ADV KATE HOFMEYR: So who would check the factual accuracy of what was being stated in those letters?

MR DANIEL PHOLISANI MAHLANGU: The team at the office.

ADV KATE HOFMEYR: The team within BnP?

MR DANIEL PHOLISANI MAHLANGU: Yes.

20 **ADV KATE HOFMEYR:** Thank you.

CHAIRPERSON: Is the position that you're saying that sometimes you would read what's put before you for signing but sometimes you would ask the person bringing it or the team or a member of the team whether everything was in order and if they assured you that everything was in order with the letter or the email then you would sign off?

MR DANIEL PHOLISANI MAHLANGU: That's true sir, so in most instances the – my electronic signature was used, actually in all of these communications so they would actually send it to me complete, so I'd go through it if there are any – or if there is a need you know, depending on the discussions will then just say, you know we've gone through this, we're happy.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: Apologies Chair, just one point of clarification there, you made reference to an electronic signature, did you, however,
10 satisfy yourself about the letters before your electronic signature was applied to the letters?

MR DANIEL PHOLISANI MAHLANGU: Yes I think based on what I've just mentioned to the Chair.

ADV KATE HOFMEYR: Thank you, I just wanted to be clear. So if there were factual...(intervention).

CHAIRPERSON: I just want to make sure there's no misunderstanding. I understood you to say when the letters were brought to you for approval, the electronic signature was already there but the question that you have been asked is whether you would check
20 the information before your electronic signature was put on it and you said yes, so I just wanted to make sure there's no misunderstanding.

MR DANIEL PHOLISANI MAHLANGU: The template that was used already had my electronic signature so that information would come through me with an electronic signature.

CHAIRPERSON: Oh okay.

ADV KATE HOFMEYR: But then you would check its accuracy and on occasions rely on your team, is that your evidence?

MR DANIEL PHOLISANI MAHLANGU: That's true.

ADV KATE HOFMEYR: Thank you, so if there were factual inaccuracies in those letters that came from BnP to other parties, BnP would be responsible for those, correct?

MR DANIEL PHOLISANI MAHLANGU: The consortium would be responsible for it.

ADV KATE HOFMEYR: No but I understand your evidence to be there
10 was a team within BnP who would check the facts that were set out in those letters, correct?

MR DANIEL PHOLISANI MAHLANGU: That's true.

ADV KATE HOFMEYR: So if those facts are shown to be false then it's the BnP team that would be responsible for not having got the facts correct.

MR DANIEL PHOLISANI MAHLANGU: Yes that's true.

ADV KATE HOFMEYR: Thank you, the other point I want to pick up on, on page 17 we were at paragraph 5.12 and its sub paragraphs there is that at 5.12.4 you indicate one of the other roles of Mr Mngadi was to
20 liaise directly with SAA and other parties, do you see that?

MR DANIEL PHOLISANI MAHLANGU: Yes I do, thank you Chair.

ADV KATE HOFMEYR: Mr Mahlangu I think you were here for some of the evidence of Ms Nhantsi she indicated in her evidence that she's never met you, is that correct?

MR DANIEL PHOLISANI MAHLANGU: That's true.

ADV KATE HOFMEYR: So at no point of your engagements with SAA did you physically meet Ms Nhantsi?

MR DANIEL PHOLISANI MAHLANGU: No I haven't met her.

ADV KATE HOFMEYR: Did you meet anyone else at SAA?

MR DANIEL PHOLISANI MAHLANGU: No I haven't met her – I haven't met anybody at SAA.

ADV KATE HOFMEYR: And you corresponded on occasion with people at SAA is that correct?

MR DANIEL PHOLISANI MAHLANGU: That's true.

10 **ADV KATE HOFMEYR:** Who was meeting with SAA then, from your side?

MR DANIEL PHOLISANI MAHLANGU: It's Mr Mngadi.

ADV KATE HOFMEYR: Right and as I understand the evidence Mr Mngadi pitched this JV to you because Inline Trading was going to play that role of liaising with and communicating with SAA is that correct?

MR DANIEL PHOLISANI MAHLANGU: That's true.

ADV KATE HOFMEYR: Then Mr Mngadi I need to put to you what is remarkable about all the papers in this case, is that at no point is Inline Trading in any formal way interacting with SAA, is that something you
20 were aware of at the time?

MR DANIEL PHOLISANI MAHLANGU: Through you Chair, I'm Mr Mahlangu.

ADV KATE HOFMEYR: Apologies, I do that.

CHAIRPERSON: Mr Mahlangu she did the same with another witness, it's not intentional it's just that she has to deal with different names

and I think it happens to the best of us.

ADV KATE HOFMEYR: Apologies.

MR DANIEL PHOLISANI MAHLANGU: To respond to that, in our understanding Inline Trading was represented by Mr Mngadi so the issue – what I'm not understanding now is, it's actually your question because as far as – in our world...(intervention).

CHAIRPERSON: Yes okay maybe – I also thought there might be something that might cause confusion. You actually said, Ms Hofmeyr what was strange was that at not stage was Inline Trading in contact –
10 in communication with SAA, based on what you had said, I expected you – or maybe, no, no I understand – I think the question is in terms of what you had arranged with Inline Trading, it was that – your understanding was that they would - Inline Trading would be in communication, would handle the communication part with SAA and I think Ms Hofmeyr was saying, and she will correct me if I misunderstood here question, what is strange is that there was no formal communication that ever came from Inline Trading to SAA, Ms Hofmeyr am I right?

ADV KATE HOFMEYR: Indeed.

20 **CHAIRPERSON:** Yes.

ADV KATE HOFMEYR: Thank you Chair.

CHAIRPERSON: All the formal communication came from BnP not Inline Trading, or most of it, I said all but maybe most.

MR DANIEL PHOLISANI MAHLANGU: It's true Chair now am I supposed to respond or is it just an observation? No I thought maybe

she was just passing an observation to say this is not.

CHAIRPERSON: (Inaudible mic off).

ADV KATE HOFMEYR: No indeed Chair I don't...(intervention).

CHAIRPERSON: Maybe it's been a long morning.

ADV KATE HOFMEYR: It has been a long morning but I don't take it to be my role to make observations I am interested in your comment Mr Mahlangu in relation to what – when you look at these papers, can be observed. So let me be clear about the question, I understood Mr Mngadi to say to you when you met on the 9th of February that what
10 Inline Trading was going to bring to this JV was it was going to be the entity responsible for all communication with SAA, is that correct?

MR DANIEL PHOLISANI MAHLANGU: That's true.

ADV KATE HOFMEYR: And is it correct that there is not a single letter on a letterhead of Inline Trading that you are aware of that ever went to SAA?

MR DANIEL PHOLISANI MAHLANGU: Through you Chair it couldn't have been in that particular fashion because of the arrangement.

CHAIRPERSON: Okay no let's start with, is it true that you are not aware that there was any letter from Inline Trading that went to SAA
20 and if the answer is yes, I'm not aware then we can take it – we can move forward. So she's just asking you at this stage...(intervention).

MR DANIEL PHOLISANI MAHLANGU: Yes I'm not aware.

CHAIRPERSON: Okay, alright.

ADV KATE HOFMEYR: And Mr Mahlangu I understand you to want to explain why that was the case, why was there no communication from

Inline Trading to SAA?

MR DANIEL PHOLISANI MAHLANGU: It's because of the arrangement, if you look at, even the letter of appointment, that BnP Capital was appointed and we work with Inline Trading so all the communication that needed to be done was supposed to be done through the letterhead of BnP Capital for consistency as actually as a standard with all our other contracts. If there's a contract – if a particular individual, for instance even the one that I've mentioned, Deloitte, Deloitte would actually send all the communication to the
10 client. If we've got opinions we'd actually (indistinct) to their opinions send them whatever our inputs are and then they would actually do that communication. So we wouldn't send clients different emails otherwise there would be a confusion.

ADV KATE HOFMEYR: Mr Mahlangu at the time that you bid for this tender were you aware that Mr Mngadi was employed at Nedbank?

MR DANIEL PHOLISANI MAHLANGU: No I wasn't aware only – no I wasn't aware.

ADV KATE HOFMEYR: By when did you learn that he was employed at Nedbank, if at all?

20 **MR DANIEL PHOLISANI MAHLANGU:** When there was a paper – a media that actually spoke about it, it's only then that I only became aware.

ADV KATE HOFMEYR: Were you aware that Nedbank was bidding for this tender at the time that BnP bid?

MR DANIEL PHOLISANI MAHLANGU: At the time BnP bid, no I

wasn't aware but I got aware of it when it was in the media.

ADV KATE HOFMEYR: Thank you, Chair I see we're just past the lunch break scheduled time, if it's appropriate we can take the break now.

CHAIRPERSON: Yes just before we do that, I just want to go back to this question of communication, you said that from a certain time, I think maybe that's from the date of appointment BnP became the party that would communicate with SAA because otherwise there would be confusion if BnP would communicate with SAA and Inline Trading would also do the same, is that correct – is my understanding correct of what you said?

MR DANIEL PHOLISANI MAHLANGU: The formal correspondence, through you Chair yes, the formal correspondence.

CHAIRPERSON: The formal correspondence?

MR DANIEL PHOLISANI MAHLANGU: Yes would be done through BnP Capital but Inline Trading would actually meet with the client, understand their needs and come and feedback to us and then we'd actually work on that and feedback to the client.

CHAIRPERSON: Are you saying that before the letter of appointment the arrangement was that Inline Trading would handle all communication which would include formal communication and informal communication but that after the letter of appointment this changed. The formal communication would be handled by BnP but Inline would have informal communication with SAA?

MR DANIEL PHOLISANI MAHLANGU: Formal – through you Chair, I

think formal communication and informal it's – as far as – because what we wanted to do was maintain consistency so meaning formal communication is maybe that is formal where you go and meet the client, I would assume that is formal as well but as far as what actually gets put on a letterhead and then it's sent to client given that the client only knows – communicates with us formally, as far as issues are concerned so that's how we actually did it.

CHAIRPERSON: Okay maybe we'll talk about it further after lunch, let's take the lunch break we'll resume at ten past two, we adjourn.

10 **INQUIRY ADJOURNS**

INQUIRY RESUMES

CHAIRPERSON: There have been challenges the past few days and last week and starting exactly the time that I said we should start and the challenge has been from me not from anybody. I am going to find a way as to how to deal with meetings that I allow to happen during the breaks because we end up not finishing on time but that is my responsibility so we will try and improve on that. Ms Hofmeyr are you ready?

ADV KATE HOFMEYR: Indeed we are thank you Chair.

20 **CHAIRPERSON:** Thank you.

ADV KATE HOFMEYR: Chair just to orientate ourselves for the afternoon I envisage that we may need to sit a bit beyond four o'clock in order to complete Mr Mahlangu's evidence. I have conferred with him over the lunch adjournment and he has indicated he is in a position to stay on. If that is convenient Chair we can look at it again at four

o'clock.

CHAIRPERSON: Yes no that is fine but what is your estimation of when we might be finished if we go beyond five o'clock, beyond four o'clock?

ADV KATE HOFMEYR: Chair my...

CHAIRPERSON: Would an hour be enough or we might need more?

ADV KATE HOFMEYR: I think maybe until six if that is not going to stretch us too much. But it really does depend – my hope...

CHAIRPERSON: Ja.

ADV KATE HOFMEYR: Is that having placed some of the facts in the
10 background setting.

CHAIRPERSON: Ja.

ADV KATE HOFMEYR: We will now be able to move with a bit more pace.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: But certainly not earlier than five I could say that.

CHAIRPERSON: Ja not earlier than five. We might have to stop at five.

ADV KATE HOFMEYR: Certainly.

20 **CHAIRPERSON**: And then make plans for tomorrow morning.

ADV KATE HOFMEYR: Indeed possibly an earlier start then.

CHAIRPERSON: To start earlier. Ja an earlier start. So if we go up to five and then we start a little earlier tomorrow.

ADV KATE HOFMEYR: Yes.

CHAIRPERSON: Then we might be able to finish with him quite early.

ADV KATE HOFMEYR: Yes.

CHAIRPERSON: And then continue with the next witness.

ADV KATE HOFMEYR: Indeed.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: The only challenge with our witness tomorrow is that he does not have capacity after tomorrow in the sense that he flies back to Zimbabwe on Saturday but I am optimistic we will finish him in the course of the day. So that should not be an issue for us tomorrow.

10 **CHAIRPERSON:** Sorry but is the – is he able to be available till late tomorrow?

ADV KATE HOFMEYR: Yes that is fine. His flight as I understand it is only on Saturday.

CHAIRPERSON: Yes. Oh.

ADV KATE HOFMEYR: So we could complete it tomorrow.

CHAIRPERSON: Ja.

ADV KATE HOFMEYR: But I am optimistic if we are pushed to have an earlier start with Mr Mahlangu tomorrow

CHAIRPERSON: Ja.

20 **ADV KATE HOFMEYR:** Hopefully it will not cut in much to the day.

CHAIRPERSON: Yes, ja.

ADV KATE HOFMEYR: And then a day would be sufficient for tomorrow's witness.

CHAIRPERSON: Okay no that is fine – that is fine.

ADV KATE HOFMEYR: Thank you Chair.

CHAIRPERSON: Thank you.

ADV KATE HOFMEYR: Mr Mahlangu I am hoping that we can move with a little bit more pace through some of the aspects. And what I thought would be useful then just at the outset was to clarify the two corrections that you wanted to make as I understand it on your affidavit. They both relate to when certain events took place. And Mr Mahlangu just to assist you I am going to guide you to the relevant pages but I understand there was an error in your first statement about the date on which BNP Capital received the award as transaction
10 advisor, is that correct?

MR DANIEL PHOLISANI MAHLANGU: Yes that is correct through you Chair.

ADV KATE HOFMEYR: And you provided to us subsequently an email which reflects the actual date on which you received that letter of award. Chair you will find it and Mr Mahlangu under Tab 4 but it is an additional page that Mr Mahlangu has provided to us and so it is paginated page 116.1.

CHAIRPERSON: Ja no that is fine.

ADV KATE HOFMEYR: And...

20 **CHAIRPERSON:** I now see something that I wanted to mention before lunch.

ADV KATE HOFMEYR: Yes.

CHAIRPERSON: You know those pages that are marked PDM

ADV KATE HOFMEYR: Hm.

CHAIRPERSON: On my file maybe it is all of our files.

ADV KATE HOFMEYR: Yes.

CHAIRPERSON: PDM is on the page number – the pagination number.

ADV KATE HOFMEYR: Yes.

CHAIRPERSON: That makes it difficult sometimes to see the pagination number.

ADV KATE HOFMEYR: Yes exactly.

CHAIRPERSON: So it might be good if later on if possible the pages which have got that problem could be replaced with pages where the pagination

10 **ADV KATE HOFMEYR:** Indeed.

CHAIRPERSON: Or PMD is not written on top of the pagination number.

ADV KATE HOFMEYR: Chair we will certainly take care of that. It can just be adjusted on the page.

CHAIRPERSON: Yes. Yes.

ADV KATE HOFMEYR: We will do that.

CHAIRPERSON: Ja.

ADV KATE HOFMEYR: Mr Mahlangu just to return to page 116.1 can you explain to us what that email is?

20 **MR DANIEL PHOLISANI MAHLANGU:** 116.1

ADV KATE HOFMEYR: If you look under Tab 4.

MR DANIEL PHOLISANI MAHLANGU: Tab 4.

ADV KATE HOFMEYR: And you go just – page through it there are two pages which were in your original statement and then there is a third page that has been inserted, do you see that?

MR DANIEL PHOLISANI MAHLANGU: Yes three you say?

ADV KATE HOFMEYR: Thank you. So at 116.1 I understand that is the email that you wanted to bring to the commission's attention because it relates to the date on which you received notification from SAA that you had been appointed as transaction advisor, is that correct?

MR DANIEL PHOLISANI MAHLANGU: That is correct.

ADV KATE HOFMEYR: And what date is it?

MR DANIEL PHOLISANI MAHLANGU: The 22 April.

ADV KATE HOFMEYR: Thank you. So for the purposes of the
10 evidence Chair we will take it that BNP Capital was alerted to its success in that bidding process on the 22 April.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: Chair you will recall earlier in evidence we had actually queried this because the document that appears at page 115 which is actually the award letter was dated 20 March and we could not

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: Understand how that could be

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: We had hoped Mr Mahlangu would be able to
20 assist us and he has been able to.

CHAIRPERSON: Ja okay.

ADV KATE HOFMEYR: The next correction relates to the date on which you were in fact appointed to source funds for SAA and if you turn over the tab Mr Mahlangu to Tab 5 and you will find there page 117. Can you explain to us what that document is?

MR DANIEL PHOLISANI MAHLANGU: It is the – through you Chair – it is a letter of award for sourcing of capital.

ADV KATE HOFMEYR: And when did BNP receive that letter of award?

MR DANIEL PHOLISANI MAHLANGU: On the 26 May.

ADV KATE HOFMEYR: Thank you. So we will take it as 26 May. This letter is dated 25 May but is it your evidence that you received notification the following day the 26 May?

MR DANIEL PHOLISANI MAHLANGU: That is true.

ADV KATE HOFMEYR: Thank you.

10 **CHAIRPERSON:** Just one second. Thank you.

ADV KATE HOFMEYR: Thank you. So Mr Mahlangu we will work with those dates as we proceed in the evidence. I would like to then before we go further in the questions and getting into the bid itself just to make sure that we are on the same page in relation to your previous evidence. As I had your previous testimony Inline Trading required a partnership with BNP to bid for the transaction advisor services because of the particular financial advisory expertise that BNP would bring, is that right?

MR DANIEL PHOLISANI MAHLANGU: That is true.

20 **ADV KATE HOFMEYR:** Thank you. BNP Capital was to be the lead member of that joint venture, is that correct?

MR DANIEL PHOLISANI MAHLANGU: That is true.

ADV KATE HOFMEYR: But I understood your evidence to be you never met with anyone from SAA, is that correct?

MR DANIEL PHOLISANI MAHLANGU: That is true.

ADV KATE HOFMEYR: And am I to understand that no one else from BNP ever met with SAA representatives?

MR DANIEL PHOLISANI MAHLANGU: That is true.

ADV KATE HOFMEYR: And also as I had your evidence it was only Mr Mngadi who met with SAA, is that correct?

MR DANIEL PHOLISANI MAHLANGU: That is true.

ADV KATE HOFMEYR: And what about Mr Brendan King did he meet with SAA?

MR DANIEL PHOLISANI MAHLANGU: I would not know.

10 **ADV KATE HOFMEYR:** You would not know.

MR DANIEL PHOLISANI MAHLANGU: Yes.

CHAIRPERSON: Did you ever meet him yourself?

MR DANIEL PHOLISANI MAHLANGU: No I have not.

CHAIRPERSON: You have never met him?

MR DANIEL PHOLISANI MAHLANGU: I have never met him yes.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: What role was he going to play in the JV Mr Mahlangu?

20 **MR DANIEL PHOLISANI MAHLANGU:** Through you Chair I think the – as far as Inline Trading was concerned all we – there was – there was not any especially from our part as BNP Capital because initially as I have indicated that we had Mr Mngadi was representing Inline Trading because all the documentation for Inline Trading came through him. So in our view he was actually their representative. So when at the eleventh hour he changed the details and he put Brendan's detail. So

on our part we thought it was just sort of a profile change from their side because I mean in any business, in any company if you partner with me and I put my employee's CV and no one questions me I am think – you know – you basically assume that those are the actually CV's that are relevant for that particular exercise. I think on our part that is how we viewed it. So we did not actually question as to why – when Brendan has actually shown up – why has he not actually come to the meetings but I think maybe for obvious reasons that we have actually never attended any meetings so that was their responsibility.

10 **ADV KATE HOFMEYR:** So your – you – am I correct from your understanding when I say that Brandon King was inserted in the place of Mr Mngadi wherever there were references to Mr Mngadi in the proposal that your team had prepared for the bid?

MR DANIEL PHOLISANI MAHLANGU: That is true. According to Inline Trading that is what – that is information in the email we got. Hence you will see even from the early letter of award that Mr Mngadi was there even I mean the SAA guys they actually been cc'ing him from the word go and we actually got even the award. So as far as BNP Capital was concerned that was our position to say he represents he is actually
20 part of Inline Trading.

ADV KATE HOFMEYR: Mr King is that right?

MR DANIEL PHOLISANI MAHLANGU: No Mr Mngadi.

ADV KATE HOFMEYR: But then why have a bid submission that does not refer to Mr Mngadi at all?

MR DANIEL PHOLISANI MAHLANGU: As I have indicated through you

Chair that there was actually a turn of events yes where Mr Mngadi actually asked our you know especially Mr Moyo I mean the eve of the submission because that was – I think it was due on Tuesday on the weekend to say can we actually – can Mr Moyo remove his details. Yes as far as the bid submission is concerned. So fortunately Mr Moyo did that and given that the RFI was due on Tuesday so I did not actually did not have an opportunity I just – hence I said as far as this email is concerned I saw it about two weeks ago when I actually met with Mr Moyo but eventually when I ask him what has happened he said no
 10 actually Mr Mngadi asked him to do so. So he never actually gave me much explanation about it.

ADV KATE HOFMEYR: And Mr Mahlangu you have referenced what needed to be in the response to the RFI you will also be aware I am sure that Mr Brendon King was given as the representative of Inline Trading when you submitted the bid later in March 2018, do you recall that?

MR DANIEL PHOLISANI MAHLANGU: That is true.

ADV KATE HOFMEYR: And by March 18 had you made any enquiries as to the role that Mr King was going to play in the JV?

20 **MR DANIEL PHOLISANI MAHLANGU:** No and for obvious reasons that I have never met Mr King number 1. Number 2 all the information for Inline Trading came through Mngadi. So we had no reason not to believe that he is not representing Inline Trading.

ADV KATE HOFMEYR: Was Mr Mngadi going to be remunerated in some way for all the work he was doing in relation to the JV?

MR DANIEL PHOLISANI MAHLANGU: Obviously through the JV agreement that we were actually putting together. Yes the Inline Trading was going to be remunerated as far as I am concerned.

ADV KATE HOFMEYR: That JV agreement was never reduced to writing was it?

MR DANIEL PHOLISANI MAHLANGU: No it was not.

ADV KATE HOFMEYR: And then if Inline Trading was going to be remunerated was it not relevant to know the rates of the individuals in Inline Trading so that you could put that through in your pricing for the
10 bid?

MR DANIEL PHOLISANI MAHLANGU: As far as the rates are concerned it is – the rates are done not according to individuals but according to the level of seniority. So when we actually did the bid it was according to the level of seniority.

ADV KATE HOFMEYR: So did that pricing schedule that you provided then include information about Mr Mngadi and Mr King?

MR DANIEL PHOLISANI MAHLANGU: Definitely. I think it was a question of not necessarily include but the responsibilities and their agreed [indistinct] going forward. I think the reason why we could not
20 then finalise it was because the letter of appointment made a provision that we supposed to sign with SAA. So we actually waiting for that particular SLA the terms and conditions for that SLA for us to actually conclude our engagement.

ADV KATE HOFMEYR: Mr Mahlangu were you aware when you submitted the bid that you needed to identify the percentage income

split as between the different members of the JV, were you aware of that?

MR DANIEL PHOLISANI MAHLANGU: No I am not aware.

ADV KATE HOFMEYR: Okay let us go to it if we can. You will find it in the soft file that I provided which is just our reference point for today and if you go to the internal page 13 of 55 which for the record is in Ms Nhantsi's bundle which is Exhibit DD2 at page 209. This is a section of the bid that BNP Capital submitted and you will see the first heading there under Clause 18.2.6 refers to part 6 it refers to the BEE

10 submission and it reads:

“Bidders must submit their BBBEE certificate.
Consortiums or joint ventures must submit a
consolidated BBBEE certificate.”

And then it goes on and this is the point I was raising with you.

MR DANIEL PHOLISANI MAHLANGU: Okay.

ADV KATE HOFMEYR:

20 “Each member organisation must submit the
percentage income split as per the consortium or
joint venture agreement. The workload split must
also clearly – be clearly defined and indicated.”

Do you see that?

MR DANIEL PHOLISANI MAHLANGU: Yes I do.

ADV KATE HOFMEYR: And I have your evidence to be you were not aware that you needed to do that when you submitted the BNP Capital bid?

MR DANIEL PHOLISANI MAHLANGU: I was not aware of this aspect.

ADV KATE HOFMEYR: Right. Were you aware that you had to submit a consolidated BBBEE certificate for the members of the JV?

MR DANIEL PHOLISANI MAHLANGU: Through you Chair it was not a requirement then because we took a lead position.

ADV KATE HOFMEYR: Mr Mahlangu I need to follow that up with you. We have already had clarified in your evidence that you accept that you bid as a JV with Inline Trading, is that correct?

MR DANIEL PHOLISANI MAHLANGU: Yes as a consortium.

10 **ADV KATE HOFMEYR:** As a consortium.

MR DANIEL PHOLISANI MAHLANGU: Yes.

ADV KATE HOFMEYR: Sorry I thought we were talking about a JV agreement that you were in the process of finalising?

MR DANIEL PHOLISANI MAHLANGU: Hence through you Chair hence I said I think we using those two words loosely and for – yes for that I think for the purposes of this discussion. But as I have indicated in my statement that what I have sub – as far as the consortium or JV you know that we had in place was unincorporated and we have not actually even it was not you know finalised as far as you know written
20 documentation is concerned.

ADV KATE HOFMEYR: Yes. No I have no difficulty that it was not in writing but the nature of your bid was a consortium or joint venture with Inline Trading, correct?

MR DANIEL PHOLISANI MAHLANGU: That is true.

ADV KATE HOFMEYR: And if we read that sentence on the page we

are looking at it is under the heading 18.2.6 part 6 BEE submission you will see the second sentence there says:

“Consortiums or joint ventures must submit a consolidated BBBEE certificate.”

Do you see that?

MR DANIEL PHOLISANI MAHLANGU: Yes I do.

ADV KATE HOFMEYR: Do you understand that to mean you must submit a consolidated BBBEE certificate?

MR DANIEL PHOLISANI MAHLANGU: That is what it meant but our
10 understanding is based on our experience as far as these types of structures are concerned. So just to add on that we are not even made aware of this particular aspect when we submitted our own bid.

ADV KATE HOFMEYR: Well it is in the bid submission that you filled in Mr Mahlangu. If we go to internal page 5 of that document. If you go back a bit. And for record purposes that is to be found in Ms Nhantsi's bundle Exhibit DD2 at page 205. Do you see that this is the bid submission you compiled for BNP Capital?

MR DANIEL PHOLISANI MAHLANGU: Yes.

ADV KATE HOFMEYR: And so if we page from that page, page 5 you
20 would have found at page 13 the provision we have just read, do you see that?

MR DANIEL PHOLISANI MAHLANGU: Yes.

ADV KATE HOFMEYR: But I take it at the time you were not aware of that requirement?

MR DANIEL PHOLISANI MAHLANGU: No.

ADV KATE HOFMEYR: And I take it you then accept that if it was a requirement of this bid and you did not comply with it you ought not to have been awarded the tender?

MR DANIEL PHOLISANI MAHLANGU: That is true.

ADV KATE HOFMEYR: Thank you. If you just remain at that internal page 13 which is in Exhibit DD2 at page 209 you will see there is also a part there on pricing schedule. It says:

“Bidders must submit a detailed costings schedule.”

Do you see that?

10 **MR DANIEL PHOLISANI MAHLANGU:** Hm sorry on what page?

MR DANIEL PHOLISANI MAHLANGU: Sorry on what page?

ADV KATE HOFMEYR: Apologies so we are on internal page 13 of 55 in that soft file.

MR DANIEL PHOLISANI MAHLANGU: Yes.

ADV KATE HOFMEYR: That was the page we were looking at previously.

MR DANIEL PHOLISANI MAHLANGU: Oh I [indistinct].

ADV KATE HOFMEYR: And then I was just drawing your attention to the second clause there 18.2.7 part 7 which has the heading ‘Pricing
20 Schedule’ and it says there

“Bidders must submit a detailed costing schedule.”

Do you see that?

MR DANIEL PHOLISANI MAHLANGU: Yes I do.

ADV KATE HOFMEYR: And it says:

“All prices submitted must reflect the total landed

costs of the proposed products to SAA. The relevant INCO term is DAP Johannesburg SAA warehouse and include all applicable taxes.”

I take that to be apply where it is a procuring of products but insofar as it related to this bid the requirement was for a detailed costing schedule, do you see that?

MR DANIEL PHOLISANI MAHLANGU: Yes I do.

ADV KATE HOFMEYR: Did you supply one at the time of submitting the bid?

10 **MR DANIEL PHOLISANI MAHLANGU:** No I did not and can I just talk to it?

ADV KATE HOFMEYR: Certainly.

MR DANIEL PHOLISANI MAHLANGU: Yes. I think as far as the [indistinct] here it is concerned as I have indicated at the beginning that how we viewed it was us being a lead and headers of contractor. But having read this I can understand why you know keep on coming to this point. Because it actually moves from consortium to joint venture.

CHAIRPERSON: Hm.

MR DANIEL PHOLISANI MAHLANGU: Which basically makes this
20 particular requirements.

ADV KATE HOFMEYR: Hm

MR DANIEL PHOLISANI MAHLANGU: But as far as our submissions were concerned we were viewed as a lead bidder and we had Inline Trading as sort of a sub-contractor even though it does not actually reflect in our documentation.

ADV KATE HOFMEYR: Hm. Understood.

MR DANIEL PHOLISANI MAHLANGU: But I agree with you.

ADV KATE HOFMEYR: Thank you Mr Mahlangu and I appreciate that. Just in terms of your pricing schedule though whether you were presenting it as the lead or as a member of a consortium do you accept that no pricing schedule was provided when you submitted the bid on the 18 March 2016?

MR DANIEL PHOLISANI MAHLANGU: That is not true it was submitted.

10 **ADV KATE HOFMEYR:** Then why was it resubmitted in April 2016?

MR DANIEL PHOLISANI MAHLANGU: I am not aware of that.

ADV KATE HOFMEYR: Let me take you to the relevant correspondence then. You will find it in – you will now need to actually take out Exhibit DD2 which is Ms Nhantsi's bundle. Chair you should it have there – yes we had looked at it earlier. And you will find the relevant correspondence at page 282 of that bundle.

MR DANIEL PHOLISANI MAHLANGU: Sorry exhibit? I mean ...

ADV KATE HOFMEYR: Page is 282.

MR DANIEL PHOLISANI MAHLANGU: Yes.

20 **ADV KATE HOFMEYR:** Mr Mahlangu if we start at the bottom of the page we will then be able to read this correspondence in chronological order. You will see below the middle of the page an email there, could you please tell us who it is from and who it is to?

MR DANIEL PHOLISANI MAHLANGU: It is through you Chair it is the email from Silas M – ja I cannot say the surname proper which was sent

to us on the 8 April 2016 to me and Mr Mngadi which is written the subject is appointment of a transition advisor it says;

“Dear Daniel please send to me via email a copy of
BNP recent financial statement. It is possible for me
to get them today as we are behind time.”

ADV KATE HOFMEYR: Thank you Mr Mahlangu. Can I just pause at the sender and recipients of that email correspondence. Just locate ourselves in time we are on the 8 April 2016 do you see that for the email?

10 **MR DANIEL PHOLISANI MAHLANGU:** Yes.

ADV KATE HOFMEYR: And at that point in time as I have the evidence the bids had been submitted on the 18 March but no decision had been communicated to you yet because we just clarified in your evidence you only got the result from SAA on the 22 April, correct?

MR DANIEL PHOLISANI MAHLANGU: That is true.

ADV KATE HOFMEYR: So this is in the period between bid submission and final decision by SAA, do you accept that?

MR DANIEL PHOLISANI MAHLANGU: That is true.

ADV KATE HOFMEYR: Why was Mr Matsaudza – Matsaudza emailing
20 you and Mr Mngadi about this BNP Capital’s bid?

MR DANIEL PHOLISANI MAHLANGU: I would not answer that I do not know.

ADV KATE HOFMEYR: You do not know?

MR DANIEL PHOLISANI MAHLANGU: Yes.

ADV KATE HOFMEYR: Can I raise with you my query about it?

MR DANIEL PHOLISANI MAHLANGU: Yes.

ADV KATE HOFMEYR: You see the bid that went in on the 18 March made no reference whatsoever to Mr Mngadi, is that correct?

MR DANIEL PHOLISANI MAHLANGU: You mean as far as the information concerned in there?

ADV KATE HOFMEYR: Yes.

MR DANIEL PHOLISANI MAHLANGU: Yes that is true.

ADV KATE HOFMEYR: He had asked previously the prior month for all references to him to be removed, do you recall that?

10 **MR DANIEL PHOLISANI MAHLANGU:** Yes that is true.

ADV KATE HOFMEYR: So I am just struggling and you will tell me if you do not know but why would SAA then know to email Mr Mngadi in relation to a BNP Capital bid that made no reference to him on any of the documents?

MR DANIEL PHOLISANI MAHLANGU: I would not know. I would not know that. I would not know that.

ADV KATE HOFMEYR: So there were not interactions that you had with SAA in that period to say and by the way Mr Mngadi is with us in this bid?

20 **MR DANIEL PHOLISANI MAHLANGU:** No but remember the RFI was a discussion between Mr Mngadi and the gentleman called Silas ja.

ADV KATE HOFMEYR: Hm.

MR DANIEL PHOLISANI MAHLANGU: That we got. So it started before that.

ADV KATE HOFMEYR: Yes but at that point he had not yet approached

you about a partnership with BNP Capital had he?

MR DANIEL PHOLISANI MAHLANGU: That is true.

ADV KATE HOFMEYR: Indeed. So I think you will understand the force of my query. What Mr Matsaudza is emailing here is in relation to the people he understands to be in the BNP Capital bid, do you see that?

MR DANIEL PHOLISANI MAHLANGU: That is true. But at the same time I would like to – because when you actually send a RFI Mr Mngadi could have been part of the emails that have been sent to Mr Silas.

10 **ADV KATE HOFMEYR:** Right.

MR DANIEL PHOLISANI MAHLANGU: Because he kept on requesting quite a whole lot of information. So I cannot – that is why I am saying for – given the information yes it becomes very difficult as to why. But...

ADV KATE HOFMEYR: I understand.

MR DANIEL PHOLISANI MAHLANGU: There has been some correspondence prior this.

ADV KATE HOFMEYR: I just wanted to get for the record purposes whether you could assist us with that oddity as I saw it on the face of
20 that email. But you do not have personal knowledge as I understand it.

MR DANIEL PHOLISANI MAHLANGU: That is true yes.

ADV KATE HOFMEYR: You also were not aware that Nedbank bid for the same transaction advisor services at the time, were you?

MR DANIEL PHOLISANI MAHLANGU: No.

ADV KATE HOFMEYR: If I can take you to two pages of that bid Mr

Mngadi – Mr Mahlangu. You will find it earlier in Ms Nhantsi's bundle that is Exhibit DD2 and you will find it at page 198. Mr Mahlangu I take it that this is not a document you were aware of at the time, is that correct?

MR DANIEL PHOLISANI MAHLANGU: That is true.

ADV KATE HOFMEYR: As I see that document on its face it is dated 18 March 2016 and it is what appears to be the covering letter to an appointment of a transaction advisor to provide financial advice to SAA and it reads in the first sentence.

10 "Thank you for your invitation to tender for the
 appointment of transaction advisor."

Do you see that?

MR DANIEL PHOLISANI MAHLANGU: I do yes.

ADV KATE HOFMEYR: If you go over the page to 199 there is an extract that has been included in this bundle from the Nedbank bid for those services. Do you see under the transaction team in that – on that page are amongst other people a reference to Msotsha Mngadi, do you see that?

CHAIRPERSON: I did not get that page.

20 **ADV KATE HOFMEYR:** Apologies Chair it is the next page 199.

CHAIRPERSON: Okay thank you.

ADV KATE HOFMEYR: So this is a page of the Nedbank bid dealing with the team composition. Do you see under the heading there...

MR DANIEL PHOLISANI MAHLANGU: Yes I do now.

ADV KATE HOFMEYR: You do? There is a heading 'client relations'

you have got that sort of just above midway on the page?

MR DANIEL PHOLISANI MAHLANGU: Yes I do.

ADV KATE HOFMEYR: And then there are a series of four individuals referenced there. Who is the second individual in the Nedbank team on the line below client relations? If you go across the four names there.

MR DANIEL PHOLISANI MAHLANGU: Are you talking about Phuti.

ADV KATE HOFMEYR: Well let us go through if you read from the left under client relations.

MR DANIEL PHOLISANI MAHLANGU: Yes.

10 **ADV KATE HOFMEYR:** You have got Remo Moyo.

MR DANIEL PHOLISANI MAHLANGU: Yes.

ADV KATE HOFMEYR: Is that correct?

MR DANIEL PHOLISANI MAHLANGU: That is true.

ADV KATE HOFMEYR: Who is the second individual?

MR DANIEL PHOLISANI MAHLANGU: It is Mosotsha Mngadi.

ADV KATE HOFMEYR: Masotsha Mngadi?

MR DANIEL PHOLISANI MAHLANGU: Yes.

ADV KATE HOFMEYR: Is – he is the person you are engaging with as Inline Trading for your bid. Is that right?

20 **MR DANIEL PHOLISANI MAHLANGU:** That is true.

ADV KATE HOFMEYR: But at that time you had no knowledge of his association with Nedbank?

MR DANIEL PHOLISANI MAHLANGU: That is true.

ADV KATE HOFMEYR: Thank you. Mr Mahlangu if we then return to page 2-8-2 because that was the email correspondence that I said was

relevant to the pricing that you put forward after the bid submission.

You will remember ...

CHAIRPERSON: 2-8-2?

ADV KATE HOFMEYR: 2-8-2 Chair.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: We were in the second half of that page to begin with because that was the email from Mr Matsaudza to you copied to Mr Mngadi asking for the recent financials and then as I have it above that is your response. Is that correct?

10 **MR DANIEL PHOLISANI MAHLANGU:** Are we still on 2-8-2?

ADV KATE HOFMEYR: Yes indeed.

CHAIRPERSON: She is referring you to the second email from the bottom of that page.

MR DANIEL PHOLISANI MAHLANGU: Oh yes. I can see that.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: Thank you. What is the date of that email?

MR DANIEL PHOLISANI MAHLANGU: It is the 11th.

ADV KATE HOFMEYR: And what – and who sends it and who is it to?

CHAIRPERSON: That is 11 April 2016?

20 **MR DANIEL PHOLISANI MAHLANGU:** Yes.

ADV KATE HOFMEYR: Thank you Chair.

MR DANIEL PHOLISANI MAHLANGU: It is me.

ADV KATE HOFMEYR: It is you and who are you sending the email to?

MR DANIEL PHOLISANI MAHLANGU: To Silas.

ADV KATE HOFMEYR: And Mr Matsaudza and who is it copied to?

MR DANIEL PHOLISANI MAHLANGU: To Mngadi.

ADV KATE HOFMEYR: Mr Mngadi?

MR DANIEL PHOLISANI MAHLANGU: Yes.

ADV KATE HOFMEYR: And what does the email reflect?

MR DANIEL PHOLISANI MAHLANGU: The pricing and the financials.

ADV KATE HOFMEYR: Yes. Let us read it – if we may.

MR DANIEL PHOLISANI MAHLANGU: It is please:

“Dear Ms Silas please find attached financials and
pricing for your attention.”

10 **ADV KATE HOFMEYR:** And then if you go over to page 2-8-4
Mr Mahlangu we did not deem it necessary to attach it all of the
financials that you submitted with this email.

MR DANIEL PHOLISANI MAHLANGU: (Intervenes).

ADV KATE HOFMEYR: We simply attached the pricing that was one of
the attachments. You will see that at 2-8-4. Do you see that?

MR DANIEL PHOLISANI MAHLANGU: Yes I do.

ADV KATE HOFMEYR: So in fairness to you Mr Mahlangu that is why I
was asking you why you submitted your pricing after the bid
submission. Is that what we see here?

20 **MR DANIEL PHOLISANI MAHLANGU:** That was a verification of our
pricing. It was not – it is not true. If – if I take you through to the
same document that you – you have in P-N-2-4-6. That was our
pricing.

CHAIRPERSON: P-N-2-4-6?

MR DANIEL PHOLISANI MAHLANGU: Ja. P-N – okay the same file ...

CHAIRPERSON: *Ja.*

MR DANIEL PHOLISANI MAHLANGU: But it is at 2-4-6.

CHAIRPERSON: 2-4-6?

MR DANIEL PHOLISANI MAHLANGU: Yes. That is what we actually submitted and then we have actually been through you Chair been asked to clarify it further.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: Let us go to 2-4-6 if we then may. So there I have under Section 6 “Project Costing”. It reads:

10 “The consortium fee will be as follows: the raising
 fee will be charged at 1.25 percent of the amount
 raised.”

Do you see that?

MR DANIEL PHOLISANI MAHLANGU: Yes.

ADV KATE HOFMEYR: Why was that relevant to the bid for transaction advisor services when it was not requiring any funds been raised?

MR DANIEL PHOLISANI MAHLANGU: Through you Chair – when it is actually standard when we actually send our documentation it comes together with this. So it is a template that we have and all the fees are
20 actually up front.

ADV KATE HOFMEYR: I am not sure I understand it. You were bidding for transaction advisor services. Is that correct?

MR DANIEL PHOLISANI MAHLANGU: That is true.

ADV KATE HOFMEYR: And we have established earlier that is a very different thing to sourcing of funds or funds raising. Is that correct?

MR DANIEL PHOLISANI MAHLANGU: That is true.

ADV KATE HOFMEYR: So why would you bid for transaction advisor services with reference to a fee for fund raising?

MR DANIEL PHOLISANI MAHLANGU: As I have said again this is our standard proposal. So all proposals come with a fee so that whoever – just in case we get appointed people actually understand exactly how – how we actually cost ourselves.

ADV KATE HOFMEYR: Right. Then you go down and you say:

10 “Retainer fee will be charged at an hourly rate as
 indicated in the table below. This will be offset
 from the raising ...”

I think that is supposed to be fee.

“...when a project is funded.”

Is that correct?

MR DANIEL PHOLISANI MAHLANGU: That is true. Can I provide clarity here? I think at this point in time one did not actually have a clear idea as to how things are going to actually pan out as to what is the nature of the best of this – you know – work that you supposed to have done. So we just provided our standard to say there is a retainer
20 that we do and there is – when it is capital raising is how we do as far as advisory work.

 This is the rate that we charge. As – as – given that this information as submitted at the – at the bidding stage – at the RFI stage. So as actually as we progress they moved. Now we are actually we are forced to – to narrow down the specifics so hence the – the

costing you find on – on 2-8-4.

ADV KATE HOFMEYR: We will follow that up if we may in a moment Mr Mahlangu but if we go down to the hourly rates on that page. What I am interested in there is I see no reference to an individual from Inline Trading in that table. Is that correct?

MR DANIEL PHOLISANI MAHLANGU: That is correct.

ADV KATE HOFMEYR: But these were the consortium fees. Correct?

MR DANIEL PHOLISANI MAHLANGU: These were the sort of standard fees as per our – our standard fees at the office, yes.

10 **ADV KATE HOFMEYR:** If we could let us start at the top of the page. What I understand this page to be detailing is the consortium's fee. Correct?

MR DANIEL PHOLISANI MAHLANGU: That is true.

ADV KATE HOFMEYR: The consortium comprised BNP Capital and Inline Trading. Correct?

MR DANIEL PHOLISANI MAHLANGU: That is true.

ADV KATE HOFMEYR: But the table does not reflect any rates for Inline Trading's representatives. Is that correct?

MR DANIEL PHOLISANI MAHLANGU: Yes and through you Chair I
20 think there was just an error which is – which - why they are not included when you actually mentioned the consortium.

ADV KATE HOFMEYR: Hm.

MR DANIEL PHOLISANI MAHLANGU: It is just an error on our part.

ADV KATE HOFMEYR: Did you know the rates of the representatives of Inline Trading?

MR DANIEL PHOLISANI MAHLANGU: No not at this point.

ADV KATE HOFMEYR: So you would have needed to insert them in order to be compliant with the bid that required you to specify the particular breakdown between consortium members as to what fees they would be charging. Correct?

MR DANIEL PHOLISANI MAHLANGU: At this point in time we more or less had an idea so it is not – it was not a question of us understanding exactly how much they charge but it is for us to actually to send sort of indicative numbers because these are very indicative numbers to them
10 because – sorry – as I indicated it was at a point of just requesting information from us.

ADV KATE HOFMEYR: Right. We will move to what was put in there actual bid submission by 18 March but I understood when I asked you the question earlier had you previously submitted your pricing for the bid you took me to page 2-4-6. Is that correct?

MR DANIEL PHOLISANI MAHLANGU: That is true.

ADV KATE HOFMEYR: But what you are clarifying now is this is was only submitted at RFI stage not at RFP stage. Correct?

MR DANIEL PHOLISANI MAHLANGU: That is true.

20 **ADV KATE HOFMEYR:** Right. So we will look ...

MR DANIEL PHOLISANI MAHLANGU: Sorry – sorry. I cannot confirm it now.

ADV KATE HOFMEYR: Hm.

MR DANIEL PHOLISANI MAHLANGU: Yes because I do not have the details.

CHAIRPERSON: But you – you think it is true but ...

MR DANIEL PHOLISANI MAHLANGU: Yes.

CHAIRPERSON: Subject to confirmation?

MR DANIEL PHOLISANI MAHLANGU: Definitely.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: Yes. As I have your evidence you were explaining why it was rough and ready at this stage. It is because it is only at the information stage. Correct?

MR DANIEL PHOLISANI MAHLANGU: One, information stage.

10 **ADV KATE HOFMEYR:** Hm.

MR DANIEL PHOLISANI MAHLANGU: Two, I guess it was a question of time as well because we were moving at a fast pace.

ADV KATE HOFMEYR: Yes indeed.

MR DANIEL PHOLISANI MAHLANGU: Ja.

ADV KATE HOFMEYR: So what we – what we have is the picture of what you submitted at RFI stage now. We will jump into due course to what pricing information was submitted with the bid on 18 March.

MR DANIEL PHOLISANI MAHLANGU: Okay.

20 **ADV KATE HOFMEYR:** Thank you; but I would like one point of clarification on your response to the RFI and for that if you will go page 2-8-1 in the bundle you are currently busy with. That is EXHIBIT DD2. So this is Section 6 of that response which has the heading helpfully Pricing Schedule because you remember that is what I am interested in is when was a Pricing Schedule submitted ...

MR DANIEL PHOLISANI MAHLANGU: Yes.

ADV KATE HOFMEYR: And what I read there Mr Mahlangu - but I would like your help in understanding it – is it reflects there:

“Because of the envisaged methodology and complexity of the project we propose a fee of R1 excluding VAT plus a fee to SAA on the successful adoption for implementation of our advice as detailed above.”

So just tell me about that fee of R1 excluding VAT. How was that going to work?

MR DANIEL PHOLISANI MAHLANGU: To be honest with you I think
10 that was an error on our part hence the fees that were discussed in – in prior pages.

ADV KATE HOFMEYR: Because it would not make sense to bid for this at ...

MR DANIEL PHOLISANI MAHLANGU: Yes it does not make sense.

ADV KATE HOFMEYR: At R1 excluding VAT.

MR DANIEL PHOLISANI MAHLANGU: It does not make sense.

ADV KATE HOFMEYR: Right. So then let us move ahead. We all agreed it does not make sense to bid at R1 for this transaction advisor services. We also have your evidence that we saw previously was not
20 the final pricing but then we move to the question of why was pricing then submitted after the bid was put in because the only ...

CHAIRPERSON: I am sorry Ms Hofmeyr.

ADV KATE HOFMEYR: Apologies Chair.

CHAIRPERSON: Please do not forget your question,

ADV KATE HOFMEYR: Certainly.

CHAIRPERSON: Can we go back to 2-8-1? You have said that – that reference to R1 excluding VAT was an error. That kind of puzzles me because you are in business. BNP is in business and is that not – does not that relate to what it might ultimately charge even if it is not exact. Is that not an area where you would particularly pay special attention because you know that if you get the tender – you know- the client needs to have a reasonable idea at least if not the exact amount even at that stage at least a reasonable idea of what it might cost them to prefer you.

- 10 **MR DANIEL PHOLISANI MAHLANGU:** Through you Chair. I think that that there was a duplication because if you look at the – 2.4.6 and 2.8.1 are the same things – the Pricing Schedule which is – which is written – which is under Section 6.

CHAIRPERSON: Okay.

MR DANIEL PHOLISANI MAHLANGU: So it was explained. So hence I am saying the – the narrative – I mean the discussion on top which is the one that I am saying it does not actually make sense but it was explained if you look at ...

CHAIRPERSON: 2-4-6 you say?

- 20 **MR DANIEL PHOLISANI MAHLANGU:** 2-4-6 that which is Section 6 then you go back to Section 6 again which is Pricing Schedule. So perhaps what my team has done is they have realised that it was actually discussed and just left this thing as it is.

CHAIRPERSON: Yes, okay. No that is fine.

ADV KATE HOFMEYR: Well if I could follow up on that Mr Mahlangu

because at 2-4-6 there is no indication of what this is going to cost SAA. Is there because and let me explain why I say that in fairness to you all that the table reflects is rates but it does not reflect how much time you thought was going to be spent and hence how much would have to be paid by SAA if they chose you for the services. Is that correct?

MR DANIEL PHOLISANI MAHLANGU: That is correct.

ADV KATE HOFMEYR: So the only part of this document that actually gives a fee is the one at 2-8-1 which reflects the fee that we all agreed
10 cannot possibly be the fee. Is that correct?

MR DANIEL PHOLISANI MAHLANGU: Based on this file yes.

ADV KATE HOFMEYR: Thank you. Right. If we then go to when the proper Pricing Schedule the one that actually detailed the total of 2.6 million was provided to SAA I put to you earlier that it appears to only have gone to SAA as an attachment to your email of 11 April and let me take you to the page in fairness. You will find it at page 2-8-2. It is the next page. You will recall we looked at that email a moment ago ...

MR DANIEL PHOLISANI MAHLANGU: Yes that is true.

ADV KATE HOFMEYR: And we were focusing on the one you sent to
20 Mr Matsaudza and it reads:

“Please find financials and pricing for your
attention.”

And then we went over to your 2-8-4 and that was the Pricing Schedule which was attached to that email and I put it to you then that this was a submission of a Pricing Schedule after the bid submission date had

passed. Do you see that?

MR DANIEL PHOLISANI MAHLANGU: Yes. However it was just an explanation of the numbers as I have said in your previous statement.

ADV KATE HOFMEYR: Hm.

MR DANIEL PHOLISANI MAHLANGU: That what we have submitted was not – was just indicative and then now to actually firm down as to what exactly that you are submitting.

ADV KATE HOFMEYR: But Mr Mahlangu you have to break down your pricing before you submitted your bid before the closing date on
10 18 March did you not?

MR DANIEL PHOLISANI MAHLANGU: It is true. However it depends on the – on the work at hand because in some instances you – you are not sure how long this thing is going to take and you give them an indicative because you do not know – even know how much – you know – what amount – I mean – amount of work that is involved. So in most cases would even currently would actually send our prices. It is only when we have been successful ...

ADV KATE HOFMEYR: Hm.

MR DANIEL PHOLISANI MALANGU: Or in the process of the client
20 want to compare apples with apples because others put a price others put rates and then said to you send us the rates so that we can compare apples with apples.

ADV KATE HOFMEYR: Mr Mahlangu do you accept that you had to submit a Pricing Schedule with this bid?

MR DANIEL PHOLISANI MAHLANGU: Yes.

ADV KATE HOFMEYR: And the Pricing Schedule we looked at that was provided in response to the RFI contained the meaningless fee of R1 excluding VAT. Correct?

MR DANIEL PHOLISANI MAHLANGU: That is true.

ADV KATE HOFMEYR: And by 18 March when the bids closed there was no further Pricing Schedule that had been provided by BNP Capital. Correct?

MR DANIEL PHOLISANI MAHLANGU: Okay. So through you Chair let me go back. It was actually provided but through rates. So – so
10 remember what has actually happened here is it is not like the client that is seeing BNP for the first time yes. We actually provided the information. We have given them an indication of pricing and – and the second time is they want to firm up as far as that pricing is concerned.

ADV KATE HOFMEYR: Did they ask you to firm it up?

MR DANIEL PHOLISANI MAHLANGU: They asked us to actually send a Pricing Schedule because what we have done we just sent the rates.

ADV KATE HOFMEYR: Well Mr Mahlangu the only email we have relating to correspondence after the bid was closed on 18 March and when you were awarded the tender on 22 April is the email at the
20 bottom of page 2-8-2. Do you see that?

MR DANIEL PHOLISANI MAHLANGU: Yes I do.

CHAIRPERSON:

ADV KATE HOFMEYR: And do you see that Mr Matsaudza asked you for there was a copy of your financial statements. He made no reference to a Pricing Schedule.

MR DANIEL PHOLISANI MAHLANGU: That is true.

ADV KATE HOFMEYR: So other than this was there any other correspondence from SAA that required you to put through your Pricing Schedule?

MR DANIEL PHOLISANI MAHLANGU: I cannot remember. That must be 2000 - happened in 2016. I cannot recall all the – what basically transpired but as far as from this information that I have before me I can – I could tell that based on our pricing that was not specific to a number ...

10 **ADV KATE HOFMEYR:** Hm.

MR DANIEL PHOLISANI MAHLANGU: But to rates then we actually have – I guess they wanted to compare apples with apples. Hence we have been asked to send this.

CHAIRPERSON: Well maybe let us – let us ask this. You said SAA asked you for clarification. How did that request come to you? Was it telephonic? Was it ...?

MR DANIEL PHOLISANI MAHLANGU: It is ...

CHAIRPERSON: By way of written communication or did you hear from Mr Mngadi that that is what they wanted?

20 **MR DANIEL PHOLISANI MAHLANGU:** Via email.

CHAIRPERSON: Via email?

MR DANIEL PHOLISANI MAHLANGU: Yes.

CHAIRPERSON: Is that email in this bundle that or is it anywhere here before me? Have you – have you seen it in the bundles in preparation for giving evidence? Is it something you have recently seen?

MR DANIEL PHOLISANI MAHLANGU: No. No Chair.

CHAIRPERSON: You have seen it?

MR DANIEL PHOLISANI MAHLANGU: I have not seen it.

CHAIRPERSON: Okay but are you sure that there was an email?

MR DANIEL PHOLISANI MAHLANGU: Definitely.

CHAIRPERSON: Asking for clarification?

MR DANIEL PHOLISANI MAHLANGU: Definitely because I mean even our response was via email. So ...

CHAIRPERSON: Hm.

10 **ADV KATE HOFMEYR:** But Mr Mahlangu I must probe that further because you supplied your Pricing Schedule in response to an email that did not ask for it. Are you saying that there is another email that asked for it?

MR DANIEL PHOLISANI MAHLANGU: What I am saying is the – the pricing that we sent was actually on rates and then we have been actually asked to send – to firm up on the price because they could not actually get down – compare apples with apples. So we had to actually send that pricing but as to because – you know – this thing happened in 2016 – as to whether that communication it is in one of these files I am

20 not – I cannot ...

ADV KATE HOFMEYR: Mr Mahlangu in fairness to you ...

MR DANIEL PHOLISANI MAHLANGU: But ...

ADV KATE HOFMEYR: We have found through the Commission's engagements with SAA no other email than this one at the bottom of page 2-8-2 that requires you to provide your financials and makes no

reference to pricing. It is not impossible that such an email exists but we would ask for your assistance if it does exist on your records to provide it to us in due course.

MR DANIEL PHOLISANI MAHLANGU: I will try because I have been battling with my records yes.

ADV KATE HOFMEYR: Certainly but let me put the proposition to you then. If it was a requirement of the bid that you submit a Pricing Schedule before 18 March 2016 do you accept that BNP Capital did not do so?

10 **MR DANIEL PHOLISANI MAHLANGU:** Through you Chair I do not agree.

ADV KATE HOFMEYR: Okay.

MR DANIEL PHOLISANI MAHLANGU: Yes.

ADV KATE HOFMEYR: Hm.

CHAIRPERSON: Do you accept that if BNP did not as a matter of fact do so then its bid would not have been fully compliant?

MR DANIEL PHOLISANI MAHLANGU: Through you Chair hence I am – I am saying I do not agree.

CHAIRPERSON: No, no, no I am saying assume that you are wrong.

20 **MR DANIEL PHOLISANI MAHLANGU:** We have not.

CHAIRPERSON: Assume that you are wrong. Assume that in fact the pricing was not sent through before closing date. If that is the position ...

MR DANIEL PHOLISANI MAHLANGU: Definitely.

CHAIRPERSON: Would you accept that then the bid was not fully

complaint?

MR DANIEL PHOLISANI MAHLANGU: Through you Chair definitely.

CHAIRPERSON: Okay, alright. Thank you.

ADV KATE HOFMEYR: And just one follow up to that Mr Mahlangu it was on the email of 11 April that you provided the Pricing Schedule that indicated that the fee to SAA would be 2.6 million or thereabouts is that correct?

MR DANIEL PHOLISANI MAHLANGU: Ma'am I do not have an email. What page are we at?

10 **ADV KATE HOFMEYR:** Apologies. It is at page 2-8-4. It is the Pricing Schedule that you attach to your email of 11 April. Do you see there you actually do now attribute hours to the rates and you give a total there including VAT of 2 689 830. Do you see that?

MR DANIEL PHOLISANI MAHLANGU: Yes I do.

ADV KATE HOFMEYR: So that was BNP's fee for the transaction advisor services if it was awarded the tender. Correct?

MR DANIEL PHOLISANI MAHLANGU: That is true.

ADV KATE HOFMEYR: And prior to 11 April 2016 that fee had not yet been made known to SAA. Correct?

20 **MR DANIEL PHOLISANI MAHLANGU:** That is true. Only the rates yes.

ADV KATE HOFMEYR: Thank you.

CHAIRPERSON: So just to make sure that I understand you – do you accept that this fee was not made known to SAA before the closing date for the bid?

MR DANIEL PHOLISANI MAHLANGU: Yes I do. However what I am

saying Chair is that only the rates were made.

CHAIRPERSON: Yes, *ja*.

MR DANIEL PHOLISANI MAHLANGU: No, yes.

CHAIRPERSON: Okay; but the absence of – the absence of this information in the bid would mean would it not that SAA would not have any reasonable idea as to how much or more or less how much you would charge - it would have to pay you if it preferred you – if it preferred BNP.

MR DANIEL PHOLISANI MAHLANGU: That is true sir – Chair.

10 **CHAIRPERSON:** Okay.

MR DANIEL PHOLISANI MAHLANGU: Hence they had to actually send – you know – clarification.

CHAIRPERSON: Afterwards?

MR DANIEL PHOLISANI MAHLANGU: Yes, yes.

CHAIRPERSON: *Ja*, okay.

ADV KATE HOFMEYR: Mr Mahlangu just to conclude the aspects on Inline Trading – at any point in 2016 did you become aware that Inline Trading is a car dealership?

MR DANIEL PHOLISANI MAHLANGU: No.

20 **ADV KATE HOFMEYR:** So up until the point that the award was cancelled with SAA you had not engaged further with Inline Trading about its line of business had you?

MR DANIEL PHOLISANI MAHLANGU: No.

ADV KATE HOFMEYR: Then am I to take it that you took that description that Mr Mngadi provided on Saturday 13 February as the

accurate description of the business of Inline Trading?

MR DANIEL PHOLISANI MAHLANGU: That is true. However over and above that for him to supply us with all the information and the CVs so that is how - that is basically the position we are at – at that point in time.

ADV KATE HOFMEYR: You got certain information from Mr Mngadi about Inline Trading that was submitted with the bid. Is that correct?

MR DANIEL PHOLISANI MAHLANGU: Yes. That is correct.

ADV KATE HOFMEYR: I have certainly seen in the documents their
10 SAR Certificate that you spoke about earlier. Correct?

MR DANIEL PHOLISANI MAHLANGU: That is true.

ADV KATE HOFMEYR: I have seen an indication of their bank account details. Is that correct?

MR DANIEL PHOLISANI MAHLANGU: That is true.

ADV KATE HOFMEYR: But you made reference to CVs and I have not seen CVs. Can you assist me with that?

MR DANIEL PHOLISANI MAHLANGU: I think as far as this file is concerned – I am not sure whether those – you know – those CVs are actually contained but what I remember is the profile for Mr – is it
20 Mr King? Yes that is what I remember.

ADV KATE HOFMEYR: Yes. He certainly included in a team structure diagram that I have seen. You will find that in Ms Nhantsi's bundle which is EXHIBIT DD2 at page 2-7-3. Do you see that diagram on that page?

MR DANIEL PHOLISANI MAHLANGU: Yes I do through you Chair.

ADV KATE HOFMEYR: And I see you at the top of that page identified as Lead Project Director. Do you see that?

MR DANIEL PHOLISANI MAHLANGU: Yes I do.

ADV KATE HOFMEYR: And then tell us what position Mr King was to occupy?

MR DANIEL PHOLISANI MAHLANGU: As far as our understanding is concerned as I have actually indicated at the beginning that when we see Mr King in our view is - and Mr Mngadi they are actually in the same position because as far as our understanding that is going to be
10 our responsibility to actually liaise with the client one; two, coordinate all the imports that actually they get from the client and then – and then provide us with actually whatever input that they get.

So that was our responsibility. I mean that understanding at the time when this thing was put together.

ADV KATE HOFMEYR: I understand but you indicated that the profiles of the people who had come from Inline Trading were provided by Mr Mngadi. Is that correct?

MR DANIEL PHOLISANI MAHLANGU: That is true and that is my understanding yes.

20 **ADV KATE HOFMEYR:** Indeed. My challenge with this document though is that the only place where Mr King is referenced is actually in this diagram that we are looking at – at page 2-8 – sorry – 2-7-3 and actually when you get to give the qualifications and experience of your team members later in that document everyone from BNP Capital is there but no one from Inline Trading is there. Are you aware of that?

MR DANIEL PHOLISANI MAHLANGU: No I am not aware.

ADV KATE HOFMEYR: Okay but just for completeness let us go to it. It is at page 2-7-9 of that same bundle - EXHIBIT DD2. See as I have it we are progressing in the document that was submitted. We start with your team structure that is the page we have just looked at with the diagram and it is identifying yourself as the Head and amongst the people in second command are Mr King and now you come to page 2-7-9 what is the heading of that section of this proposal?

MR DANIEL PHOLISANI MAHLANGU: Team qualifications – sorry.

10 **ADV KATE HOFMEYR:** Team qualifications, thank you.

MR DANIEL PHOLISANI MAHLANGU: Yes.

ADV KATE HOFMEYR: And then who are the people who are referenced there?

MR DANIEL PHOLISANI MAHLANGU: It is BNP Capital people.

ADV KATE HOFMEYR: Indeed. So you – you accept the proposition I put to you which is that there is no information at all of anyone from Inline Trading?

MR DANIEL PHOLISANI MAHLANGU: That is true.

ADV KATE HOFMEYR: Thank you.

20 **CHAIRPERSON:** Under the column with your qualifications there – there is MBA Dissertation. What did that mean?

MR DANIEL PHOLISANI MAHLANGU: MBA ...

CHAIRPERSON: Under the column at page 2-7-9 that gives your qualifications. There is MBA Dissertation. What did that mean? I just ask because I did not see that qualification when we were dealing with

your qualifications earlier on.

MR DANIEL PHOLISANI MAHLANGU: Yes thank you Chair. At some point in my life I did MBA. Yes and I was like just left with this dissertation and I ...

CHAIRPERSON: So dissertation meant – you meant that the dissertation was still outstanding?

MR DANIEL PHOLISANI MAHLANGU: Definitely.

CHAIRPERSON: You had not completed it?

MR DANIEL PHOLISANI MAHLANGU: Yes.

10 **CHAIRPERSON:** Okay.

ADV KATE HOFMEYR: Mr Mahlangu as I have your evidence BNP was going to be the lead in this consortium in its engagements with SAA. Correct?

MR DANIEL PHOLISANI MAHLANGU: That is true.

ADV KATE HOFMEYR: But BNP itself had no interactions with SAA. Correct?

MR DANIEL PHOLISANI MAHLANGU: That is true.

ADV KATE HOFMEYR: Was that even the position after the award of the transaction advisor services?

20 **MR DANIEL PHOLISANI MAHLANGU:** That is true.

ADV KATE HOFMEYR: Thank you.

CHAIRPERSON: I am sorry Ms Hofmeyr I may have missed something.

ADV KATE HOFMEYR: Certainly.

CHAIRPERSON: At some stage I think you were raising the point that he put the names of people from BNP I think with their qualifications ...

ADV KATE HOFMEYR: Yes.

CHAIRPERSON: But nobody from Inline Trading.

ADV KATE HOFMEYR: Yes.

CHAIRPERSON: I did not hear what the answer was to that.

ADV KATE HOFMEYR: As I have it here he accepted that. Correct?

CHAIRPERSON: He accepted that, *ja*. Okay.

MR DANIEL PHOLISANI MAHLANGU: Hm.

CHAIRPERSON: Let me – okay, let me – Ms Hofmeyr put the question to you that it appeared that you only put staff from BNP as the people
10 who were involved in the project as I understood the question and there was nobody mentioned from Inline Trading. Do you remember her asking that question?

MR DANIEL PHOLISANI MAHLANGU: Yes I do Chair.

CHAIRPERSON: Yes and you confirm that that – that was so?

MR DANIEL PHOLISANI MAHLANGU: Hm.

CHAIRPERSON: That you did not put, include or mention anybody from Inline Trading?

MR DANIEL PHOLISANI MAHLANGU: Yes. I – I guess on my part it was an oversight based on – on the – you know – on the fact that as I
20 said in the beginning that I was not actually involved with this – with this documentation. So at the beginning when – you know – my guys at the office were running with it Mngadi was part of it. Yes and then at the eleventh hour he pulled out. So I – so I think ...

CHAIRPERSON: Did you say Mngadi?

MR DANIEL PHOLISANI MAHLANGU: Yes. Mr Masotsha Mngadi.

CHAIRPERSON: Yes, *ja*.

MR DANIEL PHOLISANI MAHLANGU: Yes. At the eleventh hour he pulled out based on the letter over the weekend.

CHAIRPERSON: Yes.

MR DANIEL PHOLISANI MAHLANGU: So I think things just fell through the cracks then.

CHAIRPERSON: Yes but that you only knew recently, not then, that he pulled out and suggested that somebody else's name be included in his place.

10 **MR DANIEL PHOLISANI MAHLANGU:** I saw on the – yes I just saw – I only knew now as far as the email, I thought he was just instructing my guys to actually do that, because I saw Mr king, I thought perhaps – because he was actually just engaging with my guys as far as the preparation of this document is concerned, so I thought that was – you know, they understood but when I saw the email now it shows that he actually asked them to remove his details on that particular documentation.

CHAIRPERSON: Okay let me make sure I understand that. Are you saying that at that time, you were aware that Mr Mngadi had asked that
20 his name be withdrawn or should not be in and that the name of Mr Brandon King be the one that would be put in, in the place of his name but what you were seeing for the first time, about two weeks ago or so was the email?

MR DANIEL PHOLISANI MAHLANGU: Through you Chair, what I'm saying is my understanding was that was still part of this and when

things were done because the communication happened over the weekend and when things were done for him to actually request one of our guys to remove his name that was – I was not aware of that but when people – when names of people were actually put in the documentation, my understanding is the guy still a Inline Trading guy so I didn't actually think about it to the point where I would start questioning as to why did he withdraw his information, so that didn't actually bother me at that point in time.

CHAIRPERSON: Yes.

- 10 **MR DANIEL PHOLISANI MAHLANGU:** It's only now when you know in hindsight with all the information that you realise basically yes.

CHAIRPERSON: Yes because one would expect that Mr Mngadi, on your understanding and as a matter of fact having been the lead guy from Inline Trading, you know, he came to you, he met with you for the first time and he was very active and so on, that he would be surprised if, in documents that were supposed to reflect who is involved with Inline Trading, who are the people in Inline Trading you'll be surprised if his name did not appear in that list wouldn't you?

MR DANIEL PHOLISANI MAHLANGU: True Chair.

- 20 **CHAIRPERSON:** Yes and one would therefore – particularly for somebody that active in regard to Inline Trading's business that one would expect that he would say, well I want to find out how come and that he would have asked.

MR DANIEL PHOLISANI MAHLANGU: That's true Chair and as I said, I think when things were actually moving at that pace at that point

in time one actually didn't ask a lot and for obvious – not for obvious reasons but things were just moving and hence I said even this letter just got it now to say remove me but no-one even told me at the office to say, you know what – requested the letter to say we must remove because it was just addressed to one of the employees. Yes so I think on my part also I will actually take responsibility for that to say perhaps what one should have actually done was to actually ask as to why but in hindsight because I think when you run a business you don't run a business with the intention that you're going to be (indistinct) in the process so we...(intervention).

CHAIRPERSON: Well at the same time you have to guard – you have to be alert as to who you're dealing with because otherwise you don't have the best interest of your own business at heart if you are not going to at least take reasonable steps to make sure that people that you are seen with are not – or you're seen to be associated with in business are not going to be people that may give your company a bad name.

MR DANIEL PHOLISANI MAHLANGU: That's true Chair, I agree thank you.

20 **ADV KATE HOFMEYR:** Mr Mahlangu if I may I'd like to proceed to those parts of the bid that you completed and in respect of which you needed to satisfy yourself as to the accuracy of the information you were providing and for that purpose I'd just like to preface the questions with, the speed over the RFI submission is now over for the purposes of this bid submission because that happened on the 16th of

February and now you've got a month and two days before you prepare and submit the bid submission, do you accept that?

CHAIRPERSON: I guess before you submit you have to prepare and submit before you submit.

ADV KATE HOFMEYR: Indeed.

MR DANIEL PHOLISANI MAHLANGU: Yes.

ADV KATE HOFMEYR: Thank you. So there a number of declarations that you gave in that bid that was submitted on the 18th of March 2016 I'd like to take you to the first of those, if you pick up the soft file in
10 front of you and you go to internal page 19 of 55 and for record purposes that will be found in Exhibit DD2 which is Ms Nhantsi's bundle at page 212, do you see that document Mr Mahlangu?

MR DANIEL PHOLISANI MAHLANGU: It's PN212?

ADV KATE HOFMEYR: PN212 internal page 19 of 55, are you on that page?

MR DANIEL PHOLISANI MAHLANGU: Yes.

ADV KATE HOFMEYR: Thank you what is this document?

MR DANIEL PHOLISANI MAHLANGU: The declaration of interest.

ADV KATE HOFMEYR: And if you go over the page to internal page 20
20 of 55 which will be found in Exhibit DD1 at page 391 which is Ms Stimpel's bundle please read for us what you are declaring when you sign that document and I pick it up at the place indicated 3, declaration on that page, can you read for us what you declare by signing that document?

MR DANIEL PHOLISANI MAHLANGU: Through you Chair,

“I Bolasani Daniel Mahlangu the undersigned certify that the information furnished in paragraph 2.1 to 3.1 is correct, accept that the principal may act against me in terms of paragraph 23 of the general conditions of the contract should this declaration prove to be false”.

ADV KATE HOFMEYR: Thank you did you understand then what you were doing when you signed this declaration, you were giving that confirmation as to the correctness of the information?

MR DANIEL PHOLISANI MAHLANGU: That’s true.

10 **ADV KATE HOFMEYR:** Thank you, if we go back to the page, the aspect that I’m interested in is the one that appears at point 2.2 on internal page 19, you’ll see there that the declaration of interest asks you to answer the following question,

“do you or any person connected with the bidder have any relationship, family, friend or other with the person employed by the principal who may be involved in the evaluation and/or adjudication of this bid”,

Do you see that?

20 **MR DANIEL PHOLISANI MAHLANGU:** I’m not sure if I’m on the same page.

ADV KATE HOFMEYR: Apologies.

CHAIRPERSON: That’s 2.2 at page PN212 internal page 19 of 55.

MR DANIEL PHOLISANI MAHLANGU: Oh 2.12?

CHAIRPERSON: The page is internal page 19 of 55, the one on the top...(intervention).

MR DANIEL PHOLISANI MAHLANGU: What file now?

ADV KATE HOFMEYR: The soft file thank you and if you go back a page, I think you'll find at the bottom internal page 19 of 55. Thank you, apologies Mr Mahlangu I didn't realise you weren't there. Do you see clause 2.2 at the bottom of that page?

MR DANIEL PHOLISANI MAHLANGU: Yes I do.

ADV KATE HOFMEYR: And what it ask you to answer is a question,

10 “Do you or any person connected with the bidder have any relationship, family, friend or other with the person employed by the principal that in this case is a reference to SAA, and who may be involved in the evaluation or adjudication of this bid”,

Do you see that?

MR DANIEL PHOLISANI MAHLANGU: Yes.

ADV KATE HOFMEYR: I understood from your evidence this morning that you didn't enquire of Mr Mngadi if he had any personal relationships with persons at SAA when you met with him originally, is that correct?

MR DANIEL PHOLISANI MAHLANGU: That's correct.

20 **ADV KATE HOFMEYR:** Did you make any enquiries of him before you filled out this declaration?

MR DANIEL PHOLISANI MAHLANGU: No.

ADV KATE HOFMEYR: So how did you answer, no to that question?

MR DANIEL PHOLISANI MAHLANGU: Because in our knowledge Mr Mngadi was actually running his own business.

CHAIRPERSON: Was what?

MR DANIEL PHOLISANI MAHLANGU: Running his own entity.

CHAIRPERSON: Running is own entity?

MR DANIEL PHOLISANI MAHLANGU: Yes.

CHAIRPERSON: Inline Trading?

MR DANIEL PHOLISANI MAHLANGU: Definitely.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: But then why wouldn't that still have applied because the question asks you whether you or any person connected
10 with the bidder, and Inline Trading was your consortium partner.

MR DANIEL PHOLISANI MAHLANGU: Yes.

ADV KATE HOFMEYR: So why wouldn't they have been people that you had to establish whether they had any personal relationships with people who were going to be adjudicating this bid?

MR DANIEL PHOLISANI MAHLANGU: To be honest I didn't actually ask them.

CHAIRPERSON: No she understands that, she's asking why you didn't see it as important or relevant or as your duty to ask Mr Mngadi before giving answer to this question. Maybe let's do it this way, just look at
20 that question, 2.2 do you see it?

MR DANIEL PHOLISANI MAHLANGU: Yes I do.

CHAIRPERSON: Ja it says,

“do you or any person connected with the bidder have any relationship (family, friend or other) with a person employed by the principal and who may be involved with the evaluation

and/or adjudication of this bid”,

You see that?

MR DANIEL PHOLISANI MAHLANGU: Yes I do Chair.

CHAIRPERSON: Now of course you did know whether you have had any relationship with any of those people.

MR DANIEL PHOLISANI MAHLANGU: That’s true.

CHAIRPERSON: Ja but now it goes further it says,

“any person connected with the bidder”,

Who was the bidder here, what was your understanding of who

10 the bidder was?

MR DANIEL PHOLISANI MAHLANGU: It’s us and Inline Trading.

CHAIRPERSON: Sorry?

MR DANIEL PHOLISANI MAHLANGU: It’s BnP and Inline Trading.

CHAIRPERSON: Yes so the question – part of the question then was, do you or does any person connected with BnP and Inline Trading, have any relationship with a person employed by the principal and who may be involved with the evaluation and/or adjudication of this bid. One, in Mr Mngadi would fall within that, isn’t it?

MR DANIEL PHOLISANI MAHLANGU: That’s true

20 **CHAIRPERSON:** Yes so do you accept that you should have checked whether he had any such relationship with the persons contemplated in that question at SAA, do you accept that he is one of the people the question expected you to deal with when you say, no, there is no person connected with the bidder who has any relationship with anybody who might be involved in the evaluation or adjudication of the

bid?

MR DANIEL PHOLISANI MAHLANGU: Yes that's true sir I think obvious in our discussion it didn't indicate to us whether he's got any relationships, I mean, any family or friend or other that are actually involved in the adjudication of this process.

CHAIRPERSON: Yes but leave out what he didn't say, you were the one who was going to give an answer to the question and you were supposed to give a truthful answer okay.

MR DANIEL PHOLISANI MAHLANGU: Yes.

10 **CHAIRPERSON:** Therefore if you didn't know whether he had such relationships – such a relationship with somebody at SAA then you had an obligation to ask him, isn't it?

MR DANIEL PHOLISANI MAHLANGU: That's true sir.

CHAIRPERSON: And the question is, you didn't ask him, why not before saying, here no?

MR DANIEL PHOLISANI MAHLANGU: The way I read the question, the question was, in essence I think focused on us as BnP Capital and our consortium. I agree with you Chair and Ms Hofmeyr that perhaps we could have actually asked that particular question but in our
20 engagement we – at that point in time we didn't actually suspect anything so as I said that time was of essence so we just signed the document and moved on.

CHAIRPERSON: Well Ms Hofmeyr told you earlier on the time when you didn't have much time that is before the closing date for the RFI is gone, this is now when you had about a month to put in the bi as I

understand the position, so you – time was not a problem to find out who among the people who are involved in this bid on the part of your consortium might have relationship with people at SAA.

MR DANIEL PHOLISANI MAHLANGU: Yes I agree with you Chair hence I said as far as the nature of business is concerned I think I've been involved in many of these things and I haven't been asked this particular question so now looking back in hindsight perhaps that's the question that's supposed to be asked on a constant basis but in our nature of our business, I haven't actually been asked this particular
10 question and when we actually engaged with Mngadi didn't give us any indication that he's involved or that he doesn't actually – he's got any relationships but I do agree with Chair, perhaps I should have asked the question.

CHAIRPERSON: but the other thing in terms of what Mr Mngadi told you right from the beginning in terms of your own evidence is it that he had a long-standing relationship with SAA isn't it?

MR DANIEL PHOLISANI MAHLANGU: That's true.

CHAIRPERSON: Yes so I would have thought that when you see a question like this, and knowing that Mr Mngadi is a person connected
20 with the bidder, as contemplated in this question, that, that would be the time when you would say, you know what, Mr Mngadi came here and he indicated he has been involved with SAA for a long time I need to find out if he's got any such relationships before I can answer this question, that's what I would have expected you to do, what do you say to that?

MR DANIEL PHOLISANI MAHLANGU: I agree with you Chair, I think in hindsight you know if one was given the benefit of the doubt, yes all of us should be doing that but I guess it's the nature of the business so otherwise we wouldn't actually complete this document if we had to go through each and every point and answer.

CHAIRPERSON: No listen Mr Mahlangu how can you say that, you're not suppose to sign any document, unless you have read it and you're not suppose to give information as – and give it as true when you don't know if it's true and here you are asked, on the next page, you do
10 certify – you do certify, you say,

“I Bolasani Daniel Mahlangu, the undersigned certify that the information furnished in paragraph 2.1 to 2.1.3 above is correct”,

So you are telling the people who must adjudicate here that your answers that you have given here are correct.

MR DANIEL PHOLISANI MAHLANGU: That's true Chair.

CHAIRPERSON: And yet we find out now that you don't know and you didn't know then whether Mr Mngadi was a person connected with the bidder as the question contemplated had somebody with whom he had a
20 family or other relationship at SAA, can you see that it means that you gave incorrect information because you gave the impression that you knew that there was nobody connected with the bidder who knew somebody at SAA who could be involved in the evaluation or adjudication of the bid and yet you are saying that you didn't know.

MR DANIEL PHOLISANI MAHLANGU: Yes Chair, I think for – I do

agree in some of the aspects of your discussion but perhaps it's incorrect to say I gave the wrong information, I think at that point in time when we did the bid and based on information that was available to us, we took that decision.

CHAIRPERSON: No let's deal with that. Did you know at that time whether there was anybody connected with the bidder who had any relationship, family, friend or other with a person employed by the principal and who may be involved with the evaluation or adjudication of the bid, did you know?

10 **MR DANIEL PHOLISANI MAHLANGU:** No there wasn't.

CHAIRPERSON: No, are you saying no you did not know or are you saying no there wasn't anybody like that?

MR DANIEL PHOLISANI MAHLANGU: I didn't know.

CHAIRPERSON: But your answer here doesn't say you don't know, it says no there was no such person. Look at the answer, you said no didn't you?

MR DANIEL PHOLISANI MAHLANGU: Yes hence sir I'm saying I did say I don't know – I mean I did say no and the reason why I did say no because people amongst our team no-one actually had that relationship
20 with SAA.

CHAIRPERSON: No Mr Mahlangu, if the question requires you to indicate what you know, you have to indicate what you know, if you don't know you say you don't know. Now here you are being asked the question whether there was anybody connected with the bidder who had family relationships or friendship with anybody involved in the

evaluation or adjudication of the bid and if you didn't know, you needed to ask people or get whatever information so that when you answer you answer it from a position of knowledge.

MR DANIEL PHOLISANI MAHLANGU: I agree with you Chair.

CHAIRPERSON: Otherwise if you didn't do – make those enquiries, your only correct answer would be, something like, you did not have any such relationship but you didn't know if there was anybody else who might have that relationship but ...(intervention).

MR DANIEL PHOLISANI MAHLANGU: I agree with you Chair

10 **CHAIRPERSON:** Do you agree?

MR DANIEL PHOLISANI MAHLANGU: Yes.

CHAIRPERSON: And the question again is why didn't you check, why didn't you make those enquiries?

MR DANIEL PHOLISANI MAHLANGU: There was no doubt in my mind that anybody in our team actually had that, yes, however in hindsight Chair – yes so that maybe we don't spend too much time, I think in hindsight I agree with you that perhaps it's an exercise that one needs to do going forward yes especially as far as this exercises is concerned but I think at that point in time one just took it for granted.

20 **CHAIRPERSON:** But when you say in your team, do you include Mr Mngadi?

MR DANIEL PHOLISANI MAHLANGU: Yes.

CHAIRPERSON: But you hadn't known Mr Mngadi for a long time, unlike maybe the other people in your office and I would have thought that you would think no, you know, this man I haven't known for a long

time, I must ask him, you didn't think about doing it that way?

MR DANIEL PHOLISANI MAHLANGU: No.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: Thank you Chair. Mr Mahlangu we've dealt with – what I'm focusing on now are documents and declarations that you were responsible for and we've looked at the declaration of interest I then want to take you to one of the letters that you sent out in the course of this engagement with SAA, it is a letter that was actually sent to the representative of Grissag, Mr van der Merwe. You reference it in
10 your statement, it's the last annexure because it's an email that comes from Mr Mngadi with the text of the letter that he wants you to send on to Grissag so I'm just orientating you, I want to find the letter first that went to Grissag, you'll find that in Mr van der Merwe's bundle which is Exhibit DD3, Chair you should also have that available to you, it's Exhibit DD3.

MR DANIEL PHOLISANI MAHLANGU: I don't have DD3 here.

CHAIRPERSON: It's a file like this, if you can look this way.

MR DANIEL PHOLISANI MAHLANGU: Oh.

ADV KATE HOFMEYR: Thank you I'm indebted Chair mine is a hard
20 lever arch file so I wouldn't have been any the wiser. Mr Mahlangu if you turn in that bundle to page 18 it's under tab 4, do you see that document?

MR DANIEL PHOLISANI MAHLANGU: Yes I do.

ADV KATE HOFMEYR: Is that your signature on the document?

MR DANIEL PHOLISANI MAHLANGU: Yes it's mine.

ADV KATE HOFMEYR: And is that a letter that you're familiar with having sent to Mr Peter van der Merwe?

MR DANIEL PHOLISANI MAHLANGU: Yes I've seen it yes.

ADV KATE HOFMEYR: And let me just assist you because you do provide, in your statement, the email version of this that came from Mr Mngadi, you might recall that, it's right at the end of your bundle and you'll find it there at page 145.

CHAIRPERSON: I'm sorry what page?

ADV KATE HOFMEYR: 145 of Mr Mahlangu's bundle which is DD11 I
10 think, no DD4 apologies Chair. Do you remember that Mr Mahlangu?

MR DANIEL PHOLISANI MAHLANGU: Yes.

ADV KATE HOFMEYR: Thank you, Mr Mahlangu this is a letter that was sent to Mr van der Merwe on the 22nd of April, you'll pick up that date on the emailed version which is attached to your statement, do you see that?

MR DANIEL PHOLISANI MAHLANGU: Yes.

ADV KATE HOFMEYR: Thank you and the evidence of Mr van der Merwe confirmed that he received this letter on the 22nd of April. What I'm interested in is the first line of that letter, Mr Mahlangu because it
20 says,

"please find attached under cover hereof, a mandate from South African Airways whereby SAA amongst others mandates BnP – sorry BHP I think that's a typing error, Capital, to raise and arrange funding for and on behalf of SAA for the purposes of the consolidation of SAA's debt of 15billion rand",

Do you see that?

MR DANIEL PHOLISANI MAHLANGU: Yes I do.

ADV KATE HOFMEYR: On the 22nd of April 2016 BnP Capital had not been appointed yet to source funds for SAA is that correct?

MR DANIEL PHOLISANI MAHLANGU: That's true.

ADV KATE HOFMEYR: So why does this letter state that it had been so appointed?

MR DANIEL PHOLISANI MAHLANGU: Through you Chair, when I actually saw this letter which was actually just an exchange between
10 Mngadi and one of my employees at the office, I think it's only now when I actually pay attention to it that – because as far as the initial letter was concerned it was actually just attaching appointment letters as far as advisory is concerned but when one goes through the detail of it then it mentions the capital raising, it's only then that – I don't know why it actually was sent in this particular fashion but it's only now that it raises eyebrows.

ADV KATE HOFMEYR: So you didn't check this letter before you allowed your signature to be appended to it?

MR DANIEL PHOLISANI MAHLANGU: As I said it was just an
20 exchange between...(intervention).

CHAIRPERSON: I'm sorry I'm still at 145, that is from Mr Moyo not Mr Mahlangu.

ADV KATE HOFMEYR: Indeed, apologies Chair you have to go back into Mr van der Merwe's Exhibit which is...(intervention).

CHAIRPERSON: What page again?

ADV KATE HOFMEYR: That was page 18.

CHAIRPERSON: 18 from the same file?

ADV KATE HOFMEYR: Of DD3 sorry Chair we're in the soft file which is Mr van der Merwe's – there are so many pages today if you – 18 this is the letter which is a replica of the email but this is the one that contains Mr Mahlangu's signature.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: So it is at this point that I ask Mr Mahlangu whether he read this text of this letter before he sent it to Mr van der
10 Merwe?

MR DANIEL PHOLISANI MAHLANGU: Through you Chair, it wasn't sent by me it was sent by Ivan. So as I've indicated before the guys at the office that there's a template that they used that you know they append my – it's actually my signature is there so when I looked at it, it was just a correspondence between Mngadi and Ivan but the memorandum of understanding between – I think there was a mistake here with this BH, it's supposed to be BnP and Grissag and eventually Ivan sent that letter to...(intervention).

ADV KATE HOFMEYR: But Mr Mahlangu apologies, I did understand
20 your evidence earlier to be that there was an electronic signature of yours available in BnP is that correct?

MR DANIEL PHOLISANI MAHLANGU: There was a template, letter template yes that they were using, electronic signature was constantly there.

ADV KATE HOFMEYR: But I understand your evidence earlier to be,

you would nonetheless check letters that were being sent out in your name, is that correct?

MR DANIEL PHOLISANI MAHLANGU: Not in most cases it depends on the nature of that particular letter, it's for instance we – for instance in this particular case it was just an engagement, when I read the first – the subject of the letter, to me it gave me the impression that – Masoja is actually introducing Grissag into the picture and it says, this is fine...(intervention).

CHAIRPERSON: You say Masoja, that is Mr Mngadi, otherwise the
10 transcript will – anyone reading the transcript will think that's somebody else now.

MR DANIEL PHOLISANI MAHLANGU: Okay, sorry Chair, Mr Mngadi basically came up with this particular letter yes, and had a discussion – there was a to and fro between him and the – one of my guys at the office and eventually one of my guys at the office put this letter on the letterhead and then attached the letter of appointment for – for transactional advisory and sent it with. So and as far as I am concerned I did not actually go through it that much because I thought okay fine what is going on here you actually – you have been actually
20 Mr Mngadi is bring Grissag on the table and you – it is an introduction type of a discussion because that was some of his responsibilities.

ADV KATE HOFMEYR: Mr Mahlangu I really would like to get clear what your knowledge was at the time that this letter was sent. Did you look at the letter before it was sent out by Mr Moyo bearing your signature?

MR DANIEL PHOLISANI MAHLANGU: No I did not.

ADV KATE HOFMEYR: Did you learn of it shortly after the 22 April?

MR DANIEL PHOLISANI MAHLANGU: No I did not. I did not actually – to be honest with you it is now this letter that makes sense to me. That when I...

ADV KATE HOFMEYR: Well when did you see it for the first time this letter? And I do not – I am not asking for a date I meaning recently in preparation for the commission.

MR DANIEL PHOLISANI MAHLANGU: Definitely yes.

10 **ADV KATE HOFMEYR:** So at no point in 2016 when all of this was going on were you aware of this letter?

MR DANIEL PHOLISANI MAHLANGU: No.

ADV KATE HOFMEYR: Does that concern you that letters were being sent out under your name and representing your company in circumstances where you had no knowledge that those letters were being sent out?

MR DANIEL PHOLISANI MAHLANGU: Yes through you Chair. In some instances I would be cc'd yes in those letters. As I have indicated at the beginning that I had you know professionals that were actually
20 running some of these things. So if a letter is not sort of implicating or there is not much on that particular letter it is just an introductory letter so I would not actually spend time on it.

CHAIRPERSON: Well Mr Mahlangu I am getting quite concerned. Did people in your office have the – have your permission or authority to put your signature on letters that you had not approved or seen?

MR DANIEL PHOLISANI MAHLANGU: At some point they did hence I had to actually come up with a policy to say no one actually uses my electronic signature going forward.

CHAIRPERSON: How had that come about that you gave people in your office permission to put your signature to – on letters – correspondence that you had not seen?

MR DANIEL PHOLISANI MAHLANGU: Through you Chair I think it is the nature of our business. If for instance it is a question of the content of that – in that particular letter and who it actually addresses
10 to and what it says. So in most instances what would usually happen is if that letter goes to a particular client then obviously one needs to actually look at that particular letter. Or otherwise I would get sort of you know a brief on that particular and the content of the letter because you – you know because in most cases I would be away when actually that particular you know event is actually taking place.

CHAIRPERSON: I understand completely the position that not every letter from your – from a company needs to be seen by the boss – by the person in charge. That I accept. Of course in some cases you just cannot operate on the basis that you must see every letter okay but
20 what is normally done is if you have got people at a certain level you let them sign letters. The letters they go out on the letterhead of the organisation but with their signatures and not yours. And the ones that go out with your signature would be the ones that

1. You have seen and you have approved or the ones that might fall into a category which is non-contentious maybe if it is – you

might have certain categories to say no if it is this or that that is fine but anything else if it is going to go out with my signature I must see it otherwise it must go out with someone's signature who had drafted it who knows about it.

That is what I would expect.

MR DANIEL PHOLISANI MAHLANGU: Yes that is true Sir. It think in some instances I would actually do that when time permits but in others you know depending as I said it depends – it depends on the seriousness on that particular letter.

10 **CHAIRPERSON:** But why would you not – I understand you were saying you had senior people, experienced people so why would you not let them sign correspondence that related to matters that they were dealing with? Particularly where you had seen the correspondence so they can take responsibility. Nobody can meet you at – in town and say why did you send me such a nonsensical letter and you do not know about it.

MR DANIEL PHOLISANI MAHLANGU: I understand Chair I think in this particular cases in hindsight I think we actually never had any issue with the letters and as I have said before that what usually happened
20 was there was a template that everyone was actually getting used to it you know which had my signature already attached to it so people would write whatever they want to write ...

CHAIRPERSON: But that does not explain why you would not let them – you would not say to them if you write a letter to somebody in regard to the business of the organisation you put your own signature not my

signature unless I have seen that letter.

MR DANIEL PHOLISANI MAHLANGU: Yes I agree Chair I think it was – it was a fault on my part.

CHAIRPERSON: Hm.

ADV KATE HOFMEYR: Mr Mahlangu do you accept that this letter was false?

MR DANIEL PHOLISANI MAHLANGU: Yes I do.

ADV KATE HOFMEYR: Thank you. In terms of Grissag because you have introduced Grissag in your explanation around this did you have
10 any direct interactions between Mr Van Der Merwe and BNP Capital?

MR DANIEL PHOLISANI MAHLANGU: No.

ADV KATE HOFMEYR: Did anyone to your knowledge within BNP Capital have any interactions with Mr Van Der Merwe?

MR DANIEL PHOLISANI MAHLANGU: I think it is Mr Moyo at some point. Yes.

ADV KATE HOFMEYR: Do you know that as a fact or do you surmise that?

MR DANIEL PHOLISANI MAHLANGU: You mean knowing in terms got the exchange some emails between the two of them.

20 **ADV KATE HOFMEYR:** Directly between Mr Moyo and Mr Van Der Merwe?

MR DANIEL PHOLISANI MAHLANGU: At some point it did happen.

ADV KATE HOFMEYR: Because I am going to pick up on this topic of what is stated in the letters that bear your name because there are a great many facts about Grissag that are put to SAA when BNP Capital

is motivating for a cancellation fee, are you aware of that?

MR DANIEL PHOLISANI MAHLANGU: Yes I am.

ADV KATE HOFMEYR: And who was responsible for obtaining those facts from Grissag?

MR DANIEL PHOLISANI MAHLANGU: It is Mr Mngadi.

ADV KATE HOFMEYR: And would your team check those facts?

MR DANIEL PHOLISANI MAHLANGU: Okay let me – can I – can I just understand the question? What – when you mean facts in terms of the fees or?

10 **ADV KATE HOFMEYR:** Hm what BN – what Grissag was doing? I will take you to all the correspondence in due course but there are lots of letters under your name.

MR DANIEL PHOLISANI MAHLANGU: Yes.

ADV KATE HOFMEYR: That say Grissag is flying directors to Paris. That say Grissag has got breakage costs. That say Grissag is going to place a penalty of 5 million US dollars on BNP Capital. I understand your evidence to be you had no interactions with Mr Van Der Merwe, correct?

MR DANIEL PHOLISANI MAHLANGU: That is true.

20 **ADV KATE HOFMEYR:** So where did those facts that appear in your letters come from?

MR DANIEL PHOLISANI MAHLANGU: Mr Mngadi.

ADV KATE HOFMEYR: Did he send them to you and then you put them in the letters?

MR DANIEL PHOLISANI MAHLANGU: Yes remember at the beginning

Mr Mngadi actually is the one that had an interaction with Grissag.

ADV KATE HOFMEYR: Hm.

MR DANIEL PHOLISANI MAHLANGU: Yes. So in our understanding with him was that he understands what Grissag's needs are given you know because that is the function he was actually dealing with. So he understands what SAA's needs are. So he was – there was a gentleman that would actually a representative of Inline Trading now to go to Grissag and say Grissag what is it that you require and provide that information to us.

10 **ADV KATE HOFMEYR:** So did you check those facts yourself ever?

MR DANIEL PHOLISANI MAHLANGU: The email that he sent that he said okay fine – because what he basically did is he would send us a discussion that he had with Grissag and said this is the discussion that I had with Grissag, Grissag actually wants this. So he would actually you know follow that.

ADV KATE HOFMEYR: Did he give you a summary of the discussion or did he give you the text of the letter that he wanted you to send to SAA?

MR DANIEL PHOLISANI MAHLANGU: The text of the letter.

20 **ADV KATE HOFMEYR:** Hm. Why did you not just say to him Mr Mngadi I know none of these facts. Why do you not just write to SAA and motivate on this basis for the cancellation fee?

MR DANIEL PHOLISANI MAHLANGU: As far as the cancellation fee I am not sure whether we actually there now see – I mean Chair.

CHAIRPERSON: Well she is asking you a general question but it might

...

MR DANIEL PHOLISANI MAHLANGU: Yes because it is interlinked.

CHAIRPERSON: Relate to ja but basically the question is, you were being given draft letters.

MR DANIEL PHOLISANI MAHLANGU: That is true.

CHAIRPERSON: By Mr Mngadi which if you sent out on – under your signature would convey to either SAA or whoever SAA that you were saying these are the facts about Grissag and yet you did not know that those were the facts. You just heard from Mr Mngadi. So the question
10 is if I understand correctly

ADV KATE HOFMEYR: Indeed Chair.

CHAIRPERSON: The question is, why did you not ask Mr Mngadi to say Mngadi you are the one who know – who knows whether these facts are true why do you not write under your own name to SAA and tell them these facts?

MR DANIEL PHOLISANI MAHLANGU: Thank you Chair. Remember
Chair at the beginning what I said was there were actually
arrangements in place as to how we communicate to the client. So his
responsibility was for him to actually communicate with us,
20 communicate with the client and communicate with other parties so he
was actually doing that role. So when he actually introduced Grissag
into the equation so we have never met Grissag you know – we have
never heard of Grissag so it is at that point in time when we said you
know this Grissag, Grissag especially as far as this letter is concerned
that was sent initially. So secondly when he actually brought the issue

of the cancellation fee because that issue was brought immediately after the award of the sourcing of funding letter. So on that letter he basically said this is what Grissag actually would want yes and basically he had all the details because all the details that have been actually that basically read detail in the mail if where we are sitting we thought this is Grissag, what did Grissag wants because he introduced them. So even if – you can see it in the correspondence where Mr it is Van Der Merwe was actually communicating directly with him. So he would actually send us sort of forward us information from Piet himself

10 I mean Mr Van Der Merwe himself. So we had no doubt in our minds to say this is exactly that information that comes from Grissag.

ADV KATE HOFMEYR: Mr Mahlangu I will come back to this point in due course once we have got the full story about the way in which these interactions were working between Mr Mngadi, yourself and SAA. But before we do that I do in fairness to you want to go in time first to the FSP licence suspension of BNP and then from there we will go to the cancellation fee in more detail. So if we pick up the FSP licence issue you will find that at page 25 of your statement.

CHAIRPERSON: Ms Hofmeyr we are about two, two and a half minutes

20 before four o'clock. At four o'clock I think we will continue at least until five.

ADV KATE HOFMEYR: Indeed Chair.

CHAIRPERSON: We will take a break at four o'clock so maybe we should rather take it now but...

ADV KATE HOFMEYR: It is appropriate now Chair.

CHAIRPERSON: Ja.

ADV KATE HOFMEYR: Because I am moving to another topic.

CHAIRPERSON: Before you are moving into another...

ADV KATE HOFMEYR: Indeed.

CHAIRPERSON: So we will take a ten minute break we will resume at ten past four. We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

10 **CHAIRPERSON:** Thank you. Let us proceed.

ADV KATE HOFMEYR: Thank you Chair. Mr Mahlangu we are going to pick up the topic of the FSP licence that was ...

CHAIRPERSON: How is our progress looking?

ADV KATE HOFMEYR: Chair I am cautiously optimistic we might just make it by five.

CHAIRPERSON: Oh, okay.

ADV KATE HOFMEYR: If we do not ...

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: Then it will be a small section ...

20 **CHAIRPERSON:** Okay, *ja*.

ADV KATE HOFMEYR: For tomorrow.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: But I am indebted to Mr Mahlangu for his assistance this afternoon.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: We are able – we have been able to increase the pace to some extent.

CHAIRPERSON: Ja, okay.

ADV KATE HOFMEYR: Mr Mahlangu on the FSB licence issue I said we would pick that up in your statement at page 24. That is where you have a heading Engagement with FSB and Cancellation of Contracts and your bundle is DD4. Have you got page 24?

MR DANIEL PHOLISANI MAHLANGU: Yes I do.

10 **ADV KATE HOFMEYR:** Thank you and then if just go over the page from that heading to page 25 as I have it in that first paragraph on the page you concede that having an FSP licence was a requirement of the transaction advisor services tender. Is that correct?

MR DANIEL PHOLISANI MAHLANGU: That is true.

ADV KATE HOFMEYR: And at the time that BNP bid for that tender did it have an FSP licence?

MR DANIEL PHOLISANI MAHLANGU: Yes it did. That is true.

ADV KATE HOFMEYR: Thank you. At a point thereafter – as I have the facts – BNP received a notice from the FSB as it then was of an intention to suspend the licence. Is that correct?

20 **MR DANIEL PHOLISANI MAHLANGU:** That is true.

ADV KATE HOFMEYR: And just to add the flow otherwise I can take you there are you happy that that correspondence came through from the FSB to BNP Capital on 23 March 2016?

MR DANIEL PHOLISANI MAHLANGU: That is true.

ADV KATE HOFMEYR: And thereafter there was further communication

on 12 May from the FSB. What did the FSB communicate to BNP Capital on 12 May?

MR DANIEL PHOLISANI MAHLANGU: Can you get to that reference because on 12 May I cannot remember.

ADV KATE HOFMEYR: Oh certainly. Let me assist 23 March I have your evidence to be you got a letter of the FSB's intention to suspend the licence. Correct?

MR DANIEL PHOLISANI MAHLANGU: That is correct.

ADV KATE HOFMEYR: And on 12 May - we will go to it now – the FSB
10 actually suspended the licence. Is that consistent with your recollection?

MR DANIEL PHOLISANI MAHLANGU: Yes that is correct.

ADV KATE HOFMEYR: Thank you. Now a suspension of a licence is quite a serious matter in relation to the services required for that licence. Are they not?

MR DANIEL PHOLISANI MAHLANGU: I could say yes as – however the suspension comes with its terms and conditions.

ADV KATE HOFMEYR: Correct. Let us go to them because I think that will be of assistance. You will find that in Ms Stimpel's bundle which is
20 EXHIBIT DD1 and let us start at page 5-9-7 if we may. Oh I must tell you which one that is in. That is in EXHIBIT DD1C - they are in three parts - EXHIBIT DD1. I am sorry. I am wrong there. It is in B – apologies.

CHAIRPERSON: What is the page number?

ADV KATE HOFMEYR: Chair we are going to begin at 5-9-7 which is

under Tab 63.

MR DANIEL PHOLISANI MAHLANGU: 5-1 ...?

ADV KATE HOFMEYR: 5-9-7 and if you look for Tab 63 it will be under that.

MR DANIEL PHOLISANI MAHLANGU: Yes.

ADV KATE HOFMEYR: Do you have it Mr Mahlangu?

MR DANIEL PHOLISANI MAHLANGU: Yes I do.

ADV KATE HOFMEYR: I am just in fairness to you wanting to take you to the document. This is an email as I have it dated 23 March 2016.

10 Do you see that?

MR DANIEL PHOLISANI MAHLANGU: Yes I do.

ADV KATE HOFMEYR: And the subject of that email could you tell it – tell us what that is?

MR DANIEL PHOLISANI MAHLANGU: Intention to Suspend.

ADV KATE HOFMEYR: And if you go over the page to page 5-9-8 – we will not spend long on it but this is the letter as I have it from the FSB that informed you in paragraph 1 of the FSB's intention to suspend BNP's licence. Is that correct?

MR DANIEL PHOLISANI MAHLANGU: That is true.

20 **ADV KATE HOFMEYR:** But we had moved in your evidence to the actual suspension because you said there are certain terms and conditions attached to that suspension. So let me take you to that. You will find that in its covering email at page 6-0-3. It is a few pages on. What is the date of that email appearing at page 6-0-3?

MR DANIEL PHOLISANI MAHLANGU: It is 12 May – 12 May 2016.

ADV KATE HOFMEYR: Thank you and it is addressed to who?

MR DANIEL PHOLISANI MAHLANGU: Daniel (indistinct).

ADV KATE HOFMEYR: And that is you. Correct?

MR DANIEL PHOLISANI MAHLANGU: Yes.

ADV KATE HOFMEYR: And the subject of that email? Could you read that for us?

MR DANIEL PHOLISANI MAHLANGU: Suspension.

ADV KATE HOFMEYR: Thank you; and then if we go over to the actual notice of suspension that was attached to that email. You will find it
10 commencing at page 6-1-4 and I would like I just to go through some of the aspects of that page. Could you read for us what is recorded by the FSB at paragraph 1 on that page?

MR DANIEL PHOLISANI MAHLANGU: Through you Chair.

“Notice of intention to suspend authorisation of the
licence dated 18 March 2016 refers.”

ADV KATE HOFMEYR: And then if you move to – that I have it is a reference to the previous letter that we just looked at. Is that correct?

MR DANIEL PHOLISANI MAHLANGU: That is true.

ADV KATE HOFMEYR: And then if you go to paragraph 3 on that page.
20 What did the FSB notify BNP Capital of on this date?

MR DANIEL PHOLISANI MAHLANGU: “The licensee is hereby notified of the decision of the Registrar of Financial Services Providers Registrar referred to – to suspend its licence to act as a Financial Service Provider in terms of Section 9(1) read with Section

9(2) of the Financial Advisor Intermediary Services

Act number 37 of the 2002 Act.”

ADV KATE HOFMEYR: Thank you and then you referred to the conditions and terms attached to that suspension. I would like to pick up one of those which is important for our purposes. You will find the first at the following page – page 6-1-5 under the heading there of Clause 6 which reads Suspension of Licence. Can you read to us what is recorded there?

MR DANIEL PHOLISANI MAHLANGU: “The licensee’s
10 licence is hereby suspended with immediate effect
based on the following grounds and reasons
tendered above.”

ADV KATE HOFMEYR: And then that proceeds and it tells you about a period of suspension and then if you over to page 6-1-6. I am interested in the first general term attached to the suspension which you will find under paragraph 6.2 on that page. Can you read for us the first general term of that suspension?

MR DANIEL PHOLISANI MAHLANGU: “The licence ...”

Through you Chair.

20 “The licensee must inform all affected clients and
products suppliers concerned that its licence has
been suspended.”

ADV KATE HOFMEYR: And – and Roman III under those general terms there. What does that record?

MR DANIEL PHOLISANI MAHLANGU: “The licensee must in

consultation with the clients and products suppliers concerned take reasonable steps to ensure that any outstanding business is transferred to another authorised FSP in the best interest of the clients.”

ADV KATE HOFMEYR: Mr Mahlangu did you act in accordance with those requirements?

MR DANIEL PHOLISANI MAHLANGU: Yes I did.

ADV KATE HOFMEYR: As I have it from your statement you indicate that there was a letter of 13 May that you sent to SAA. Is that correct?

10 **MR DANIEL PHOLISANI MAHLANGU:** That is true.

ADV KATE HOFMEYR: You will find that Mr Mahlangu - just for ease of reference - at page 27 of your statement at paragraph 6.5 on that page. You say there:

“When the FSP was suspended sometime in April 2016 I informed SAA of the suspension per letter dated 13 May 2016 attached hereto as Annexure PDM21.”

We – we can go to that in a moment but Mr Mahlangu are you aware of Ms Nhantsi’s evidence on this question?

20 **MR DANIEL PHOLISANI MAHLANGU:** Yes I am aware.

ADV KATE HOFMEYR: Were you – are you aware that she indicated that that letter was never received by SAA?

MR DANIEL PHOLISANI MAHLANGU: Yes she did.

ADV KATE HOFMEYR: And are you aware of the document she took us to on the second day of her evidence which is a letter – I provided a

copy of it to your attorneys after that session – where she writes to you in July 2016 and says:

“You have made reference to a previous letter to us in which you informed us about the FSP licence suspension but we do not have a record of it and we call on you to provide it to us.”

Do you remember that letter?

MR DANIEL PHOLISANI MAHLANGU: Yes I do.

ADV KATE HOFMEYR: So do you have any records that show that you
10 sent this letter on 13 May to SAA?

MR DANIEL PHOLISANI MAHLANGU: Through you Chair – when I actually look at the letter given that it was done in 2016 in my mind – you know – the letter was actually sent but the question we have been actually struggling with the – with my lawyers to actually to locate as to actually who actually sent that letter. Who did I give the instruction to and we have been battling to actually find the correspondence to that effect.

ADV KATE HOFMEYR: Right. So as I have it as matters stand you cannot find confirmation of that recollection in any email
20 communication. Is that right?

MR DANIEL PHOLISANI MAHLANGU: Yes that – that is correct.

ADV KATE HOFMEYR: So with that level of certainty can you say it was sent on 13 May?

MR DANIEL PHOLISANI MAHLANGU: I guess with the high probability because I think at that point in time we did not have any – you know –

qualms about – you know – we could not just specify a particular date ...

ADV KATE HOFMEYR: Hm.

MR DANIEL PHOLISANI MAHLANGU: Without any follow. So I do not know actually what transpired.

ADV KATE HOFMEYR: You do not know. So you are not certain it went on 13 May?

MR DANIEL PHOLISANI MAHLANGU: No I am – I am saying I am not sure what happened to ...

10 **ADV KATE HOFMEYR:** Oh.

MR DANIEL PHOLISANI MAHLANGU: Yes. Whether that letter – whether she received it or not but from her own statement she did indicate that she has not received it. So from our side when basically I engaged – when I actually sent that letter and I engaged at the office and that was letter it was sent but because my – my discussion with - my follow up emails with her basically were saying we actually did inform you.

ADV KATE HOFMEYR: Hm.

MR DANIEL PHOLISANI MAHLANGU: Yes about this particular event.

20 **ADV KATE HOFMEYR:** Did you alert or anyone in BNP's offices alert Mr Mngadi to the suspension when you received it on the 11th – 12 May 2016?

MR DANIEL PHOLISANI MAHLANGU: He should have known yes.

ADV KATE HOFMEYR: He should have or do you know for a fact somebody told him?

MR DANIEL PHOLISANI MAHLANGU: No I cannot - I cannot – yes I do not know for a fact but it was sort of public information.

ADV KATE HOFMEYR: In what sense was it public on the – in May 2016?

MR DANIEL PHOLISANI MAHLANGU: I think it was in the news if I am not mistaken.

ADV KATE HOFMEYR: Well it was subsequently in the news ...

MR DANIEL PHOLISANI MAHLANGU: Yes.

ADV KATE HOFMEYR: But I am not sure that in May 2016 it was. I am
10 just trying to get a sense and I do understand that this is going back some years. I understand your evidence to be you do not know as a fact that somebody told Mr Mngadi on 12 May 2016 that BNP Capital's FSB licence had been suspended. Is that right?

MR DANIEL PHOLISANI MAHLANGU: That is true.

ADV KATE HOFMEYR: But is your sense that somewhere in that period he came to learn of that fact?

MR DANIEL PHOLISANI MAHLANGU: I cannot talk unless we have it.

ADV KATE HOFMEYR: Okay, thank you. So you are not aware of anyone at BNP actually telling him in that period?

20 **MR DANIEL PHOLISANI MAHLANGU:** No.

ADV KATE HOFMEYR: Thank you. I would like to go to some email correspondence that happened between SAA and representatives of BNP including yourself around this issue in July and we will find that in Ms Stimpel's evidence which is EXHIBIT DD1 and I would like you to take out File B for that purpose.

CHAIRPERSON: EXHIBIT DD1?

ADV KATE HOFMEYR: B.

CHAIRPERSON: B.

ADV KATE HOFMEYR: Thank you Chair and it is near where we were previously. The page I am interested in is page 5-7-5. It is under Tab 62. Mr Mahlangu just in the interest of time we have been through these emails before but there is an email in the second half of that page from Mr Moyo do you see that?

MR DANIEL PHOLISANI MAHLANGU: Yes I do.

10 **ADV KATE HOFMEYR:** And who is that email sent to?

MR DANIEL PHOLISANI MAHLANGU: Ms Phumeza – she is the CFO – I mean – Acting CFO then of SAA and Ursula Fikelepi which I think – I think that is Legal Risk and Compliance.

ADV KATE HOFMEYR: That is correct. Just for the record Ms Phumeza is Ms Phumeza Nhantsi and who is copied on that email?

MR DANIEL PHOLISANI MAHLANGU: It is Daniel – it is me.

ADV KATE HOFMEYR: Right. So will you not read the text of that email for us?

20 **MR DANIEL PHOLISANI MAHLANGU:** “We can confirm that the funding entity has an FSB licence as authorised under South African Law to provide these financial products. See attached the FSB licence.”

ADV KATE HOFMEYR: What is the date of that email?

MR DANIEL PHOLISANI MAHLANGU: It is 6 July.

ADV KATE HOFMEYR: 206?

MR DANIEL PHOLISANI MAHLANGU: Yes 2016. I am sorry.

ADV KATE HOFMEYR: Ms Mahlangu were you surprised to see Mr Moyo writing this on 6 July 2016 when your licence had been suspended in May?

MR DANIEL PHOLISANI MAHLANGU: Yes I was.

ADV KATE HOFMEYR: So what did you do about it?

MR DANIEL PHOLISANI MAHLANGU: I guess at that point in time one, I was actually involved in a whole lot of things. You know when I saw this email obviously in hindsight this was sort of an incorrect thing to
10 do to actually send because he think he was just doing administrative work just forwarding information to SAA – administrative information. So it – it included - that information that he sent included our licence as well.

CHAIRPERSON: When did you become aware of this email? Would it have been around the time it was sent sometime in July 2016 or – or much later?

MR DANIEL PHOLISANI MAHLANGU: Chair when – when I actually saw this email it was during the time when I was constantly engaging with FSB and – and I mean it was a public – you know – knowledge that
20 our FSB licence was suspended. So I could not – I could not understand like he would have actually sent it and it is ...

CHAIRPERSON: Ja but I am trying to get in terms of timeframe would it have been around July would it have been August or much later? It was sent in ...

MR DANIEL PHOLISANI MAHLANGU: In – in July.

CHAIRPERSON: In July at the – on 6 July. So I am trying to understand how soon after it had been sent you became aware of it more or less.

MR DANIEL PHOLISANI MAHLANGU: Sometime in July yes.

CHAIRPERSON: Sometime in July?

MR DANIEL PHOLISANI MAHLANGU: Yes.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: Mr Mahlangu on that very day did you become aware of it because you were copied on the email?

- 10 **MR DANIEL PHOLISANI MAHLANGU:** Our – hence I am saying – hence I am saying through you Chair that it was on – on my part obviously I was not – I saw an email coming through but I did not pay attention to it because my understanding is our licence was already expired and we are actually in the process of getting another FSP on board to actually assist us with this particular exercise.

So I could not – I did not understand why when we actually had another FSP ...

CHAIRPERSON: Ja, hang on – hang on. The question is whether you became aware of the email on the same day that you were copied?

- 20 **MR DANIEL PHOLISANI MAHLANGU:** No.

CHAIRPERSON: Was it maybe the following day within the same week or after two weeks or more or less how – how far from the date of sending?

MR DANIEL PHOLISANI MAHLANGU: Hm.

CHAIRPERSON: Or you – or it is difficult to say?

MR DANIEL PHOLISANI MAHLANGU: Yes it is difficult to say because I think at that point in time I was really ...

CHAIRPERSON: Hm.

MR DANIEL PHOLISANI MAHLANGU: Under pressure.

CHAIRPERSON: Except ...

MR DANIEL PHOLISANI MAHLANGU: There were so many things happening.

CHAIRPERSON: Except that I – I thought you said a few minutes – a minute or two ago that you saw the email coming but you did not pay
10 attention to it?

MR DANIEL PHOLISANI MAHLANGU: Yes. What – what basically I meant was when the email because the email hits my – you know – it comes through to my account yes but at some point in time one does not actually pay attention to the emails till – till you are actually alerted to it.

CHAIRPERSON: Does that mean that you know that you saw it arrive but you did not read it for whatever reason and read it later or is the position that you did not see it arrive but you did read it much later?

MR DANIEL PHOLISANI MAHLANGU: No – no Chair. I think when the
20 email came through I did not see it then on the same day.

CHAIRPERSON: Hm.

MR DANIEL PHOLISANI MAHLANGU: Yes I did not pay attention because ...

CHAIRPERSON: Hm.

MR DANIEL PHOLISANI MAHLANGU: I receive so many emails on the

day. So – but at that point – hence I am saying it could have been some time in – some time in – in July when I actually – when I actually go through my documentation – you know – then I – I came across it but at the same time hence I was saying I was surprised as to why would someone send such a licence when it is – it is a known fact that our licence has been suspended.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: Mr Mahlangu maybe I can assist you because two days later you wrote to South African Airways about the FSP
10 licence issue. That letter you will find two pages back in the file in front of you – EXHIBIT DD1B and it is at page 5-7-3. Do you see that letter?

MR DANIEL PHOLISANI MAHLANGU: Yes I do.

ADV KATE HOFMEYR: It has got a handwritten 08/07/2016. Do you see that in the top right hand corner?

MR DANIEL PHOLISANI MAHLANGU: Yes I do.

ADV KATE HOFMEYR: Chair Ms Nhantsi assisted us in the evidence. That date is confirmed in the emails between herself ...

CHAIRPERSON: Yes.

20 **ADV KATE HOFMEYR:** At SAA ...

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: And Mr Mahlangu. Mr Mahlangu I take it you do not dispute that is the date of this letter. Is that right?

MR DANIEL PHOLISANI MAHLANGU: I can confirm it yes.

CHAIRPERSON: I am sorry.

ADV KATE HOFMEYR: You cannot confirm it but you do not dispute it.

CHAIRPERSON: Was that date put in by Ms Nhantsi?

ADV KATE HOFMEYR: Who precisely put that in is not clear ...

CHAIRPERSON: Oh, okay

ADV KATE HOFMEYR: But Ms Nhantsi's letters later ...

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: Indicate that this letter was received ...

CHAIRPERSON: On that date?

ADV KATE HOFMEYR: From BNP on the 8th ...

10 **CHAIRPERSON:** Okay.

ADV KATE HOFMEYR: Of July ...

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: And Mr Mahlangu what I am interested in there is what you say to Ms Nhantsi on 8 July 2016 in the first two lines. Will you read that for us?

MR DANIEL PHOLISANI MAHLANGU: Through you Chair.

20 "I would like to clarify the issue of the FSB licence.
BNP Capital received a letter from the FSB dated
12/05/2016 indicating its intention to temporarily
suspend BNP Capital's licence for a period of three
months based on the reason that according to the
FAIS Act Section 10 the (indistinct) successful
complete the first level regulatory examinations
applicable to the categories or sub categories for
which they are authorised or approved."

ADV KATE HOFMEYR: Thank you. Did you compile this letter?

MR DANIEL PHOLISANI MAHLANGU: Yes I did.

ADV KATE HOFMEYR: Why then did you state that the letter from the FSB of 12 May indicated its intention to temporarily suspend BNP licence? Why did you not say that the letter suspended BNP's licence?

MR DANIEL PHOLISANI MAHLANGU: I can see you – through you Chair – I think it was wording on my part which I can see – I agree what you are saying but I think it was even correct to write it the way I did.

ADV KATE HOFMEYR: So because we have gone through the evidence
10 already. In March you had been told about the intention to suspend.
Correct?

MR DANIEL PHOLISANI MAHLANGU: That is true.

ADV KATE HOFMEYR: And by May you were told the licence had actually been suspended with immediate effect. Correct?

MR DANIEL PHOLISANI MAHLANGU: That is true.

ADV KATE HOFMEYR: But you conveyed to SAA only an intention to temporarily suspend the licence and that is false.

MR DANIEL PHOLISANI MAHLANGU: That is incorrect. That is – yes
I put it incorrectly. It was not an intention to mislead anyone. It was
20 incorrect.

ADV KATE HOFMEYR: Well where in this letter do you tell them about the other FSP licensee who you are getting on board to take over the work from you?

MR DANIEL PHOLISANI MAHLANGU: You mean in this particular letter?

ADV KATE HOFMEYR: Yes.

MR DANIEL PHOLISANI MAHLANGU: I think there has been some correspondence between us – I mean between ...

ADV KATE HOFMEYR: Chair while I was questioning Mr Mahlangu I had an indication from his legal representative that there are some documents.

MR DANIEL PHOLISANI MAHLANGU:

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: I have not seen those documents.

10 **CHAIRPERSON:** Yes.

ADV KATE HOFMEYR: I do not know what ...

CHAIRPERSON: What they say?

ADV KATE HOFMEYR: They want to do with them ...

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: But I see Mr Mahlangu interacting with his legal representatives ...

CHAIRPERSON: Yes, yes.

ADV KATE HOFMEYR: I do not know what is most appropriate because certainly I would like to see those documents ...

20 **CHAIRPERSON:** Yes.

ADV KATE HOFMEYR: Before we deal with them.

CHAIRPERSON: Mr Mahlangu do you believe that your or somebody in this room has got the document that might help you?

MR DANIEL PHOLISANI MAHLANGU: Yes I do Chair.

CHAIRPERSON: Maybe they should make it available to you ...

ADV KATE HOFMEYR: Certainly.

CHAIRPERSON: And – and then you might – depending ...

ADV KATE HOFMEYR: Hm.

CHAIRPERSON: You might be able – you might need quite a few minutes ...

ADV KATE HOFMEYR: Hm.

CHAIRPERSON: To read it or you might be able to quickly have – have a look and be able to proceed. If we need to take a five minutes adjournment ...

10 **ADV KATE HOFMEYR:** Hm.

CHAIRPERSON: Then we – we can do that.

ADV KATE HOFMEYR: Certainly Chair.

CHAIRPERSON: I do not know whether you prefer that we rather take that five minutes adjournment or they let you have the document and then you see whether you need more time.

ADV KATE HOFMEYR: I would be able quite quickly to identify whether I have seen it before.

CHAIRPERSON: Yes, yes.

ADV KATE HOFMEYR: So maybe we take that moment ...

20 **CHAIRPERSON:** *Ja*.

ADV KATE HOFMEYR: Or two ...

CHAIRPERSON: *Ja*.

ADV KATE HOFMEYR: And I can come back and let you know.

CHAIRPERSON: Yes. Let us do that.

ADV KATE HOFMEYR: Thank you Chair.

CHAIRPERSON: Let him give it to you, *ja*.

ADV KATE HOFMEYR: Chair I can confirm that the first of these in the pack is a document we have =seen before.

CHAIRPERSON: Huh-uh.

ADV KATE HOFMEYR: It is the letter of 13 May as I understand Mr Mahlangu's evidence.

CHAIRPERSON: Hm.

MR DANIEL PHOLISANI MAHLANGU: That is true.

ADV KATE HOFMEYR: That he alleges was sent through but which
10 SAA has not record of.

CHAIRPERSON: Huh-uh.

ADV KATE HOFMEYR: The ones after that – if I read them quickly and locate them in time they are now later ...

CHAIRPERSON: Hm.

ADV KATE HOFMEYR: Than 8 July ...

CHAIRPERSON: Hm.

ADV KATE HOFMEYR: 2016.

CHAIRPERSON: Hm.

ADV KATE HOFMEYR: And I am working quickly.

20 **CHAIRPERSON:** Yes.

ADV KATE HOFMEYR: Forming that view.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: If I have read them incorrectly then I would like to take more time ...

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: But if that is all that we have in this pack ...

CHAIRPERSON: Hm.

ADV KATE HOFMEYR: I am happy to proceed ...

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: Because I have certainly seen what happened on 13 May ...

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: And I know of correspondence later ...

CHAIRPERSON: Yes.

10 **ADV KATE HOFMEYR:** But where I am focused is 8 July ...

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: At the moment.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: Mr Mahlangu are you happy to proceed on that basis?

MR DANIEL PHOLISANI MAHLANGU: Yes you can proceed.

CHAIRPERSON: Okay.

20 **ADV KATE HOFMEYR:** Then it is not clear to me you need this pack right now because all that we are interested in currently is what has happened up until 8 July and you have available to you in your own statement the document that your recollection says was sent to SAA on 13 May ...

MR DANIEL PHOLISANI MAHLANGU: That is true.

ADV KATE HOFMEYR: And you have in front of you right now the letter of 8 July that we were focussing on. That is the one in

Ms Stimpel's bundle. Correct?

MR DANIEL PHOLISANI MAHLANGU: Yes that is true.

ADV KATE HOFMEYR: Please tell me at any point if you want to make reference to the later correspondence.

MR DANIEL PHOLISANI MAHLANGU: That is true. I think you subsequently asked me a question ...

ADV KATE HOFMEYR: Hm.

MR DANIEL PHOLISANI MAHLANGU: As to when did I inform SAA ...

ADV KATE HOFMEYR: Hm.

10 **MR DANIEL PHOLISANI MAHLANGU:** About – remember just to go back there are some of the conditions of the suspension

ADV KATE HOFMEYR: Hm.

MR DANIEL PHOLISANI MAHLANGU: Because it said to us ...

CHAIRPERSON: *Ja.*

MR DANIEL PHOLISANI MAHLANGU: What – one is engage with your client and inform them ...

CHAIRPERSON: Hm.

ADV KATE HOFMEYR: Huh-uh.

MR DANIEL PHOLISANI MAHLANGU: And then secondly is if you have
20 got a business which products or - you know – financial (intervenes).

CHAIRPERSON: Suppliers?

MR DANIEL PHOLISANI MAHLANGU: Yes.

CHAIRPERSON: *Ja.*

MR DANIEL PHOLISANI MAHLANGU: Engage them.

CHAIRPERSON: You must tell them?

MR DANIEL PHOLISANI MAHLANGU: Yes. No engage with the licence FSP and move those clients FSP.

ADV KATE HOFMEYR: Yes.

MR DANIEL PHOLISANI MAHLANGU: Yes.

ADV KATE HOFMEYR: If Mr Mahlangu if I might be clear just about my question so we do not lose each other. I did not actually ask when you told them that you had found another FSP licensee to transfer the business too.

MR DANIEL PHOLISANI MAHLANGU: Yes.

10 **ADV KATE HOFMEYR:** I said looking at the letter of 8 July why in that letter do you not tell them about a partner that has been secured.

MR DANIEL PHOLISANI MAHLANGU: I think post that letter there had been subsequent engagement with SAA.

ADV KATE HOFMEYR: Indeed.

MR DANIEL PHOLISANI MAHLANGU: Yes.

ADV KATE HOFMEYR: But for present purposes I'm interested in not what happened after the 8th of July, I'm interested in what happened on the 8th of July in your communications with SAA, and Mr Mahlungu in fairness to you let me explain why, the 13 May letter is quite different
20 to this letter, the 13 May letter does what your suspension required you to do, you recall that, you can get it in front of you if you would like to, it's at page 143 of your exhibit which is DD4, but I'm sure you will recall in the last paragraph of that letter, which SAA says it never received you say the following:

"The conditions of suspension require that BNP work with

another authorised financial service provider until it has fulfilled all its suspension conditions. Accordingly we have engaged Creed Capital Partners of which its license has been attached.”

Do you recall that?

MR DANIEL PHOLISANI MAHLANGU: Yes I do.

ADV KATE HOFMEYR: Right but SAA says it never got this letter, okay. The next thing that happens in time is on the 6th of July your employee, Mr Moyo, tells SAA that you have a current valid FSP
10 license, we saw that email, correct?

MR DANIEL PHOLISANI MAHLANGU: That’s true.

ADV KATE HOFMEYR: And in the letter that SAA says it did receive, which is the one we’re looking at dated the 8th of July 2016 you make no reference to having secured another partner to take over the business, and you also incorrectly represent that the license has merely been – there’s an intention to suspend it, and do not say it has been suspended, and so I must put it to you that that is a misrepresentation of the facts on the 8th of July, and I must query from you why you did not tell them about the services being moved to
20 another FSP licensee?

MR DANIEL PHOLISANI MAHLANGU: Through you Chair, if you look at the letters that are before you, that have been forwarded to you there’s a discussion between me, the letter that was sent to Ms Nhantsi about the new FSP that we have actually secured, so I agree with you that on the 6th of July when my employee made a mistake, which was

gravely sort of incorrect to actually say your license actually has been active when ...(intervention)

CHAIRPERSON: It is still valid.

MR DANIEL PHOLISANI MAHLANGU: Yes when it was public knowledge, I think, I'm not sure, I think it was just, I don't know I can't explain it, it's just – it's a big mistake, but there was no intention of misrepresentation because I mean we've never done that, we don't have a history of going to our clients and misrepresent ourselves, or any facts for that reason, so hence if you check the second email which
10 was sent to Ms Nhantsi that you've got we did indicate to her to say we've actually sent an email with Creed information, with the license, the service provider and actually to the CEO, that is why I was saying to the CEO of – yes to say this is a new actually service provider that we've got on board to assist us with this particular exercise, so we did do that, we did do that. So it's not like we actually we're just hoping that you know this thing the issues it's going to go away, we did actually actively engage on it.

ADV KATE HOFMEYR: Mr Mahlangu do you accept that if you had made the suspension of your license known to SAA on the 13th of May
20 you could not have been awarded the extension of the contract to source the funds for SAA.

MR DANIEL PHOLISANI MAHLANGU: I can't say yes to that, because in my view I think I did actually mention it in our statement to say what actually puts us in a very difficult spot even with our license because our license was a private equity license and when SAA requested a

license even the FSB themselves, if they say to us move products, we don't have products, we don't have anything so as far as FSB is concerned they are thinking as far as BNP Capital is concerned he's got actually people's money and that they need to move, move, move all the selling products that they actually get an authorised service provider to actually look after those products.

As far as SAA is concerned on the other part because capital raising doesn't actually require an FSB license, unfortunately it is a requirement that we need to fulfil and we actually make attempts to that
10 to say let's fulfil this unusual condition as far as this exercise is concerned but when you got suspended then it put us in a very precarious conditions because you get suspended and someone says to you move the funds that you have into another FSC but you don't have the fund, and the service that you're actually providing to SAA it's not regulated services, so we find ourselves in that position.

ADV KATE HOFMEYR: Mr Mahlangu you accepted in your evidence previously that an FSP license was a requirement of the transaction advisor services tendered, correct?

MR DANIEL PHOLISANI MAHLANGU: I said it was a requirement.

20 **ADV KATE HOFMEYR:** Indeed.

MR DANIEL PHOLISANI MAHLANGU: Yes, but it – transactional advisory doesn't need an FSB license.

ADV KATE HOFMEYR: It's a separate matter, you accept that it was a requirement of the tender.

MR DANIEL PHOLISANI MAHLANGU: I agree.

ADV KATE HOFMEYR: And you couldn't have been awarded the tender if you didn't have one, correct?

MR DANIEL PHOLISANI MAHLANGU: I agree.

ADV KATE HOFMEYR: Your appointment to source funds from SAA was an extension of the scope of that previous transaction advisor services role, are you aware of that?

MR DANIEL PHOLISANI MAHLANGU: Sorry, the – as far as the sourcing of funds was concerned we actually did a proposal, yes, to SAA, to say SAA this is our proposal, and in my view ...(intervention)

10 **CHAIRPERSON:** Hang on Mr Mahlangu the question is do you accept that it was an extension of the scope that you had originally, you were originally going to do for SAA.

MR DANIEL PHOLISANI MAHLANGU: Technically yes.

ADV KATE HOFMEYR: Thank you. If it was a requirement for your original appointment that you needed an FSP license what is your comment on my proposition that it was a requirement for any extension of those services as well?

MR DANIEL PHOLISANI MAHLANGU: Through you Chair, I think you partly what you're saying is the truth because it becomes an extension,
20 I think you actually evaluating on the basis of information that you submitted initially but as far as that aspect of capital raising is concerned it doesn't require a license.

ADV KATE HOFMEYR: I understand that but Ms Nhantsi's evidence, just so that you have the benefit of it and you can answer with any comment you may have, was that it would not have been regular for

SAA to have awarded you the extension of the scope if they had known any point prior to that that your FSP license was suspended, you are aware that that was her evidence?

MR DANIEL PHOLISANI MAHLANGU: Yes I am aware, thank you.

ADV KATE HOFMEYR: But your evidence as I have it is your recollection is that they got that notice on the 13th of May but you can find no documentary proof of that is that correct?

MR DANIEL PHOLISANI MAHLANGU: That's true.

ADV KATE HOFMEYR: Thank you. Mr Mahlangu I propose that we
10 then move to the next topic and we may even be able to complete it before five o'clock which will leave only one or two matters for tomorrow morning. This relates to the fee on the souring of funds of 1.5%, and I have it from your evidence previously that you had no engagements with Grissag directly or Mr van der Merwe is that correct?

MR DANIEL PHOLISANI MAHLANGU: That's true.

ADV KATE HOFMEYR: I also understand you not to have attended the meeting on the 8th of June where that term sheet was signed at SAA is that correct?

MR DANIEL PHOLISANI MAHLANGU: That's true.

20 **ADV KATE HOFMEYR:** And you didn't have any direct dealings with Grissag, is that right?

MR DANIEL PHOLISANI MAHLANGU: That's true.

ADV KATE HOFMEYR: Were you then aware that the term sheet that was signed, if that transaction had gone through, was going to earn BNP Capital another R75million?

MR DANIEL PHOLISANI MAHLANGU: I'm not sure which aspect of it you are referring to.

ADV KATE HOFMEYR: Okay in the term sheet that was signed on the 8th of June there was a 1% fee that was going to be paid to Grissag initially on any drawdown on the facility and then Mr van der Merwe's evidence was the arrangement between BNP Capital and Grissag was that you would each share that 1% in equal portions, half/half, are you aware of those negotiations?

MR DANIEL PHOLISANI MAHLANGU: Through you Chair, when a
10 term sheet gets drafted I remember we received two term sheets, and one term sheet basically was an indicative term sheet as far as the terms and conditions were concerned and one term sheet as far as the commitment fee which is – was concerned was actually 1% and it was erroneously put between us, which is BnP Capital and Grissag and then that term sheet was amended, yes, to actually be sent to the CFO and when it was sent to the CFO he said this is amended term sheet and also all the rates actually have been proofed because even the first one that was sent if you look at, if you check on the margins were all sitting at four, 4%, even the fixed rates was four and then amended one,
20 amended term sheet was sitting at 3.5 and also the margin was 3.5 and we removed ourselves there because we're not a financial institution and Grissag is. They are the ones that are entitled to that commitment fee.

ADV KATE HOFMEYR: Thank you, that's very helpful. Just so that we can look at the document that you know quite well and we can have the

benefit of it, you will find it in Ms Stimpel's bundle, which is EXHIBIT DD1, that's the big one we've been working on for some time and you will find there under tab 54 which is at page 532.

MR DANIEL PHOLISANI MAHLANGU: Sorry Chair, number?

ADV KATE HOFMEYR: Apologies, so it's under tab 54 and its page 532. This as I have it is what you were referring to in your testimony under the section pricing, is that right?

MR DANIEL PHOLISANI MAHLANGU: That's true.

ADV KATE HOFMEYR: Mr Mahlangu just to give you the benefit, this is
10 the term sheet that was signed on the 8th of June, that has been confirmed by Ms Nhantsi in her evidence and if we go to the section on pricing that's the – it reflects as interest rate 3.5% and margin 3.5%, is that what you're referring to?

MR DANIEL PHOLISANI MAHLANGU: That's true.

ADV KATE HOFMEYR: And right at the bottom of that section on pricing it says "other fees:", and there it reflects a 1% fee will be payable by SAA to Grissag AG on each drawdown amount received, you see that?

MR DANIEL PHOLISANI MAHLANGU: Yes, that's true.

20 **ADV KATE HOFMEYR:** And did I understand your evidence correctly to be that your understanding was that BnP Capital would not receive any portion of that 1% fee?

MR DANIEL PHOLISANI MAHLANGU: That's true.

ADV KATE HOFMEYR: What do you base that information on?

MR DANIEL PHOLISANI MAHLANGU: Through you Chair as I have

indicated in my experience, in the fundraising experience space, only funders charge a commitment fee and for obvious reasons, it's because they charge, that commitment fee is a fee that they charge for them to actually commit to that particular funds that are set aside for whatever client.

ADV KATE HOFMEYR: So can I be clear, your evidence on this is not based on any actual interaction with Mr van der Merwe or Mr Mngadi?

MR DANIEL PHOLISANI MAHLANGU: My interaction with this I received two of these and when I actually went through it I actually
10 queried it to say why are we actually included here, and then it went there because our, as far as we are concerned we are just advisors and then we get a success fee, not a commitment fee, we are not part of the funding.

ADV KATE HOFMEYR: Mr Mahlangu I haven't seen that other version, it would be useful if you could make that available to the Commission, but we can still ask a few follow-up questions. Mr van der Merwe's evidence was that there was an agreement between BnP Capital and Grissag that this 1% would be shared between the two parties, is your evidence that that was not agreed between the parties?

20 **MR DANIEL PHOLISANI MAHLANGU:** No, we haven't agreed on that.

ADV KATE HOFMEYR: Would you know whether Mr Mngadi had struck that deal with Grissag?

MR DANIEL PHOLISANI MAHLANGU: I wouldn't know.

ADV KATE HOFMEYR: So it is possible that there was an arrangement on the side between Grissag and Mr Mngadi that that 1% would be

shared in equal proportions?

MR DANIEL PHOLISANI MAHLANGU: I wouldn't comment on it, I wouldn't know.

ADV KATE HOFMEYR: It's possible, you don't know that that didn't happen?

MR DANIEL PHOLISANI MAHLANGU: Yes.

ADV KATE HOFMEYR: Thank you. Please would you if possible overnight provide us with that other version which you say you queried so that the 1% would now reflect only being payable to Grissag AG?

10 **MR DANIEL PHOLISANI MAHLANGU:** Yes I will.

ADV KATE HOFMEYR: Thank you. Chair we are quite close but there are just one or two aspects that I can conclude on this and then we will start a new topic in the morning.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: Mr Mahlangu even if you weren't standing to benefit from the half of the half percent which we calculated to be 75million the fees that you were going to earn in relation to the sourcing of funds were in the order of R256million, is that correct?

MR DANIEL PHOLISANI MAHLANGU: I wouldn't know.

20 **ADV KATE HOFMEYR:** Well you were awarded the sourcing of funds work on the basis that you would charge a 1.5% fee on R15billion, correct?

MR DANIEL PHOLISANI MAHLANGU: That's incorrect, if you can see on communications between us and Ms Nhantsi yes, that fee was actually 1.25, however it was based on capital raised, not necessarily

the entire R15billion.

ADV KATE HOFMEYR: That's interesting to me because SAA decided to award this to you on the basis that it would cost SAA R256million, are you aware of that?

MR DANIEL PHOLISANI MAHLANGU: No I am not aware.

ADV KATE HOFMEYR: So from your vantage point there was no agreed R256million at all?

MR DANIEL PHOLISANI MAHLANGU: Yes through you Chair I think from where I'm standing I had no agreement with SAA, nothing was
10 signed, nothing was agreed upon, never received a letter to say you've sent us this proposal, we agree on this proposal, nothing whatsoever was actually sent to us, so as far as I'm concerned we actually ran this exercise without any agreement in place, yes, so I wouldn't know, so we were actually making proposals, hence I am saying you're talking about 1.5 but eventually the fee went to 1.25, yes, but still SAA didn't come back to us about whether that 1.25 is feasible or it makes sense, whatever the case is.

ADV KATE HOFMEYR: Mr Mahlangu for your benefit that is certainly consistent with the letter of award that you got, because the letter of
20 award that you got didn't specify a fee did it?

MR DANIEL PHOLISANI MAHLANGU: Yes definitely.

ADV KATE HOFMEYR: It just said you've been awarded to source funds for SAA, and then it spoke about other terms and conditions that would be agreed thereafter, was that your understanding as well?

MR DANIEL PHOLISANI MAHLANGU: Yes.

ADV KATE HOFMEYR: Thank you. Chair that concludes this aspect, we are about two minutes before five but I am moving to a new topic, so if we could do that in the morning.

CHAIRPERSON: Yes, and you think we might need what – another 30 minutes?

ADV KATE HOFMEYR: I would think so Chair so possibly starting half past nine would be adequate.

CHAIRPERSON: I was thinking then if we will need more or less thirty minutes maybe we may as well start at ten and to try and finish the
10 witness for tomorrow we could go into the evening.

ADV KATE HOFMEYR: Yes, indeed, we've got no difficulty with that and I have confirmed with the witness for tomorrow that he has availability in the evening

CHAIRPERSON: Okay, okay no that's fine, we will adjourn Mr Mahlangu and we will start at ten o'clock tomorrow so come back tomorrow at ten.

MR DANIEL PHOLISANI MAHLANGU: Thank you.

CHAIRPERSON: We will adjourn for the day and we will start at ten tomorrow. We adjourn.

20 **INQUIRY ADJOURNS TO 28 JUNE 2019**