

COMMISSION OF INQUIRY INTO STATE CAPTURE

HELD AT

PARKTOWN, JOHANNESBURG

10

28 JUNE 2019

DAY 123

20

PROCEEDINGS ON 28 JUNE 2019

CHAIRPERSON: Good morning Ms Hofmeyr, good morning everybody.

ADV KATE HOFMEYR: Morning Chair.

CHAIRPERSON: Are you ready this morning?

ADV KATE HOFMEYR: We are indeed.

CHAIRPERSON: Let us start.

ADV KATE HOFMEYR: Thank you.

CHAIRPERSON: Thank you.

ADV KATE HOFMEYR: Chair I do not envisage being particularly long
10 in the conclusion of Mr Mahlangu's evidence.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: With your leave there are just a few loose ends
from yesterday that I would like to tie up.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: I then propose to deal with the cancellation fee
that was negotiated with SAA and then to make some concluding
observation for Mr Mahlangu's comment.

CHAIRPERSON: Remember also the part that we did not deal with that
we left for the break and the lunch break.

20 **ADV KATE HOFMEYR**: Indeed. That is true Chair I should update you
on that. We had some engagements with Mr Mahlangu's lawyers
yesterday. My suggestion to them was that they provide us in due
course with an affidavit setting out those facts.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: Because they were already going to be

providing us with an affidavit in response to one of the affidavits you will recall.

CHAIRPERSON: Hm.

ADV KATE HOFMEYR: So my suggestion yesterday was that we get that altogether in a single affidavit in due course.

CHAIRPERSON: Okay no that is fine.

ADV KATE HOFMEYR: Subject to your direction.

CHAIRPERSON: Ja no that...

10 **ADV KATE HOFMEYR**: If you are comfortable with that that is my proposal.

CHAIRPERSON: No that is fine it is unlikely to be anything controversial.

ADV KATE HOFMEYR: Indeed. It was on that basis.

CHAIRPERSON: Ja.

ADV KATE HOFMEYR: That we made the suggestion.

CHAIRPERSON: No that is fine.

20 **ADV KATE HOFMEYR**: Thank you Chair. Mr Mahlangu there were a few aspects of yesterday afternoon's evidence that I wanted to just clarify this morning so that we can have the background in place before we move to the question of the cancellation fee. The first of those just relates to your knowledge of the trading activities of Inline Trading. Mr Mahlangu you will recall in the course of yesterday afternoon I questioned whether you were aware that Inline Trading was in the business of car sales, do you recall that?

MR DANIEL PHOLISANI MAHLANGU: Yes I do.

ADV KATE HOFMEYR: And as I have it your evidence was that you were not aware of that at any point in 2016, is that correct?

MR DANIEL PHOLISANI MAHLANGU: Yes that is correct.

ADV KATE HOFMEYR: And then in relation to Mr King remember Mr Brendan King was the individual who Mr Mngadi asked for his details to be inserted in the submission rather than his, do you recall that?

MR DANIEL PHOLISANI MAHLANGU: Yes I do.

ADV KATE HOFMEYR: Were you aware at the time of submitting the bid that Mr King had resigned prior to that as a director of Inline
10 Trading?

MR DANIEL PHOLISANI MAHLANGU: No.

ADV KATE HOFMEYR: I would like on that note Chair just to take us to Mr King's affidavit where those facts are set out. Mr Mahlangu you will find them in Ms Nhantsi's bundle which is Exhibit DD2 and you will find it right towards the end of that. Chair I did ask that you have Ms Nhantsi's bundle available to you this morning as well.

CHAIRPERSON: You know that sometimes I am not provided.

ADV KATE HOFMEYR: I think they might be at the back on your left Chair. You are looking for DD2.

20 **CHAIRPERSON:** I think my Registrar sometimes decides that she will not put some of these here she want me to stretch.

ADV KATE HOFMEYR: Indeed. Well we sitting so much of day that may not be a bad thing. Chair we – and Mr Mahlangu we would – I would like to ask that we go to page 317 of Exhibit DD2 which is right towards the end of the file.

CHAIRPERSON: Maybe before you proceed with that question let me ask this question and it maybe it is a question you may have intended to ask.

ADV KATE HOFMEYR: Hm.

CHAIRPERSON: Did you know in 2016 prior to your consortium putting in its bid at SAA who the directors of Inline Trading were as a matter of fact?

MR DANIEL PHOLISANI MAHLANGU: No Chair I did not know. I
10 guess the information that we had was only – was the information that was provided to us by Mr Mngadi.

CHAIRPERSON: By Mr Mngadi?

MR DANIEL PHOLISANI MAHLANGU: Yes.

CHAIRPERSON: Yes but the information that he provided to you did it state clearly that – did it state clearly who the directors were or did he just give you his – the name of Mr King and himself.

MR DANIEL PHOLISANI MAHLANGU: He...

CHAIRPERSON: How was it put?

MR DANIEL PHOLISANI MAHLANGU: Yes Chair. There was – he did
20 mention the name of the CEO then of Inline Trading.

CHAIRPERSON: Ja.

MR DANIEL PHOLISANI MAHLANGU: And subsequently to that he came to us and then he said that person actually has passed away for some reason.

CHAIRPERSON: He said the person has passed away?

MR DANIEL PHOLISANI MAHLANGU: Yes. The CEO yes actually passed away.

CHAIRPERSON: Yes, yes.

MR DANIEL PHOLISANI MAHLANGU: So that was basically our discussion with him to say who actually are these guys from – from Inline Trading and then when he got back to us – actually that was during the calls when we were actually doing this exercise.

CHAIRPERSON: Hm.

MR DANIEL PHOLISANI MAHLANGU: And then he said actually the
10 CEO has passed on. And then he said actually the CEO has passed on.

CHAIRPERSON: Hm. Did Mr Mngadi say to you that he was a director of Inline Trading or did you just take it that he was a director?

MR DANIEL PHOLISANI MAHLANGU: He did not – he did not actually mention and we just made assumption on that basis.

CHAIRPERSON: Okay thank you.

ADV KATE HOFMEYR: Mr Mahlangu just a follow up question there as I understand your statement he referred to it as his company, is that right?

MR DANIEL PHOLISANI MAHLANGU: He was part of the company
20 yes.

ADV KATE HOFMEYR: Yes. Yes. So it was on – at the basis of assumption that you regarded him as holding a director position, is that right?

MR DANIEL PHOLISANI MAHLANGU: That is true.

ADV KATE HOFMEYR: Thank you. The person who passed away do

you recall his name?

MR DANIEL PHOLISANI MAHLANGU: Unfortunately I cannot.

ADV KATE HOFMEYR: I think page 317 might be able to assist you. Because at page 317 is the affidavit that has been provided to the commission by Mr King Chair and...

CHAIRPERSON: What is the page again?

ADV KATE HOFMEYR: 317.

CHAIRPERSON: Thank you.

ADV KATE HOFMEYR: Right towards the back of that file.

10 **MR DANIEL PHOLISANI MAHLANGU:** Thank you.

CHAIRPERSON: Is that Ms Nhantsi's file?

ADV KATE HOFMEYR: It is Ms Nhantsi's file Exhibit DD2.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: And right at the back at page 317 you will find the affidavit of Mr King.

CHAIRPERSON: Thank you.

ADV KATE HOFMEYR: Mr Mahlangu if we pick it up at paragraph 3 could you please read what is stated there?

MR DANIEL PHOLISANI MAHLANGU:

20 "I would like to state that Mr Garry Ronald Gillard and I were business partners since 2018 since 2008. I was introduced to Mr Mngadi by Garry in line of normal business. Mr Mngadi over the years brought several vehicles from Inline Trading passing over a few clients to the business."

ADV KATE HOFMEYR: Thank you and then at paragraph 4?

MR DANIEL PHOLISANI MAHLANGU:

“Beginning of 2016 Mr Eric Mbezi took over Inline Trading 10 PTY LTD being on the 5 February 2016 I resigned as a director of Inline Trading 10 PTY LTD. Unfortunately Mr Mbezi passed away on the 9 February a week after my – my resignation. I was not aware of any dealings between BNP Capital, Mr Mngadi or Mr Mbezi. I was only made aware of BNP
10 Capital by OUTA in the press in August 2016.”

ADV KATE HOFMEYR: Thank you Mr Mahlangu. Can I take it that these facts as they set out by Mr King in paragraph 3 and paragraphs 4 were not known to you at the time you that you included him in the bid pursuant to Mr Mngadi’s instructions?

MR DANIEL PHOLISANI MAHLANGU: That is true.

CHAIRPERSON: Ms Hofmeyr

ADV KATE HOFMEYR: Yes Chair.

CHAIRPERSON: It seems to me that it is uncertain from Mr King’s affidavit when he resigned from Inline Trading and that could be
20 important. I do not know whether you read 4 differently?

ADV KATE HOFMEYR: Yes Chair it is not the most clearly framed statement because it is dealing with two subject matters both when Mr...

CHAIRPERSON: In one sentence.

ADV KATE HOFMEYR: Mr Mbezi took over – indeed – and his

resignation. Chair there are CIPC records in relation to Inline Trading which will reflect clearly the dates of resignation. I am aware of having seen those.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: In the commission's records.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: They were not included here but we can certainly make them available.

CHAIRPERSON: Yes.

10 **ADV KATE HOFMEYR**: So that clarity as to the date on which Mr King left

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: And Mr Mbezi took over can be established.

CHAIRPERSON: Yes okay that is fine.

ADV KATE HOFMEYR: At the moment certainly I had read paragraph 4 but I do see the ambiguity as indicating that the 5 February 2016 was the date on which Mr King resigned as a director. But the CIPC records will make that clear.

CHAIRPERSON: Yes, yes, yes. I think what happened is what should
20 have been two sentences were put in one sentence.

ADV KATE HOFMEYR: Yes precisely.

CHAIRPERSON: Ja.

ADV KATE HOFMEYR: Precisely.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: But we can certainly clarify that and if any

issue becomes of it in relation to responses we will take it further.

CHAIRPERSON: Yes no that is fine.

ADV KATE HOFMEYR: Mr Mahlangu had you known these facts as stated on page 317 and 318 of Exhibit DD2 would you have entered into a consortium to tender for transactional advisor services to SAA with Inline Trading?

MR DANIEL PHOLISANI MAHLANGU: Chair I am not sure whether I understand the question. Yes and...

ADV KATE HOFMEYR: Let me break it down. Would you have
10 proposed to SAA that you enter into a consortium with an entity whose experience was in motor vehicle sales for the purposes of tendering for transaction advisor services to SAA?

MR DANIEL PHOLISANI MAHLANGU: No.

ADV KATE HOFMEYR: Thank you.

CHAIRPERSON: Ms Hofmeyr no I think that my query gets addressed in the second sentence of paragraph 4.

ADV KATE HOFMEYR: Yes oh.

CHAIRPERSON: Because they...

ADV KATE HOFMEYR: Indeed.

20 **CHAIRPERSON**: Ja

ADV KATE HOFMEYR: I have just seen that as well.

CHAIRPERSON: Ja because he says he – he – Mr Mbezi passed away on the 9 February a week after his resignation.

ADV KATE HOFMEYR: Hm.

CHAIRPERSON: So he must have resigned ...

ADV KATE HOFMEYR: That prior week.

CHAIRPERSON: Around beginning of...;

ADV KATE HOFMEYR: Indeed.

CHAIRPERSON: Of February of 2016,

ADV KATE HOFMEYR: Indeed.

CHAIRPERSON: Ja.

ADV KATE HOFMEYR: I am indebted Chair.

CHAIRPERSON: Ja okay.

ADV KATE HOFMEYR: Thank you. But we will nonetheless just have
10 the CIPC records available.

CHAIRPERSON: Yes no that is fine.

ADV KATE HOFMEYR: So that there is no issue around those dates.

CHAIRPERSON: Ja.

ADV KATE HOFMEYR: Thank you.

CHAIRPERSON: Ja.

ADV KATE HOFMEYR: Mr Mahlangu I would like to go just to a few
loose ends in relation to the FSB licence issue.

CHAIRPERSON: I am sorry I think while I was applying my mind to this
I missed out on the answer to the question.

20 **ADV KATE HOFMEYR**: Indeed.

CHAIRPERSON: You put to Mr Mahlanagu and I guess that in
answering it he can now also take into account that if like me he had
not picked this up that Mr King says he resigned from Inline Trading at
the beginning of February 2016. So the answer – the question that I
think had been put to you was whether had you been aware of the facts

set out in paragraph 3 and 4?

ADV KATE HOFMEYR: Yes.

CHAIRPERSON: Or 4 whether you would have gone into the partnership with Inline Trading I think that was the question. I did not hear the answer. What was your answer?

MR DANIEL PHOLISANI MAHLANGU: Yes Sir what I said was given the information that is present – is presented you know before – before me we actually would not actually partnered with them.

CHAIRPERSON: Yes and...

10 **MR DANIEL PHOLISANI MAHLANGU:** Yes but I think...

CHAIRPERSON: Yes and...

MR DANIEL PHOLISANI MAHLANGU: Can I qualify? We would not have partnered with them on the basis that Ms Hofmeyr has actually just highlighted on the basis that.

CHAIRPERSON: Okay please just raise your voice for some reason I am not hearing you.

MR DANIEL PHOLISANI MAHLANGU: Is it my voice?

CHAIRPERSON: Maybe it is not you it is my ears. Yes.

MR DANIEL PHOLISANI MAHLANGU: I am fine now.

20 **CHAIRPERSON:** I think you are fine but do not go too close to the microphone.

MR DANIEL PHOLISANI MAHLANGU: Okay.

CHAIRPERSON: Ja.

MR DANIEL PHOLISANI MAHLANGU: Yes Sir. What I actually said was I would not have actually partnered with them on the basis that

what Ms Hofmeyr just highlighted to say Inline Trading was actually in a business of ...

CHAIRPERSON: Was a car dealership.

MR DANIEL PHOLISANI MAHLANGU: Yes so on that basis we would not have actually partnered with – if we actually knew that information but information that was presented before us was something else.

CHAIRPERSON: Okay thank you.

ADV KATE HOFMEYR: And Mr Mahlangu just to follow that up. If you had known Mr King was no longer associated with Inline Trading on the
10 date you put in the bid I assume you would not have referred to him as part of the team?

MR DANIEL PHOLISANI MAHLANGU: Definitely.

ADV KATE HOFMEYR: Thank you. I would then like to go to the issue of the FSB licence.

CHAIRPERSON: I am sorry again Ms Hofmeyr.

ADV KATE HOFMEYR: Apologies Chair.

CHAIRPERSON: Before you – when you were putting in the team you were aware that Mr Mngadi no longer did not want his name to appear, is that correct? Or before the bid documents were submitted to SAA
20 were you aware at that time that he – his name did not appear among the team and that he did not want his name to appear?

MR DANIEL PHOLISANI MAHLANGU: Sir yes – yesterday actually I responded to that particular question. What I said there was a correspondence between Mr Moyo at the office and Mr Mngadi which was sent on the Saturday to actually request Mr Moyo to remove his

detail and it is only now that as I said two weeks back that I saw that email but as far as the bid was concerned I thought they were – you know it was basically an Inline Trading sort of plan to say who should actually be part of that bid as far as Inline Trading you know and staff is concerned. So I was not actually aware – I was aware – I was actually made aware you know now when I actually saw those things but I was not actually completely aware of it.

CHAIRPERSON: Well I am not sure if I get your answer. Let us take it step by step. Let us leave out the document that you only became
10 aware of I think about two weeks ago when you were preparing for your appearance here.

MR DANIEL PHOLISANI MAHLANGU: Yes.

CHAIRPERSON: I take it that before the bid was sent through to SAA you had seen who the members of the team were who were identified there?

MR DANIEL PHOLISANI MAHLANGU: Yes initially I have.

CHAIRPERSON: Yes.

MR DANIEL PHOLISANI MAHLANGU: Yes.

CHAIRPERSON: And you were aware that Mr Mngadi name did not
20 appear there?

MR DANIEL PHOLISANI MAHLANGU: Not then.

CHAIRPERSON: Hm.

MR DANIEL PHOLISANI MAHLANGU: Not...

CHAIRPERSON: At that time?

MR DANIEL PHOLISANI MAHLANGU: Yes remember Chair.

CHAIRPERSON: When you saw the list.

MR DANIEL PHOLISANI MAHLANGU: Yes.

CHAIRPERSON: Hm.

MR DANIEL PHOLISANI MAHLANGU: Remember Chair what has happened is that discussion happened over the weekend and the...

CHAIRPERSON: No, no

MR DANIEL PHOLISANI MAHLANGU: No what I am saying is...

CHAIRPERSON: At a certain stage you saw the list of identifying the team, is it not?

10 **MR DANIEL PHOLISANI MAHLANGU**: Yes I saw the list.

CHAIRPERSON: Yes let us leave out when it was.

MR DANIEL PHOLISANI MAHLANGU: Okay.

CHAIRPERSON: At a certain stage you saw the names.

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

CHAIRPERSON: Okay. Was that time before the bid was sent through to SAA?

MR DANIEL PHOLISANI MAHLANGU: It was after yes.

CHAIRPERSON: It was after?

MR DANIEL PHOLISANI MAHLANGU: Yes.

20 **CHAIRPERSON**: You did not see the list of the team members before the bid was sent – the bid documents were sent to SAA?

MR DANIEL PHOLISANI MAHLANGU: I did.

CHAIRPERSON: You did?

MR DANIEL PHOLISANI MAHLANGU: Yes and when I saw it Mr Mngadi was there.

CHAIRPERSON: Mr Mngadi was there?

MR DANIEL PHOLISANI MAHLANGU: Yes.

CHAIRPERSON: At that time?

MR DANIEL PHOLISANI MAHLANGU: At that time.

CHAIRPERSON: Oh okay. So later on you became aware that his name no longer appeared there but that was after?

MR DANIEL PHOLISANI MAHLANGU: Yes it was after.

CHAIRPERSON: Oh okay alright.

ADV KATE HOFMEYR: But Chair if I may be permitted to follow up?

10 Mr Mahlangu I understand you referring to what you saw over the weekend in February and what you saw in the weekend of February was a version of the documents that included Mr Mngadi's name, is that correct?

MR DANIEL PHOLISANI MAHLANGU: I am not sure I understand your question. What I saw was the email which basically...

ADV KATE HOFMEYR: No sorry Mr Mahlangu remember we are back in 2016.

MR DANIEL PHOLISANI MAHLANGU: Yes.

20 **ADV KATE HOFMEYR:** As I have your evidence of yesterday you did not see that email?

MR DANIEL PHOLISANI MAHLANGU: Yes that is true.

ADV KATE HOFMEYR: Of the 13 February until two weeks ago, correct?

MR DANIEL PHOLISANI MAHLANGU: That is true.

ADV KATE HOFMEYR: Right so if we could go back to 2016 because

as I understand the Chair's questions we are wanting to establish what knowledge you had in 2016 prior to submitting the bid about who the Inline Trading representative was? So can I follow up on that?

MR DANIEL PHOLISANI MAHLANGU: Okay.

ADV KATE HOFMEYR: Were you aware that the bid submission that was given to SAA on the 18 March 2016 did not refer to Mr Mngadi anywhere?

MR DANIEL PHOLISANI MAHLANGU: Yes I was aware.

ADV KATE HOFMEYR: And were you further aware that the
10 representative of Inline Trading indicated in that bid submission was Mr
Brendan King?

MR DANIEL PHOLISANI MAHLANGU: Yes I was aware.

ADV KATE HOFMEYR: And then to follow up on that did you take any steps to satisfy yourself as to Mr King's representative capacity for Inline Trading before submitting the bid?

MR DANIEL PHOLISANI MAHLANGU: Yes Chair. Just to respond on that question unfortunately we running a business here and when you run a business we actually enter into so many partnerships with different partners. And it is actually it is not our responsibility I mean
20 as a company...

CHAIRPERSON: Yes Mr Mahlangu.

MR DANIEL PHOLISANI MAHLANGU: Yes.

CHAIRPERSON: No, no, no. The question is what steps did you take, is that correct?

ADV KATE HOFMEYR: Indeed Chair.

CHAIRPERSON: Ja what steps did you take you say I did not take any steps and if you want to explain why you can explain or I did take the steps these were the steps.

MR DANIEL PHOLISANI MAHLANGU: Okay. Okay. I did not take any steps so I just took that information that actually came from Inline Trading to say this is their representative.

ADV KATE HOFMEYR: And to be specific from Mr Mngadi and you did not deal with anyone else at Inline Trading did you?

MR DANIEL PHOLISANI MAHLANGU: No.

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

MR DANIEL PHOLISANI MAHLANGU: Except Mr Mngadi.

ADV KATE HOFMEYR: Yes.

CHAIRPERSON: Well let me confirm the timing you know. Ms Hofmeyr asked you two questions about whether you were aware and your answers were yes. Was that awareness before the bid was sent to SAA or was it after?

MR DANIEL PHOLISANI MAHLANGU: Chair remember there were two bids here. The first one was a RFI which basically it is the one that I am talking about here that I was not aware which was sent earlier on in
20 sometime in February. Yes and the last one was the request for proposal.

CHAIRPERSON: The response to the RFP?

MR DANIEL PHOLISANI MAHLANGU: Yes.

CHAIRPERSON: Yes.

MR DANIEL PHOLISANI MAHLANGU: So as far as the RFI is

concerned I was not aware that is what I am saying yes. And then I only became aware when obviously we were preparing for response for proposal.

CHAIRPERSON: Yes.

MR DANIEL PHOLISANI MAHLANGU: Yes.

CHAIRPERSON: So before you submitted the bid to SAA in response to the RFP you were aware that Mr Mngadi's name did not appear in the list of the members of the team?

MR DANIEL PHOLISANI MAHLANGU: Yes.

10 **CHAIRPERSON:** Yes. Did that strike you as strange in the light of the dominant role he appeared to play in regard to Inline Trading he was the person who – who was referred to you and he was the person who appeared to be driving this process of the consortium getting this bid?

MR DANIEL PHOLISANI MAHLANGU: To be honest Chair no. At that point in time I had no suspicions whatsoever. Yes. So I just took – as I said that when we actually deal with these partnerships you know we deal with a particular company they recommend certain individuals you know to the particular structure and they can change that individual as and when. So there was no = any suspicion then as to what has
20 actually changed. Yes.

CHAIRPERSON: I – I would have thought that the absence of his name in the list would be strange to you and to anybody in your position because he was the leading person from Inline Trading that was dealing with you. You were the leader of BNP and from the dealings that you had had with him it was quite clear that he was the leading person in

regard to this tender and Inline Trading, am I – am I – is my understanding wrong that he was clearly a leading person in regard to – from Inline Trading in regard to this tender?

MR DANIEL PHOLISANI MAHLANGU: Chair I think that is an assumption. I think he is the person that brought you know the transaction to us. Yes.

CHAIRPERSON: Yes.

MR DANIEL PHOLISANI MAHLANGU: But we did not make an assumption that he is actually whether he is the CEO as far as you
10 know Inline Trading is concerned or the leader.

CHAIRPERSON: No, no I did not talk about the CEO. He was the only person from Inline Trading that you were dealing with – you had dealt with up to that stage, is it not?

MR DANIEL PHOLISANI MAHLANGU: That is true Chair.

CHAIRPERSON: Indeed is he not the only person that you ever dealt with from Inline Trading?

MR DANIEL PHOLISANI MAHLANGU: Yes yes.

CHAIRPERSON: And you knew of no other person or you had – you knew no other person from Inline Trading that you had met?

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

CHAIRPERSON: Or had you met any other person from Inline Trading?

MR DANIEL PHOLISANI MAHLANGU: Yes I have not – no – no.

CHAIRPERSON: You had not?

MR DANIEL PHOLISANI MAHLANGU: Yes.

CHAIRPERSON: Yes.

MR DANIEL PHOLISANI MAHLANGU: He just mentioned because when you actually ask about the CEO of Inline Trading ...

CHAIRPERSON: Sorry?

MR DANIEL PHOLISANI MAHLANGU: When we ask him about the CEO of Inline Trading.

CHAIRPERSON: Yes.

MR DANIEL PHOLISANI MAHLANGU: So who is the CEO and then he said the gentleman just passed on.

CHAIRPERSON: Yes.

10 **MR DANIEL PHOLISANI MAHLANGU:** Yes so we thought okay fine. We did not actually dig deep into it.

CHAIRPERSON: Yes but what I am – what I am wanting to establish is whether in your mind there was anybody else that associated with leading anybody else from Inline Trading that you associated with leading this bid from Inline Trading side other than Mr Mngadi?

MR DANIEL PHOLISANI MAHLANGU: No it was Mr Mngadi.

CHAIRPERSON: So I then say to you I would have thought that you would have found it strange that the lead man or lead person from Inline Trading was not on the list and that may have raised some
20 uneasiness on your part and you would have wanted to find out but you are the lead man how come you are not in the list number 1. Number 2 to the extent that you may have been aware that previously he was on the list you would want to find out why was Mr Mngadi taken out he is the lead man?

MR DANIEL PHOLISANI MAHLANGU: He – Chair as I have indicated I

think when the submission was made it was on the basis of Mr Mngadi being part of that submission. So on the eve of the submission they actually requested one of the employees to remove his detail and that bid was submitted without his detail but Mr King's detail. So when I understand your question as to [indistinct] hence I was – hence I said when I actually saw it after that I just – I questioned myself as to why but I did not dig deep into it as to – because as to what the reasons are. Because he was still part of the team so I thought perhaps they – I do not know perhaps maybe Mr King brings a different [indistinct] into
10 this game – I mean into the transaction. So I did not actually think it further than that.

CHAIRPERSON: But am I right in understanding your evidence as suggesting that you also did find it a little strange but you did not take it further?

MR DANIEL PHOLISANI MAHLANGU: Yes.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: Thank you. Just for the record purposes Mr Mahlangu in your own statement you reference Mr Mngadi as the representative of Inline Trading, is that correct?

20 **MR DANIEL PHOLISANI MAHLANGU:** That is true. What page are you at now?

ADV KATE HOFMEYR: It is page 44 of your statement. It is not particularly necessary that we go there but it was just a follow on from the Chair's questions.

MR DANIEL PHOLISANI MAHLANGU: Okay.

ADV KATE HOFMEYR: As I read your statement there was no doubt in your mind that the representative of Inline Trading was Mr Mngadi, correct?

MR DANIEL PHOLISANI MAHLANGU: That is true.

ADV KATE HOFMEYR: Thank you. I would then like to go to the question of the FSB licence suspension because I do want to probe just a little further the question of whether that letter of yours dated the 13 May – well I should not even say dated 13 May because Mr Mahlangu one of the challenges we face when we look at the BNP letters that
10 were sent to SAA during this period is they never bear a date, is that standard?

MR DANIEL PHOLISANI MAHLANGU: No.

ADV KATE HOFMEYR: But it is quite a feature of all of these letters they actually are not themselves ever dated, are you aware of that?

MR DANIEL PHOLISANI MAHLANGU: I am quite aware Ma'am, Chair.

CHAIRPERSON: Hm. So the only way you can track then when they were sent or not is I assume with the email that attached them, is that correct?

MR DANIEL PHOLISANI MAHLANGU: That is true.

20 **ADV KATE HOFMEYR:** Right so when you said in your statement that the letter which alerts SAA to the fact that the licence has been suspended by the FSB you say in your statement it was sent on the 13 May. How did you establish that fact?

MR DANIEL PHOLISANI MAHLANGU: Yes Chair as I have actually indicated yesterday that when I actually engaged with the guys at the

office we – I got a feel – actually when I asked all the guys that I was dealing with as to whether when this letter was sent I was actually told the letter was sent on the 13 May.

Hence – hence I actually wrote that to SAA to say given – I mean - based on the – on the letter that was sent to you – you know – on 13 May this is a follow up discussion. So hence - hence I said yesterday that when that letter was sent to SAA we were in no way knowing that we are going be – you know – at this Commission answering to it. So – and at the same time it was not a representation
10 from – misrepresentation from our side, yes.

ADV KATE HOFMEYR: Can I follow up on that? Did you rely simply on what your colleagues told you about the date when it was sent or did you ask them to bring you the proof of the email?

MR DANIEL PHOLISANI MAHLANGU: I - I have actually relied on them because they are the ones that sent the information.

ADV KATE HOFMEYR: Yes and then when Ms Nhantsi wrote to you on 13 July - we looked at that letter yesterday. We can go to it again today and she said:

20 “Please provide me with proof because you say in your because you say in your correspondence that you sent us a letter on 13 May and we can find no record of it in SAA.”

Did you then try and look for proof?

MR DANIEL PHOLISANI MAHLANGU: I – I – then I actually did not but I responded to her.

ADV KATE HOFMEYR: Yes.

MR DANIEL PHOLISANI MAHLANGU: Yes.

ADV KATE HOFMEYR: But you did not refer to the proof that she was requiring?

MR DANIEL PHOLISANI MAHLANGU: Yes but remember on the email that she sent it was not only please send us the email that you sent to us but there were other undertakings as far as that email. So I had to actually deal with undertakings at hand because they were pressing more than the letter that was sent.

10 **CHAIRPERSON:** But why did you not deal with the proof she was asking because obviously that was quite something important? You said you sent something. She says we did not receive it. Please give us the proof. How can you omit to deal with that?

MR DANIEL PHOLISANI MAHLANGU: Yes Chair. I think then what basically as far as the letter is – you know – is concerned what basically caught my attention then was there were other undertakings as far as that letter is concerned because there were actually sort of some indication that if we do not actually comply – you know – our contract maybe actually terminated.

20 So we were – we were basically given about a couple of days to rectify the situation. So ...

CHAIRPERSON: But ...

MR DANIEL PHOLISANI MAHLANGU: So ...

CHAIRPERSON: I am sorry – I am sorry. I am interrupting you; but you did read the letter and you did see that she was asking for proof?

MR DANIEL PHOLISANI MAHLANGU: Yes sir. Yes Chair.

CHAIRPERSON: And did you then decide to ignore that part of the letter and not provide her with proof?

MR DANIEL PHOLISANI MAHLANGU: No it is not true that I actually ignored. So what – what ...

CHAIRPERSON: So what did you do?

MR DANIEL PHOLISANI MAHLANGU: Yes.

CHAIRPERSON: About this part of the letter.

MR DANIEL PHOLISANI MAHLANGU: So what – what basically I did
10 was to actually send her another letter – an email – basically saying to her because the issue that she was addressing she was addressing the issue - I mean – the biggest issue besides the letter that she said we must actually forward to her was the issue of we – she – she actually had given us a couple of days to rectify our position otherwise if we actually do not do that – you know – she would actually terminate the contract.

So what I was – basically what I responded to her was to say to her we have actually went ahead and – and rectify and trying to rectify the situation as far as the – the terms of suspension are
20 concerned and – and this is what we have done to date and we have even sent a letter to the CEO – you know – to actually allow for – for CEO's references with regards to dealing with some of the suspensions.

It is actually the critical suspension – you know – in the letter that was sent by FSB. So I think that – at that point in time that

occupied me. So hence I thought – hence I did not actually respond to every part of her email but I thought I should actually bring it to her attention what was very critical at that point in time because it was a threat to the contract number one which actually we were working on.

So I just – so I had to actually respond – you know – with – with basic information that - that said we did actually send information to the CEO. These are the details that we sent as far as that contract is concerned – as far as – I mean – the FSB is concerned.

CHAIRPERSON: But obviously or maybe not obviously if you believed
10 that you had sent the letter to her and she said she did not receive it obviously you would be concerned. How come she had not received a letter that you had sent and you would want to provide her with – with that letter. Is it not?

MR DANIEL PHOLISANI MAHLANGU: That is true Chair.

CHAIRPERSON: Did you go back to your team and say where is that letter let us – let us send it?

MR DANIEL PHOLISANI MAHLANGU: Hence I - yes Chair. So hence I said when the threat of our contract was actually mentioned ...

CHAIRPERSON: Let, let, let ...

20 **MR DANIEL PHOLISANI MAHLANGU:** I did not – I did not do that Chair.

CHAIRPERSON: Ja. You did not do that.

MR DANIEL PHOLISANI MAHLANGU: Yes.

CHAIRPERSON: Why not?

MR DANIEL PHOLISANI MAHLANGU: Hence I said when the threat of

our contract was actually questioned what I was actually alerting here as to say based on this because in essence whether I did send her that information that she requested was either here nor there at that point in time because her mind was already made to say rectify your position.

So I had to actually say how do we then – how do I respond to that imminent threat as far as our contract is concerned and then hence I sent that information.

CHAIRPERSON: Did you later on take the trouble to respond to her and say I know you asked for proof I was attending to other matters. I
10 have now found the proof. Here is the proof.

MR DANIEL PHOLISANI MAHLANGU: In – no I did not sir.

CHAIRPERSON: Why not?

MR DANIEL PHOLISANI MAHLANGU: Hm.

CHAIRPERSON: You thought it was important because you had addressed the other issues that you say you had addressed?

MR DANIEL PHOLISANI MAHLANGU: Sir I think at that point in time obviously one was actually – you know – involved in too many things at that particular point in time and then what – what was critical as far as my position was concerned then was to actually save the contract. So
20 – so at that point in time I actually because the only thing that she says to me then was to – I mean – post when I actually sent – sent an email because I actually responded to that particular email of hers but I did not actually do a follow up as far as looking for that particular letter.

CHAIRPERSON: Yes well if the letter that you said you had sent to her which she said she had not received and was asking for proof did exist

and was there would you agree that it was the easiest thing to do to send her – to send the proof to her because all you would need is get somebody to show it to you and then you say email it that is all.

Email it with one line – here is proof and then the other things that you attended to might have needed more time and more work but that one must have been the easiest to do and that is the one you did not do.

MR DANIEL PHOLISANI MAHLANGU: Yes sir. I think it was a question of priorities here, yes – it ...

10 **CHAIRPERSON:** Okay.

MR DANIEL PHOLISANI MAHLANGU: Yes.

CHAIRPERSON: Okay, thank you.

ADV KATE HOFMEYR: Mr Mahlangu just to follow up on your priorities. I understand your priority was to save the contract. Is that correct?

MR DANIEL PHOLISANI MAHLANGU: That is true.

ADV KATE HOFMEYR: Do you not think that finding that letter and sending it to her and the proof that it had been sent on 13 May would have assisted in saving the contract?

20 **MR DANIEL PHOLISANI MAHLANGU:** That is not true.

ADV KATE HOFMEYR: Well that letter explains precisely the steps you have taken to involve another authorised service – financial services provider who is going to work with you until you have fulfilled all the suspension conditions in the letter of suspension that you had received from the FSB. So that letter shows SAA if you had managed to find the

proof of it being sent.

A that you are acting in compliance with what the FSB requires of you; b that you found a partner to work with during the period that you are seeking to have the suspension lifted and c, that you can therefore continue with the contract. Do you accept that?

MR DANIEL PHOLISANI MAHLANGU: No I do not Chair. I think the response was based on because I - I think you are making a couple of assumptions here. Assumptions is did you actually notify us about what you going – you know – your challenges at FSB and then that is yes
10 and then when I actually responded in the – on the – I cannot remember now the date – when I – when I responded ...

CHAIRPERSON: You can have a look if you want to have a look. It depends if you think it is important.

MR DANIEL PHOLISANI MAHLANGU: Yes. It is very important.

CHAIRPERSON: Okay, okay.

MR DANIEL PHOLISANI MAHLANGU: When I responded on that particular letter I was basically highlighting the issues that were discussed in that letter of the 13th.

CHAIRPERSON: When you say that letter are you talking to the letter
20 that ...

MR DANIEL PHOLISANI MAHLANGU: That ...

CHAIRPERSON: Ms Nhantsi said she did not receive?

MR DANIEL PHOLISANI MAHLANGU: Yes.

CHAIRPERSON: Yes, okay.

MR DANIEL PHOLISANI MAHLANGU: Yes and in essence I – I do not

think to be honest – to be honest and – and I think in this Commission I think they need to know that when – when SAA actually came to us about our licence they which is – we find it very strange – they came to us even though we have actually said to them these are the steps we are going to take.

This is what we are going to do as far as the licence is concerned but they were actually hell-bent ...

CHAIRPERSON: But I am – I am sorry Mr Mahlangu. I think you maybe drifting away from the question not necessarily deliberately. I
10 am not saying you are doing so deliberately. As I understand the question - the question you are supposed to deal with is one that is asking you why you think it would not help you in saving the contract with SAA or in being allowed by SAA to continue and do the work for SAA to know that you had found somebody who had the licence who would work with you.

You said you did not think that that would help save the contract ...

MR DANIEL PHOLISANI MAHLANGU: Yes sir.

CHAIRPERSON: And what is your motivation for saying for SAA to
20 know that would not help in saving the contract?

MR DANIEL PHOLISANI MAHLANGU: Thanks Chair. I – I was actually going – I was actually taking you on a journey to that particular conclusion, yes.

CHAIRPERSON: Can I suggest one thing?

MR DANIEL PHOLISANI MAHLANGU: Yes.

CHAIRPERSON: It is shorter to be shorter.

MR DANIEL PHOLISANI MAHLANGU: Yes I understood ...

CHAIRPERSON: Yes.

MR DANIEL PHOLISANI MAHLANGU: Ms Hofmeyr's question. Let me cut short. I think when – when we started engaging with SAA as far as our FSB licence is concerned SAA already took the position regardless of the – the information that actually from FSB to them took a position that they are only going to be giving us a couple of days to rectify our position otherwise they will actually cancel the contract.

10 Even despite the fact that we actually have found a partner to assist us as far as this exercise is concerned. There was no meeting of minds to say ...

CHAIRPERSON: But as I understand the position they never got any information to that effect or they had not got that information because they did not get that letter or am I mistaken?

MR DANIEL PHOLISANI MAHLANGU: Yes. Yes Chair they did.

CHAIRPERSON: They did receive ...

MR DANIEL PHOLISANI MAHLANGU: Yes.

CHAIRPERSON: The letter?

20 **MR DANIEL PHOLISANI MAHLANGU:** Not only the letter but also the attachments – the FSB attachments.

CHAIRPERSON: The letter that was – the letter that they said they did not receive you are saying they did receive or are we talking at cross purposes?

MR DANIEL PHOLISANI MAHLANGU: Hm.

CHAIRPERSON: I am talking about the letter – my understanding is that the letter that they said they did not receive was the letter in which you advised them that you had found a partner who had the FSB licence with whom you could work. That is my understanding. Is that your understanding as well that that is part of what that letter said?

MR DANIEL PHOLISANI MAHLANGU: Hm.

CHAIRPERSON: Or is supposed to have said?

MR DANIEL PHOLISANI MAHLANGU: Okay. The letter that I am talking about it is the initial letter after the - the suspension. So that
10 letter in essence what basically was doing was to inform the ...

CHAIRPERSON: Okay, okay. Let us ...

MR DANIEL PHOLISANI MAHLANGU: SAA.

CHAIRPERSON: I am sorry. Let us – there is a letter that we know ...

MR DANIEL PHOLISANI MAHLANGU: Yes.

CHAIRPERSON: SAA said they did not receive. Is it not?

MR DANIEL PHOLISANI MAHLANGU: Yes Chair.

CHAIRPERSON: Is it your understanding that part of the letter that they say they did not receive which you said you had sent to them was advising them that you had found a partner who had an FSB licence
20 with whom you were going to work. Is – is that correct?

MR DANIEL PHOLISANI MAHLANGU: (No audible reply).

CHAIRPERSON: Is that your understanding of part of what was in that letter that they said they did not receive?

MR DANIEL PHOLISANI MAHLANGU: No it was not.

CHAIRPERSON: It ...

ADV KATE HOFMEYR: Mr Mahlangu if I may just be of assistance. Let us go to the letter so that we can all have it in front of us the one that you allege was sent to SAA on 13 May. You will find it in your statement bundle that is EXHIBIT DD4 and it is at page 1-4-3 under Tab 21 and just as you go in there and a follow up to what the Chair has put to you.

As I read that letter that is precisely what you were seeking to communicate on that day. So you will find it under Tab 21 at page 1-4-3 and Mr Mahlangu just to orientate you. This is the letter that you in
10 your statement say was sent to SAA on 13 May 2016. This is the letter that Ms Nhantsi writes to you about on 13 July 2016 and says:

“You have told us that a letter was sent but we did not receive it. Please tell us precisely who it was sent to and give us proof that it was sent.”

CHAIRPERSON: Hm.

MR DANIEL PHOLISANI MAHLANGU: It ...

CHAIRPERSON: I think that last paragraph before I hope the above is in order seem to be the paragraph where you were saying that you had found somebody else who has – who has a licence.

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

CHAIRPERSON: Ja.

MR DANIEL PHOLISANI MAHLANGU: Yes Chair.

CHAIRPERSON: Yes. So the – do you – do you – is it – is it fair to read that paragraph as suggesting that you were conveying to SAA that you intended to try to work with capital partner or to talk to them with a

view to seeing whether you could work with them? Is it fair to read that paragraph in that way?

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

CHAIRPERSON: You think it is fair?

MR DANIEL PHOLISANI MAHLANGU: Yes.

CHAIRPERSON: If – if that is fair to read it that way would you still say that it was not important in your attempts to save the contract for SAA to know that these were the attempts you were making to work with
10 somebody who had a licence to the extent that you wanted to take steps to save the contract?

MR DANIEL PHOLISANI MAHLANGU: Yes sir.

CHAIRPERSON: Do you say that it was not important for SAA to know that this is one of the attempts you were taking in order to try and make sure that you can continue with the contract without FSB problems?

MR DANIEL PHOLISANI MAHLANGU: Yes sir. I agree with you. I think what we need to do is let look at the logical sequence of events. We get a letter of suspension ...

CHAIRPERSON: Okay. I will – I will let you do that if it is really
20 necessary but are you saying you agree that it would - it would have been important for SAA to know that this was one of the attempts you were making? You agree?

MR DANIEL PHOLISANI MAHLANGU: I agree.

CHAIRPERSON: Okay, alright. I do not – for me that is – that is enough for now but I do not know if you want to ...

MR DANIEL PHOLISANI MAHLANGU: Okay.

CHAIRPERSON: Qualify it. For me but that is – that is enough for me.

MR DANIEL PHOLISANI MAHLANGU: Hm.

CHAIRPERSON: Do you feel an urge to explain anything?

MR DANIEL PHOLISANI MAHLANGU: What I was about to – maybe – maybe just spend two seconds on it.

CHAIRPERSON: Yes.

MR DANIEL PHOLISANI MAHLANGU: What I was about to say is when we actually received a letter of suspension ...

10 **CHAIRPERSON:** Yes.

MR DANIEL PHOLISANI MAHLANGU: We informed SAA then ...

CHAIRPERSON: Yes.

ADV KATE HOFMEYR:

MR DANIEL PHOLISANI MAHLANGU: To say the letter of suspension requires us to do one, two, three.

CHAIRPERSON: Yes.

MR DANIEL PHOLISANI MAHLANGU: We are in the process of doing that.

CHAIRPERSON: Hm.

20 **MR DANIEL PHOLISANI MAHLANGU:** And we have not actually mentioned (indistinct) – you know our – you know – you know to say this is what we are going to do and then was sent sometime in July to say we have actually – this is what the terms of suspensions were and this is what we have done to date yes to actually rectify that position.

ADV KATE HOFMEYR: Mr Mahlangu I – I truly do not want to belabour

this point but what you have just said is inconsistent with your own statement. The letter at page 1-4-3 that you are looking at you say was sent the day after you got the letter from the FSB informing you that the licence was suspended. Do you accept that?

MR DANIEL PHOLISANI MAHLANGU: Through you Chair no. That is incorrect.

ADV KATE HOFMEYR: The letter that you are looking at in front of you at page 1-4-3?

MR DANIEL PHOLISANI MAHLANGU: Yes. It is not the letter that I
10 was sent on May – in May.

ADV KATE HOFMEYR: Okay. Let us go to where you say in the statement it was sent on 13 May

CHAIRPERSON: Well I also made a note on the letter yesterday which reads:

“Mr Mahlangu says that this letter was sent on
13 May 2016.”

ADV KATE HOFMEYR: Yes. Should I read it to you? Let us go to page 27 of your statement. At page 27 of your statement paragraph 6.5 on that page.

20 **CHAIRPERSON:** Have you got the right file in front of you?

MR DANIEL PHOLISANI MAHLANGU: Is it my file?

CHAIRPERSON: The one with your statement.

ADV KATE HOFMEYR: Your file indeed.

CHAIRPERSON: Your file *ja*.

MR DANIEL PHOLISANI MAHLANGU: Yes. It is paragraph – sorry?

ADV KATE HOFMEYR: Hm.

CHAIRPERSON: Page 27 paragraph 6.5.

ADV KATE HOFMEYR: If I can just read it out for the purposes of the record.

CHAIRPERSON: Let us see if he has found it. He has not found it yet.

ADV KATE HOFMEYR: Apologies Chair.

MR DANIEL PHOLISANI MAHLANGU: It is page 37?

CHAIRPERSON: 27.

ADV KATE HOFMEYR: 27.

10 **CHAIRPERSON:** Yes. Paragraph 6.5. Have you found it?

MR DANIEL PHOLISANI MAHLANGU: (No audible reply).

CHAIRPERSON: Have you found – she is still going to ask you the question but have you found paragraph 6.5 at page 27?

MR DANIEL PHOLISANI MAHLANGU: Yes I have.

CHAIRPERSON: Okay, thank you.

ADV KATE HOFMEYR: Thank you Chair and apologies I thought that you had found the place Mr Mahlangu. At paragraph 6.5 there as I read your statement you state:

20 “When the FSB licence (or notice to suspend was
 given) was suspended sometime in April 2016 I
 informed SAA of the suspension per letter dated
 13 May 2016 attached hereto as Annexure PDM21.”

That is the letter we were just looking at – at page 1-4-3.

MR DANIEL PHOLISANI MAHLANGU: Is this – okay. Yes I am looking at it.

ADV KATE HOFMEYR: So do you accept ...

MR DANIEL PHOLISANI MAHLANGU: PDM21.

ADV KATE HOFMEYR: As you have stated in the statement ...

MR DANIEL PHOLISANI MAHLANGU:

CHAIRPERSON: Okay. I think she is - you want to go back to the letter. It is at page 1-4-3.

MR DANIEL PHOLISANI MAHLANGU: Yes. No I am actually looking at the letter now.

CHAIRPERSON: Okay, alright.

10 **ADV KATE HOFMEYR:** Is your statement correct when you say you sent that to SAA on 13 May?

MR DANIEL PHOLISANI MAHLANGU: Yes. It is right.

ADV KATE HOFMEYR: Thank you. Mr Mahlangu to move on then on the success fee aspect that we concluded your evidence on yesterday ...

CHAIRPERSON: I am sorry Ms Hofmeyr.

ADV KATE HOFMEYR: Apologies Chair.

CHAIRPERSON: I think you might in the process have forgotten some loose end ...

20 **ADV KATE HOFMEYR:** Yes.

CHAIRPERSON: But you maybe you did not forget. I think now that we have gone to the letter at page 143 and we have gone to – and you have indicated you have accepted that in that letter you did indicate to SAA that you were making efforts to get a partner who has – who had an FSB licence and you have indicated that it would have been

important for SAA to know that that is what you were doing in your attempts to save the contract.

The question that arises is still why then did you not take the trouble to look for the letter or the proof that SAA was looking for and send it to them because we – we all accept that that could have contributed in saving the contract which is what you wanted to do.

MR DANIEL PHOLISANI MAHLANGU: Yes Chair. We have actually done that. Now I think I was just confusing my – you know – I have got too many – too much information.

10 **CHAIRPERSON:** Yes. No, no that is fine.

MR DANIEL PHOLISANI MAHLANGU: Yes.

CHAIRPERSON: Make sure you have got what you want to look at.

MR DANIEL PHOLISANI MAHLANGU: Yes. We have actually done that because there is a letter that we sent to say further to your correspondence – I think it is information that we share yesterday.

ADV KATE HOFMEYR: Chair you will find it – I took the step to place it in Mr Mahlangu's file and it has been paginated right at the end at page - from page 1-4-6. So you will find it in EXHIBIT DD4 at page 1-4-6.

20 **CHAIRPERSON:** Yes continue then ...

MR DANIEL PHOLISANI MAHLANGU: Yes.

CHAIRPERSON: Mr Mahlangu.

MR DANIEL PHOLISANI MAHLANGU: Yes. The letter reads as follows.

CHAIRPERSON: I am sorry. You said we did that. I was still going to

say just complete the sentence. You said you did what ...

MR DANIEL PHOLISANI MAHLANGU: Hm.

CHAIRPERSON: So that I can understand.

MR DANIEL PHOLISANI MAHLANGU: Yes. What I am saying is what you just asked – the question that you have asked as to have you actually because I think the first question ...

CHAIRPERSON: Why – why did you not take the trouble ...

MR DANIEL PHOLISANI MAHLANGU: Yes.

CHAIRPERSON: Of sending the proof because we both accept that
10 that would have been important for SAA to know in your attempts to save the contract?

MR DANIEL PHOLISANI MAHLANGU: Yes. That is true Chair. So in – in response of my – in response to Ms Nhantsi's email hence I said that email did not only say to us just send whatever that you sent on 13 May but it had other critical issues that I had to actually deal with at that point in time. So I actually attempted to address that in this particular email that I – letter that I sent to her. So it says – I will read it – I will read it to you.

CHAIRPERSON: No, no do not read it to me ...

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

CHAIRPERSON: Because I think the point you are making is a point you made earlier. There were certain things that the letter from Ms Nhantsi raised - certain matters that you had raised which you wanted – which you regarded as important ...

MR DANIEL PHOLISANI MAHLANGU: Yes.

CHAIRPERSON: To address in order to save the contract. Now that I understood but this was also an important step that SAA needed to know and so my question was simply why did you not take this trouble of just looking for the letter and send- sending it because it would add to SAA seeing that you could actually continue with the contract if your engagement with this partner was successful.

MR DANIEL PHOLISANI MAHLANGU: Yes Chair. Hence I disagree that at that particular point in time when I engaged with SAA they were not – not in the position to actually assist or to actually even listen to –
10 to whatever that sent because in the letter that I sent it says this is the letter of – of the 13th. This is what it meant but as far as the aspects or the content of that letter is concerned they did not actually want to hear anything.

What they said post that is we did not receive the letter however rectify your position as far as the FS – the FSP licence is concerned and – and we are giving you this – a certain number of days and if you do not we will cancel the contract.

CHAIRPERSON: But is the position not that if you had a partner who had an FSB licence you could actually do the job without even
20 rectifying your situation? At least that is – that is my understanding.

MR DANIEL PHOLISANI MAHLANGU: That is true Chair. Hence I said it is a bit strange – at the beginning I think when I said it was a bit strange and I know I wanted to actually elaborate on it to say it was a bit strange because we actually provided all the information including our partners to them but there – there was no – any indication on their

part to say okay fine we have received this information.

As far as the licence is concerned we were actually compliant – you know – because we are actually dealing with some of the aspects of the compliance and I also sent them a discussion – a long discussion that we had with FSB to say this is a discussion that we had with FSB but they have just taken a position to say if you do not want to rectify your situation we do not care what you say to us or what you are saying to us but if you do not rectify your situation we will cancel this.

CHAIRPERSON: Okay. I think we have spent as much time ...

10 **ADV KATE HOFMEYR:** We have.

CHAIRPERSON: As we – we can.

ADV KATE HOFMEYR: Indeed Chair.

CHAIRPERSON: Ja, okay. Proceed.

ADV KATE HOFMEYR: Chair I did have some intimations from Mr Mahlangu's legal team around this issue I'll take it up with them over the break if it's relevant we'll address it again, but I would like to make a bit more progress before we break if possible.

CHAIRPERSON: Yes thank you.

ADV KATE HOFMEYR: Just to conclude on the success fee Mr
20 Mahlangu, I understood your evidence yesterday to be that you had proposed a success fee of 1.25% is that correct?

MR DANIEL PHOLISANI MAHLANGU: That's true.

ADV KATE HOFMEYR: And were you involved in negotiations to increase that success fee at all with SAA?

MR DANIEL PHOLISANI MAHLANGU: No.

ADV KATE HOFMEYR: Were you aware that what the Board was asked to approve was a success fee of not 1.25% but of 1.5%?

MR DANIEL PHOLISANI MAHLANGU: No I haven't received any communication to that effect.

ADV KATE HOFMEYR: Because that difference of .25% is not insignificant, I did a short calculation and it amounts on funding transaction of 15billion to 37.5million, I'm not sure how quickly you can do the mental arithmetic but are you satisfied that the move from 1.25% ...(intervention).

10 **CHAIRPERSON:** Well Ms Hofmeyr he has an honours in maths...(intervention).

ADV KATE HOFMEYR: So he can probably do it, I have to take out my phone and do the calculation.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: Are you happy that .25% of 15billion is 37.5million.

MR DANIEL PHOLISANI MAHLANGU: I will agree with you.

ADV KATE HOFMEYR: So the move from your proposed 1.25% to 1.5% had this transaction ever eventuated would have resulted in a further
20 37.5million to BnP Capital, do you accept that?

MR DANIEL PHOLISANI MAHLANGU: I don't accept it, in the – from my position, I think you are discussing from a position of information, from where I'm sitting as – we actually sent a proposal to Ms Nhantsi that was some time, if I'm not mistaken, it's actually in the file, I think on the 12th of May, discussing our fees which is 1.25% and even with

regards to 1.5% we haven't received any communication with regards to whether that was accepted or they're negotiating. So we haven't, so where I'm sitting I can not actually vouch and agree with you on the numbers and you know, of which I didn't agree on, there's nothing that was communicated to us.

ADV KATE HOFMEYR: Mr Mahlangu we may be at cross purposes, I absolutely understand your evidence to be, you weren't aware that the SAA Board approved a 1.5% success fee on this transaction, is that correct?

10 **MR DANIEL PHOLISANI MAHLANGU:** Yes I wasn't aware, that's correct.

ADV KATE HOFMEYR: What I am putting to you is that if those were the facts, I understand you did not know them at the time, but if it was the case that the SAA Board approved 1.5% as a success fee, they would have been approving to pay you 37.5%million more than you were asking for, is that correct?

MR DANIEL PHOLISANI MAHLANGU: That's incorrect because obviously if we, for some reason – for some strange reason if we managed to get that 15billion which is an assumption we're making
20 here, remember our proposal now it's 1.25%, we could have actually send an invoice of 1.25% not 1.5%.

CHAIRPERSON: No I think you don't understand the question, let me try, just relax and listen carefully and if you don't understand ask – tell me that you don't understand. Ms Hofmeyr is saying to you, she understands that you were not aware at the time that the SAA Board

had approved that you be paid a success fee of 1.5%, you agree that, that's your evidence, you were not aware of that?

MR DANIEL PHOLISANI MAHLANGU: That's true Chair.

ADV KATE HOFMEYR: Then she is saying, she has made a calculation of what you would have been paid in rands if indeed you were paid 1.5% of the 15billion rand, okay, you understand that part?

MR DANIEL PHOLISANI MAHLANGU: I understand that Chair.

CHAIRPERSON: She says she wants to tell you the figure that she has arrived at and she says it's – that would mean you would have been
10 paid, and she will tell you the figure more than the amount you had said you would charge, you understand. In other words she says, SAA would have ended up paying you more than – far more than you said you would charge for the job and she just wants you to comment whether you think more or less that amount that she is talking about, is correct, in terms of calculations?

MR DANIEL PHOLISANI MAHLANGU: Yes Chair I think the assumption it's flawed in a sense that ...(intervention).

CHAIRPERSON: Which assumption if flawed?

MR DANIEL PHOLISANI MAHLANGU: Yes the assumption that SAA
20 would actually – would actually pay us 1.5% when we actually have given them a proposal of 1.25% so the question now is, regardless of our...(intervention).

CHAIRPERSON: Let's assume it is an assumption and let's assume the assumption is right despite you thinking it's flawed she's interested in you indicating whether you accept that it would have meant that you

would have been paid an amount that was far more than what you had asked for or what you said you would charge for the job and maybe Ms Hofmeyr can just repeat the figure.

ADV KATE HOFMEYR: Indeed the difference which is the deference between 1.24% and 1.5% is 37.5million rand.

CHAIRPERSON: So in other words she says if the – she says you would have been paid 37.5million rand more than what you were prepared to charge but you were not aware of this at the time.

MR DANIEL PHOLISANI MAHLANGU: Yes Chair, actually I
10 understand completely what Ms Hofmeyr is saying to me yes and what I'm putting through is there are institutions – I'll give you an example, there are institutions that have got a budget on a particular project they set a budget and bidders come and bid for that particular project and if they bid for a particular project, the institution already has a got a budget on it and one could come even below that budget, that doesn't mean that whoever that won is actually going to be paid a higher amount. So they will pay you what your proposal is at a particular point in time.

CHAIRPERSON: Okay I don't think – I think we can – I think the issue
20 can be left there.

ADV KATE HOFMEYR: We can leave it there Chair, the only point, just to conclude that I'd like to make to Mr Mahlangu is, you don't have knowledge of the Board's decision to approve a 1.5% success fee to you, do you?

MR DANIEL PHOLISANI MAHLANGU: No obviously not.

ADV KATE HOFMEYR: And where it's recorded in the motivation that went to the Board, for that 1.5% success fee, that the two parties, that's a reference to SAA and BnP settled for a success fee of 1.5% percent should BnP Capital be tasked to urgently source funds, can I take it you were not involved in those negotiations which settled at a success fee of 1.5%.

MR DANIEL PHOLISANI MAHLANGU: No I'm not sure which – are you – yes Chair, I don't understand the question was the discussion between BnP representatives and SAA or the Board or SAA Board,
10 that's ...(intervention).

CHAIRPERSON: Well maybe let's put it this way, were you involved in any negotiations with SAA whether – with management or the Board of SAA aimed at getting SAA to agree to 1.5% success fee?

MR DANIEL PHOLISANI MAHLANGU: No.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: Do you know who those engagements would have been with?

MR DANIEL PHOLISANI MAHLANGU: No.

ADV KATE HOFMEYR: Thank you, Mr Mahlangu I'd then like to move
20 to the cancellation fee we've got a few more minutes before tea if we can use them Chair.

CHAIRPERSON: Yes let's use them.

ADV KATE HOFMEYR: Mr Mahlangu if you could turn up page 20 of your statement, Mr Mahlangu as I read paragraph 5.25 on that page, you offer two motivations for the cancellation fee that was sought from

SAA I'll come to them in a moment but just so we get our facts correct, do you accept that on the same day that BnP Capital was awarded the work to source funds, you wrote back to SAA and said you would like a cancellation fee of 50% of all your fee proposals until that point if there was to be a termination?

MR DANIEL PHOLISANI MAHLANGU: That's true.

ADV KATE HOFMEYR: And you give at page 22, motivations as I have it for that cancellation fee. To be of assistance, the first I picked up midway down that paragraph where you start,

10 "In our case Grissag had already furnished us with proof of funds and therefore failure on the part of SAA to utilise such funds would warrant a cancellation fee",

Is that correct that, that was one of the grounds on which you justified it?

MR DANIEL PHOLISANI MAHLANGU: Yes based on a discussion between Grissag and Mr Mngadi, yes.

ADV KATE HOFMEYR: That was then relayed to you by Mr Mngadi?

MR DANIEL PHOLISANI MAHLANGU: Definitely yes.

ADV KATE HOFMEYR: Thank you and then the second one that I pick
20 up in that paragraph is towards the bottom of the page you state there,
"in the absence of a cancellation fee, the service provider would have worked (sometimes for months) and then over the page and delivered on its mandate but received no remuneration therefore simply because the trigger for its remuneration i.e. utilisation of funds would not have occurred

due to no fault of the service provider”,

Do you see that?

MR DANIEL PHOLISANI MAHLANGU: Yes.

ADV KATE HOFMEYR: And is it a fair reading that, that is your second justification for the cancellation fee being paid?

MR DANIEL PHOLISANI MAHLANGU: It is the only justification.

ADV KATE HOFMEYR: That work would have been done and despite that the deal could have fallen through, is that right?

MR DANIEL PHOLISANI MAHLANGU: That's true.

10 **ADV KATE HOFMEYR:** Do you accept that...(intervention).

CHAIRPERSON: I'm sorry, ja maybe it is one but I thought another one was – it's an accepted practice in the industry, I thought that's what – part of what that paragraph says, in other words not only is it justified by virtue of the fact that the entity would have done the work, but also asking for this money is okay because it's accepted practice in the industry, I thought that, that was another reason you advanced.

MR DANIEL PHOLISANI MAHLANGU: Yes Chair, but here it is written right at the bottom I think for months and delivery on it's mandate but received no remuneration therefore simple because the trigger for it's
20 remuneration that it utilisation of funds wouldn't have occurred due to no fault of the service provider.

CHAIRPERSON: Ja well it's okay, I thought I was trying to help you in case you might be unfairly saying you gave one reason for this view because I thought you gave two but it's okay, I thought you gave two reasons at least. One is, it's an accepted practice, two you have

worked for the money.

MR DANIEL PHOLISANI MAHLANGU: That's true what you're saying sir.

CHAIRPERSON: Oh but you agreed to Ms Hofmeyr's – or no actually you didn't agree she said to you – she put it to you, she asked you whether that was your second reason for the view you took that there should be a cancellation fee, and your answer was, that was the only reason, so that is what triggered this discussion with me because I thought you had more than one reason, ja, but...(intervention).

10 **MR DANIEL PHOLISANI MAHLANGU:** I think it was just a misunderstanding ja.

CHAIRPERSON: Okay that's fine, no I just wanted to make sure that you don't tie yourself into a corner to say it's one reason when actually you have given more than one reason, okay thank you.

ADV KATE HOFMEYR: Thank you Chair, we are indebted. I would like to follow up on the reason though that appears at the bottom of the page which is the reason related to the work that had already been done. Mr Mahlangu do you accept that, until you have a mandate, to source funds, it would not be appropriate to seek remuneration for any
20 work related to that?

MR DANIEL PHOLISANI MAHLANGU: That's true.

ADV KATE HOFMEYR: So you had not been mandated to source funds by SAA until the 25th of May 2016, correct?

MR DANIEL PHOLISANI MAHLANGU: That's true.

ADV KATE HOFMEYR: So why would you motivate for a cancellation

fee based on work done on the very same day that you received your mandate?

MR DANIEL PHOLISANI MAHLANGU: Yes Chair, I think there's misunderstanding of the cancellation fee here. Remember what I said initially about the success fee, the success fee was actually discussed on the 12th of May, yes, in essence what I'm saying is, before even the letter of award was actually presented to us, we sent a proposal to SAA to say we'd actually require 1.25%. So as time progressed, come the 25th of May we were actually given a letter of appointment subject to us
10 singing a SLA, it's only then that we realised that the only thing which is actually not in this – that we've actually not touched which is very critical, it's a cancellation fee. So I think the question is, it's the when, you know when are we suppose to have discussed it, maybe two days after receiving the letter or a week after, a month after, I think maybe that is the question, that maybe you're asking us. However, when we received it, given that all the critical aspect or that were critical as far as we were concerned had been addressed and the only thing, which is the biggest risk in our business was that cancellation.

ADV KATE HOFMEYR: Mr Mahlangu you had no mandate to source
20 funds from SAA until the 25th of May 2016, correct.

MR DANIEL PHOLISANI MAHLANGU: I agree with you.

ADV KATE HOFMEYR: So it would not be reasonable, I put it to you, to seek a cancellation fee for any work had done to source those funds prior to the 25th of May 2016.

MR DANIEL PHOLISANI MAHLANGU: Yes Chair, Ms Hofmeyr can you

maybe give me your understanding of the cancellation fee so that maybe on the webpage because...(intervention).

CHAIRPERSON: Well let's – Ms Hofmeyr you are referring to a letter – a letter that he wrote, can you – can we go there, I wonder whether the problem might be a misunderstanding of the use of the sentence, I think he mentioned – what page is it, I want to have a look at it before he answers.

ADV KATE HOFMEYR: Indeed, let us go first to your motivation on the 25th of May for the cancellation fee, you'll find that at Ms Stimpel's
10 bundle which is Exhibit DD1 and it's in the B volume and you'll find it there at page 494 and that is under tab 47.

CHAIRPERSON: Well Ms Hofmeyr I see that at least this letter...(intervention).

ADV KATE HOFMEYR: This letter has a date, it is true Chair.

CHAIRPERSON: I think you may have created the impression...(intervention).

ADV KATE HOFMEYR: I did create...(intervention).

CHAIRPERSON: All letters from BnP should...(intervention).

ADV KATE HOFMEYR: Indeed I should have said the majority, indeed.
20 The majority of the letters do not bear a date and I was exuberant in my suggestion that it was all because of my level of difficulty in trying to navigate when things were sent or not but this one is indeed dated, 25th of May 2016 and you'll see the first line – sorry Mr Mahlangu, do you have it in front of you?

MR DANIEL PHOLISANI MAHLANGU: Yes I do.

ADV KATE HOFMEYR: The first line reads,

“we acknowledge with thanks the award of this mandate and
hereby graciously accept it”,

Just to confirm, you’d received that mandate on that same
date, the 25th of May 2016, correct?

CHAIRPERSON: Did you hear the question or would you like to just go
through this letter first before you answer?

MR DANIEL PHOLISANI MAHLANGU: No, I know the letter yes.

CHAIRPERSON: Okay the question is based on the first line of the
10 letter you say,

“We acknowledge with thanks the award of this mandate and
hereby graciously accept it”,

And Ms Hofmeyr asked you to confirm that you had received
the letter of award on the same day, 25 May, she was asking you to
confirm whether that is the case.

MR DANIEL PHOLISANI MAHLANGU: Yes the letter was received on
the 26th of May.

CHAIRPERSON: 25?

MR DANIEL PHOLISANI MAHLANGU: 26th.

20 **CHAIRPERSON:** Well you were responding on the 25th.

MR DANIEL PHOLISANI MAHLANGU: Yes I’m saying the letter for
award.

CHAIRPERSON: Was received on the 25th.

MR DANIEL PHOLISANI MAHLANGU: 26th.

CHAIRPERSON: Ja but how could you respond on the 25th on a letter

that you had not yet received?

MR DANIEL PHOLISANI MAHLANGU: I think there was maybe an error there but the letter of award was received on the 26th.

CHAIRPERSON: 26th.

MR DANIEL PHOLISANI MAHLANGU: Yes.

CHAIRPERSON: You say then there was a mistake with the date?

MR DANIEL PHOLISANI MAHLANGU: Yes.

CHAIRPERSON: Oh okay.

ADV KATE HOFMEYR: Mr Mahlangu might I assist you because I also
10 had some difficulty with that date of the 26th of May. My understanding
of the fact is that you received the letter of award on the 25th of May
but it bore the wrong date, it bore the date of the 25th of March 2016.
So you followed up with SAA and said, the letter is dated incorrectly
and on the 26th of May, you had a response from SAA correcting it
saying sorry it shouldn't have said March it should have said May and
attaching the correctly dated letter which was 25 May 2016. I think that
is why you recall that it was on the 26th that you got the award but as a
matter of fact you got it on the 25th but you were worried about the date
indicated on it, is that a fair reading of the facts?

20 **MR DANIEL PHOLISANI MAHLANGU:** It's fair but it was on the – it
was on April not March, it was on April.

ADV KATE HOFMEYR: Oh my goodness Mr Mahlangu there was also
another date – there were two date problems, I know that this has gone
on for long but let me just assist you. There was an error in your first
letter appointing you as a transaction advisor, that was the error

between 20 March and 20 April which was cleared up on the 22nd of April 2016, are you comfortable with that?

MR DANIEL PHOLISANI MAHLANGU: Yes.

ADV KATE HOFMEYR: Okay there two date errors, I'm just trying to assist you here. When you get into May as I have the facts you receive the letter of award on the 25th of May 2016 but when you look at the attached letter it says 25 March, so you take it up with SAA and you say SAA's got the wrong date and on the 26th of May you are sent a corrected version of the letter which now bears the date 25 May and not
10 25 March.

MR DANIEL PHOLISANI MAHLANGU: That's true.

ADV KATE HOFMEYR: Super so what that means Mr Mahlangu, just to get back is that you did originally receive the mandate award on the 25th of May and that's why, with respect it makes sense for you to graciously accept it on the 25th of May, do you see that.

MR DANIEL PHOLISANI MAHLANGU: Yes.

ADV KATE HOFMEYR: Super, right now we can proceed because – and I want to give you the benefit of my background to my question. You asked me before we went to the letter, what is my understanding of
20 a cancellation fee, right, in order to assist us here Mr Mahlangu, I'm relying on nothing other than what you yourself say in your statement about the basis for a cancellation fee, so let me just put that to one side. We looked at your statement, and as I read it, you said,

“A cancellation fee is justified when work has been done to discharge a mandate but then the deal falls through and in

those circumstances you should be remunerated for all that work that had been done despite the deal not going through”,

Is that a correct reflection of what you said in your statement?

MR DANIEL PHOLISANI MAHLANGU: Partly, Chair, I think...(intervention).

CHAIRPERSON: What is lacking?

MR DANIEL PHOLISANI MAHLANGU: Yes the lacking is without fault of a service provider, yes and our understanding is – because cancellation fee is a standard fee, it's a standard concept, I think in the
10 financial services space and our thinking then or rather objective of that particular letter of the cancellation fee was to say to SAA, SAA you've actually given us a mandate which is a risk free mandate so meaning – I mean which is risk mandate so go risk capital on our behalf at risk, if you managed actually to get something, then we're actually going to be compensated and the compensation, how actually it was done was, you know as per the success fee. So then – given that this – the only thing that we have as far as the business is concerned was, we're going to be remunerated only on the basis that we actually success – that we raise the funds successfully, one, two SAA utilises
20 those funds because if they don't utilise those funds we don't actually get paid, so that was the spirit of our letter when we actually sent it to them to say SAA, if we don't actually – if you, for whatever reason you terminate our mandate we actually worked and then you're not actually utilising those funds, then you actually need to remunerate us, that was the spirit of the letter.

ADV KATE HOFMEYR: Chair there will be some follow-up questions, but I propose that we take the break if it's convenient now.

CHAIRPERSON: Yes we can take it now or take it at exactly half past, I'm busy...(intervention).

ADV KATE HOFMEYR: Oh I'm happy to take two more minutes and then we can take it at half past.

CHAIRPERSON: Yes but before you do that, let me ask this question. Do you accept Mr Mahlangu that generally speaking there are acceptable situations where somebody will do some work and only get
10 paid if a certain result is achieved and if its not achieved despite that person having put in a lot of effort they might not be or they would not be paid anything, you accept that in life, that happens quite a lot.

MR DANIEL PHOLISANI MAHLANGU: That's true.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: Mr Mahlangu I understand you to have added a further requirement, that there's no fault of the service provider when a cancellation fee is sought but I would like to focus, for this debate on the first part, that a cancellation fee is justified because work has been done and despite the work being done the funds are not utilised.

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

ADV KATE HOFMEYR: Thank you, if that is so Mr Mahlangu on the 25th of May 2016, you had not yet been mandated to do any work in sourcing funds for SAA, correct.

MR DANIEL PHOLISANI MAHLANGU: That's true.

ADV KATE HOFMEYR: Then my question is, how could you motivate

for a cancellation fee on the same day that you were given that award on the basis of work done as you had done no work?

CHAIRPERSON: I'm sorry I think this is – it was at this stage you were asking this question that I wanted to go to the letter because there may be some confusion, let's go to the letter and I want to see the sentence that you rely on.

ADV KATE HOFMEYR: Yes, Chair if we go to the letter on page 494, and Chair my question actually derives from what Mr Mahlangu said in his statement but I think for the purposes of this debate it's useful to
10 look at how Mr Mahlangu motivated for the cancellation fee on that day, and you'll find it most clearly expressed in the penultimate paragraph, Mr Mahlangu would you mind reading that for us, it starts,

“This is to ensure”.

MR DANIEL PHOLISANI MAHLANGU: Yes Chair,

“This is to ensure that we deliver on – sorry, this is to ensure that when we deliver on all mandates entrusted to us by SAA, accordingly should SAA decide to unilaterally terminate our services ahead of us fulfilling our mandate, for whatever reasons, on any matter outside of our control, a cancellation
20 fee of 50% of all fees as per our proposals to SAA shall become due and payable 5 working days from the cancellation notification date”.

CHAIRPERSON: I don't see what I was looking for there, it was the work done part that I ...(intervention).

ADV KATE HOFMEYR: Yes Chair that's why I wanted to clarify, the

point about work done actually derives from Mr Mahlangu's statement, because it's in the stamen where Mr Mahlangu is dealing with this cancellation fee, it was at page 20 where he says,

"The reason why a cancellation fee should be paid or it's reasonable for it to be paid is because of work done",

We saw that at page 20 of his statement. So my question arises from that, in the light of an exchange on the very same day that BnP gets its mandate to source funds, that a cancellation fee should be payable, even before the mandate is fulfilled.

10 **CHAIRPERSON:** Let me, let me put this question, did you want – did you ask or demand that SAA should pay a cancellation fee for work that you would have done if any before you were awarded the mandate?

MR DANIEL PHOLISANI MAHLANGU: No sir.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: So if, pursuant to this letter, two days later SAA had cancelled your mandate, would they have been liable for the cancellation fee?

MR DANIEL PHOLISANI MAHLANGU: No.

20 **ADV KATE HOFMEYR:** And why do you say that, because as I read that sentence, that we looked at, it says,

"Accordingly, I'm picking it up – sorry the second sentence in the penultimate paragraph, accordingly should SAA decide to unilaterally terminate our services ahead of us fulfilling our mandate, for whatever reason on any matter outside our control, a cancellation fee of 50% of all fees as per our

proposals to SAA shall be become due and payable in 5 working days, following the cancellation notification date”,

Why does that not mean that two days later, when you receive the note of the cancellations which was prior to your fulfilment of the mandate SAA would be liable to pay your cancellation fees?

MR DANIEL PHOLISANI MAHLANGU: Yes Chair.

CHAIRPERSON: You understand the question?

MR DANIEL PHOLISANI MAHLANGU: I understand the question but the question – I think Chair, Ms Hofmeyr can you – can assist.

10 **CHAIRPERSON:** Okay Let me try and assist. You have – look at that paragraph that you read a minute ago.

MR DANIEL PHOLISANI MAHLANGU: Yes.

CHAIRPERSON: In the second line it has the phrase “ahead of us fulfilling our mandate”, okay.

MR DANIEL PHOLISANI MAHLANGU: Yes.

CHAIRPERSON: As I understand this paragraph it says that should SAA after having awarded you the mandate, should it thereafter, cancel your mandate, before you fulfilled that mandate they should pay a cancellation fee and I think Ms Hofmeyr’s question is – seeks to
20 establish whether this, ahead of you fulfilling your mandate, didn’t include a situation where, you would not have done any work. You received the letter of award on the 25th of May, 27th of May SAA cancels your mandate, in the meantime you have not done any work, would the cancellation fee be payable, in that situation?

MR DANIEL PHOLISANI MAHLANGU: No.

CHAIRPERSON: Would it depend on you having done some work?

MR DANIEL PHOLISANI MAHLANGU: Yes, hence I was saying the spirit of our letter, our discussion, was to say to SAA – because It's a standard practice, to say to SAA, SAA we've raised the funds and hence we actually even discussing, you know, with the terms sheets, to say SAA we've raised the funds and then post raising the funds successfully, and then you decide not to utilise our funds.

CHAIRPERSON: So your position and if necessary Ms Hofmeyr can look at the letter if she thinks that what you say is not reflected in the
10 letter but was your intention to convey to SAA that one, if you had already performed your work and you'd done so successfully in that you'd secured the funds, but they nevertheless terminate your mandate, then they would have to pay the cancellation fee.

MR DANIEL PHOLISANI MAHLANGU: Yes Chair.

CHAIRPERSON: That's the one scenario, here's another scenario you have started working to carry out the mandate but you have not succeeded yet did you intend to say in that situation, the cancellation fee would be payable?

MR DANIEL PHOLISANI MAHLANGU: Let me understand your
20 question Chair, are you saying we have started the mandate and...(intervention).

CHAIRPERSON: And you have not succeeded in getting the funds.

MR DANIEL PHOLISANI MAHLANGU: So it wouldn't be paid because we haven't actually fulfilled our mandate.

CHAIRPERSON: It would not be payable?

MR DANIEL PHOLISANI MAHLANGU: Yes because we haven't – remember our mandate says we must actually secure 15billion yes.

CHAIRPERSON: Okay so if you have not carried – if you have not successfully carried it out the cancellation fee would not be payable?

MR DANIEL PHOLISANI MAHLANGU: Yes sir, I agree.

CHAIRPERSON: Okay so if you had spent a lot of – you had done a lot of work and spent a lot of money towards your efforts to secure the funds but you have not succeeded, irrespective of how much expenses you may have incurred, if SAA terminated your mandate before you
10 secured the funds from them the cancellation fee would not be payable?

MR DANIEL PHOLISANI MAHLANGU: Yes sir.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: Chair I will need to follow that up because my reading of the letters indicates that is not conveyed but we will do that after the break with your leave.

CHAIRPERSON: No that's fine, we'll take the tea adjournment and – it's now about twenty-one minutes to twelve, we'll resume at five to twelve, we adjourn.

20 **INQUIRY ADJOURNS**

INQUIRY RESUMES

CHAIRPERSON: We may proceed.

ADV KATE HOFMEYR: Thank you Chair. Mr Mahlangu I indicated before the break I would have some follow up questions in relation to the letter that we were looking at in Ms Stimpel's bundle which appears

at page 494. Do you have that still in front of you?

MR DANIEL PHOLISANI MAHLANGU: Yes I do.

ADV KATE HOFMEYR: And just to aid the process if you would also get in front of you Mr Van Der Merwe's bundle. That is the soft file that I think is under one of your other files there that is Exhibit DD3 and the page there that I am interested in is page 31, 31. Thank you I will be relying on both of these letters so it is just useful to have them in front of us. Let us start with the one in Ms Stimpel's bundle Exhibit DD1B the one that is bearing the date of 25 May 2016. Who drafted this

10 letter Mr Mahlangu?

MR DANIEL PHOLISANI MAHLANGU: It is our partners it is Mr Mngadi.

ADV KATE HOFMEYR: Mr Mngadi and then did he forward it to you?

MR DANIEL PHOLISANI MAHLANGU: To Ivan yes and me.

ADV KATE HOFMEYR: And you. So did you check its content before it was sent to SAA?

MR DANIEL PHOLISANI MAHLANGU: Yes I did.

ADV KATE HOFMEYR: Thank you. And the one that appears in Mr Van Der Merwe's bundle which is Exhibit DD3 that one dated 31 May 2015

20 who drafted that letter?

MR DANIEL PHOLISANI MAHLANGU: It is Mr Mngadi as well.

ADV KATE HOFMEYR: And did the same process take place? Did he forward it to you

MR DANIEL PHOLISANI MAHLANGU: Yes to Ivan.

ADV KATE HOFMEYR: To Ivan first and then did you check it before it

was sent to SAA?

MR DANIEL PHOLISANI MAHLANGU: Yes I did.

ADV KATE HOFMEYR: Thank you.

CHAIRPERSON: The reference to Ivan is a reference to Mr Ivan Moyo?

MR DANIEL PHOLISANI MAHLANGU: Moyo yes.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: Thank you Chair. Mr Mahlangu in your answer before the break to the Chair I understood your evidence to be you would not have been entitled to a cancellation fee from SAA unless you
10 had discharged your mandate in sourcing funds. Is that correct?

MR DANIEL PHOLISANI MAHLANGU: That is true.

ADV KATE HOFMEYR: When you described that to the Chair in your answer you spoke about the spirit of the letter, do you recall that?

MR DANIEL PHOLISANI MAHLANGU: That is true.

ADV KATE HOFMEYR: And I want for the purposes of this debate to separate the spirit from the actual words used in the letter if we may? Thank you. So if we go to the letter dated 25 May 2016 which is in Ms Stimpel's bundle at page 494 and that is the penultimate paragraph that we were looking at. I want to understand from you what it means in
20 that second sentence to say:

“Accordingly should SAA decide to unilaterally terminate our services a head of us fulfilling our mandate.”

And then it goes on

“For whatever reason then there is a cancellation fee

that will be payable.”

What does it mean to say the cancellation fee would be payable ahead of you fulfilling your mandate?

MR DANIEL PHOLISANI MAHLANGU: Yes Chair. I guess let me respond it in this particular fashion. When the letter was written we basically as I said that cancellation fee is a standard fee – is a standard practice so we said – when we said ahead of us fulfilling our mandate meaning our mandate was actually to raise approximately 15 billion for SAA and SAA had to actually utilise that 15 billion. So what
10 it meant is if all the legal documentation that has been actually been drafted and basically [indistinct] financial close and SAA decides at a financial close not to actually utilise that and cancel our fee I mean our mandate it is only then that a cancellation fee will kick in. So it does not mean that in between because we understand it we doing this thing at risk so we have been doing this with all the mandates at risk. So at risk what basically happens is we take that particular risk but if we have raised – we have actually done our part as far as raising that capital and – because remember our mandate is for raising a capital and that capital must be utilised. So if you can raise the capital but it
20 is not being utilised that capital it means we have not actually fulfilled our mandate. So SAA at that point in time will have to actually remunerate us for that particular – for us to actually deliver that but for them not to actually using the funds that we have been delivered. I think that was the understanding when we actually drafted this letter. It was obviously I think from where Ms Hofmeyr is sitting we are not

lawyers unfortunately and yes and now if one had to actually because when this letter was written we wrote – when we wrote it to another financial – you know we assumed that it is another financial [indistinct] the person that would understand and understand that these things actually do happen in the market. And if there were any issues they would actually engage us further because this was – this proposal right at the beginning.

ADV KATE HOFMEYR: Do you accept that this extended explanation you have given is not contained in the language of the letter?

10 **MR DANIEL PHOLISANI MAHLANGU:** Yes Chair. The – obviously when one writes this letter to another financial [indistinct] person we do not actually put all the details in a sense that they understand. When someone says a cancellation fee they actually understand what a cancellation fee means. But I agree with Ms Hofmeyr to say we did not actually explain it in detail yes.

CHAIRPERSON: But ahead of us fulfilling our mandate are you saying that meant before you succeeded in getting the funds for SAA or are you saying before that and without SAA using the funds In other words the fulfilment of the mandate that you were talking about did it include
20 that SAA should utilise the funds or it would be a – it would have been the fulfilment a fulfilment of your mandate if you secured the funds irrespective of whether SAA utilised them.

MR DANIEL PHOLISANI MAHLANGU: Yes Chair I think in this case is the question of is us raising the funds because even in the discussion you could understand that we kept on Grissag kept on being mentioned

which they were actually the backers then. So to come to your question is it is for us to secure the funds.

CHAIRPERSON: Irrespective of whether SAA utilises those funds or not?

MR DANIEL PHOLISANI MAHLANGU: Yes. The penalty then comes to say – because our mandate is – because the only time SAA will pay us is when SAA actually utilises the fund. We can raise the fund and SAA signs on the term sheet and all other documentation but decides not to utilise that fund so in any event we actually have not fulfilled that
10 particular mandate because we have not been paid because – remember Chair we get paid on draw down so the...

CHAIRPERSON: No the mandate is not what the SAA would do to – would do, is it not? The mandate is what you were going to do?

MR DANIEL PHOLISANI MAHLANGU: Yes.

CHAIRPERSON: Ja. Now the question is you go to A and say we have a client our client is called SAA they need R50 billion and you – and A agrees I will give you R50 billion for SAA and these are the terms on which I will give the R50 billion to you. And you go to SAA they say no
20 there is no problem with these terms it is fine. But for some reason that you do not understand they decide not to go ahead would you have fulfilled your mandate or would you not have fulfilled your mandate?

MR DANIEL PHOLISANI MAHLANGU: Yes Sir it depends at what point. If,...

CHAIRPERSON: At the point where

1. You have secured the funds. SAA has said the terms and

conditions attached to the funds have no problem but whether they have signed or not they just decide not to utilise the funds.

MR DANIEL PHOLISANI MAHLANGU: At that point ...

CHAIRPERSON: Have you or have you not fulfilled your mandate?

MR DANIEL PHOLISANI MAHLANGU: Can I specify – can I clarify where we would actually say we fulfilled our mandate?

- a. If we have actually raised the funds.
- b. SAA has actually signed a term sheet on those funds.
- c. There are drafts agreements on those particular funds on the discussion and
- d. We have actually finalised those draft agreement.

And then at the end SAA decides not to actually use the funds that we have actually been secured.

CHAIRPERSON: That is when the cancellation fee...

MR DANIEL PHOLISANI MAHLANGU: Will kick in.

CHAIRPERSON: You say would be payable.

MR DANIEL PHOLISANI MAHLANGU: Yes.

CHAIRPERSON: But not before that?

MR DANIEL PHOLISANI MAHLANGU: Not before that.

20 **CHAIRPERSON**: Okay.

ADV KATE HOFMEYR: And let us go to the letter in Mr Van Der Merwe's bundle which is D – Exhibit DD3 page 31. That is as I have it in the sequence is the second follow up letter that you send in relation to the cancellation fee and again I want to draw your attention to the same language being used about before the fulfilment of the mandate.

You will find that in the third paragraph from the third line. It reads:

“Should SAA terminate this mandate before its fulfilment because of matters or issues outside of BNP Capital’s control BNP Capital’s partners or stakeholders have a cancellation fee in US dollars against BNP due to the costs incurred of flying around the world to source funding for and behalf of SAA and then it says: please note that the 50% of the fees that we asked for equate to BNP’s actual
10 cancellation costs.”

Mr Mahlangu do you see again there there is the reference to before the fulfilment of the mandate?

MR DANIEL PHOLISANI MAHLANGU: Yes.

ADV KATE HOFMEYR: And you have had an engagement with the Chair about what that means according to your understanding.

MR DANIEL PHOLISANI MAHLANGU: Yes.

ADV KATE HOFMEYR: I put it to you again that more detailed explanation that you would have to be much further down the road of success in achieving the sourcing of funds does not appear on this
20 letter, does it?

MR DANIEL PHOLISANI MAHLANGU: I agree but as I have said that when you actually write these letters you write to another financial you know astute person. So that particular explanation it was actually not necessary.

CHAIRPERSON: Well let me ask you this question or let me make this

proposition to you for your consideration. What would you say to the proposition that your explanation which you have given to me as to when a cancellation fee would be payable actually means a cancellation fee would be payable after the fulfilment of your mandate. Whereas both the letter at page 494, the letter of 25 May 2006 from your company to SAA and the letter from your company to SAA in Mr Van Der Merwe's file both say the cancellation fee would be payable before the fulfilment of the mandate?

MR DANIEL PHOLISANI MAHLANGU: Yes I agree.

10 **CHAIRPERSON:** You agree?

MR DANIEL PHOLISANI MAHLANGU: Yes I agree that...

CHAIRPERSON: That they – what you say and what the letter say are different?

MR DANIEL PHOLISANI MAHLANGU: Yes hence I said that you know we are not lawyers. I think in hindsight now a lawyer could have actually drafted it much better than he did.

ADV KATE HOFMEYR: Mr Mahlangu did you enquire of Ms Nhantsi if she understood it in the same way that you did?

MR DANIEL PHOLISANI MAHLANGU: No we got a response from her
20 however and her response was can you elaborate on that cancellation fee?

ADV KATE HOFMEYR: On the justification for it correct?

MR DANIEL PHOLISANI MAHLANGU: Yes.

ADV KATE HOFMEYR: Because we do not have to go there now.

MR DANIEL PHOLISANI MAHLANGU: Yes.

ADV KATE HOFMEYR: But when she motivated to the board she certainly did not have this more nuanced understanding of the terms on which the mandate would be – the cancellation fee would be paid, are you aware of that?

MR DANIEL PHOLISANI MAHLANGU: Yes Sir – I think I agree with that.

ADV KATE HOFMEYR: Hm.

MR DANIEL PHOLISANI MAHLANGU: But I am not surprised but having heard – her testimony here and the level of experience
10 especially in the financial market space I am not surprised why.

ADV KATE HOFMEYR: But then why did you assume you would be writing to somebody who would have that more detailed experience and so would read into the words before fulfilment of the mandate all of these quite complicated things about where you are in the timeline.

MR DANIEL PHOLISANI MAHLANGU: Remember we actually – yes Chair we dealing with the CFO of a huge parastatal so I would not actually think any lesser than a person who is actually is supposed to have experience in that position. And also just to add the when we actually discuss the cancellation fee it was not discussed in isolation.
20 At this point in time we were anticipating that we are going to actually enter into an [indistinct] and that [indistinct] was going to be you know assisting us to actually carve out to actually put more understanding on it. At this point in time we are actually just putting proposal to say this is how this thing is going to actually work however we are still waiting for the contract because we have not signed any contract with SAA –

with SAA then. So we are saying to SAA – SAA these are our terms if we – you know anticipating – anticipation of that contract that needs to be part of that contract. So it was actually in the spirit to say firstly this is the fee that we are charging, secondly the cancellation fee so put those in the draft let us actually have a discussion about it.

CHAIRPERSON: Tell me these – this phrase ahead of us fulfilling our mandate in the letter of 25 May – you are not saying that you did not – you did not see it in the letter you obviously must have seen it the phrase ‘ahead of us fulfilling our mandate’ you are not saying you did
10 not see it in the letter? You did see it.

MR DANIEL PHOLISANI MAHLANGU: Chair I said I did see it.

rYs.

MR DANIEL PHOLISANI MAHLANGU: Yes.

CHAIRPERSON: Yes.

MR DANIEL PHOLISANI MAHLANGU: And I – however – the difference is my understanding of it.

CHAIRPERSON: Ja your understanding of ...

MR DANIEL PHOLISANI MAHLANGU: And the interpretation of it yes.

CHAIRPERSON: Are you saying your understanding was that ahead of
20 us fulfilling our mandate meant after you had – after all the things you were supposed to do that you have mentioned had been done, was that your understanding?

MR DANIEL PHOLISANI MAHLANGU: Yes Sir. Yes Chair.

CHAIRPERSON: So your understanding would have been that ahead you would read ahead to mean after? Ahead of fulfilling you would

have read or understood it to mean after the fulfilment of the mandate?
At least in terms of your understanding.

MR DANIEL PHOLISANI MAHLANGU: Chair I want – my understanding of ahead of us fulfilling our mandate in our – I think then when I looked at this where we were sitting and I was sitting in a position where we were saying when are we going to be in a position to fulfil our mandate? Our mandate is fulfilled on condition that SAA actually withdraw – I mean utilise the funding. If they do not utilise the funding we have not actually fulfilled our mandate.

- 10 **CHAIRPERSON:** And of course the letter in Mr Van Der Merwe's file does not use the word ahead it says before its fulfilment that is before the fulfilment of the mandate. You would have had the same understanding that it meant after all those steps had been taken? The fulfilment would occur when all those steps that you have mentioned had taken place.

MR DANIEL PHOLISANI MAHLANGU: The fulfilment occurs I know I maybe it is just language issue here yes.

CHAIRPERSON: Maybe it is that both of us English is not our best first language.

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

CHAIRPERSON: But we – you speak very you know good English I think you are fluent so – but I am not tempting – trying to hold that against you I am just saying it is not our first language both of us.

MR DANIEL PHOLISANI MAHLANGU: Yes Chair. I agree. The – our understanding I think the operative word is mandate – fulfilment of the

mandate.

CHAIRPERSON: Hm.

MR DANIEL PHOLISANI MAHLANGU: And hence I said it was written by us professional financial professionals and then if you give it to obviously a lawyer the interpretation is different.

CHAIRPERSON: Hm.

MR DANIEL PHOLISANI MAHLANGU: Yes I think where – how we actually have to – how I am trying to close that gap where I am sitting is to actually give you the background as to what I was thinking then.

10 **CHAIRPERSON:** Would you say and I take it that from you have been telling us people in the industry would understand – would have the same understanding as you in terms of when a cancellation is payable?

MR DANIEL PHOLISANI MAHLANGU: That is true.

CHAIRPERSON: And is your position that if the intention or if the drafter of the letter intended that cancellation fee should be paid even before those steps happen that would be totally unacceptable and unreasonable?

MR DANIEL PHOLISANI MAHLANGU: That is true Chair.

CHAIRPERSON: Hm. Okay.

20 **ADV KATE HOFMEYR:** Thank you Chair. Just a follow up Mr Mahlangu you spoke about when we had discussions about this in your answer to the Chair a moment ago. Can I just clarify those are not discussions you were having with SAA were they?

MR DANIEL PHOLISANI MAHLANGU: Yes.

ADV KATE HOFMEYR: So they were discussions who between

yourselves and Mr Mngadi?

MR DANIEL PHOLISANI MAHLANGU: Ourselves – yes – ourselves and the office yes.

ADV KATE HOFMEYR: Oh just within BNP Capital not involving Mr Mngadi?

MR DANIEL PHOLISANI MAHLANGU: Mr Mngadi he forwarded us the documentation, the letter and a note to discuss it.

ADV KATE HOFMEYR: Right thank you. I just wanted that clarification. I then want to pick up the point on – we can still stay in
10 Mr Van Der Merwe's file at page 31. Mr Mahlangu I am going to use this letter as illustrative of a point I want to make in relation to a number of these letters. Sorry just to give it to you again it is page 31, 31.

MR DANIEL PHOLISANI MAHLANGU: Okay I am here.

ADV KATE HOFMEYR: That is the second letter as I have it motivating for the cancellation fee. We were looking at the third paragraph earlier. I want to just get clarity as to your knowledge of certain facts in this letter. When you wrote in paragraph 3 there that BNP Capital's – middle of the way down that paragraph – BNP Capital's partners or
20 stakeholders have a cancellation fee in US dollars against BNP due to the costs incurred of flying around the world to source funding for and on behalf of SAA. Can we stop there? Did you have knowledge of those facts when they were included in this letter?

MR DANIEL PHOLISANI MAHLANGU: We were told. I did not – I did not actually have confirmation but that is what we were told.

ADV KATE HOFMEYR: And who were you told that by?

MR DANIEL PHOLISANI MAHLANGU: Mr Mngadi.

ADV KATE HOFMEYR: And did you not take any steps at any point to verify these facts with Grissag?

MR DANIEL PHOLISANI MAHLANGU: No as I have indicated Chair that Mr Mngadi is the one that brought Grissag on board. So Mr Pieter Van Der Merwe had actually a relationship with Mr Mngadi so they were in constant communication. So whatever that comes from Mr Mngadi we took it as it is from him it is the gospel so we just fulfilling it.

10 **ADV KATE HOFMEYR:** How do you know they were in constant communication?

MR DANIEL PHOLISANI MAHLANGU: If you check our files even the emails, the MOU that have been sent to us it is a correspondence between the two of them it just gets sent to us. Even the meeting that we went to SAA was arrange by Mr Mngadi so they were in constant communication.

ADV KATE HOFMEYR: And you on the basis of what you have said now I assume you would not have a basis to dispute what Mr Van Der Merwe said under oath before this commission which is that none of
20 these costs had as a matter of fact been incurred by Grissag?

MR DANIEL PHOLISANI MAHLANGU: That is true.

ADV KATE HOFMEYR: Thank you. I would then like to just move on the question of cancellation Mr Mahlangu to the reduction in the sought cancellation fee.

MR DANIEL PHOLISANI MAHLANGU: Okay.

ADV KATE HOFMEYR: Are you aware that it started as 50% of all your proposed fees and then it got reduced to 49.9million are aware of that?

MR DANIEL PHOLISANI MAHLANGU: Yes I am aware.

ADV KATE HOFMEYR: If we go to the letter in which that is conveyed to SAA you will find it again in Mr Van Der Merwe's bundle which is Exhibit DD3 and it is just over the page where we were. You will find it – sorry I am just looking this – oh sorry I do apologise. It is page 32

MR DANIEL PHOLISANI MAHLANGU: Yes.

ADV KATE HOFMEYR: In that bundle. You will see there is this a
10 letter that you sent to SAA?

MR DANIEL PHOLISANI MAHLANGU: Yes.

ADV KATE HOFMEYR: Does it follow the same approach as previously? Did Mr Mngadi draft it?

MR DANIEL PHOLISANI MAHLANGU: Yes.

ADV KATE HOFMEYR: Did you check it before it was sent?

MR DANIEL PHOLISANI MAHLANGU: Yes.

ADV KATE HOFMEYR: Did you take any steps to verify the facts that Mr Mngadi had put in the draft letter?

MR DANIEL PHOLISANI MAHLANGU: The facts with regards to the
20 values or Grissag?

ADV KATE HOFMEYR: Well any of the facts?

MR DANIEL PHOLISANI MAHLANGU: No.

ADV KATE HOFMEYR: Right. Let us look at what he said there. In the first paragraph as I read it is says:

“Our previous letter that required a cancellation fee

of 50% of our total fees in the event that our fundraising mandate is cancelled by SAA for reasons beyond BNP Capital refers.”

Mr Mngadi I am just going to pause there but as these letters progress I want to put it to you that your understanding of these letters gets less and less clear because this first paragraph is now saying nothing about fulfilment it is just saying if we can – if SAA cancels the mandate at any point there is going to be a cancellation fee payable, do you see that?

MR DANIEL PHOLISANI MAHLANGU: Yes I do.

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

CHAIRPERSON: Well before you proceed Ms Hofmeyr on a lighter note.

ADV KATE HOFMEYR: Yes.

CHAIRPERSON: I see that both this letter also

ADV KATE HOFMEYR: Yes.

CHAIRPERSON: Has a date as well as the one on the 31st of – on page 31 has a date.

ADV KATE HOFMEYR: It should have been much clearer earlier.

CHAIRPERSON: So we now have three letters from...

20 **ADV PHILLIP MOKOENA:** We do they are standing against me.

CHAIRPERSON: From BNP that have got dates.

ADV KATE HOFMEYR: Indeed. I think what I should be and in fairness to the record and Mr Mahlangu once cancellation fees start being engaged upon I note many dates on the letters. Prior to that there is not many dates that I could find. But in fairness to you I

should not have suggested that the vast majority did not have dates so I do apologise for that. If we...

MR DANIEL PHOLISANI MAHLANGU: Accepted.

ADV KATE HOFMEYR: Thank you.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: If we move down to the second paragraph it reads there:

“Following concerns by SAA that the cancellation fee we requested is high we have now consulted with
10 Grissag and the issue is the substantial cost of their penalty to us if we cancel.”

Can I just break that down? When you wrote there, we have now consulted with Grissag. Were you referring to yourself?

MR DANIEL PHOLISANI MAHLANGU: Self meaning the company or the consortium?

ADV KATE HOFMEYR: No yourself Mr Mahlangu are you part of that we?

MR DANIEL PHOLISANI MAHLANGU: No.

ADV KATE HOFMEYR: So who is the person or persons who were
20 consulting with Grissag?

MR DANIEL PHOLISANI MAHLANGU: Inline Trading.

ADV KATE HOFMEYR: And in particular the individual?

CHAIRPERSON: Sorry what was that answer?

MR DANIEL PHOLISANI MAHLANGU: Inline Trading Mr Mngadi yes.

CHAIRPERSON: Oh okay Mr Mngadi

MR DANIEL PHOLISANI MAHLANGU: Yes.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: And then this question of a substantial cost of their penalty to us if we cancel. Again I assume you were relying on Mr Mngadi for that information?

MR DANIEL PHOLISANI MAHLANGU: That is true.

ADV KATE HOFMEYR: And you would have no basis to dispute Mr Van Der Merwe's evidence that there was no penalty that Grissag was going to impose on BNP Capital?

10 **MR DANIEL PHOLISANI MAHLANGU:** There is...

CHAIRPERSON: I think repeat the question?

ADV KATE HOFMEYR: Apologies.

MR DANIEL PHOLISANI MAHLANGU: Ja repeat the question.

ADV KATE HOFMEYR: Mr Van Der Merwe's evidence was that there was no penalty that Grissag was going to apply, are you aware of that? That that is the evidence he gave in this commission.

MR DANIEL PHOLISANI MAHLANGU: Yes I am aware of it.

20 **ADV KATE HOFMEYR:** And because you had no interactions with him you could not say that he is giving false evidence when he says that, could you?

MR DANIEL PHOLISANI MAHLANGU: I cannot say it, I cannot comment ja.

ADV KATE HOFMEYR: Thank you. Thank you.

CHAIRPERSON: Let me ask the question in regard to that second paragraph in the letter at page 32 which says that Grissag would

impose a penalty on you as I understand it if SAA cancelled. Now you see that part?

MR DANIEL PHOLISANI MAHLANGU: Yes Chair.

CHAIRPERSON: Yes. Was that part true? As far as you knew was it true that Grissag would impose a penalty on you if SAA cancelled

MR DANIEL PHOLISANI MAHLANGU: Yes. I would not comment on that. I would not know.

CHAIRPERSON: Sorry?

MR DANIEL PHOLISANI MAHLANGU: I would not know because to say
10 to it ...

CHAIRPERSON: You do not know – you did not know then and you do not – you did not know then whether that was true?

MR DANIEL PHOLISANI MAHLANGU: Yes.

CHAIRPERSON: But you – you – one would have expected that you would have asked Mr Mngadi what is the basis for that because I am the Head of BNP Capital. I do not know what you are talking about here that Grissag is going to impose a penalty on us. Where is that? Where do you get that from?

MR DANIEL PHOLISANI MAHLANGU: Chair remember that right at the
20 beginning – I mean – post – right at the beginning Mr Mngadi has actually being engaging with Grissag right from the start. So it is – it is – I think it took us to this date which is the 14th of – I mean – 4 July where he has actually been engaging. Even the time sheets that had been sent to us.

It was exchanged between him and Grissag. So at this stage

we – in our minds we actually had no doubt that perhaps that is the discussion that he had because firstly he was actually interacting with Grissag. Secondly he was interacting with – with SAA. So even in the letter he says we have realised that your fees are actually too high. Hence on our part we did not actually have any doubts in our mind that we are supposed to actually now at that stage engage – engage Grissag.

So we thought based as per *status quo* and as things have happening he is actually engaging with Grissag as – you know – as –
10 as part of his responsibilities.

CHAIRPERSON: But did you ask him Mr Mngadi whether indeed that was so namely Grissag would impose a penalty on you if SAA cancelled? Did you ask him whether indeed that was so or you did not ask him? You – you assumed what he was saying was true?

MR DANIEL PHOLISANI MAHLANGU: Yes. Yes Chair.

CHAIRPERSON: You did not ask him?

MR DANIEL PHOLISANI MAHLANGU: I did not ask him.

CHAIRPERSON: I am concerned whether you are not asking particularly with regard to this aspect - maybe with regard to others
20 there might be another argument – whether you should not have been concerned that you could be party to conveying to SAA something that was not true about your own company as well - that a penalty would be imposed upon your own company by somebody when you know nothing about that.

MR DANIEL PHOLISANI MAHLANGU: Chair as – I – I agree with what

you are saying now but just to give you background of how things have actually been happening. As I indicated that Mr Mngadi was running with the process of actually engaging with Grissag. So from – from the word go even the term sheet even – you know – the changes in the term sheet he was actually involved in that.

So our responsibility because when the – the cancellation – cancellation fee came – started – the discussion of the cancellation fee started where I was sitting as a – as a CEO of BNP Capital to me it was the initial discussion which at some point I would assume that that
 10 discussion was going to be – you know - catered for in the legal document – in the SLA that we were going to sign with SL - with – with SAA.

So as time progressed given that Mr – Mr Mngadi was the one who was actually in constant communication to – with SAA and with Grissag. We actually – I just assumed as – as the case that – as the case – you know – has been that this gentleman – Mr Mngadi has been interacting with Grissag. So they have – they have even said nothing at this point in time even 4 July.

They even sent us a mandate – Grissag – through Mr Mngadi
 20 to say we must sign this mandate between us and Grissag. So hence I am saying at – at this point in time I had no doubts in our – in my mind that whatever Mr Mngadi was saying concerning Grissag was not true.

CHAIRPERSON: Yes. No that – that is fine. Just this one question. In terms of your experience in this – in this sector would there be circumstances under which a funder would impose a penalty on you if

your client ends up not utilising the funds?

MR DANIEL PHOLISANI MAHLANGU: No sir.

CHAIRPERSON: They will – they will – there is no such in the – in the industry?

MR DANIEL PHOLISANI MAHLANGU: There is no such.

CHAIRPERSON: Which suggests to me that that would be all the more reason why you should have found – you should have wanted to know more about why would this funder impose a penalty on us because that is not normal in the industry.

- 10 **MR DANIEL PHOLISANI MAHLANGU:** And I agree with you sir but the circumstances here were different because Grissag itself is not a bank. It is another extension of us who has got access to funds. So – so in that – in that light we thought Grissag acts a – as an advisor like us – you know – you know in the big scheme of things.

CHAIRPERSON: Okay, thank you.

- ADV KATE HOFMEYR:** Mr Mahlangu I would like to pick up on something that you addressed at the end of your statement which relates to an affidavit that Mr Mngadi required that you sign in 2017 but before we go there I just want to be clear as to my understanding of
20 some of the other things you said in your statement. Mr Mahlangu I have understood your statement to indicate that Mr Mngadi was the primary contact person between yourselves and SAA. Is that correct?

MR DANIEL PHOLISANI MAHLANGU: And Grissag yes.

ADV KATE HOFMEYR: And Grissag indeed. For now ...

CHAIRPERSON: Actually the only person.

ADV KATE HOFMEYR: Indeed.

CHAIRPERSON: Is it not? The only contact person between yourself and SAA and ...?

MR DANIEL PHOLISANI MAHLANGU: And Grissag yes.

CHAIRPERSON: *Ja.*

ADV KATE HOFMEYR: And then if you pick up at page 43 of your statement you will find that in EXHIBIT DD4.

CHAIRPERSON: What paragraph?

ADV KATE HOFMEYR: We page 43 paragraph 11.3.6 Chair.

10 **CHAIRPERSON:** Okay.

ADV KATE HOFMEYR: In paragraph 11.3.6 you are responding to the question:

“What was the nature of the joint venture with Inline Trading?”

Do you see that Mr Mahlangu? Apologies page 43.

MR DANIEL PHOLISANI MAHLANGU: Oh.

ADV KATE HOFMEYR: And I am at paragraph 11.3.6. Do you see that?

MR DANIEL PHOLISANI MAHLANGU: Yes.

20 **ADV KATE HOFMEYR:** There is a question below halfway down the page at paragraph 11.3.6.

“What was the nature of the joint venture with Inline Trading?”

Do you see that?

MR DANIEL PHOLISANI MAHLANGU: Yes.

ADV KATE HOFMEYR: And I am interested in the first two sentences.

You write there:

“Inline Trading is the company that was brought in by Mr Mngadi as his company. As already explained in the background Inline Trading or Mr Mngadi was responsible for compiling the bid, liaising with SAA, preparing all letters, proposals and relevant documentation.”

Do you see that?

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

ADV KATE HOFMEYR: And is that an accurate reflection of the way things were run?

MR DANIEL PHOLISANI MAHLANGU: Chair I think what we need to do is to qualify in terms of because they actually got involved as far as the sourcing of capital is concerned.

ADV KATE HOFMEYR: Well they were involved right from the outset ...

MR DANIEL PHOLISANI MAHLANGU: Yes.

ADV KATE HOFMEYR: As your transaction advisor partner. Were they not?

20 **MR DANIEL PHOLISANI MAHLANGU:** The extent of it yes. At the beginning as a transaction advisor because the transaction advisor actually did not go any further. Yes it was not actually – we did not do much. We did work but it was actually overtaken by events.

ADV KATE HOFMEYR: Yes but these facts that Mr Mngadi was responsible for compiling the bid is that correct?

MR DANIEL PHOLISANI MAHLANGU: Hence I am saying now we need to actually qualify.

ADV KATE HOFMEYR: Hm.

MR DANIEL PHOLISANI MAHLANGU: The – the bid that we are talking about is the – the source fund – sourcing of funding. That is what I – hence I am qualifying.

ADV KATE HOFMEYR: Oh I see. You are drawing a distinction between that and the transaction advisor services?

MR DANIEL PHOLISANI MAHLANGU: Yes.

10 **ADV KATE HOFMEYR:** There was no bid though for the sourcing of funds. Was there? There was just a proposal?

MR DANIEL PHOLISANI MAHLANGU: To us it is a bid. Yes, *ja*. I agree.

ADV KATE HOFMEYR: Oh and liaising with SAA is that what Mr Mngadi did?

MR DANIEL PHOLISANI MAHLANGU: Yes.

ADV KATE HOFMEYR: Preparing all letters. Is that what he did?

MR DANIEL PHOLISANI MAHLANGU: Letters, yes.

20 **ADV KATE HOFMEYR:** And he – preparing all proposals. Is that what he did?

MR DANIEL PHOLISANI MAHLANGU: Proposals – as far as the – I think maybe proposal is just too wide in a sense that if someone says you prepare proposals it is – you actually – yes it involves quite a lot.

ADV KATE HOFMEYR: Hm.

MR DANIEL PHOLISANI MAHLANGU: So in this case you would

actually – he was actually preparing letters.

ADV KATE HOFMEYR: Hm.

MR DANIEL PHOLISANI MAHLANGU: Yes but proposals no proposals.

ADV KATE HOFMEYR: Who was preparing the proposals?

MR DANIEL PHOLISANI MAHLANGU: Proposals it was us.

ADV KATE HOFMEYR: Which of those proposals?

MR DANIEL PHOLISANI MAHLANGU: The proposals – I now have to define what a proposal means.

ADV KATE HOFMEYR: Yes.

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

ADV KATE HOFMEYR: Because I want to understand why this is necessary as a clarification of that paragraph. Maybe I could assist with going through the proposals that I am aware of. The proposal on sourcing of funds did Mr Mngadi prepare that?

MR DANIEL PHOLISANI MAHLANGU: Yes.

ADV KATE HOFMEYR: The proposal attached to your original bid did Mr Mngadi prepare that?

MR DANIEL PHOLISANI MAHLANGU: The proposal – his input?

ADV KATE HOFMEYR: Yes. For the transaction advisor services.

20 **MR DANIEL PHOLISANI MAHLANGU:** Okay. His input, yes. Not a proposal. That is his input.

CHAIRPERSON: He made – he made an input?

MR DANIEL PHOLISANI MAHLANGU: Yes.

CHAIRPERSON: That was used in the proposal?

MR DANIEL PHOLISANI MAHLANGU: Yes.

CHAIRPERSON: But the proposal was prepared by ...

MR DANIEL PHOLISANI MAHLANGU: By us.

CHAIRPERSON: Your team?

MR DANIEL PHOLISANI MAHLANGU: Yes.

CHAIRPERSON: Not by him?

MR DANIEL PHOLISANI MAHLANGU: Yes Chair.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: Thank you. So he exclusively did the sourcing of funds proposals but he assisted your team in the transaction advisor services proposal. Is that a fair statement of the facts?

MR DANIEL PHOLISANI MAHLANGU: He provided input yes.

ADV KATE HOFMEYR: Thank you. Then I would like to go to page 52 of your statement – 5-2. Mr Mahlangu at that page you begin at paragraph 12.2 on the basis that you and I am quoting here:

“Find it vital to bring to the attention of the Commission something that happened in 2017.”

Can you please tell us what that was?

MR DANIEL PHOLISANI MAHLANGU: Yes Chair. From two point I said:

20 “I find it vital to bring it to the ...”

Oh, must I explain or read?

ADV KATE HOFMEYR: Hm. An explanation is ...

MR DANIEL PHOLISANI MAHLANGU: Oh.

ADV KATE HOFMEYR: Is entirely adequate thank you.

MR DANIEL PHOLISANI MAHLANGU: In 2017 I got a – a call from

Mr Mngadi and then he said – he said to me he wants actually to – to see urgently and when I actually got to him and – and then he says to me your actually – one of your which - he meant Vonani has actually assisted him – Mr Mathebula.

He assisted him with the – with one of the affidavits and that affidavit meant that we – we must - you know - that he is not an employee of BNP Capital and then we said – and then he was telling me that he actually spoke to Mr Mathebula. Mr Mathebula actually assisted him and I said yes you are not an employee of BNP Capital
10 and – and secondly he says to me and also that he was not actually involved with and then the second affidavit was actually indicating that he was not actually involved in compilation of the bid meaning of the RFI.

Yes, I said yes we compiled. You provided an input and then he said okay fine can you actually sign on that – on that – on the affidavit but now given that one has actually been sitting here understanding all the issues that have transpired and – you know – and I realise that one has actually made a mistake as far as that aspect is concerned because what – what in essence he was trying to do was to
20 trying divorce himself away from this transaction to say he did not participate. He did not provide any input.

He was not party to it, yes. So I thought it is very critical that I would bring this to – to this Commission.

ADV KATE HOFMEYR: Did you consider carefully what you were being asked to confirm as correct before you signed the affidavit?

MR DANIEL PHOLISANI MAHLANGU: I tried but I am not a lawyer but I think what – what he was implying is he did not because he actually mentioned even the bid because we – we actually completed the bid. So he says he is not the one that completed the bid. I said yes you did not complete the bid. We did it.

CHAIRPERSON: I think Ms Hofmeyr wants to focus on whether you understood what was written in the affidavit before you signed it?

MR DANIEL PHOLISANI MAHLANGU: Hm.

CHAIRPERSON: Whether you understood what it – what it meant.

10 **MR DANIEL PHOLISANI MAHLANGU:** I think I understood as a layman as far as the legalities are concerned but I think the essence of it where I am sitting was - was basically saying to me he did not actually fill - sort of complete the bid which is – is the bid that is actually been discussed in this document and I said yes he did not complete it.

CHAIRPERSON: But the affidavit that you signed did it say he was not an employee and had not been an employee of BNP and had not completed the bid or did he say something else?

MR DANIEL PHOLISANI MAHLANGU: Chair there were two. One was actually signed by me think he actually dealt with Vonani Mathebula to
20 say he was (intervenes).

CHAIRPERSON: What - two affidavits?

MR DANIEL PHOLISANI MAHLANGU: Yes.

CHAIRPERSON: Ja.

MR DANIEL PHOLISANI MAHLANGU: To say he is not an employee.

CHAIRPERSON: Oh the one that said he was not an employee

MR DANIEL PHOLISANI MAHLANGU: Is not an employee, yes.

CHAIRPERSON: Was signed by Mr Mathebula?

MR DANIEL PHOLISANI MAHLANGU: Yes.

CHAIRPERSON: Okay.

MR DANIEL PHOLISANI MAHLANGU: That is what he told me and then the ...

CHAIRPERSON: You never saw that one?

MR DANIEL PHOLISANI MAHLANGU: I did not – yes. No I did not see it.

10 **CHAIRPERSON:** *Ja.*

MR DANIEL PHOLISANI MAHLANGU: Yes and the – the one he – he brought to me was – was basically saying to me he did not actually complete this bid - the bid document.

CHAIRPERSON: But is that what the affidavit said as you read it or is that what he told you it was saying?

MR DANIEL PHOLISANI MAHLANGU: It is what the affidavit – yes when I read it.

CHAIRPERSON: Oh you - when you read it?

MR DANIEL PHOLISANI MAHLANGU: Yes.

20 **CHAIRPERSON:** You understood it to say he had not compiled or completed the bid?

MR DANIEL PHOLISANI MAHLANGU: Yes but that is why I am saying that was – you know – some time ago. I might have missed some of the points in there but in essence that is what he actually meant.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: Mr Mahlangu we have asked you if you have a copy of that affidavit still. Do you?

MR DANIEL PHOLISANI MAHLANGU: No. He actually brought a hard copy, yes.

ADV KATE HOFMEYR: And then did he take it away with him?

MR DANIEL PHOLISANI MAHLANGU: Yes.

ADV KATE HOFMEYR: And do you remember taking time to read through it before you signed it or were you relying on what Mr Mngadi told you it contained?

10 **MR DANIEL PHOLISANI MAHLANGU:** I tried to read it, yes. I think as the – it was – you know – I think it involved also – it was a bit lengthy. So I tried to read it for my own understanding. Hence I am saying I might have missed some stuff but in essence I think that is what he was saying.

ADV KATE HOFMEYR: Because at paragraph 12.2 you say that - one of the things that you stated in that affidavit was that:

“Mr Mngadi was not in BNP Capital’s employ.”

But I understand you just to have said in your testimony that that was something contained in another affidavit.

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

ADV KATE HOFMEYR: So which was it? Was that fact in your affidavit or was it in Mr Mathebula’s affidavit?

MR DANIEL PHOLISANI MAHLANGU: Mr Mathebula’s affidavit.

ADV KATE HOFMEYR: So it is incorrect when you say here you signed an affidavit in terms of which you stated that:

“Mr Mngadi was not in BNP Capital’s employ.”

MR DANIEL PHOLISANI MAHLANGU: Yes. I think that was – that was incorrect. It is a mistake.

ADV KATE HOFMEYR: Right.

MR DANIEL PHOLISANI MAHLANGU: There were two affidavits yes. I think it is supposed to have explained in that particular fashion.

ADV KATE HOFMEYR: Have you made attempts to get a copy of that affidavit from Mr Mngadi?

MR DANIEL PHOLISANI MAHLANGU: No.

10 **CHAIRPERSON:** Did you ask him what prompted him coming to you and asking you to sign this affidavit? What had happened? What is wrong and did you ask him where this affidavit would be submitted to?

MR DANIEL PHOLISANI MAHLANGU: I – Chair I think after the – the expose I think on the – you know - the articles that came out that - that we realised that he actually was employed by Nedbank and basically was – I think it was – he was fighting with Nedbank ever since. It was actually in the papers. So in 2017 – you know – I am not sure what prompted him to actually ask us to actually do that.

20 Then we said as far as you completing the bid you not actually involved. We actually completed the bid.

CHAIRPERSON: So you – it was in the context of – of his issues with Nedbank?

MR DANIEL PHOLISANI MAHLANGU: Nedbank, yes.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: But Mr Mahlangu if it was public knowledge at

that stage that Mr Mngadi was employed at Nedbank while he put in a competitive bid with your company through Inline Trading were you not concerned when he had approached you in 2017 to ask you to put an affidavit together that would make it appear as though he had had no role in the submission of the bid that you put in? Were you not concerned about that?

MR DANIEL PHOLISANI MAHLANGU: Definitely I was concerned sir and hence what – what basically – okay two things. Firstly obviously it was suspicious to say why at this point in time because I think at that
10 point in time it was – I am not sure was he already fired. He as no longer working, yes. So – so what we wanted to do was to actually set the record straight from our part to say how do we actually know the facts as far as we concerned to say what is it that he has done what is it that he has not done.

ADV KATE HOFMEYR: But Mr Mahlangu if you were concerned to set the facts straight should your affidavit not have said what your affidavit or your statement before this Commission says which is this whole thing started with Mr Mngadi approaching you. Mr Mngadi led this thing through all its phases. Mr Mngadi asked you to take his name off the
20 bid documents.

Would not that have been the fullest account of what actually happened between BNP Capital and Mr Mngadi?

MR DANIEL PHOLISANI MAHLANGU: I do not agree with that because this - the affidavit remember was given to me. I did not draft the affidavit. It was given to me. I had to read the affidavit and based on

the facts at that point in time we realised that okay fine as far as these facts that he is saying – you know – these facts are true. We are not – I was not actually not misrepresenting any facts.

We are just saying Mr Mngadi firstly when he told me that my – my colleague actually signed – has actually declared that he is not in the employ of BNP. I said it is true. He is not – he is not employed by us as far as I know which is fact and then secondly and then he was showing me a bid document which was completed by us to say this document was solely completed by BNP Capital.

10 I said yes it was completed by us and then I signed the affidavit on that basis and not anything more.

ADV KATE HOFMEYR: Mr Mahlangu I will put it to you in fairness but I understood your testimony to be that you were concerned to set the facts straight in 2017 and saying only the two things you said in that affidavit would not have set the facts straight about Mr Mngadi's extensive involvement in the BNP Capital bid. Do you accept that?

MR DANIEL PHOLISANI MAHLANGU: In – in light of the information I had Chair yes that is how - that is how I acted. If for some reason someone came to me and said what was Mr Mngadi's participation the
20 discussion would have been different but at that point in time where I was give – where I was given facts which are – which are straightforward to say these are things we – I - you did not complete this document.

Yes you did not. I – I - then on that basis it is only then that I signed but I will qualify the statement sir – I mean – Chair to say in

hindsight you know when one looks at what has transpired and the testimonies and everything else hence I said that I regret because what Mr Mngadi was basically saying hence I brought it to this Commission to say what Mr – Mr Mngadi was basically saying was trying to say he never participated in this – in the - in SAA transaction.

So it is only now in hindsight that I looked at it and think what it is what he was trying to achieve with this. You know – hence – hence I am saying it is – it is a decision that one regrets to say one if in hindsight given more information than one knows even before that one
10 would actually have made that – taken that decision.

CHAIRPERSON: Well you said earlier on that when Mr Mngadi approached you and asked you to sign this affidavit. There had been the story involving him and Nedbank had been in – in the media already as I understood your evidence was. Is my understanding correct?

MR DANIEL PHOLISANI MAHLANGU: Yes. It was (intervenes).

CHAIRPERSON: You said he might even have been fired by that time you were not sure.

MR DANIEL PHOLISANI MAHLANGU: Yes. He was not working at that time.

20 **CHAIRPERSON:** He was not working at that time?

MR DANIEL PHOLISANI MAHLANGU: Yes.

CHAIRPERSON: What had you understood him to be in trouble with Nedbank for based on the media?

MR DANIEL PHOLISANI MAHLANGU: I – I really do not know Chair because he just said to me your colleague had just signed that I am not

an employee. I said yes.

CHAIRPERSON: No, no Mr Mahlangu I am not asking about now your discussion with Mr Mahlangu. I am asking what you had heard or read in the media ...

MR DANIEL PHOLISANI MAHLANGU: Oh.

CHAIRPERSON: Before he came to you with the affidavit about what his issues were with Nedbank?

MR DANIEL PHOLISANI MAHLANGU: What – what we read and it was public knowledge that he was actually working for Nedbank.

10 **CHAIRPERSON:** And what did that mean in the context of the role that he had played in the bid as your partner in the bid? I heard that you might be needing to catch a flight?

MR DANIEL PHOLISANI MAHLANGU: Yes I am late.

CHAIRPERSON: Ja. What – what time must you be out of here?

MR DANIEL PHOLISANI MAHLANGU: I was meant to be at half past 12.

CHAIRPERSON: Oh, okay. Okay maybe just answer that and then we will try and I release you as soon as possible but it help – it would help if you answer questions you know just straight.

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

CHAIRPERSON: So the question was what did the fact that he had been employed by Nedbank ...

MR DANIEL PHOLISANI MAHLANGU: Yes.

CHAIRPERSON: What did you – what did that mean to you in the context of the role that he had played in the bid? What mean – what

did put it that – what meaning did you attach to that?

MR DANIEL PHOLISANI MAHLANGU: Hm.

CHAIRPERSON: Did it get you concerned or not about his role?

MR DANIEL PHOLISANI MAHLANGU: Yes it did.

CHAIRPERSON: Yes.

MR DANIEL PHOLISANI MAHLANGU: Yes it very much concerned – actually one regrets the moment – you know – we met him because ...

CHAIRPERSON: Yes.

MR DANIEL PHOLISANI MAHLANGU: Yes – because ever since
10 everything is.

CHAIRPERSON: Ja.

MR DANIEL PHOLISANI MAHLANGU: Yes. It is (intervenes).

CHAIRPERSON: Because I would have thought that – so – so did it mean to you that he had done something he should not have done while he was employed by Nedbank?

MR DANIEL PHOLISANI MAHLANGU: That is true sir.

CHAIRPERSON: And knowing that fact before he came to you with the affidavit I would have thought would have meant that you would have been much more careful about what you were going to sign because
20 here was somebody who had – had not disclosed to you that he had been employed by Nedbank and yet was involved in this bid?

MR DANIEL PHOLISANI MAHLANGU: I – I agree with you Chair.

CHAIRPERSON: Hm.

MR DANIEL PHOLISANI MAHLANGU: I think on my part hence I am saying – hence I said at the beginning you know a couple of minutes

ago that it was just a lapse as far as you know the decision that I made.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: Thank you Chair. I propose just to put some concluding propositions to Mr Mahlangu for your comment in fairness. There are I think only seven of them and hopefully that will be the conclusion of your evidence subject to the Chair's follow up questions. Mr Mahlangu I would like your comment on the following which appears from your evidence I propose that BNP Capital agreed not to reveal the
10 involvement of Mr Mngadi in the bid for the transaction advisor services with SAA. Do you confirm that that is the case?

MR DANIEL PHOLISANI MAHLANGU: Hm.

CHAIRPERSON: Please repeat the question for him – the proposition.

ADV KATE HOFMEYR: That BNP Capital agreed not to reveal the involvement of Mr Mngadi in the bid for transaction advisor services with SAA.

MR DANIEL PHOLISANI MAHLANGU: That is incorrect.

ADV KATE HOFMEYR: Incorrect?

MR DANIEL PHOLISANI MAHLANGU: Yes.

20 **ADV KATE HOFMEYR:** Why?

MR DANIEL PHOLISANI MAHLANGU: So your question across as we – if you say reveal as if we consciously sort of hide ...

CHAIRPERSON: Decided not to ...?

MR DANIEL PHOLISANI MAHLANGU: Yes.

CHAIRPERSON: Not to reveal?

MR DANIEL PHOLISANI MAHLANGU: Yes. It comes across in that particular fashion but the essence – I think the true facts are Ms – Mr Mngadi at the eleventh hour ...

ADV KATE HOFMEYR: Hm.

MR DANIEL PHOLISANI MAHLANGU: He withdrew his – is details in the bid document and it is not like – it is BNP Capital's doing. It is – it is basically he just sent us information to one of us guys to say can you take me out and replace me with this particular individual ...

ADV KATE HOFMEYR: Yes.

10 **MR DANIEL PHOLISANI MAHLANGU:** And it is not like we – we actually made a conscious decision.

ADV KATE HOFMEYR: Well you were asked to remove every reference to him in the bid document and as I understand it your employee – Mr Moyo – agreed to that. Correct?

MR DANIEL PHOLISANI MAHLANGU: Yes.

ADV KATE HOFMEYR: Thank you. The second proposition is that BnP Capital's bid was not compliant with the terms of the tender and as a consequence ought not to have been awarded the contract.

MR DANIEL PHOLISANI MAHLANGU: That's not true.

20 **ADV KATE HOFMEYR:** So all of the respects that we went through yesterday of the non-compliance, the non-provision of the consolidated BBBEE certificate, the non-provision of the financial schedule, the pricing schedule the date of submission, the non-provision of a JV or consortium agreement as you regard that as not rendering your bid non-compliant?

MR DANIEL PHOLISANI MAHLANGU: I don't agree Chair, can I explain why?

CHAIRPERSON: Yes you may.

MR DANIEL PHOLISANI MAHLANGU: Yes, as far as the JV or the consortium is concerned, I understand where Ms Hofmeyr comes from ours was not incorporated it was a loose consortium where there's a lead bidder which was us and Inline Trading was just a sub-contractor. So as far as the requirements are concerned, you cannot actually have a consolidated bid certificate for such, so we've – actually we've done
10 so many of these arrangements even – to date we don't have, the only thing that you have you actually submit separate documentation, especially with a sub-contractor hence we submitted a tax clearance certificate and a BEE so that's the requirement but as far as – if it's a consolidated – if it's a consortium incorporated in that particular fashion, that understanding yes.

ADV KATE HOFMEYR: Sorry Mr Mahlangu just a follow-up question there, did you say that you submitted Inline Trading's BBBEE certificate?

CHAIRPERSON: Switch on the mic.

20 **MR DANIEL PHOLISANI MAHLANGU:** What I'm saying is...(intervention).

ADV KATE HOFMEYR: No just the question was, did you submit Inline Trading's BBBEE certificate with the bid?

MR DANIEL PHOLISANI MAHLANGU: I'd like to understand that, that was submitted.

ADV KATE HOFMEYR: You'd like to understand or did you submit it?

MR DANIEL PHOLISANI MAHLANGU: I can't tell what was Inline information that was submitted but I know certain information that is critical to the bid as per our arrangement was actually submitted...(intervention).

ADV KATE HOFMEYR: Yes but I then need to put it to you, that no BBBEE certificate of Inline Trading was submitted with the bid, do you have a basis to dispute that?

MR DANIEL PHOLISANI MAHLANGU: I can't tell now Chair,
10 what...(intervention).

ADV KATE HOFMEYR: Thank you.

CHAIRPERSON: Is your position that you don't know whether, as a matter of fact it was submitted but you would have expected that your team would have submitted it, is that your position?

MR DANIEL PHOLISANI MAHLANGU: Yes I wouldn't know, basically what I'm trying to clarify here is that my understanding as far as the – our arrangement is concerned we took the lead, so we submitted all our information as far as the lead is concerned so when you've got a sub-contractor you just submit minimal information. So I think it was also
20 an understanding of SAA as far as that structure was concerned, so it was not according to us to actually determine but it was a structure that is, you know, currently being used.

ADV KATE HOFMEYR: How did you know what SAA was understanding about those clauses in it's bid submission?

MR DANIEL PHOLISANI MAHLANGU: Yes because if that was not

understanding they could have actually disqualified us as per your...(intervention).

ADV KATE HOFMEYR: Well that's precisely what I'm asking Mr Mahlangu whether these deficiencies in your bid shouldn't have resulted in your disqualification?

MR DANIEL PHOLISANI MAHLANGU: That's not true.

ADV KATE HOFMEYR: Okay, the next one, Mr Mahlangu is that you did not check the factual accuracy of what was contained in letters that were drafted for you by Mr Mngadi, is that correct?

10 **MR DANIEL PHOLISANI MAHLANGU:** Some, not all of them yes, that's not a blanket statement, I mean some of them yes we did but some we couldn't.

ADV KATE HOFMEYR: You couldn't or you didn't?

MR DANIEL PHOLISANI MAHLANGU: Some, for obvious reasons that he was actually interacting with Grissag and other parties so we just assumed that whatever that was bringing to the party was the gospel truth.

ADV KATE HOFMEYR: The fourth proposition is that you have – as matters stand currently, no record of having sent that letter of the 13th
20 of May to SAA which dealt with the suspension of your FFSP licence is that correct?

MR DANIEL PHOLISANI MAHLANGU: That's correct.

ADV KATE HOFMEYR: Thank you, Mr Mahlangu the fifth proposition is that you motivated for a cancellation fee from SAA on the basis of facts that you had not verified and you did not have personal knowledge of,

do you accept that?

MR DANIEL PHOLISANI MAHLANGU: Chair I think what we must be careful of it's misinformation yes, in a sense that we mustn't give public information that we actually send information to SAA and then that information was not verified because we had partners in the structure that were actually responsible for that. So I don't want to say I didn't when my partners actually did verify that information, so – now I'm putting myself in a position that actually sending that information to SAA without me actually not verifying that information.

- 10 **ADV KATE HOFMEYR:** And when you motivated for the reduction of the cancellation fee to 50million – below 50million, apologies, you did so again on the basis of facts that you had not yourself verified.

MR DANIEL PHOLISANI MAHLANGU: Basis on facts of our partners...(intervention).

ADV KATE HOFMEYR: That you yourself had not verified, correct?

CHAIRPERSON: It amounts to - it seems to me what you are saying, namely you took what Mr Mngadi gave you and assumed that to be true but you didn't know for sure that it was true.

MR DANIEL PHOLISANI MAHLANGU: That's true Chair.

- 20 **CHAIRPERSON:** Ja.

ADV KATE HOFMEYR: Thank you Chair, those are the propositions I wanted to put to Mr Mahlangu for his comment.

CHAIRPERSON: Thank you very much Mr Mahlangu for coming to give evidence, if a need arises for you to be asked to come back you will be asked to come back but for now you are excused.

MR DANIEL PHOLISANI MAHLANGU: Yes can I just have a minute
Chair, just ...(intervention).

CHAIRPERSON: Yes.

MR DANIEL PHOLISANI MAHLANGU: I know I'm running out of time,
probably my flight is going to leave me, I just need to make some
arrangements.

CHAIRPERSON: Yes sorry for that.

MR DANIEL PHOLISANI MAHLANGU: I'd like to thank this
Commission for giving us this opportunity to come – I know its been a
10 daunting task you know, I've basically lost time, lost resources because
you can see these gentlemen are here they don't come cheap and also
to (indistinct) this information from different sources which hire
technicians to go onto a lap top, search this, search that so it's been a
struggle but I think we did that for obvious reasons, I think to just clear
our name number one and number two to say I think even the evidence
that has actually been put forward here we realise that actually there
were bigger (indistinct) at play and we find ourselves, you know, sort of
in between, you know, being sort of scape goats for some of them and
to say, you know – I think also what's revealing to me and if this was
20 some of the testimonies that were actually shared before us, and
especially with all the people that gives testimony. Firstly I'll start with
Ms Stimpel, I think the testimony that she gave, it was a good one, two
but if one look at it deeper obviously there other interest, yes and other
interest was, obviously as far as this space of our space is concerned
she – her interest was just to actually ring-fence this opportunity of

fund raising for SAA to only the big banks and those big banks would be given the opportunity to compete amongst themselves so in any way the big banks themselves basically captured SAA one. Two, she actually excluded, you know, companies like us as far as the black companies are concerned, the up and coming – it's very difficult as a black company like BnP Capital or even other companies to actually penetrate this particular space. Yes and for people in public sectors to actually in a way proud out the black fields like us it's worrisome because...(intervention).

10 **CHAIRPERSON:** Well I allowed you to make a few remarks but we have to be careful if you are going to be attacking any specific people who have not been told you would be here to attack them who might not get a chance to challenge you and cross-examine you on the statements that you make so we must stay within the bounds of just brief remarks you wanted to make without attacking any particular person.

MR DANIEL PHOLISANI MAHLANGU: Yes thanks Chair, that's what I'm doing now, just two minutes, yes and my worry is unfortunately BnP Capital is the only company that is here, that is put before this
20 Commission, that is in a way disgraced you know, for...(intervention).

CHAIRPERSON: That is?

MR DANIEL PHOLISANI MAHLANGU: Disgraced yes for (indistinct) reasons because ...(intervention).

CHAIRPERSON: Well that might come across as if you're suggesting that the Commission is disgracing BnP.

MR DANIEL PHOLISANI MAHLANGU: Can I put it to you Chair, that unfortunately when one appears before this Commission there's already a stigma, it doesn't matter whether you've done bad or good but there's already a stigma.

CHAIRPERSON: Well it may be that different persons might look at somebody appearing here differently, some would say this is a person who is patriotic and wants to help the Commission held the country, wants to come and tell the country what they know about matters that may fall under State Capture and corruption and is a good person and
10 is cooperating with the Commission.

MR DANIEL PHOLISANI MAHLANGU: Agree with you Chair.

CHAIRPERSON: Ja.

MR DANIEL PHOLISANI MAHLANGU: Two minutes.

CHAIRPERSON: You are taking long.

MR DANIEL PHOLISANI MAHLANGU: Just two minutes.

CHAIRPERSON: Strictly two minutes.

MR DANIEL PHOLISANI MAHLANGU: Yes, I think as far as - let me just wrap up on the issue that BnP Capital unfortunately is the only company that is here, there is a company called SeaCrest that did
20 actually – had nothing was a shelf company it had no credentials whatsoever but was given an opportunity?

CHAIRPERSON: Which company are you talking about?

MR DANIEL PHOLISANI MAHLANGU: SeaCrest, it was mentioned.

CHAIRPERSON: Yes but why you going there, I've just said to you, don't attack other persons or companies because one, that was not in

your statement they have not been notified that you are going to attack them here, just like you will want everyone to be fair to you we must be fair – you must also be fair to other people. Your two minutes is almost up. Two sentences.

MR DANIEL PHOLISANI MAHLANGU: Yes, with Mr van der Merwe, Piet van der Merwe, literally I haven't met him, we then spoken to each other and I think what's worrisome that I think the Commission must follow up with him is why is he so hell bent to protect Mr Mngadi, because he says from his statement he says he's never actually – he
10 knows Mr Mngadi but he doesn't know what Mr Mngadi does.

CHAIRPERSON: Well if you want to challenge anything that Mr van der Merwe said in this Commission, your lawyers will advise you what to do, okay. Let's stop at that, we are going to take the adjournment – the lunch adjournment and we will resume at ten past two, we adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Yes Ms Hofmeyr.

ADV KATE HOFMEYR: Thank you Chair. We are...

CHAIRPERSON: Are you ready?

20 **ADV KATE HOFMEYR:** We are indeed we are ready to proceed with our next witness.

CHAIRPERSON: Hm.

ADV KATE HOFMEYR: Who is Ms – Doctor Dahwa. Just one or two procedural aspects in advance of swearing in the witness if I may? It is important for us to place on record that in the course of the week we

received communication from Ms Meyene's lawyers indicating that she intends to apply to cross-examine Doctor Dahwa and also the witness who will be appearing on Monday Ms Mpshe but as matters currently stand we have not received any such application we were simply notified in a letter that that would be coming.

CHAIRPERSON: Okay that is fine.

ADV KATE HOFMEYR: Chair it does mean unfortunately that for the purposes of Doctor Dahwa's evidence today and Ms Mpshe's Monday we are not in a position to put the alternative version to either of the
10 witnesses for comment.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: We have experienced in the past when that is feasible it does aid the processes.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: But if the application comes in later than the fourteen days we will expect to see a condonation application and that will be placed before you for determination.

CHAIRPERSON: Ja that is fine thank you.

ADV KATE HOFMEYR: And then the procedural aspect Chair if we
20 could just enter Doctor Dahwa's affidavit as Exhibit DD16 for the record.

CHAIRPERSON: The lever arch file containing the statement or affidavit of Doctor Dahwa is going to be marked Exhibit DD16.

ADV KATE HOFMEYR: Thank you Chair and if I could then ask for the witness to be sworn in?

CHAIRPERSON: Ja thank you.

REGISTRAR: Please state your full names for the record?

DR MASIMBA PHILLIP DAHWA: Masimba Phillip Dahwa.

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

DR MASIMBA PHILLIP DAHWA: No.

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

DR MASIMBA PHILLIP DAHWA: Yes.

10 **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.

DR MASIMBA PHILLIP DAHWA: I do.

REGISTRAR: If so please raise your right hand and say, so help me God.

DR MASIMBA PHILLIP DAHWA: So help me God.

REGISTRAR: Thank you.

CHAIRPERSON: Yes.

20 **ADV KATE HOFMEYR:** Doctor just to orientate you. On the witness table in front of you you have a large lever arch file containing your affidavit and its annexures and then I have also requested that one other file be placed before you. It is the file containing the third part of Ms Stimpel's evidence and that is to be found in Exhibit DD1[c] but I will come to that later on in the course of your testimony.

DR MASIMBA PHILLIP DAHWA: Thank you Chair.

ADV KATE HOFMEYR: Doctor Dahwa you have provided an affidavit to

the commission could you turn up page 1 of the Exhibit DD16 and as I have it the affidavit commences at page 1 and ends at page 22. Can you take a look at that and confirm that that is the affidavit you provided to the commission?

DR MASIMBA PHILLIP DAHWA: Yes Chair.

ADV KATE HOFMEYR: Thank you. I would then like to start simply with your background which we pick up at page 1 from paragraph 3. You commence there with your qualifications Doctor Dahwa. Could you please take the commission through what those are?

- 10 **DR MASIMBA PHILLIP DAHWA:** Thank you. My academic qualifications Chair a Doctor of Business Administration specialising in logistics, Masters in Business in International Business Management, Post Graduate Diploma in Business Management, BA Honours in Business Studies and a Graduate Diploma in Purchasing and Supply. My second set of credentials Chair pertain to my involvement in the development and establishment and professionalization of supply chain and procurement that is across Africa. During my stint as a Chartered Institute of Purchasing and Supply Counsel representative for Africa and later as head of regional development and integration of Chartered
- 20 Institute of Purchasing and Supply which gave me a wide involvement toward the development of the profession in Africa. And as such I [indistinct] various awards by Global Professional bodies in my area of discipline resulted in me being conferred with the Chartered Fellow of Chartered Institute of Logistics and Transport Chartered Fellow of Chartered Institute of Purchasing and Supply, Fellow of Institute of

Operations Management, Specialist Fellow of Institute of Risk and Safety Management and Fellow of Institute of Leadership and Management. Thank you Chair.

ADV KATE HOFMEYR: Thank you Doctor Dahwa and if you turn over to page 2 at paragraph 5 on page 2 at the bottom you talk about a twenty years' worth of experience that you have had in organisations and with a particular emphasis on procurement. Could you please tell us what that experience comprises?

DR MASIMBA PHILLIP DAHWA: Thank you Chair. Ideally my
10 experience has been in directing, leading and managing various areas of procurement and supply chain for various sectors of industry including aviation, retail, financial and banking as well in transport and distribution.

ADV KATE HOFMEYR: Thank you and then to bring you to the focus of today's evidence. When did you start at South African Airways?

DR MASIMBA PHILLIP DAHWA: In August 2014.

ADV KATE HOFMEYR: And in what position did you begin at SAA?

DR MASIMBA PHILLIP DAHWA: It was initially as Chief Procurement Officer for three months.

20 **ADV KATE HOFMEYR:** And what happened after the first three months?

DR MASIMBA PHILLIP DAHWA: Because of my contribution towards the implementation of the long term turnaround strategy I then earned myself a further six months by merit of the contribution that I had made.

ADV KATE HOFMEYR: And so we now at nine months' worth as I have it as your time at SAA did you remain after that and if so on what basis?

DR MASIMBA PHILLIP DAHWA: Thank you. What you find is during the nine months stint I did address a specific [indistinct] boss to do with the LTTS which found under annexure G of the LTTS where the issues of procurement were covered. I made some significant inroads in terms of restructuring the GSM structure. Putting in the necessary missing links that caused huge value leakages within the Global Supply Chain. Introduced training for my team as well as remodelling the procurement governance structure.

ADV KATE HOFMEYR: And just I want to get two acronyms clear they will be familiar to you but they may not be familiar to everyone else.

DR MASIMBA PHILLIP DAHWA: Sure.

ADV KATE HOFMEYR: You refer to the LTTS what is that?

DR MASIMBA PHILLIP DAHWA: The LTTS that is the Long Term Turnaround Strategy which was put in place by South African Airways around July 2013.

ADV KATE HOFMEYR: Thank you we will look at that insofar as it is relevant to procurement issues at SAA in due course but you also referred to GSM, what is GSM?

DR MASIMBA PHILLIP DAHWA: GSM is Global Supply Management Unit. This is the unit of SAA responsible for procurement and supply chain management.

ADV KATE HOFMEYR: So would your role as Chief Procurement

Officer have been to head that unit?

DR MASIMBA PHILLIP DAHWA: Yes Chair.

ADV KATE HOFMEYR: Thank you. If you are on page 3 of your affidavit you will see at paragraph 7 you talk about the extension of your contract after that six month period. What was that extension period?

DR MASIMBA PHILLIP DAHWA: I beg your pardon Chair.

ADV KATE HOFMEYR: Sorry in paragraph 7 you talk first about your three month contract period, then you talk about it being extended for a
10 further six months and then in the last sentence you talk about a yet further extension for a period. What was the period of the second extension?

DR MASIMBA PHILLIP DAHWA: It was two years Chair.

ADV KATE HOFMEYR: And when would that have ended?

DR MASIMBA PHILLIP DAHWA: That would have been sometime in 2017.

ADV KATE HOFMEYR: Did you remain at SAA until 2017?

DR MASIMBA PHILLIP DAHWA: No Chair.

ADV KATE HOFMEYR: We will deal with the circumstances of your
20 departure in the course of your evidence Doctor Dahwa. Thank you.

DR MASIMBA PHILLIP DAHWA: Thank you Chair.

ADV KATE HOFMEYR: Can you just tell us in terms of what process was followed before your appointment? Did you go through a recruitment process?

DR MASIMBA PHILLIP DAHWA: Yes Chair.

ADV KATE HOFMEYR: And was that before the initial appointment or in relation to the various extensions?

DR MASIMBA PHILLIP DAHWA: That was before the initial appointment and also for the second appointment I went for some further selection as well.

ADV KATE HOFMEYR: Thank you. Doctor Dahwa at page 3 paragraph 8 you talk about the duties that you had as Chief Procurement Officer of SAA. Can you tell us in summary what those main duties were?

DR MASIMBA PHILLIP DAHWA: Thank you Chair. At the time of
10 joining SAA my job brief was to make sure that GSM which is the Global Supply Chain Management Unit helped the organisation to deliver on its long term turnaround strategy. So ideally my job was to ensure that there was that alignment and also to deliver onto the specific issues that were contained in the LTTS that pertained to supply chain to advise the various stakeholders on various technical issues pertaining to procurement in supply chain management as well as to manage the day to day operations of the function.

ADV KATE HOFMEYR: Thank you.

CHAIRPERSON: One second.

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

CHAIRPERSON: Thank you.

ADV KATE HOFMEYR: Thank you Chair. Doctor Dahwa if we then go to page 4 of your affidavit. You will see at paragraph 10 on that page you talk about the key themes of the long term turnaround strategy and what they had identified as the critical success factors for Global

Supply Management. Could you indicate to us what those success factors were?

DR MASIMBA PHILLIP DAHWA: Thank you Chair. Top of the list was the issue of cost compression because if you go through the LTTS document you will find that the airline was bleeding badly because of bad contracting and the costs of running the business was just too high so that was aspect number 1. Then the strengthening of the procurement governance was also quite top on the agenda because of the various weaknesses that prevailed within the GSM procurement
10 practices. There were issues that needed to be addressed. Then there was also issues to do with people initiatives as well as their development and ability to support the operations of GSM in general. Then was also the issue of preferential procurement spends which is promoting the development of small to medium enterprises as well as the BEE companies. And also was the issue of implementation of the SAP, the SAAP procurement system which had been outstanding and not implemented for a very long time.

ADV KATE HOFMEYR: Doctor Dahwa you mentioned the need I think it was the second key success factor being strengthening the
20 procurement processes and as I have it later in the affidavit you detail what some of the weaknesses were that you found in the procurement governance sector when you arrived at SAA. You will find that over the page at page 5 and paragraph 12 on that page. Could you take us through what some of those weaknesses were that you found when you began at SAA in August of 2014?

DR MASIMBA PHILLIP DAHWA: Thank you Chair. Interestingly some of the cases Chair you have – we heard other witnesses talk about them it is to my surprise that those weaknesses have gone back again. For instance at SAA when I went there Chair you would find documents lying all over, tender documents and I think one witness here did mention that they went into the procurement unit and picked up documents.

CHAIRPERSON: Yes I think somebody...

DR MASIMBA PHILLIP DAHWA: Which were not...

- 10 **CHAIRPERSON:** Said that some people were keeping the tender documents in their drawers and they were not – they were not put in one place.

ADV KATE HOFMEYR: Yes.

CHAIRPERSON: Where they were secured.

- DR MASIMBA PHILLIP DAHWA:** True. So when I joined SAA that was really an item of concern. Because of the main audits findings that I observed before my time it pertained to some documents going missing and all these kind of things and from where I was coming from any procurement Chair must be available for inspection of an audit at any
- 20 time documents are needed and yet documents went missing because they were just left all over. And as such I took effort to use – we did not have money there is an organisation but then I looked for quick wins which included improvising coming up with a locking system where I bought chains and lock for each and every commodity manager to store their documents in allocated space and would chain them off from

the work space so much that documents would be kept safe and as and when they were needed for whatever reasons we would find them. And also you would find for instance receipt of tenders was just in shambles. One person would go and receive tenders and at times there were issues and problems where you find that bids come in late and to try and verify and establish exactly what would have happened it was quite a big challenge and yet with the two locker system where there is dual control of the tender boxes and everything which is the standard practice in most public sector procurement this was not the case but all

10 these things Chair we tried to implement to try and address some of the gaps that were there at the time.

ADV KATE HOFMEYR: Thank you Doctor Dahwa. If you go still in paragraph 12 on page 5 of your affidavit you will see midway down you reference another what I understand to be a weakness which is related to procurements being done on the basis of letters of award as opposed to signed contracts. Can you explain to us what that issue was?

DR MASIMBA PHILLIP DAHWA: Okay thank you Chair. I think so it is one of the major, major weakness in the procurement practices at South African Airways where – when an RFP went out Chair half the time or

20 most of the time they would go without the draft terms and conditions where you telling the bidders that in terms of delivery of the service or the goods these are the respective draft terms and conditions we expect you to conform with. But the practice Chair was the awarding the process would happen without such kind of documents going out and at the end of the process you award somebody the tenders and

after you have awarded them then you start negotiating to say oh okay now what is going to be the terms and conditions and to me that is a bad practice because the moment you communicate award Chair and in my understanding as a procurement person you have lost it. Bidders are not at peace or by then it will be your supplier is not interested in finalising the contract because that is how they end up making money for themselves. As you keep on the [indistinct] things keep going on and you could see even from my observation that contracts would go for months you know between 18 to 24 months before a contract can be
 10 signed but in the meantime the service is being provided and this to me was a major major risk that needed urgent addressing.

ADV KATE HOFMEYR: Thank you. One point I wanted to pick up on that we passed in your affidavit was just in terms of your reporting lines. Who did you report to during the time that you occupied the position of Chief Procurement Officer?

DR MASIMBA PHILLIP DAHWA: Thank you Chair. I reported to Chief Finance Officer Mr Wolf Meyer.

ADV KATE HOFMEYR: Thank you. And if you then go over to page 6 of your affidavit and if you pick it up there at paragraph 14 you detail
 20 there some of the processes and policies that you attempted to put into place which were presented to the board of directors. Before we get into the details of those policies the first thing I would like your assistance on is your understanding of the role of a board of directors of a state owned entity in procurement matters. What is your understanding about how their involvement in those matters is

supposed work?

DR MASIMBA PHILLIP DAHWA: Thank you Chair. My understanding of that question is the board is an oversight responsibility over the operations of the organisation including procurement.

ADV KATE HOFMEYR: Do they get involved in the day to day procurement decisions in the ordinary course?

DR MASIMBA PHILLIP DAHWA: No Chair.

ADV KATE HOFMEYR: Would you regard it as unusual if a boards or board members were endeavouring to do so?

10 **DR MASIMBA PHILLIP DAHWA:** Yes I would have concerns Chair.

ADV KATE HOFMEYR: Thank you we will come to some of the details of your engagements around that issue during your time at SAA but before we do so if you can turn over the page to page 7 of your affidavit and I would like to take us to your annexure MD2 which you will find in your bundle DD16 at page 181. It is under Tab 2. Doctor Dahwa what is this document?

DR MASIMBA PHILLIP DAHWA: Now it was a board paper that I presented to the board regarding the changes that I thought needed to be put in place in order to strengthen SAA procurement governance.

20 **ADV KATE HOFMEYR:** And when did you present it to the board?

DR MASIMBA PHILLIP DAHWA: It was around the 13 March 2015 Chair.

ADV KATE HOFMEYR: And Doctor Dahwa assist us what were the principle features of this governance structure that you wanted to put in place?

DR MASIMBA PHILLIP DAHWA: The key things that I presented in this document Chair initially it was the SE's of the procurement structures at South African Airways where ideally there were two committees responsible for the procurement. The first one was known as the cross function or sourcing team which was mandated with the whole procurement process that is from origin of tender specification right up to award or recommendation for award which would then go to various levels of approval pending on the amounts involved. I had problems with that Chair and I thought there was no segregation of duties and as

10 such there was a huge scope for the processes being secured towards certain individuals or preferred suppliers or anything of the form and also I wanted there to be the issue of making sure that we were getting best value for money as there were – there were checks and balances I would say to make sure that things were done above board. And the second committee was the bid adjudication committee which was more like responsible for just reviewing what the cross functional sourcing team would have it done. Just talking about the issue of cross functional and sourcing team Chair I liked the spirit in which it was done but I had problems with the credibility of that committee. By

20 credibility Chair I meant the skill sets that were brought to try and assist in the respective procurement I expected to see certain competencies but this was not the case. It was more like well if we get people from across the business it means we are doing a perfect job but in standard practice and best practice for that matter that is the case and those are some of the key things I then definitely wanted to

address Chair.

ADV KATE HOFMEYR: And on your structure as you devised it if we go to page 184 of your bundle DD16 you will see there at – towards the bottom of the page that as I have it you recommended a three stage tender committee system for competitive bids. How was that going to work that system?

DR MASIMBA PHILLIP DAHWA: Thank you so much Chair. Obvious key to me was the issue of separation of responsibilities. So the first committee was supposed to be called the bid specification committee.

- 10 This is a committee Chair that is responsible for understanding the business requirement and crafting the specification of that particular requirement as well as putting together the draft terms and conditions which I also expect to be evaluated at some point. And the second committee Chair which would not involve of most members coming from the bid specification committee was the bid evaluation committee and their responsibility was to evaluate bids as they come back and also to write recommendations to the BAC in terms of the award in line with the rest of the procurement processes spelt out in the supply chain management policy and then the third committee was obviously the bid
- 20 adjudication committee in its current form.

ADV KATE HOFMEYR: Thank you. Doctor Dahwa you – were you familiar with the supply chain management policy of SAA during your time as Chief Procurement Officer?

DR MASIMBA PHILLIP DAHWA: Yes Chair.

ADV KATE HOFMEYR: And I know I am jumping ahead but it is

relevant for the questions I am going to ask following up. When you left SAA towards the end of 2015 who replaced you in the position of Chief Procurement Officer do you know?

DR MASIMBA PHILLIP DAHWA: I overheard that it was Advocate Lester Peter.

ADV KATE HOFMEYR: Thank you we have had evidence about Mr Peter occupying that role towards the end of 2015 and early 2016 that was in the evidence of Ms Nhantsi. But the point about the supply chain management policy which I would like to seek your guidance on
10 relates to clause 14. You will find the supply chain management policy of SAA in Ms Stimpel's bundle which is Exhibit DD1 and it was that volume C that I asked that you have available to you. And Doctor Dahwa if you turn early on in that file to page 868. Do you have that?

DR MASIMBA PHILLIP DAHWA: Yes Chair.

ADV KATE HOFMEYR: What is that document?

DR MASIMBA PHILLIP DAHWA: That is South African Airways Supply Chain Management Policy Chair.

ADV KATE HOFMEYR: Is this the policy that you would have been working with at your time – during your time?

20 **DR MASIMBA PHILLIP DAHWA:** Yes Chair.

ADV KATE HOFMEYR: Thank you. If you will turn within that document to page 894.

DR MASIMBA PHILLIP DAHWA: Yes Chair.

ADV KATE HOFMEYR: You will there a section of the document dealing with clause 14 Evaluation Process, do you see that?

DR MASIMBA PHILLIP DAHWA: Which point is that Chair?

ADV KATE HOFMEYR: At the top of the page.

DR MASIMBA PHILLIP DAHWA: Yes that is point 14 yes Chair.

ADV KATE HOFMEYR: Thank you. Chair just to locate ourselves in the evidence that we have received previously you may recall that in the evidence of Ms Nhantsi she indicated that after the SAA board had taken the decision to not appoint Seacrest and not appoint the second alternative which was the consortium of banks and nonetheless to task the CFO and acting CEO to conclude the transaction with FDC, the

10 Free State Development Corporation. As I have Ms Nhantsi's evidence she went to the then CPO, Chief Procurement Officer Advocate Lester and she asked him about how they could follow a process that would regularise in a sense what the board had done at its 3 December 2015 meeting. And as I understood her evidence she was told that reliance could be placed in the SCEM policy on clause 14.4 which if we read it provides

“Regardless of whether a bidder submits an offer conforming strictly to specification alternative offers may be considered and accepted provided that the

20 other bidders are not prejudiced.”

And Chair in the course of the questioning of Ms Nhantsi I put it to her that the interpretation she had been given of this clause did not seem in my view to bear out with what it is trying to achieve in this part of the policy and given that we have got Doctor Dahwa with us today and he was the prior Chief Procurement Officer I thought it useful to get his

expertise.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: On what his understanding of clause 14.4.1 is. Could you tell us Doctor Dahwa how you understand that clause?

DR MASIMBA PHILLIP DAHWA: Thank you so much Chair. My understanding Chair of an alternative bid offer it is a bid that is submitted the time of the procurement process that is within the confines that is the start and closing of a tender process. And this is like a bidder is offering you maybe two options to your requirement.

- 10 They are saying option 1 has to be compliant with the requirement of my specification and option 2 could be not in line exactly with my requirement in terms of the specification but it is a possible solution to my requirement and in that case yes that is what we call an alternative bid but it is not anything that comes outside of the procurement process. If it comes outside of the procurement process then that tend amounts to an unsolicited bid but if it is an alternative bid it cannot be the first bid that is trying to respond to my requirement or to my RFP but it must be a second option. Because say out of argument if somebody is to submit an alternative bid at the time of procurement it
- 20 is deemed to non-compliant because it will not address the requirement of the RFP. But in the case that there are two options then it is up to the evaluating committee to consider the option or to reject it those two be allowed to do so.

ADV KATE HOFMEYR: Dr Dahwa if Ms Nhantsi had come to you in December 2015 and asked you whether that clause could be used to

consider a bid that had not been submitted during the opening and closing period of the RFP that was under evaluation. What would you have said to her?

DR MASIMBA PHILLIP DAHWA: It would – it would not Chair amounted to an alternative bid and if anything I would raise concerns regarding the time of its submission. What do I mean Chair? In the even that this bid – this unsolicited bid is submitted before we conclude the ongoing procurement process and by conclusion I mean we have communicated to all participating bidders the outcome that you were
10 unsuccessful anything of the form. I would have issues to do with collusion Chair.

ADV KATE HOFMEYR: Thank you Dr Dahwa. If we could then move to page 8 of your affidavit. There you have a heading ...

CHAIRPERSON: Did you say page 8?

ADV KATE HOFMEYR: Page 8. Yes indeed Chair.

CHAIRPERSON: Yes you may proceed.

ADV KATE HOFMEYR: Thank you. There is a heading on that page Setting Aside of 30 percent of Contracts for BEE Entities. Dr Dahwa we have heard some evidence about the Set-aside approach that SAA
20 embarked upon in 2015 but I would like us to go through it in some detail in relation to your knowledge of it and that commences at paragraph 21 on that page. What is your understanding of what happened in early 2015 and its link to this Set-aside Policy of SAA?

DR MASIMBA PHILLIP DAHWA: Thank you Chair. My understanding Chair was there was a SONA which is State of the Nation Address by

the President of the Republic of South Africa that is President Zuma where he made a comment that the State Owned Enterprises needed to set-aside 30 percent of their spent.

That is for particular groupings of people including those who were previously disadvantaged the youth and women and I cannot quite remember off the head some of the groupings there but that is what it was about and this is what gave rise to this discussion Chair.

ADV KATE HOFMEYR: Thank you. If you pick it up at paragraph 22 on page 8 you have – as I see it there – a quote of precisely what was
10 said. That actually does feature later in some of the correspondence as well between members of the Board. Could you just read for us what is quoted there as having been said by President Zuma in his February 2015 State of the Nation Address?

DR MASIMBA PHILLIP DAHWA: I read Chair.

“Government will set-aside 30 percent of appropriate categories of state procurement for purchasing from small to medium enterprises, cooperatives as well as township and rural enterprises.”

20 **ADV KATE HOFMEYR:** Dr Dahwa you go on in that paragraph to make reference to military veterans and whether they featured in the State of the Nation Address or not. What is your knowledge of that? Were they mentioned by President Zuma in that speech?

DR MASIMBA PHILLIP DAHWA: No not to my knowledge Chair.

ADV KATE HOFMEYR: But why did they then feature in SAA and its

procurement. Do you know?

DR MASIMBA PHILLIP DAHWA: I think this was a decision by the Board Chair.

ADV KATE HOFMEYR: Thank you. If we go over to the next page of your affidavit page 9. You start at paragraph 23 on that page explaining SAA's commitment to the transformation process. Can you explain to us the role that transformation was playing in SAA at the time?

DR MASIMBA PHILLIP DAHWA: At the time Chair we had a unit which
10 was formed around the same time I joined SAA which was responsible for the transformation agenda and Mr Thapelo Lehase was heading that element but obviously between me and him by me I mean GCM because we were the people responsible for engaging the small to medium enterprises.

We needed to work together towards making sure that we achieved the various targets set by the organisation regarding transformation.

ADV KATE HOFMEYR: Thank you and then at paragraph 24 on that page you talk about a query or a request that came from Ms Kwinana in
20 July 2015. What did that relate to?

DR MASIMBA PHILLIP DAHWA: Well what Ms Kwinana requested for was a series of contracts that were nearing expiring. So she needed me to provide her with that list and that she wanted to use it for transformation purposes.

ADV KATE HOFMEYR: Thank you. Let us go to that email

correspondence if we may. You will find it under Tab 7 in your bundle which is EXHIBIT DD16 and we can pick it up at page 2-1-4 under Tab 7.

DR MASIMBA PHILLIP DAHWA: Yes Chair.

ADV KATE HOFMEYR: What we have in this email as I understand it Dr Dahwa is first of all the request that came to you and then your response to it. So I would like to start in chronological order with the request that came through to you. As I have it that appears at page 2-1-4. Who is writing this email Dr Dahwa?

10 **DR MASIMBA PHILLIP DAHWA:** Ms Yakhe Kwinana one of the Board Members.

ADV KATE HOFMEYR: And to whom is it addressed?

DR MASIMBA PHILLIP DAHWA: It was addressed to myself, Mr Wolf Meyer and Ms Thuli Mpshe.

ADV KATE HOFMEYR: Thank you and if you could just read for us the first paragraph on that page.

DR MASIMBA PHILLIP DAHWA: It reads:

20 “Dear Dr Masmiba, SAA is serious about transformation and as promised in our signing ceremony with the DTI on 18 May 2015 and our promise on 12 June on Supply Development Day we cannot continue to do things the same way as they were done 21 years ago and expect different results.”

ADV KATE HOFMEYR: Then she goes on to make reference to the

need to negotiate and what did that relate to? Who - who was she saying negotiations need – needed to be commenced with?

DR MASIMBA PHILLIP DAHWA: That was Swissport and Bidvest.

ADV KATE HOFMEYR: And what contracts would that have related to? In what areas of SAA's business?

DR MASIMBA PHILLIP DAHWA: This would have related to baggage handling at the airport.

ADV KATE HOFMEYR: Thank you and then I understand she asked you to do something in relation to the tables that we see on that page.

10 What was she requesting be done?

DR MASIMBA PHILLIP DAHWA: She was requesting for information or maybe that I populate information in her table. Namely for security companies she wanted to know the name of the security company, amount of contract, start date, end date, ownership and name and contact details of key personnel for those respective contracts. So that was the same for insurance companies and insurance brokers and toilet paper companies.

ADV KATE HOFMEYR: And Dr Dahwa if we go over to page 2-1-7.

DR MASIMBA PHILLIP DAHWA: Yes Chair.

20 **ADV KATE HOFMEYR:** Can you explain to us what has been done in the table that we see there on that page?

DR MASIMBA PHILLIP DAHWA: It has not been populated.

ADV KATE HOFMEYR: And who populated it?

DR MASIMBA PHILLIP DAHWA: I did Chair.

ADV KATE HOFMEYR: And that was in accordance with the categories

that Ms Kwinana had requested the details be provided. Is that correct?

DR MASIMBA PHILLIP DAHWA: Yes Chair.

ADV KATE HOFMEYR: What did you understand this request to relate to?

DR MASIMBA PHILLIP DAHWA: From a procurement point of view that would have been a big issue Chair because it happens and most of the times you can actually have particularly in your contracts register similar kind of information that would then tell you when contracts are
10 starting and ending and it would name good planning in terms of what would happen and by when.

ADV KATE HOFMEYR: And you pick up that point at paragraph 25 back in page 9 of your affidavit because as I understand that paragraph you summarise there precisely what the status was in relation to certain tenders. Is that correct?

DR MASIMBA PHILLIP DAHWA: Sorry.

CHAIRPERSON: That paragraph is at page?

ADV KATE HOFMEYR: Page 9. Apologies – paragraph 25.

CHAIRPERSON: Thank you.

20 **DR MASIMBA PHILLIP DAHWA:** Yes Chair.

ADV KATE HOFMEYR: As I have paragraph 25 you indicate there:

“The following tenders were about to retendered by
SAA as these were awarded around 1 July 2013 and
expiring around 30 June 2018.”

Do you see that?

DR MASIMBA PHILLIP DAHWA: Yes Chair.

ADV KATE HOFMEYR: And then you provide a list. Can you tell us what those contracts were?

DR MASIMBA PHILLIP DAHWA: That is from point 25.1.

ADV KATE HOFMEYR: Pont one, indeed.

DR MASIMBA PHILLIP DAHWA: Okay thank you Chair.

ADV KATE HOFMEYR: If you can give us that list.

DR MASIMBA PHILLIP DAHWA: I beg your pardon. The tender awarded to Securitas for airport security services. (They were awarded
10 a further contract.) The tender awarded to Swissport South Africa with a value of 1.2 billion or 1 219 030 – you know there were some issues surrounding the contracts and the award and also included the tender awarded to Swissport South Africa of PAU and Wheelchair value for 131 766 184.

The tender awarded to Swissport South Africa for document verification of 20 674 827 and the tender awarded to BidAir for bussing services valued for 81 353 793.

ADV KATE HOFMEYR: Thank you and then if you go over the page in your affidavit to page 10.

20 **DR MASIMBA PHILLIP DAHWA:** Yes Chair.

ADV KATE HOFMEYR: You have a heading there which reads “Board Pressure and Interference Relating to Procurement and 30 Percent Set-aside for BEE”. Dr Dahwa can you tell us what this pressure involved that you experienced and you detail that in a number of paragraphs on that page but if you will just explain to the Chair the

essence of what you experienced as pressure?

DR MASIMBA PHILLIP DAHWA: Thank you Chair. I think what then happened is the issues of the 30 percent set-aside as pronounced in the SONA became the big issues at South African Airways.

Each and every procurement Chair would not take off even – we got ourselves talked into the extent of failure to finalise outstanding contracts remember based on the practice where the awards were issued and nothing was happening and the major issues there was to operationalise the 30 percent set-aside as pronounced in the – in the
10 SONA because there were no guidelines from National Treasury nor from PFMA or PFA to guide us in terms of how this could be implemented but unfortunately you know regardless of the many times I tried to explain to the Board that it was virtually difficult and impossible to implement the 30 set-aside without the proper rules and regulations as stipulated at law to various organisations and it really became a big challenge and in some instances also Chair I had to be given specific companies to award 30 percent which even made the whole process very difficult because no procurement process had been followed.

So it was more like an instruction to say just award this to
20 this particular company this award, this part of a particular contract to this particular company and to make the whole thing a whole lot more difficult Chair is it was like in the middle of a particular procurement that then we put into play this whole 30 percent set-aside because my understanding Chair of a proper procurement process everything has to be spelt upfront and has to be documented so that you are not like

bringing bidders to surprise in the middle of a particular procurement process and this is what was happening and I had to get instruction to say this needs to happen and despite the many times I was trying to say it is difficult and it will not be possible because we will be in breach and violation of the law this did not happen Chair.

So this is – that then became like the order of my day it was so difficult. Any procurement we had these challenges and (indistinct).

ADV KATE HOFMEYR: Dr Dahwa I would like to take you to some contemporaneous correspondence towards the end of 2015 where this
10 issue is taken up by Members of the Board. As I have it you were copied on some of that communication and I would like to seek your assistance in understanding what was going on at SAA at the time.

DR MASIMBA PHILLIP DAHWA: Yes Chair.

ADV KATE HOFMEYR: So you will find that under Tab 8 and it is page 2-2-3.

DR MASIMBA PHILLIP DAHWA: Yes Chair.

ADV KATE HOFMEYR: Chair I have had the misfortune of trying to decipher these emails over some time because the – it is an exchange over three parts and you have to work out who is speaking at what
20 point because it is identified in different colours in the text of the email.

So what I am going to endeavour to do in order for us best to in my submission to understand this email correspondence is actually take us to a part later in the pack because that is where you will see the engagement starts and Dr Dahwa if any aspect of my understanding

is incorrect please – please indicate that but let us start at page 2-2-3 because the most important thing or key you get on page 2-3-3 is about whose correspondence appears in red but before we get that could you just tell what the email is?

CHAIRPERSON: Well I wanted ...

ADV KATE HOFMEYR: Apologies.

CHAIRPERSON: To find out whether it is going to involve anything like what – what we argued about with some of the evidence leaders earlier in the week.

10 **ADV KATE HOFMEYR**: Yes.

CHAIRPERSON: About starting with ...

ADV KATE HOFMEYR: Yes later.

CHAIRPERSON: A later email.

ADV KATE HOFMEYR: No.

CHAIRPERSON: Instead of an earlier (intervenes).

ADV KATE HOFMEYR: No. We are going to start with the earliest ...

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: Because it seems to me that is the only you can intelligibly know what was happening.

20 **CHAIRPERSON**: Then - then I am fine.

ADV KATE HOFMEYR: We just have to go later in the pack to do that and what you also have to see is within the text of an email the red signifies actually the first communication ...

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: And then blue is actually ...

CHAIRPERSON: The response.

ADV KATE HOFMEYR: The recipient's response.

CHAIRPERSON: Oh, okay.

ADV KATE HOFMEYR: Indeed Chair.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: So let us – but ...

CHAIRPERSON: At least if – if in reading we go according to the sequence that happened ...

ADV KATE HOFMEYR: Indeed.

10 **CHAIRPERSON:** Then – then I understand (intervenes).

ADV KATE HOFMEYR: Chair I would want it in no other way. So let us do that but if we could just start at 2-2-3. Who are the people corresponding on this email Dr Dahwa?

DR MASIMBA PHILLIP DAHWA: It is Mr Wolf Meyer who is sending an email to Ms Yakhe Kwinana and Ms Duduzile Myeni ...

CHAIRPERSON: And it is copying rather than to?

ADV KATE HOFMEYR: Yes copying these people.

DR MASIMBA PHILLIP DAHWA: Yes copying.

DR MASIMBA PHILLIP DAHWA: Sure, thank you Chair and copying
20 Ms Duduzile Myeni and some – I think this was another Board Member.

CHAIRPERSON: Ms Thuli Mpshe.

DR MASIMBA PHILLIP DAHWA: No but before Ms Thuli Mpshe that is another Board Member. I cannot remember their name and ...

CHAIRPERSON: Hm.

DR MASIMBA PHILLIP DAHWA: The company secretary,

Ms Ruth Kibuuka and myself.

ADV KATE HOFMEYR: Thank you.

DR MASIMBA PHILLIP DAHWA:

CHAIRPERSON: So the people who were copied were Ms Duduzile Myeni and then you say then there was a Member of the Board whose name you cannot remember but the name seems to start with John. Is that correct?

DR MASIMBA PHILLIP DAHWA: Yes.

ADV KATE HOFMEYR: Is that ...?

10 **CHAIRPERSON:** Is that ...?

ADV KATE HOFMEYR: Dr Tambi?

DR MASIMBA PHILLIP DAHWA: I would not ...

ADV KATE HOFMEYR: You would not know?

DR MASIMBA PHILLIP DAHWA: No.

ADV KATE HOFMEYR: Okay.

DR MASIMBA PHILLIP DAHWA: But it is a Board Member ...

ADV KATE HOFMEYR: Yes.

DR MASIMBA PHILLIP DAHWA: Email address.

CHAIRPERSON: And thereafter it is Ms Thuli Mpshe and then it was

20 Ruth Kibuuka and then yourself.

DR MASIMBA PHILLIP DAHWA: Yes Chair.

CHAIRPERSON: Okay and this was on 19 November 2015. Is that right?

DR MASIMBA PHILLIP DAHWA: Yes Chair.

CHAIRPERSON: (Intervenes).

ADV KATE HOFMEYR: Chair as I have it is 9 November. Did you – did you say the 9th or the 19th? I just could not hear.

CHAIRPERSON: I do not think I know what I said.

ADV KATE HOFMEYR: But just – just for clarification ...

CHAIRPERSON: I should have said the 9th.

ADV KATE HOFMEYR: The 9th.

CHAIRPERSON: If I said the 19th (intervenes).

ADV KATE HOFMEYR: Well the record will reflect the clarification ...

CHAIRPERSON: *Ja*.

10 **ADV KATE HOFMEYR:** That is 9 November ...

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: 2015; but then to enable us to read this chronologically and ...

CHAIRPERSON: But – I am sorry.

ADV KATE HOFMEYR: Yes.

CHAIRPERSON: It is important actually to get it right where the date is written with the – with the year first.

ADV KATE HOFMEYR: Indeed.

CHAIRPERSON: Because sometimes you do not know whether ...

20 **ADV KATE HOFMEYR:** Of course.

CHAIRPERSON: The next is the month or the date.

ADV KATE HOFMEYR: Is the day or the month.

CHAIRPERSON: *Ja*.

ADV KATE HOFMEYR: Indeed, indeed.

CHAIRPERSON: Hm.

ADV KATE HOFMEYR: So this reflects 2015/11/09. If we then go to page 2-2-6 Dr Dahwa.

DR MASIMBA PHILLIP DAHWA: Yes Chair.

ADV KATE HOFMEYR: We had a key on that earlier page that what would be reflected in red in this conversation would be the communication originally from Ms Kwinana. Is that as you understand these emails?

DR MASIMBA PHILLIP DAHWA: Yes Chair.

ADV KATE HOFMEYR: So I would like us then to start at page 2-2-6
10 with what Ms Kwinana says in that first red portion of the page. What – what did that relate to Dr Dahwa?

CHAIRPERSON: Hang – hang on Ms Hofmeyr I must just make sure that ...

ADV KATE HOFMEYR: Yes.

CHAIRPERSON: I understand – to – to my eyes the red on page 26 – the red parts appear to be part of the same email ...

ADV KATE HOFMEYR: Yes.

CHAIRPERSON: As the blue parts ...

ADV KATE HOFMEYR: Indeed.

20 **CHAIRPERSON:** But is it suggestion that they are not – they came from somebody else – different people ...

ADV KATE HOFMEYR: They ...

CHAIRPERSON: Blue and red come from different people?

ADV KATE HOFMEYR: Indeed.

CHAIRPERSON: Oh, okay.

ADV KATE HOFMEYR: So as we understand it the red is what Ms Kwinana first sent ...

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: To Mr Wolf Meyer.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: Who is actually the blue reflected on this page.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: Because what he had done in his email was he responded to Ms Kwinana.

10 **CHAIRPERSON:** Yes.

ADV KATE HOFMEYR: That is why it begins at the page:

“Dear Ms Kwinana ...”

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: But he kept in red what her initial communication had said to him.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: So it is – it is difficult to navigate.

CHAIRPERSON: Yes.

20 **ADV KATE HOFMEYR:** But with the assistance of Dr Dahwa we have been able to establish that the red is Ms Kwinana’s initial communication.

CHAIRPERSON: Hm.

ADV KATE HOFMEYR: And then both above it and below it on the page you see the blue which is as we understand it Mr Meyer’s response to various points that she raises.

CHAIRPERSON: Are there lots of emails that they exchange which look that (intervenes)?

ADV KATE HOFMEYR: This is the only one for today's purposes.

CHAIRPERSON: Oh, okay.

ADV KATE HOFMEYR: But this is actually an email that features in quite a number of witnesses' evidence ...

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: Because there was quite a bit going on at the time. The email also had two letters attached it ...

10 **CHAIRPERSON:** Yes.

ADV KATE HOFMEYR: And we will go to those because they are very important.

CHAIRPERSON: You know what I think might be helpful for ...

ADV KATE HOFMEYR: Hm.

CHAIRPERSON: To me – at some stage I might forget about this explanation ...

ADV KATE HOFMEYR: Yes.

CHAIRPERSON: And when I read them I think ...

ADV KATE HOFMEYR: Who is speaking to who – to ...?

20 **CHAIRPERSON:** I do not know whether I read them I could tell that is from different people or not ...

ADV KATE HOFMEYR: Yes, yes.

CHAIRPERSON: But I do not want to ascribe to ...

ADV KATE HOFMEYR: Yes.

CHAIRPERSON: One person something that I should ascribe to

another one. Maybe we – it might be a good idea to have something that one can put here which has that explanation.

ADV KATE HOFMEYR: Yes.

CHAIRPERSON: A note or so. If I come to the page I see the note ...

ADV KATE HOFMEYR: Yes.

CHAIRPERSON: That warns me red is from so and so

ADV KATE HOFMEYR: Yes.

CHAIRPERSON: Blue is from so and so.

ADV KATE HOFMEYR: We will do that.

10 **CHAIRPERSON:** *Ja*, thank you.

ADV KATE HOFMEYR: We will put just a note page into the bundle before we – probably at the start of this tab.

CHAIRPERSON: *Ja*.

ADV KATE HOFMEYR: So that it will just aid the reader to navigate.

CHAIRPERSON: Yes. What – what we might do if – if - another way to would be to get maybe yellow or pink stickers ...

ADV KATE HOFMEYR: Yes.

CHAIRPERSON: And just put them on the page – on the actual page with a handwritten note ...

20 **ADV KATE HOFMEYR:** Yes.

CHAIRPERSON: That would just help otherwise ...

ADV KATE HOFMEYR: We will do that.

DR MASIMBA PHILLIP DAHWA:

CHAIRPERSON: I could ascribe to somebody something that they never said ...

ADV KATE HOFMEYR: Indeed.

CHAIRPERSON: Or wrote *ja*. Okay.

ADV KATE HOFMEYR: And Chair every day you hear much more evidence related to many other topics. So when we return to this we will need to have this guidance certainly.

CHAIRPERSON: *Ja*.

ADV KATE HOFMEYR: Thank you.

CHAIRPERSON: Okay, okay.

ADV KATE HOFMEYR: Right. So we are on page 2-2-6 Dr Dahwa and
10 there is around the middle of that page red text. Do you see that?

DR MASIMBA PHILLIP DAHWA: Yes Chair.

ADV KATE HOFMEYR: And we have clarified that is where Ms Kwinana is setting out what she wanted to say in her correspondence to Mr Meyer. What do you understand her to be raising in that first paragraph in red on that page?

DR MASIMBA PHILLIP DAHWA: Thank you Chair. I think initially I need to give a bit of background ...

ADV KATE HOFMEYR: Yes.

DR MASIMBA PHILLIP DAHWA: To some of the things that were
20 happening at SAA. As mentioned earlier in my submission that transformation became core and as such I was tasked during the 90 day turnaround period during the time of Mr – the former Mango CEO – Mr Nico ...

ADV KATE HOFMEYR: Nico Bezuidenhout.

DR MASIMBA PHILLIP DAHWA: Bezuidenhout, yes to come up with an

initiative as instructed by the Chair to try and drive forward the transformation agenda and as such I happily took the task Chair and we went on some information sharing roadshows. It was across quite a number of the provinces where we were sharing with the different bidders – no, no not bidders - potential suppliers to SAA explaining to them how to do business with SAA.

This kind of events we dubbed them supply engagement summits because we were saying let the suppliers meet the buyers and can the suppliers explain to the potential BEE companies what kind of
 10 goods and services we require as an airline and also to say how best can they prepare themselves for opportunities should they arise. We shared with them as well our procurement – our public procurement plans which is more or less the – the template that Ms Kwinana asked me to populate where we were advising them of when certain contracts were starting and so that at least in their minds they can start to think and prepare themselves in terms of their areas of interest for that time when the – the bids – I mean the RFPs would go out so that at least they are knowledgeable.

So we went on this exercise. We – initially we even had
 20 booths – you know – we had exhibition booths that is how it – those seminars it was in a big hall like here and I would have my different Category Managers presenting the various things within their area. So the (indistinct) of bringing potential suppliers to SAA would move from one booth to the other trying to understand the whole mechanics around their respective requirements and all those kind of things. It

was information sharing and non-committal.

This is something Chair that was not done for the first time and I can confess I did this in the United Kingdom when I was responsible. Although we used call it Meet the Buyer Event, buyers were explaining their processes because you find public procurement Chair is quite straightforward but at least it was a deliberate move to explain which Mr Nico Bezuidenhout was very happy with.

We shared that with the Chair. She was very excited about it and we started doing our roadshows. That - with that background Chair
 10 we then had one of the supply engagement summits in Durban and the manner in which we invited people also had a bit of challenges because we did not open up. By opening it up I mean in public sector procurement Chair there are overriding principles.

When I do something it is not for transparency, openness, fairness, competitiveness and value addition. So it means even when you make invites to anything you need to open it up to any potential BEE or any potential person who thinks they qualify to that kind of a job. So the Chair and the – and Ms Kwinana gave me some listings of some of the companies they think they wanted to be invited and my
 20 Category Managers happily invited them to that session.

So we had a session of almost about 60 different companies if you want. We did not quite know their names but obviously we had a register where people could register their presence and attendance and then when we were in those sessions we started talking about the – the issue of transformation – aggressive transformation - which I did not

have problems with because it was something that I think is noble but though I had problems with the how we needed to do it the what I was very happy with.

Hence we came up with that initiative and now at some point later Ms Kwinana then – that is where she writes this particular passage and she was then saying she wanted me to award 15 percent set-aside of – what was this product? That was Swissport Services as well as for Engen to the 60 companies that attended the – the supply engagement summit in Durban.

10 I explained to Ms Kwinana that it was not possible because legally those were individual companies and it was very difficult for us to then say we are going to award to a group of 60 different companies. In whose name was the award going to be made. So that was my problem, number one.

Then she responded to me and said she needed to – I need – I needed as the CPO to set up a company – a holding company that could constitute all those companies and I explained to her that it was virtually impossible because that was not within the mandate of the role of the Chief Procurement Officer setting up companies to which I will
20 procure from. It was a fundamental breach of my duties and then she said she was going to do it herself and we had some ...

CHAIRPERSON: That is Ms Kwinana?

DR MASIMBA PHILLIP DAHWA: Ms Kwinana yes.

CHAIRPERSON: Hm.

DR MASIMBA PHILLIP DAHWA: And we had challenges around that

and unfortunately in all my efforts to explain to her the difficulties of me trying to merge different individuals attending a supply engagement summit and make them become a company she did not take it lightly. She felt I was – I was being ...

CHAIRPERSON: You were defying her?

DR MASIMBA PHILLIP DAHWA: Exactly but ...

CHAIRPERSON: Hm.

DR MASIMBA PHILLIP DAHWA: But no I would never have done anything because it is virtually impossible and it was – it was not within
10 the remit of my duties and that is what gave rise to this – this particular email.

ADV KATE HOFMEYR: Thank you Dr Dahwa.

CHAIRPERSON: So – so since she was a Non-Executive Member of the Board she would keep the CEO and the person you were reporting who I think was – you said CFO?

DR MASIMBA PHILLIP DAHWA: Yes.

CHAIRPERSON: Keep those people and come and talk to you about procurement issues?

DR MASIMBA PHILLIP DAHWA: Yes Chair. You will find she would
20 even go a step below me.

CHAIRPERSON: Yes.

DR MASIMBA PHILLIP DAHWA: Later on I am sure.

CHAIRPERSON: Okay, alright.

ADV KATE HOFMEYR: Thank you Chair, I think it is fairly important that we actually reflect what Ms Kwinana wrote in this section because

Dr Dahwa, I'd like to ask one or two follow up questions from it so Chair with your leave I'll just read it into the record and then we can take it from there, so the first portion in red on that page reads,

10 “The allocation of 15% to BEE was a Board decision which has not been implemented, the Board allocated the 15% to all BEE companies in the SAA data base who've been knocking on SAA doors. The number of these companies is ±60 in the Sharks Board Supplier engagement the forum that you were supposed to be it, it was agreed that SAA or Engen for that matter cannot sign an agreement with 30 companies and that they will be included as one company for ease of contracting. In subsequent meeting with Misimba it was agreed where the one company represents all ± companies or all 60 companies sign, it is not an issue. What must happen is that the 15% must be implemented, in fact Chairperson no implantation of Board – non-implementation of Board resolutions amounts to insubordination”.

Dr Dahwa, your evidence earlier suggested that you had difficulties with the practicalities of how to do this, is that correct?

20 **DR MASIMBA PHILLIP DAHWA:** Yes Chair.

ADV KATE HOFMEYR: And the legalities, in fairness to your evidence?

DR MASIMBA PHILLIP DAHWA: Yes Chair.

ADV KATE HOFMEYR: When Ms Kwinana writes here that you had agreed with her that it didn't matter whether one company represents all ± 60 companies or all 60 companies sign has she correctly reflected

your position, in your view?

DR MASIMBA PHILLIP DAHWA: No Chair.

ADV KATE HOFMEYR: Had you communicated with her the difficulties that you saw following from this Board decision?

DR MASIMBA PHILLIP DAHWA: Yes Chair and I think on top of that Chair we also had advice from the National Treasury and DTI to that effect to say that it was unlawful for SAA to continue on that path.

ADV KATE HOFMEYR: Thank you Dr Dahwa that is a point made later in the communication so I'd like to pick it up then if we may.

10 **CHAIRPERSON:** Hang on, I thought there's a part in the email where she seems to be addressing the Chairperson?

ADV KATE HOFMEYR: Yes indeed, Chair the original ...(intervention).

CHAIRPERSON: That last sentence I think it was.

ADV KATE HOFMEYR: Yes so the way this begins, it's difficult to put it together but it's a email addressed by Ms Kwinana to Ms Myeni as the Chairperson detailing the difficulties that she has but she copies it to, amongst others, the CFO who is Mr Meyer and it's then Mr Meyer's response to her that we have on this page.

20 **CHAIRPERSON:** Oh you see, I understood and I made a note next to it, in line with the note explanatory note that I said maybe we should have, I said it's first email from, actually I said from Ms Kwinana to Mr Meyer, initially I thought it's from Ms Kwinana to Mr Meyer, that's not the case?

ADV KATE HOFMEYR: It is to Mr Meyer, the Chairperson, the other member of the Board and what Ms Kwinana does is at

points...(intervention).

CHAIRPERSON: But it is from Ms Kwinana?

ADV KATE HOFMEYR: It's certainly from Ms Kwinana but she addresses different people.

CHAIRPERSON: Oh it's addressed to a number of people among whom was the Chairperson.

ADV KATE HOFMEYR: Indeed and also among whom is Mr Meyer and it might have been my error to focus on Mr Meyer because the blue on this page is Mr Meyer's response.

10 **CHAIRPERSON:** Okay, thank you, it can be confusing.

ADV KATE HOFMEYR: It is terribly confusing Chair but we will do those notes in due course.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: Could we then go to what I understand to be Mr Meyer's response which actually appears higher on the page, is my understanding correct Dr Dahwa?

DR MASIMBA PHILLIP DAHWA: Yes Chair.

20 **ADV KATE HOFMEYR:** And what does Mr Meyer reflect there under points 1, 2 and 3 in his response to this aspect of Ms Kwinana's earlier correspondence?

DR MASIMBA PHILLIP DAHWA: Firstly and foremost Mr Meyer is reminding the Board member about the Chief Procurement Officers fiduciary duty as being to ensure SAA procurement practices are compliant with its own SME policies as well as the Public Procurement laws and regulations and he's also reminding the Board member that

whatever decisions and conduct by the Board it must not – it must be beyond approach, it must stand the test of times and also on point 3 he's saying please note the allocation of the 15% set aside to Quintessential Business Consulting Limited, registration number 2014/012470/07 represented by Mr Peter Tshisevhe is not part of the Board resolution.

ADV KATE HOFMEYR: Can we stop there, what was Quintessential Business Consulting?

DR MASIMBA PHILLIP DAHWA: Quintessential Business Consulting
10 Private Limited, Chair, is a company that was sent to me by Mrs Kwinana via a SMS as the holding company that would represent the ± 60 companies that would – that have attended the Durban supply engagement summit and also an individual by the name Mr Peter Tshisevhe was supposed to be the representative of that particular company.

ADV KATE HOFMEYR: So what is your understanding of why Mr Meyer was making specific reference to that company not appearing in the Board resolution?

DR MASIMBA PHILLIP DAHWA: Chair you find the Board resolution in
20 as much as it was talking about the allocation of the 15% to a BEE company, but it did not mention a particular name of a company.

ADV KATE HOFMEYR: And despite that was your understanding that Ms Kwinana was saying the 15% had to be allocated to that specific company?

DR MASIMBA PHILLIP DAHWA: Yes Chair.

ADV KATE HOFMEYR: If we go down the page to the next red that appears, could you tell us what you understand Mr Kwinana to be conveying in that part of her earlier email?

DR MASIMBA PHILLIP DAHWA: I think what Mrs Kwinana was then saying, she was in disagreement with Mr Wolf Meyer in terms of the practical implementation of this particular requirement and then she goes on to – trying to say was Mr Meyer not part of that particular Board where this resolution was made, as kind of implying that he should have known about Quintessential as it could have been at that particular Board, I mean that's my understanding.

ADV KATE HOFMEYR: Thank you, she's there in that second red dealing with the Swissport contract is that correct?

DR MASIMBA PHILLIP DAHWA: Yes Chair.

ADV KATE HOFMEYR: And what was your understanding that the set-aside that the Board wanted to be implemented in relation to Swissport?

DR MASIMBA PHILLIP DAHWA: I think I also need to give a bit of background Chair, the Swissport contract Chair happened well before my time, the tender happened in 2011 some time and it was awarded in 2012 and what you find is, because of the malpractices in terms of contracting there had not been a contract in place ever since until this particular date and for some reason now that we're talking about BEE the Board felt that they needed now to relinquish part of their scope of work to a BEE company by the name Gemicron? Private Limited and where that company comes from, again, I didn't have an idea chair.

ADV KATE HOFMEYR: And what was Mr Meyer's response to that you'll pick it up in the blue above the red, halfway down the page.

CHAIRPERSON: I just note that at the end of each of the two emails that Ms Kwinana has written there, she ends up by emphasising to the Chairperson that non-implementation of Board resolutions amounts to insubordination, it's like she's instigating her to do something about what she perceives to be insubordination.

ADV KATE HOFMEYR: Indeed Chair and that is actually quite important for the rest of Dr Dahwa's story because that is precisely as
10 we have it, the charge that was levelled at him. So if we pick up the blue above that red there, what was Mr Meyer's response Dr Dahwa?

DR MASIMBA PHILLIP DAHWA: Shall I read Chair?

CHAIRPERSON: Yes.

DR MASIMBA PHILLIP DAHWA: Okay I read,

"The Board resolution that SAA should endeavour to sign the contract with a BEE SMM directly to assist the SMME to raise any required funds is unrealistic. It is not clear how SAA will sign a contract with a supplier without following a due and proper procurement process".

20 **ADV KATE HOFMEYR:** Thank you and then if you will just read the blue above that, under point 4 as well.

DR MASIMBA PHILLIP DAHWA: Point 4,

"The practical implementation of the Board resolution on the Swissport ground handling services are clear, especially in that this is a regulated service, the selection of Gemicron Private Limited to work

with Swissport as the BEE partner for the 30% set aside is not in line with the Board resolution, also a due and proper procurement process was not followed.

CHAIRPERSON: Can I just confirm that in terms of the sequence on this page, the first email to be sent is the one – the first red one on the page and that the next email which was a response to it is the first one on the page, first red...(intervention).

ADV KATE HOFMEYR: Chair if I can clarify, the reds all come from a single email.

10 **CHAIRPERSON:** Yes I understand that.

ADV KATE HOFMEYR: And what Mr Meyer does in responding to it, is he breaks it up into its various parts and then he responds to it in the blue.

CHAIRPERSON: Yes but I'm asking is whether, first we have the first red from Ms Kwinana.

ADV KATE HOFMEYR: Yes.

CHAIRPERSON: And then we have a response to that which is above Ms Kwinana's one.

ADV KATE HOFMEYR: Indeed Chair.

20 **CHAIRPERSON:** And that thereafter we have the second red which is from Ms Kwinana.

ADV KATE HOFMEYR: Yes.

CHAIRPERSON: And then we have the blue immediately above that.

ADV KATE HOFMEYR: Correct.

CHAIRPERSON: And thereafter we have the last one on the page.

ADV KATE HOFMEYR: Indeed Chair.

CHAIRPERSON: Now I just wanted make sure I've got that sequence right.

ADV KATE HOFMEYR: Of course, Chair there is a lot going on in this email and I also know that Ms Mpshe is going to spend some time on it on Monday what I want to focus on with Mr Dahwa are the particular aspects that emerge from this email that then relate to his later engagements with Ms Myeni and Ms Kwinana. So if I may suggest that we then turn over the page to page 227.

10 **CHAIRPERSON:** Yes.

ADV KATE HOFMEYR: You'll see at the bottom there Dr Dahwa the last paragraph in red there.

DR MASIMBA PHILLIP DAHWA: Yes Chair.

ADV KATE HOFMEYR: There is an indication from Ms Kwinana, it appears to be an acceptance that, and I'm quoting here,

"It is true that the Board cannot be seen to be operationally involved",

Could you continue to read what is recorded there.

DR MASIMBA PHILLIP DAHWA: Yes Chair,

20 "The Board has specific functions which include, amongst others making decisions that do not put the company at risk. Management has also a specific responsibility among them being to implement management decisions and ensure that all of our suppliers have valid contracts in place and that we do not irregular expenditures, this is just for some of the

responsibilities”.

ADV KATE HOFMEYR: And then the blue text below that is where I understand it, Mr Meyer was making reference to that guidance that you referred to previously that had been received from the shareholder and DTI what is that guidance Dr Dahwa?

DR MASIMBA PHILLIP DAHWA: The guidance was, and I read from what Mr Meyer wrote,

“SAA has received a direct guidance from the shareholder as well from Department of – DOT in respect...(intervention).

10 **CHAIRPERSON:** Is that transport?

DR MASIMBA PHILLIP DAHWA: Yes.

ADV KATE HOFMEYR: Chair I think read in context, it was a typo because it’s really supposed to be DTI, we’ll see the letters attached in a moment.

CHAIRPERSON: Okay.

DR MASIMBA PHILLIP DAHWA: Thank you,

20 “In respect of the 30% set aside matter which should not be ignored by the Board referred to the attached correspondences from the DTI and National Treasury we all agree that transformation in South Africa is important but this goal does not justify that proper governance and supply chain policies should not be followed. SAA is currently exposed to and cannot afford an audit report containing findings, governance transgressions”.

ADV KATE HOFMEYR: Thank you Dr Dahwa, I’d like to take us then to

the two correspondences that were referenced there that were then attached to this email, you'll find that if you flick a few pages on at page 234.1.

DR MASIMBA PHILLIP DAHWA: Yes Chair.

ADV KATE HOFMEYR: Were you aware of this letter at the time?

DR MASIMBA PHILLIP DAHWA: Yes Chair.

ADV KATE HOFMEYR: And who is the letter written by and who is it addressed to?

DR MASIMBA PHILLIP DAHWA: The letter is written by Mrs Zodwa
10 Ntuli acting BBBEE Commissioner from Department of Trade and Industry and it's going to Ms Dudu Myeni Chairperson of the Board, South African Airways.

ADV KATE HOFMEYR: Thank you and just assist us with a date for the letter if you may you'll find it at page 234.3.

DR MASIMBA PHILLIP DAHWA: It was dated 13th of September 2015 Chair.

ADV KATE HOFMEYR: Thank you, I'd like to pick it up at 234.2 if we may.

DR MASIMBA PHILLIP DAHWA: Yes Chair.

20 **ADV KATE HOFMEYR:** And Dr Dahwa to the extent necessary I'll take you to any specific paragraph that I think is important but if you could just summarise for us in essence, what did you understand this letter to be communicating from the acting BBBEE Commissioner to the Chair of SAA's Board.

DR MASIMBA PHILLIP DAHWA: I think in my own view Chair just a

summary or the key message for me to South African Airways was please do not proceed with this practice as it is unlawful.

ADV KATE HOFMEYR: Thank you, you do see that – I think that is a fair summary of the text Dr Dahwa, if we start at page 234.2 you'll see under paragraph 3 there the acting BBBEE Commissioner writes,

10 “We reiterate all the contents of the letter sent to SAA on 9 September 2015 and advise that the 30% set aside initiative that SAA is in the process of implementing, to the extent that it was explained to us in the meeting with SAA, is in our view, not in line with the BBBEE Act and the codes of good practice”.

Chair if I may just pause for a moment there, that prior correspondence is going to be dealt with by Ms Mpshe, so we haven't included it here, she will be giving evidence on Monday. It goes on at paragraph 4 to state as follows,

20 “As an organ of State and Public entity SAA is required to apply any relevant code of good practice, issued in terms of the BBBEE Act which refers to the generic codes issued by the Minister of Trade and Industry or the Sector code as approved and gazetted by the Minister of Trade and Industry. Any organ of State or Public entity may deviate or be exempted through section 96 of the BBBEE Act as amended if particular, objectively, verifiable facts or circumstances applicable necessitate the exemption or deviation and then at 5, SAA confirmed that the deviation or exemption referred to in

paragraph 4 above has not been granted in line with the framework of the BBEE Act as amended and therefore it is our view that SAA is not in a position to legally proceed with the implementation of the 30% set aside in the manner proposed”,

And it goes on at – over the page at page 234.3 if you read at paragraph 8 there Dr Dahwa, would you read that for us so that we know the terms in which this letter was concluded.

DR MASIMBA PHILLIP DAHWA: Yes Chair and I read,

10 “having said the above we request SAA to send us written confirmation that it will not proceed to implement the 30% set aside initiative until it has applied for and received the authorisation to do so in terms of the BBEE Act as amended as agreed in the meeting. We will appreciate if the person, duly authorised person at SAA can send us this written confirmation by Friday 18th of September 2015”.

ADV KATE HOFMEYR: Dr Dahwa when you were providing the summary of your understanding of this letter I recall you as having said that the acting BBEE Commissioner indicated that this initiative
20 should stop immediately, I certainly want to suggest to you that, that’s consistent with what paragraph 8 says because as I read it, and you’ll correct me if you have a different interpretation, it’s saying that the BBEE Commissioner is requesting written confirmation that SAA will not proceed to implement the initiative and requests that by the 18th of September 2015 is that how you read the letter?

DR MASIMBA PHILLIP DAHWA: Yes Chair.

ADV KATE HOFMEYR: To your knowledge, what happened, if you have any knowledge, about whether SAA did provide that written confirmation that it would not proceed?

DR MASIMBA PHILLIP DAHWA: Not to my knowledge Chair and if it had, I then deserved to know, basically as the implementer of this particular task.

ADV KATE HOFMEYR: And we'll get there in your evidence but as I understand it, post this date which is 13 September 2015, there are still
10 engagements between members of the Board and yourself requiring you to implement the 30% set aside, is that correct?

DR MASIMBA PHILLIP DAHWA: Yes Chair.

ADV KATE HOFMEYR: We'll get into the detail.

CHAIRPERSON: I see also that in the same paragraph- oh not in the same paragraph, in the same letter, National Treasury of the BBBEE Commissioner leaves the door open for SAA, if they take a different view to come back to her and give their different view and reasons so that she can look at that, was that ever done, if you know?

DR MASIMBA PHILLIP DAHWA: Not to my knowledge Chair.

20 **CHAIRPERSON:** Yes okay.

ADV KATE HOFMEYR: Thank you and then if we can go over to the second attached letter, which you'll find at 234.4, who is that letter from Dr Dahwa?

DR MASIMBA PHILLIP DAHWA: It's from the National Treasury Chair.

ADV KATE HOFMEYR: And who in particular there?

DR MASIMBA PHILLIP DAHWA: That is Mr Kenneth Brown, the Chief Procurement Officer then.

ADV KATE HOFMEYR: And what is the date of that letter?

DR MASIMBA PHILLIP DAHWA: That's 28th of September 2015 Chair.

ADV KATE HOFMEYR: And to whom is it addressed?

DR MASIMBA PHILLIP DAHWA: To Mrs T. Mpshe who was the acting Chief Executive Officer of SAA then.

ADV KATE HOFMEYR: Chair the letter is fairly short and most of it's content I submit is important, so if I may just read it into the record and
10 then we can ask Dr Dahwa for his comment.

CHAIRPERSON: That's fine.

ADV KATE HOFMEYR: There's a reference to a previous letter dated 23 September 2015, again Chair we will deal with that in Ms Mpshe's evidence but it's relevant now because this was an attachment to Dr Dahwa's – the emails on which Dr Dahwa was copied then the author, Mr Brown continues,

20 "Your letter indicates that currently all procurement decisions are made within the framework of the Supply Chain Management policy and that the Board resolved to set aside 30% for key procurement transactions for black owned businesses. Decisions that are taken by the Board to encourage transformation in procurement are commendable, however, the SAA Board must not operate outside the procurement legal framework. The resolution of the Board to set aside 30% in its current form is not supported by any

procurement legal framework and must be stopped with immediate effect. You are kindly requested to advise the Board not to take procurement decisions that brings the name of SAA and National Treasury into disrepute. Kindly update me on the development around the 30% set aside of key procurement transactions”.

Dr Dahwa what did you understand this letter to convey insofar as National Treasury’s view of the 30% set aside decision was concerned?

- 10 **DR MASIMBA PHILLIP DAHWA:** I think Chair the advice was straightforward that we needed or SAA needed to stop implementing the 30% set aside with immediate effect.

ADV KATE HOFMEYR: And to your knowledge Dr Dahwa was this point taken forward with the Board?

DR MASIMBA PHILLIP DAHWA: No Chair.

ADV KATE HOFMEYR: Thank you, I’d then like to return to your affidavit if we may, we were at page 10 of the affidavit.

DR MASIMBA PHILLIP DAHWA: Yes Chair.

CHAIRPERSON: Did you say page 10?

- 20 **ADV KATE HOFMEYR:** Page 10 Chair.

CHAIRPERSON: Okay thank you.

ADV KATE HOFMEYR: And we can pick it up at the bottom of the page at paragraph 29, Dr Dahwa you there are dealing with the inaugural engagement summit at which the Chair of the Board said certain things in relation to you, what occurred on that occasion?

DR MASIMBA PHILLIP DAHWA: Sorry which part Chair?

ADV KATE HOFMEYR: Sorry paragraph 29 at the bottom of page 10 you talk about certain of the comments of the Chair that you regard as amounting to insinuations and you talk about a specific event, being the inaugural engagement summit and what was said there, could you explain that to us?

DR MASIMBA PHILLIP DAHWA: Sure Chair, you know just to the public the Chair from Nowhere advised the audience that I was the acting Chief Procurement Officer and for me to secure a permanent
10 position I needed to take instructions from her and to make sure I implemented them as per request and if I did not so, she wouldn't appoint me permanent Chief Procurement Officer.

CHAIRPERSON: Who was saying that to you?

DR MASIMBA PHILLIP DAHWA: That was Ms Dudu Myeni the Chairperson.

CHAIRPERSON: Was this in a meeting?

DR MASIMBA PHILLIP DAHWA: Yes.

CHAIRPERSON: Apart from you and her who else was at the meeting?

DR MASIMBA PHILLIP DAHWA: It was – she was addressing the
20 people, she'd do it like in a joking manner but obviously to me...(intervention).

CHAIRPERSON: Oh so there were other people in the meeting?

DR MASIMBA PHILLIP DAHWA: Yes.

CHAIRPERSON: And what was the business of the meeting?

DR MASIMBA PHILLIP DAHWA: The same supply engagement

summits where we were sharing information about opportunities and the possibilities...(intervention).

CHAIRPERSON: Oh the Board members would attend those summits?

DR MASIMBA PHILLIP DAHWA: Some would but all I know is always were the two Board members, Ms Kwinana and Ms Myeni and once, if my memory serves Dr Tambi attended as well.

CHAIRPERSON: Yes at – was it at one or more of these meetings where she spoke along these lines about you?

DR MASIMBA PHILLIP DAHWA: On another one, where I sensed
10 trouble coming my way, we went, for the first time with Advocate Lester Peter and the then Head of Procurement for SAA Technical she was also Advocate – I can't remember her name but it was a she and the Char again from nowhere started saying, you know I don't think as South Africans we can run this kind of things on our own, you know it's time we need to have our own wood that would help us to take this country forward and she was saying it again in the (indistinct) but obviously me sitting there, I was the organiser and the Chief Architect of these events so such comments, in my view, were not necessary if I may use that word.

20 **CHAIRPERSON:** Yes let's go back to the first one, just repeat what she said, the first one that you mentioned.

DR MASIMBA PHILLIP DAHWA: The first one Chair, she said if I didn't implement some of the things that she wanted in terms of transformation, she would not appoint me Chief Procurement Officer because I was acting and I think this was happening in my second

renewal of contract where I was still with six months to prove myself.

CHAIRPERSON: And at this stage, as far as you were concerned, everything you had been doing was in accordance with the policies of SAA and the law?

DR MASIMBA PHILLIP DAHWA: Yes Chair.

CHAIRPERSON: But she was expecting you to do things differently, was your understanding of her instructions?

DR MASIMBA PHILLIP DAHWA: Ja what happened Chair, initially we were doing these road shows in line with our wish which was more of
10 information sharing, nothing committal, you know just providing information getting the audience to ask questions and we'll respond to, but as the time progressed that is where now we started getting specifics to say of this particular contract I want you to award this. For instance in Durban she had to ask me to stand up and to say or confirm to the whole Augusta House that I had awarded a contract to Swissport in line with this but then I said yes a contract was awarded because that contract in as far as I knew was awarded in 2012 and from practice Chair a contract is only awarded once. You cannot award it twice or thrice or three times. So as time progressed we started changing the
20 goal posts and the whole thing started becoming a bit muddled it was not still in the same spirit and vein at which we had started.

CHAIRPERSON: Yes okay Ms Hofmeyr.

ADV KATE HOFMEYR: Thank you. I would then like to move to a particular interaction that you have with Ms Kwinana and Ms Meyene on the 2 October Doctor Dahwa and you will find that at page 11 of your

affidavit.

DR MASIMBA PHILLIP DAHWA: Yes Chair.

ADV KATE HOFMEYR: And you start with this aspect of your evidence at paragraph 30 on that page. Can you tell us about that date of the 2 October and take us as faithfully as you can through the sequence of events because quite a bit happens as I understand it on that day?

DR MASIMBA PHILLIP DAHWA: True.

ADV KATE HOFMEYR: Could you take us through that?

DR MASIMBA PHILLIP DAHWA: Thank you Chair. I think around ten
10 in the morning I received a sms message from Ms Kwinana that she wanted me to come to SAA Airways Park boardroom on the 6th Floor. So I went there and I saw Ms Kwinana. Then she asked me how far I had gone with the implementation of the 30% set aside and I repeated again my difficulties in terms of implementing these respective contracts or requirement per se and then she called the...

CHAIRPERSON: This was Ms Kwinana again.

DR MASIMBA PHILLIP DAHWA: That was Ms Kwinana yes.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: And Chair if I may just interrupt for one moment
20 before you continue Doctor Dahwa. The date is quite important it seems to me in relation to the letters that we have looked at.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: Because as I recall it the letter – the first letter from the BBBEE commissioner comes in on the 13 September. The second one from National Treasury is the end of September I think it

was the 28 September

DR MASIMBA PHILLIP DAHWA: 29th.

ADV KATE HOFMEYR: And now we are a matter of a few days later is that correct in the chronology?

DR MASIMBA PHILLIP DAHWA: Yes Chair.

ADV KATE HOFMEYR: So those two letters are communicating as I understand the papers that SAA must not proceed to implement this 30% set aside, is that your understanding of it?

DR MASIMBA PHILLIP DAHWA: Yes Chair.

10 **ADV KATE HOFMEYR:** Right and then we get to the events of the 2 October. Thank you Doctor Dahwa apologies.

DR MASIMBA PHILLIP DAHWA: Thank you Chair. So that is where it all started.

CHAIRPERSON: So – I am sorry. Did you say you got a call and Ms Kwinana called you and you had a meeting?

DR MASIMBA PHILLIP DAHWA: No it was a text message Chair.

CHAIRPERSON: It was a text message?

DR MASIMBA PHILLIP DAHWA: Yes.

CHAIRPERSON: From her?

20 **DR MASIMBA PHILLIP DAHWA:** That she wanted me on 6th Floor.

CHAIRPERSON: On the 6th Floor?

DR MASIMBA PHILLIP DAHWA: My office was on the 4th Floor.

CHAIRPERSON: Of the SAA building?

DR MASIMBA PHILLIP DAHWA: Building yes Airways Park building.

CHAIRPERSON: Did she used to be around in the building? She was

non-executive is it not? Did she used to be around or ...

DR MASIMBA PHILLIP DAHWA: Ja you find.

CHAIRPERSON: Or occasionally she would be there?

DR MASIMBA PHILLIP DAHWA: You will find Chair we also had instances where I also was not sure whether there was any board meeting going on or whatsoever you know as thigs started unveiling but you find this was not like for the first time that they could be at SAA doing whatever their business for the day was.

CHAIRPERSON: Hm. Okay so the sms said – asked you to meet her
10 where?

DR MASIMBA PHILLIP DAHWA: On the boardroom at 6th Floor.

CHAIRPERSON: Oh okay yes and you went there.

DR MASIMBA PHILLIP DAHWA: Which was the executive suite. Yes and I went there. So she wanted to know how far I had gone with the implementation of the Swissport and the Engen contracts where the issue of 30% set aside was included as well. So I went at pains again to try and explain to her the challenges I was having in terms of trying to implement and she then called Ms Ursula Fikelepe who was the general manager legal and risk to try and explain to me the various
20 options that could be looked at in terms of the implementation and unfortunately Chair to me those - to make sense they did not in any way improve my fears of violating the procurement rules and regulations and as such I insisted that it was a difficult task to implement and I would not find myself in a position to go ahead with that decision. And then during that time from nowhere the board chair

walked in Chair and she started showering praises to GM Legal and Risk that you see our daughter she is great she understands what we are trying to do. You know in my face and she went on and on saying all sorts of praise words for GM Legal Risk and Legal and Risk and then she said okay now I want to know how far have you gone with the implementation of these 30% set aside? She actually said she did not want me to respond to her so she was asking Ms Kwinana to give her an update of which she did and she told the chair that Doctor Dahwa had not even moved an inch in terms of trying to make sure that this is

10 done and is continually giving me excuses and as to why this not possible. Then she started addressing me and said that she wanted to advertise my job and she was going to start internally. Then she said oh okay by the way let me call the company secretary. So the company secretary Ms Ruth Kibuuka was invited to take minutes of what she said she wanted recorded. So I tried to make an attempt to respond to her and I remember vividly in her words she said no I will only accord you airtime if you do what I have asked you to do you have all the airtime to talk to me and even to explain whatever you want to explain. So I just could not do it. Then she said to me I needed to go back to my office

20 and prepare the award letters. Ms – Ms Kwinana then started making some draft sketches of how she wanted the awards to be done and then I was asked to go and implement that. GM Legal and Risk kind of had considered to say maybe there was a way to do it which I still did not agree with because from procurement point of view it was not in line with the laws. So I was asked to go back to my office and to prepare

award letters for the two companies of which I did. I left I went to my office and I tried to draft something then I came back and I said but I cannot sign.

CHAIRPERSON: Did they wait for you in the boardroom?

DR MASIMBA PHILLIP DAHWA: Yes they did Chair.

CHAIRPERSON: So they – it was like go and draft the letters and come back you will find us here.

DR MASIMBA PHILLIP DAHWA: Yes it was a very long day you will find I leave office now around seven.

10 **CHAIRPERSON**: It was seven.

DR MASIMBA PHILLIP DAHWA: Or around five, sixish there in the evening.

CHAIRPERSON: Ja.

DR MASIMBA PHILLIP DAHWA: But we started this whole thing from ten o'clock.

CHAIRPERSON: But the – firstly were – had – were there any tender processes that had begun that had been triggered, that had been initiated but they were wanting you to award before the processes were completed or was the position that no processes whatsoever had been
20 initiated for procurement?

DR MASIMBA PHILLIP DAHWA: It would have it been any need for any procurement process because the Swissport contract Chair had already been awarded 2012. Only outstanding was finalisation of the contracts. But Swissport was already delivering the service.

CHAIRPERSON: Oh.

DR MASIMBA PHILLIP DAHWA: What they wanted from me is to award to the BEE company which was Jamicron

CHAIRPERSON: So a tender had previously been issued/

DR MASIMBA PHILLIP DAHWA: Yes Chair.

CHAIRPERSON: And that tender had already been awarded to a certain company Swissport

DR MASIMBA PHILLIP DAHWA: Yes Chair.

CHAIRPERSON: All that remained was the finalisation of the contract.

DR MASIMBA PHILLIP DAHWA: Yes Chair.

10 **CHAIRPERSON:** And they were saying change that and award this to a BBEE company

DR MASIMBA PHILLIP DAHWA: The 30%

CHAIRPERSON: Or they were saying add the BBEE company to Swissport?

DR MASIMBA PHILLIP DAHWA: Yes add the BBEE company to Swissport.

CHAIRPERSON: To Swissport.

DR MASIMBA PHILLIP DAHWA: Yes Chair.

CHAIRPERSON: And Swissport had – was not party to any of that?

20 **DR MASIMBA PHILLIP DAHWA:** Oh that is another..

CHAIRPERSON: Oh that is another topic?

DR MASIMBA PHILLIP DAHWA: Problem on its own Chair.

CHAIRPERSON: Okay alright. But they were asking you to add a BBEE company as – into a tender that had already

DR MASIMBA PHILLIP DAHWA: Been awarded.

CHAIRPERSON: Awarded 100%.

DR MASIMBA PHILLIP DAHWA: Yes Chair.

CHAIRPERSON: To Swissport.

DR MASIMBA PHILLIP DAHWA: Yes Chair.

CHAIRPERSON: Okay alright.

DR MASIMBA PHILLIP DAHWA: Which is what...

CHAIRPERSON: And you...

DR MASIMBA PHILLIP DAHWA: Gave rise to the difficulties I was having.

10 **CHAIRPERSON**: Yes.

DR MASIMBA PHILLIP DAHWA: To say now how do I go into time and...

CHAIRPERSON: Yes.

DR MASIMBA PHILLIP DAHWA: Anyway in terms of best practice Chair this whole issue must have been implemented or it must have been part of the original RFP.

CHAIRPERSON: Yes, yes.

20 **DR MASIMBA PHILLIP DAHWA**: To say this is how the structure and everything is going to look like so that is not like on the eleventh hour or way much later into the whole contracting having to introduce a third party.

CHAIRPERSON: Yes. But as at the time of this meeting had you – had you – were you already aware of either one or both of the letters that Mr Hofmeyr referred you to from Treasury for – one from is it DDI from the BEE commissioner and the other way from the Chief Procurement

Officer from National Treasury which in effect were saying this 30% plan must be stopped. Were you aware of any one of those letters at that stage?

DR MASIMBA PHILLIP DAHWA: Yes Chair because I even attended one of the meetings with BBBEE commissioner with the acting CEO then.

CHAIRPERSON: Yes.

DR MASIMBA PHILLIP DAHWA: Ms Thuli Mpshe

CHAIRPERSON: Do you – did you know at that time whether either Ms
10 Kwinana or Ms Meyene was aware of any one of those letters at that time of the meeting?

DR MASIMBA PHILLIP DAHWA: They were because Chair I remember us giving feedback to the board regarding the issue of the set aside as per the earlier communications which I believe will be found in Ms Mpshe's bundle.

CHAIRPERSON: Yes.

DR MASIMBA PHILLIP DAHWA: So you will find we have got two sets of communication.

CHAIRPERSON: Yes.

20 **DR MASIMBA PHILLIP DAHWA:** The first set of communication from both institutions are coming to Ms Mpshe as the acting Chief Executive Officer.

CHAIRPERSON: Hm.

DR MASIMBA PHILLIP DAHWA: And obviously she would share that with me as the implementer of those requests and then at some

meeting the chair said she was going to write them directly because she would not allow anyone to stop her from – from achieving the transformation agenda. So I would like to believe that she must have wrote them and then these were the responses.

CHAIRPERSON: But in terms of timing bearing in mind that one of those letters was at the end of September.

DR MASIMBA PHILLIP DAHWA: Hm

CHAIRPERSON: And the meeting you – we are talking about where they gave you this instruction was on the 2 October. Are you confident
10 that it would have been somewhere during that time – by that time – by the 2 October they probably were aware?

DR MASIMBA PHILLIP DAHWA: I would not say with confidence Chair.

CHAIRPERSON: Yes.

DR MASIMBA PHILLIP DAHWA: But what I know is the first set of letters.

CHAIRPERSON: Yes.

DR MASIMBA PHILLIP DAHWA: Which contain more or less the same message.

CHAIRPERSON: Yes.

20 **DR MASIMBA PHILLIP DAHWA:** They had been conveyed to the board.

CHAIRPERSON: And those would have been around what time, the ones you are talking about, the first letters? Or you mean the first letter that you were referred to?

DR MASIMBA PHILLIP DAHWA: Yes.

CHAIRPERSON: Ms [indistinct] Thuli's letter.

DR MASIMBA PHILLIP DAHWA: I think it is – it should be maybe earlier around the month.

CHAIRPERSON: Oh but you say the board knew about the stunts.

DR MASIMBA PHILLIP DAHWA: Yes.

CHAIRPERSON: From either DTI

DR MASIMBA PHILLIP DAHWA: DTI

CHAIRPERSON: Or...

DR MASIMBA PHILLIP DAHWA: And National Treasury.

CHAIRPERSON: No National Treasury that this 30% set aside.

10 **DR MASIMBA PHILLIP DAHWA:** Set aside.

CHAIRPERSON: Should be – should not be proceeded with?

DR MASIMBA PHILLIP DAHWA: Yes Chair.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: Thank you Doctor Dahwa. So I think in the story we were at the point where you were told to go back to your office and draft these letters of award. Can you continue with what happened thereafter?

20 **DR MASIMBA PHILLIP DAHWA:** Thank you Chair. So I went back to the office like I indicated earlier and I drafted something and I brought it back but because of my conscience Chair I would not sign. So I said to the two members of the board here is what I think you looking for but unfortunately I will not be in a position to sign. I would be happy if any one of you can append their signatures then I can send out the communications. So at one point the chair appeared to be like going to do it but for some reason she changed her mind. Then she asked me to

go back and redo it maybe for the acting CEO's signature. So I went back to my office – before I went to my office I went to see Ms Mpshe as acting because my boss Mr Hofmeyr appeared to have not been in the office at that particular point in time. So I tried to explain the challenges that I was going through and all I remember coming from her that is Ms Mpshe was Doctor Dahwa if you know that this is wrong I suggest that you do not do anything that is unlawful because this will come back to you at some time. So she insisted and it was in close the doors. So I went back and just to try and be seen to be doing
10 something because basically Chair I was being held at ransom.

CHAIRPERSON: They were waiting for you?

DR MASIMBA PHILLIP DAHWA: Yes

CHAIRPERSON: Hm.

DR MASIMBA PHILLIP DAHWA: So I felt being felt held ransom. So I went back to my office I did another draft I remember and I had put Ms Mpshe's credentials at the bottom of the letter so that she would sign and then she said no she was not going to sign. And then the chair said let us go Ms Mpshe's office. So we went to Ms Mpshe's office she was there then we started talking about this whole issue and again the
20 acting CEO told the two members that she was not going to sign and she also advised me in their face not to sign if my conscience told me that this was unlawful. And I held – I mean I agreed with her recommendation because I knew also that this was not the right thing to do. And the meeting went on and they tried to give us sides of their stories and also I remember Chair mentioning to us that she had

received an email from someone from Swissport who was very happy I think it was some white person from Swissport who was very excited about the award of this 30% to the BEE company and she was so surprised how us as black executives were not in support of the idea you know she said all that and then Ms Mpshe later on excused herself and she said she was going home. It was a Friday this day. So she said she had some other commitments at home and she would not stay. You know and she left. We were actually left in her office, she packed her bags and off she went.

10 **CHAIRPERSON**: Oh the meeting was now in her office?

DR MASIMBA PHILLIP DAHWA: They had moved from the smaller boardroom.

CHAIRPERSON: From the boardroom?

DR MASIMBA PHILLIP DAHWA: We had moved to a smaller boardroom now so are moving from the smaller boardroom.

CHAIRPERSON: Yes.

DR MASIMBA PHILLIP DAHWA: To Ms Mpshe's office.

CHAIRPERSON: So she said ...

DR MASIMBA PHILLIP DAHWA: Ja.

20 **CHAIRPERSON**: I am going home.

DR MASIMBA PHILLIP DAHWA: Ja she refused but before she left Chair I need to confirm she said to me in front of the two board members that Doctor Dahwa you will be alone in court should this thing come back and if you know that this is wrong do not do it. Ja she insisted and the chair tried to sweet talk her and say no but you know if

anything is to come back it will come back to me as the chair then Ms Mpshe still insisted that Doctor Dahwa with all your qualifications, experience and credentials you will have to answer to this one day and in my view if you contend and if you quite satisfied that it is the wrong thing to do please do not do it. And off she went. So I remained with the two board members and they insisted that I do sign, I refused. Then they said okay maybe what we need to do is we give you an opportunity to do an undertaking that you would do this by Wednesday.

CHAIRPERSON: But give you an undertaking – ask you to give what
10 undertaking? You were making it quite clear you did not want to sign this thing, were you not?

DR MASIMBA PHILLIP DAHWA: True Chair and my honest view was they were trying to play with my mind because that is why at times they nice, they singing praises on the other time you know I am being told off that kind of thing so to me it was more like a psychology game where they were hoping that one way or another I will end up just doing it but from where I was sitting Chair if I had a way of implementing those resolutions without breaking the procurement laws I could have it done it without even the effort because that was my job and I needed to
20 do my job. And after all I was not permanent so I needed to prove my nett worth but I would not do Chair was to break the law.

CHAIRPERSON: What did they say to you the two board members whenever you said but this will – this is against the law, this is not right. What – did you ever put it like that to them? This without breaking the –

DR MASIMBA PHILLIP DAHWA: Yes the –

CHAIRPERSON: You are asking me to break the law, you are asking me to do something unlawful?

DR MASIMBA PHILLIP DAHWA: Chair there is a lot of to and fro emails but obviously for the sake of these proceedings we had to select what to present otherwise.

CHAIRPERSON: Yes.

DR MASIMBA PHILLIP DAHWA: Ja but it is clear – my position had been clear right from the onset even prior to us getting these advises
10 from National Treasury because one of my key roles Chair was to understand the statutes that regulate public sector procurement in South Africa and to advise the business accordingly. So I did advise them there are memorandums to that effect where I even talked about the same thing. I think there is one Chair where I even said we are putting the company at risk and I think Ms Kwinana responded and said to me I did not ask you about risks I said implement. So this was the challenges I was going through. Because for me it was about the company it was about protecting the company, it was about protecting the positions of the board members as well so I was doing my advisory
20 role and I did in many time Chair.

CHAIRPERSON: Well did any one of them ever said something to you that suggested that she in good faith believed that you were mistaken in thinking that agreeing to do what they wanted you to do was going to be breaking the law and that they thought there was nothing wrong with doing this thing it was lawful. Did they ever say anything to you that

suggested that in good faith...

DR MASIMBA PHILLIP DAHWA: No Chair.

CHAIRPERSON: They thought you were – you were wrong to say they were asking you to break the law.

DR MASIMBA PHILLIP DAHWA: No Chair I think in their minds like you saw in the earlier communication to them it was more of insubordination. I just do not want but not that that was the case. Like I am saying right now and I will say it Chair that if I had a way of implementing it without breaking the law I would have done it.

10 **CHAIRPERSON:** Thank you. Thank you Ms Hofmeyr.

ADV KATE HOFMEYR: Thank you Chair. I would just like to pick up on one aspect that you referenced at paragraph 32 on page 11 but I have not heard you refer to it in your recounting of the story now.

DR MASIMBA PHILLIP DAHWA: Yes Chair.

ADV KATE HOFMEYR: At paragraph 32 in the last sentence of that paragraph you state there:

“I asked her how I was going to be able to justify
appointing pre-selected entity without having gone
out on open tender to procure the most effective
service provider for SAA.”

20

Do you see that?

DR MASIMBA PHILLIP DAHWA: Yes Chair.

ADV KATE HOFMEYR: Who is the person you were saying that to?

DR MASIMBA PHILLIP DAHWA: That was Ms Kwinana and [indistinct].

ADV KATE HOFMEYR: And is this something you can confirm you

conveyed in the course of that meeting?

DR MASIMBA PHILLIP DAHWA: Yes Chair.

ADV KATE HOFMEYR: Because as I understand your testimony thus far you have raised concerns about legalities. This is – I guess a part of the legality point but it is a new point also. It is about pre-selecting an entity before any procurement process

DR MASIMBA PHILLIP DAHWA: Process is followed.

ADV KATE HOFMEYR: Has been followed, is that correct?

DR MASIMBA PHILLIP DAHWA: Yes Chair, true.

10 **ADV KATE HOFMEYR:** Was that another of your concerns?

DR MASIMBA PHILLIP DAHWA: Yes but all the same given where we were with this particular award again it was not practical but why I brought up this point to them Chair was to try and knock some sense to say you know in a procurement process you cannot just go around dishing tenders. You have to follow a process before you can then say I am giving to this particular company or any other. That is – I was just trying to open their eyes to say but hang on did you also take this into consideration? But again to them it was not taken in good faith. It was more like I am just refusing because I am anti-transformation and I
20 think somewhere they later we will talk about it. Then maybe if I can finish Chair regarding the meeting on the 2 October.

CHAIRPERSON: Yes of October ja.

DR MASIMBA PHILLIP DAHWA: I think after everyone else had gone now there is the three of us on 6th Floor then Ms Meyene said to me that by the way EFF will be coming here on Monday, the following

Monday and they want to get rid of – because they are concerned about the transformation issues at SAA and they would want to get rid of people like you. You know and then Mr Kwinana in her words she said me and Ms Mpshe were going to suffer – we were going to go through a disciplinary hearing because we had refused to obey her word. So I also got a bit emotional at that point and then I asked them that I needed to go because it was almost around six, seven-ish and I said I needed to leave and then I just had to dismiss myself Chair.

CHAIRPERSON: Around what time was it when Ms Mpshe left?

10 **DR MASIMBA PHILLIP DAHWA**: She left around five-ish.

CHAIRPERSON: Okay.

DR MASIMBA PHILLIP DAHWA: If my memory serves Chair.

CHAIRPERSON: So you still stayed with them ...

DR MASIMBA PHILLIP DAHWA: For almost another hour.

CHAIRPERSON: With these two for another hour or more?

DR MASIMBA PHILLIP DAHWA: Yes Chair.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: Doctor Dahwa Chair I note we are just at four and it may be an appropriate time for a short break but could I just
20 conclude this point.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: At page 12 Doctor Dahwa if you would it up there. Because at paragraph 34 at the top of that page you talk about what Ms Meyene had said about the EFF coming to march to SAA on Monday. But as I have it reflected there you state that the chair stated

that the EFF wanted all the Zimbabweans out of South Africa?

DR MASIMBA PHILLIP DAHWA: Yes.

ADV KATE HOFMEYR: Was there a specific reference to Zimbabweans in the context of you?

DR MASIMBA PHILLIP DAHWA: Not to – to directly to me but obviously I was the only Zimbabwean Chair in that room so if you make reference to Zimbabwe and when there is one Zimbabwean impliedly I would assume that you are referring to me Chair.

ADV KATE HOFMEYR: And did you – what did you understand that to
10 mean? Were you actually afraid of your safety?

DR MASIMBA PHILLIP DAHWA: Yes Chair. Because what you will find then is I had to raise this with my line management and the following Monday I did not even turn up to work because I was not just sure as to whether what they were saying was real or was going to materialise or if not but you know life being life I needed to take precautions measure.

CHAIRPERSON: What day of the week was the second of 2 October that meeting was it a Friday?

DR MASIMBA PHILLIP DAHWA: It must have been a Friday Chair.

20 **CHAIRPERSON:** Okay.

ADV KATE HOFMEYR: Thank you Chair.

CHAIRPERSON: We will take a ten minutes break and resume at quarter past four.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: We may proceed.

ADV KATE HOFMEYR: Thank you Chair.

CHAIRPERSON: It has been a long day.

ADV KATE HOFMEYR: It has indeed.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: But I am – I am optimistic that ...

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: We will be able to complete this evening with a little bit more time.

10 **CHAIRPERSON:** Yes, okay.

ADV KATE HOFMEYR: Thank you for that indulgence Chair.

CHAIRPERSON: Thank you.

ADV KATE HOFMEYR: Dr Dahwa you mentioned just before we broke that you raised your concerns about your safety with your Direct Line Manager – Mr Meyer. Do you recall that?

DR MASIMBA PHILLIP DAHWA: Yes Chair.

ADV KATE HOFMEYR: I would like to take you to that email that you sent to him and you will find it under Tab 9 in your file which is EXHIBIT DD16 and it is at page 2-3-6.

20 **DR MASIMBA PHILLIP DAHWA:** Yes Chair.

ADV KATE HOFMEYR: As I have it – it is an email that you sent to Mr Meyer at 47 minutes past seven on the morning of 5 October 2015. Is that correct?

DR MASIMBA PHILLIP DAHWA: Yes Chair.

ADV KATE HOFMEYR: What was the subject of the email?

DR MASIMBA PHILLIP DAHWA: “Urgent Matter for Your Consideration”.

ADV KATE HOFMEYR: And what did you relay to Mr Meyer in this email?

DR MASIMBA PHILLIP DAHWA: I did present to him about my experience the previous Friday and the issues that had been raised and also whether my – whether I was safe to come to work because I did not know whether this was going to happen but obviously them as being my seniors they may have had an idea that EFF was coming to do the
10 marches and all those kind of things.

ADV KATE HOFMEYR: If I can just pick it up at the last sentence of the first paragraph as I read it there you state to Mr Meyer:

“I was advised that they will be demonstrating ...”

I take that to be a reference to the EFF. Is that correct?

DR MASIMBA PHILLIP DAHWA: Yes Chair.

ADV KATE HOFMEYR: “That the EFF will be demonstrating
that there is no transformation in SAA because of
people like me in senior positions as there is no
South Africans holding such positions in
20 Zimbabwe.”

DR MASIMBA PHILLIP DAHWA: Yes Chair.

ADV KATE HOFMEYR: Is that what was conveyed to you the previous Friday?

DR MASIMBA PHILLIP DAHWA: Yes Chair. I had actually omitted that but yes that did happen.

ADV KATE HOFMEYR: And you go on to say:

“Seeing the recent violence against foreign
nationals I feel endangered.”

Do you see that?

DR MASIMBA PHILLIP DAHWA: Yes Chair.

ADV KATE HOFMEYR: What happened thereafter? Did you return to
work after that Monday?

DR MASIMBA PHILLIP DAHWA: Yes I did return to work on the
Tuesday.

10 **ADV KATE HOFMEYR:** And if we return to your affidavit if we may I
would like ...

CHAIRPERSON: Maybe before that Ms Hofmeyr.

ADV KATE HOFMEYR: Yes.

CHAIRPERSON: Please just refresh my memory what was the basis on
which your meeting with the two Members of the Board had ended on
Friday 2 October other than Ms Myeni saying to you the following
morning – Monday EFF would be having a demonstration? Was there a
way forward on the basis of which the meeting ended or was it simply
that there was going to be a demonstration?

20 **DR MASIMBA PHILLIP DAHWA:** These were like the closing remarks
Chair from the two Members. Ms Kwinana talked about - (clearing
throat) I beg your pardon – intentions to put me and Ms Mpshe on
disciplinary hearing and the Chair spoke about the EFF coming to do
the marches and the issue about there being no South African in
Zimbabwe holding a position of my level those were words from Ms –

Ms – the Board Chair – Ms Myeni.

CHAIRPERSON: Ms Myeni?

DR MASIMBA PHILLIP DAHWA: Yes Chair. That did not come from Ms Kwinana.

CHAIRPERSON: Would it be correct to say that the meeting – when the meeting ended no matter whatever may have said – been said before or during the meeting at some or other stage - and you said that at some stage the Chair was praising you or something – no matter what may have been said before when the meeting ended it was on a
10 clear understanding that you were not prepared to do what they wanted you to do?

DR MASIMBA PHILLIP DAHWA: Yes Chair but they had already made me make an undertaking – you remember I said – that I would address this on Friday. I think somewhere now as I am making a recollection Chair I had also said I do not have certain templates because remember it was a long end of day and all my Category Managers who kept the various templates for contracts and all these things had left for the day.

So I did not say that I was not in a position to do any further
20 work so they did not say to me do an undertaking that by Wednesday these letters have been prepared which I did. I remember doing that and the Chair took that piece of paper.

CHAIRPERSON: Oh, so the meeting ended on the basis that one, Ms Kwinana said there would be disciplinary action against you and Ms Mpshe?

DR MASIMBA PHILLIP DAHWA: Yes Chair.

CHAIRPERSON: Two, the – Ms Myeni said the EFF was going to hold a demonstration the following Monday ...

DR MASIMBA PHILLIP DAHWA: On the basis.

CHAIRPERSON: On the basis that there was no transformation in SAA because of people like you?

DR MASIMBA PHILLIP DAHWA: Yes Chair.

CHAIRPERSON: But three that they had asked you to still do the letters and you undertook to do the letters by when - the letter by
10 Wednesday?

DR MASIMBA PHILLIP DAHWA: By Wednesday yes Chair.

CHAIRPERSON: Okay. That is the basis on which the meeting ended?

DR MASIMBA PHILLIP DAHWA: True Chair.

CHAIRPERSON: When you – when you undertook to do the letters – the letters was that your true intention? You had decided you were going to do that or was it not?

DR MASIMBA PHILLIP DAHWA: It was not true Chair ...

CHAIRPERSON: Hm.

DR MASIMBA PHILLIP DAHWA: That I was going to do it but you see
20 given what I was going through I think that was duress.

CHAIRPERSON: Hm.

DR MASIMBA PHILLIP DAHWA: I mean I am a professional.

CHAIRPERSON: Hm.

DR MASIMBA PHILLIP DAHWA: You speak once Chair I hear it twice

...

CHAIRPERSON: Hm.

DR MASIMBA PHILLIP DAHWA: And obviously with all due respect to the highest offices ...

CHAIRPERSON: Hm.

DR MASIMBA PHILLIP DAHWA: I definitely was going to do it if I had the capacity to do it.

CHAIRPERSON: Hm.

DR MASIMBA PHILLIP DAHWA: Even if it meant leaving the office at 10 o' clock ...

10 **CHAIRPERSON:** Hm.

DR MASIMBA PHILLIP DAHWA: To please my superiors. I have no problems with that. For the last 20 years Chair that is the life of being an Executive but I was just trying to find a way of being released so that I can go home and have a - a refreshed break and then maybe see it when it comes back again.

CHAIRPERSON: Oh you – you wanted to - to be released from the meeting?

DR MASIMBA PHILLIP DAHWA: Yes Chair.

20 **CHAIRPERSON:** And whether or not you would end up doing it was something you wanted to give thought later on?

DR MASIMBA PHILLIP DAHWA: Yes Chair.

CHAIRPERSON: Okay.

DR MASIMBA PHILLIP DAHWA: No sorry I ...

CHAIRPERSON: Hm.

DR MASIMBA PHILLIP DAHWA: I beg your pardon Chair.

CHAIRPERSON: Yes.

DR MASIMBA PHILLIP DAHWA: Not that I was going to do it later. Like I indicated Chair in my presentation right before we have DTI and National Treasury coming to tell us that this is illegal. All my years as professional as an advisor in the public sector procurement I knew that it was wrong.

You would find there is a lot of emails that I wrote to the Board advising them that it was not proper but now the coming in of DTI and National Treasury in my view was more like relief. So I thought
10 now that it is coming from the custodians of the various policies we are trying to pursue someone was going to understand but still they were adamant that they wanted me to do it.

CHAIRPERSON: Yes. No but what I am trying to understand is I am quite clear that for a long time your stand was clear that you were not going to do it?

DR MASIMBA PHILLIP DAHWA: Yes Chair.

CHAIRPERSON: But you say that the meeting did end in part on the basis that either you were going to do it or you were going to consider doing it. That is my understanding of what your evidence is.

20 **DR MASIMBA PHILLIP DAHWA:** Yes Chair.

CHAIRPERSON: Is my understanding correct?

DR MASIMBA PHILLIP DAHWA: Yes it is correct.

CHAIRPERSON: So then our – then I asked you whether when you – when the meeting ended you truly intended doing it or not (intervenes)?

DR MASIMBA PHILLIP DAHWA: I was not going to do it Chair.

CHAIRPERSON: You did not intend to do it?

DR MASIMBA PHILLIP DAHWA: No Chair.

CHAIRPERSON: Okay. You – you wanted a way to end the meeting so that ...

DR MASIMBA PHILLIP DAHWA: *Ja.*

CHAIRPERSON: You could go?

DR MASIMBA PHILLIP DAHWA: It had been a very long day and ...

CHAIRPERSON: Yes.

DR MASIMBA PHILLIP DAHWA: This is only just that I am telling it as
10 a story ...

CHAIRPERSON: Yes.

DR MASIMBA PHILLIP DAHWA: But going through such pressure was not an easy thing for me Chair.

CHAIRPERSON: Yes and this meeting ended – by the time it ended it had taken how many hours if you are able to remember?

DR MASIMBA PHILLIP DAHWA: The whole thing started around 10 in the morning. I had (intervenes).

CHAIRPERSON: Started at about 10 in the morning?

DR MASIMBA PHILLIP DAHWA: Yes. I had those SMS on my company
20 phone but ...

CHAIRPERSON: *Ja.*

DR MASIMBA PHILLIP DAHWA: Soon after they put me on suspension ...

CHAIRPERSON: Hm.

DR MASIMBA PHILLIP DAHWA: They took away everything and I could

save that but it started in the morning.

CHAIRPERSON: When you went to the meeting thinking you were going to meet Ms Kwinana only ...

DR MASIMBA PHILLIP DAHWA: Yes.

CHAIRPERSON: Was it around 10 in the morning?

DR MASIMBA PHILLIP DAHWA: Yes Chair.

CHAIRPERSON: And you were occupied with this issue for up to about six, seven in the afternoon?

DR MASIMBA PHILLIP DAHWA: In the evening. Yes Chair.

10 **CHAIRPERSON:** And that must be in the region of how many hours?

ADV KATE HOFMEYR: About eight hours.

CHAIRPERSON: About – about probably more than five hours.

ADV KATE HOFMEYR: Yes.

CHAIRPERSON: About eight hours or so maybe?

DR MASIMBA PHILLIP DAHWA: Yes Chair.

CHAIRPERSON: Of that period of about eight hours or so how much time do you think you spend away from their presence – the presence of the two Members of the Board?

20 **DR MASIMBA PHILLIP DAHWA:** I think very little of the time. It was only when I would go to my office to try and crack around coming up with something.

CHAIRPERSON: Yes.

DR MASIMBA PHILLIP DAHWA: Ja. Which I had already explained that it was wrong. So I did not know what they wanted Chair to be honest.

CHAIRPERSON: So please help me I am very interested in getting a picture. When you put together all the time that you might have spent away from them between 10 in the morning when you started the meeting with Ms Kwinana and when the meeting ended would you – if you estimate – would you – how many hours do you – did you – do you think you spent away from their presence?

DR MASIMBA PHILLIP DAHWA: I think just about an hour.

CHAIRPERSON: About an hour all together?

DR MASIMBA PHILLIP DAHWA: Yes, accumulative.

10 **CHAIRPERSON:** Did you get a chance to have your lunch?

DR MASIMBA PHILLIP DAHWA: Not on that particular day Chair.

CHAIRPERSON: Hm.

DR MASIMBA PHILLIP DAHWA: Not on that particular day Chair ...

CHAIRPERSON: Hm.

DR MASIMBA PHILLIP DAHWA: Because I – I at one point when I left I tried to look for my boss – the CFO. I could not find him. Then much later I thought I need just to go and see the Acting CEO ...

CHAIRPERSON: Hm.

DR MASIMBA PHILLIP DAHWA: Which is why I then went to see
20 Ms Mpshe but I was really stressed to be very honest (intervenes).

CHAIRPERSON: And throughout all these hours there was talking about this issue or there would sometimes be just complete silence in the room?

DR MASIMBA PHILLIP DAHWA: Ms Kwinana even at one point was drafting the award letters and telling me – lecturing me on models,

possibilities, making adjustments. If it cannot be 15 percent what if we do 10 percent – you know - all this kind of thing. So it was more like a – a lecture on how I can make it work.

CHAIRPERSON: Hm.

DR MASIMBA PHILLIP DAHWA: *Ja*; but at least with Ms Kwinana we were exchanging - we were talking. When the Chair came she did not want to talk. She said she would give me airtime after I have made (intervenes).

CHAIRPERSON: But later on she was praising you. Is it not?

10 **DR MASIMBA PHILLIP DAHWA:** *Ja*; but it was ...

CHAIRPERSON: *Ja*.

DR MASIMBA PHILLIP DAHWA: Towards the end thinking that maybe I would soften up ...

CHAIRPERSON: Yes.

DR MASIMBA PHILLIP DAHWA: And still indulge.

CHAIRPERSON: What was the name of the company that they wanted you to award the – to give – to award the tender to as a BEE company?

DR MASIMBA PHILLIP DAHWA: There were two companies Chair for the Swissport contract it was Jamicron (Pty) Ltd and for the Engen jet
20 fuel contract it was Quintessential ...

CHAIRPERSON: So ...

DR MASIMBA PHILLIP DAHWA: (Intervenes) Limited.

CHAIRPERSON: So – so those were the companies to which they were saying write letters awarding them the contract as BEE partners to – to Swissport?

DR MASIMBA PHILLIP DAHWA: Yes Chair.

CHAIRPERSON: Okay, thank you.

ADV KATE HOFMEYR: Thank you Chair.

DR MASIMBA PHILLIP DAHWA: That was – that was – sorry Chair.
That was to Swissport and Engen.

ADV KATE HOFMEYR: Yes.

CHAIRPERSON: Swissport and Engen?

DR MASIMBA PHILLIP DAHWA: Swissport – Swissport's partner was Jamicron and Engen's partner was Quintessential.

10 **CHAIRPERSON:** Okay.

ADV KATE HOFMEYR: Thank you and Dr Dahwa you then indicate - we are at page 12 of your affidavit – what followed a few days later because as I have at paragraph 36 on that page – we are at page 12 of the affidavit.

CHAIRPERSON: Just as a matter of interest did the demonstration that the Chairperson had said would happen by the EFF on the Monday take place from what you may have been told because you were not at work?

DR MASIMBA PHILLIP DAHWA: Ja, I did check Chair and I was advised that nothing like that happened.

20 **CHAIRPERSON:** Okay.

ADV KATE HOFMEYR: So at page 12 if you pick it up at paragraph 36 you talk about an email that Ms Kwinana sent with a letter of complaint attached. Do you see that?

DR MASIMBA PHILLIP DAHWA: Yes Chair.

ADV KATE HOFMEYR: I would like to take us to that letter of

complaint and you will find it under Tab 10 at page 240 – 2-4-0.

DR MASIMBA PHILLIP DAHWA: Yes Chair.

ADV KATE HOFMEYR: Chair just to orientate us this letter is an attachment to the email that you find on the preceding page – 2-3-9 – in which Ms Kwinana sends a complaint letter to Ms Myeni but I would like for our purposes now to concentrate on the letter itself which you find at page 2-4-0 and Chair with your leave I propose – it is quite a lengthy letter – but there is a lot of it that is important.

So my suggestion is that I highlight those aspects which
10 relate particularly to the evidence we have heard thus far from Dr Dahwa and then offer him an opportunity to comment on what Ms Kwinana is recording in this letter.

CHAIRPERSON: That is fine.

ADV KATE HOFMEYR: So if we proceed on that basis.

CHAIRPERSON: *Ja.*

ADV KATE HOFMEYR: As I read the letter there is first of all a reference to the State of the Nation Address which is where your evidence began on this whole 30 percent set-aside Dr Dahwa. So Ms Kwinana sets that out initially in her letter to the Chairperson and
20 then if we pick it up right at the last paragraph on page 2-4-0 she writes:

“Having noted all this it is sad for me to seek answers from you Chairperson wherein particular I would like to report the following about Dr Masimba Dahwa. One, he lied that the jet fuel

tender is inclusive of six streams whereas on further inquiry the jet fuel tender is just supply of jet fuel. Two, I use the above lies to communicate that this tender has six streams to SMMEs to whom the Board awarded the 15 percent tender of jet fuel. Three, these lies that I communicated to a room with more 60 people has an effect of bringing my name, the Chairperson's name, SAA and the Government's name into disrepute. As there are
10 now inquiries where service providers want to know the way forward in respect of logistics and other streams as communicated by myself as per the misleading information provided by Dr Dahwa. Four, he also lied and made the Chairperson to believe that the award letters to the tenderers were signed whereas there were no letters. Five, when I asked about the status of Board Resolution implementation he lied and said that the delays are with legal. I subsequently asked legal who
20 informed me in the presence of Dr Dahwa that they are waiting for Dr Dahwa. Six, he travelled with us on transformation road shows and when we were communicating the Board decisions he also clapped his hands knowing very well that he would not write the award letters which I later discovered that he

would not write as he said my conscious does not allow me. Seven, the above statement insinuated that the Board required him to do unprofessional, unethical, illegal and criminal activities.”

Chair I propose we stop there. There are a few more aspects I would like to pick up but Dr Dahwa can you just help us with the background to this jet fuel tender and what you did or did not say to Ms Kwinana about six streams involved in the jet fuel value chain?

CHAIRPERSON: One second. Before you respond ...

10 **ADV KATE HOFMEYR:** Apologies.

CHAIRPERSON: Dr Dahwa please do not forget the answer you want to give.

DR MASIMBA PHILLIP DAHWA: Thank you Chair.

CHAIRPERSON: Thank you.

ADV KATE HOFMEYR: Thank you Chair.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: Dr Dahwa the question was to assist us in understanding this background to the allegation that you lied about the jet fuel tender being inclusive of six streams. What was that about?

20 **DR MASIMBA PHILLIP DAHWA:** Thank you Chair. I remember one day we were travelling with Ms Kwinana and I think Dr Tambi was there and we must have been going to Cape Town for something. Then she asked me to go where she was. I mean I was like seated at the back in – in the – on the aircraft and she was somewhere in front. So I went and then we started talking.

So she was asking me about these whole transformation issues and you know out of commitment and out of duty I then asked tried to share with her possibilities of exploring sustainably the transformation of the jet fuel value chain and in our discussion – you know – to me it was just an ordinary Executive discussion which happens with many people either in the car or on the bus or wherever you are going where you are exploring certain things but obviously I – I did indicate the possibility – the possible areas where we could look at and why I took a much broader spectrum of the jet fuel value chain

10 Chair is because we had also signed – SAA had signed an MOU with the DTI and we had already put together a task force which was then going to try and explore various opportunities for transformation.

Then I remember very well indicating to Ms Kwinana that jet fuel is such a delicate kind of product and we needed to look at it from various angles as opposed to just say we do transformation now and what I was just exploring is maybe we need to look at scope a possibility of transforming the into wing part of the – of the value chain or the distribution part of the value chain or the storage or anything – you know.

20 That is where I was coming from but to my surprise now Ms Kwinana took it as a presentation to the Board but I was just exploring opportunities and possibilities which obviously as a supply chain professional she needed to task me maybe at some point to say Dr Dahwa can you now do a paper - which is the usual trend - of how you think you could transform the jet fuel but unfortunately it did not

work that way.

When we went to Durban now the whole agenda item had been hijacked prematurely and then she started saying we want to give you this business. That is where now the whole 68 – I mean – the 60 companies that attended - the Quintessential - all these things started coming into play but I think she misled herself even by making those commitments to the people because we had not even fully explored and then I shared with her.

I was like talking to a Non-Executive Board Member who I
10 had seen in my view had passion to do the transformation and in terms of trying to see the whole thing come to fruition. I just mentioned that *ja* we could look into these options and everything but to my surprise in this letter it came back now as a lie and Chair my view was it became a lie simply because I had said I cannot award without following a procurement process. If I had awarded I do not think I could have been charged for having lied.

CHAIRPERSON: Are you saying that when you were having this conversation with her in - on the plane you were speaking in general?

DR MASIMBA PHILLIP DAHWA: Yes Chair.

20 **CHAIRPERSON:** And not that you were talking on the basis of specific awards being made already. You were just talking general

DR MASIMBA PHILLIP DAHWA: Yes.

CHAIRPERSON: On the understanding that if it became necessary to go into specifics then you could deal with that at that stage?

DR MASIMBA PHILLIP DAHWA: Yes Chair and why like I said I took a

broader spectrum is because we now had a third party which is DTI and so – you know – it goes with the task force. We still needed to try and explore the opportunity through the task force. See how far we can go and maybe come up with the proposal which in my view was again in support of the transformation. I could very simply have said I do not know ...

CHAIRPERSON: *Ja.*

DR MASIMBA PHILLIP DAHWA: But I just wanted to – to explore possible opportunities.

10 **CHAIRPERSON:** Hm, okay.

ADV KATE HOFMEYR: Chair just with a reference back to some evidence we have already received from Mr Vaughan who looked at that whole supply chain on the jet fuel aspect. I appreciate that he comes after in time to this engagement with Dr Dahwa but there is great similarity in the evidence that we received from Mr Vaughan about where in the value chain you might be able to introduce transformation initiatives and the evidence that Dr Dahwa has just given us.

Dr Dahwa we then move on from that background – thank you for that – to some of the other allegations made in those seven points.

20 I would like to focus now on the alleged lies you made in relation to the award letters and the allegation that you said you were going to (intervenes).

CHAIRPERSON: You alleged made.

ADV KATE HOFMEYR: Allegedly, indeed, indeed – apologies. That the alleged lie is that you had said that they were signed where they were

not signed and that you had said they were with legal when you were the cause of the delay. What is your response to those allegations?

DR MASIMBA PHILLIP DAHWA: Thank you Chair. I think Chair my understanding and (indistinct) practice over the last 20 years a tender can only be awarded once not twice not thrice unless you terminate it. You redo the process and then you award again. Something along those lines.

So when I was asked at the Durban Summit - I think this is where it emanated from – because from nowhere they said oh Dr Dahwa
10 have you awarded the contract for Swissport and I said yes. In as far as I know and even to this day Chair the Swissport contract was awarded in July 2012 and there is no way it is going to be reawarded again. So that is what I meant.

CHAIRPERSON: Had it been – were you there when the decision to award it was taken?

DR MASIMBA PHILLIP DAHWA: No I was not there but I met some frantic effort to dig into the whole tender then and I understood it like the back of my hand Chair in terms of what transpired. This pack how it looked like, what it entailed right up to the time when the award was
20 done.

So I had that information and the various Board Resolutions that pertained to it. You also find that. I think there are more than five/six Board Resolutions even thereafter which I also found to be irregular and a bit confusing in terms of our practice.

ADV KATE HOFMEYR: Dr Dahwa ...

CHAIRPERSON: I am sorry. Was that question at the summit not made in the context of awarding it around that time?

DR MASIMBA PHILLIP DAHWA: What – what I think Chair I think the Board Member themselves should not – should – sorry – okay. At that time Chair I think the Board Member chose to mislead themselves because she knew very well that we had not done any procurement for – for Swissport tender for example. So to ask me to say reawarded it.

What would I have awarded because they already had seen the - the criteria? They had already gone through the various stages of
10 the procurement process. So to ask me such a question Chair in front of many different people it is – it is also like putting me on the spotlight. I cannot argue but I can only affirm what I know as fact and to me the fact is that contract yes it was awarded in July 2012 and it is not – had not to be awarded again.

ADV KATE HOFMEYR: Thank you Chair. Dr Dahwa if we can then move on further in the letter of Ms Kwinana and it is the letter dated 9 October 2015. I am picking it up at page 2-4-1 of your Bundle DD16.

DR MASIMBA PHILLIP DAHWA: Yes Chair.

ADV KATE HOFMEYR: You will see under point seven it is record
20 there that Ms Kwinana wrote:

“Chairperson I am also said that at Board level we have to micromanage the Executives in respect of the non-implementation of our Board Resolutions in general.”

Dr Dahwa did you experience a level of micro management from the

Board at that time?

DR MASIMBA PHILLIP DAHWA: Yes Chair.

ADV KATE HOFMEYR: And what did it relate to?

DR MASIMBA PHILLIP DAHWA: For me I found it to be awkward because I mean SAA could be the 10th big company that I have worked for in my whole career and to my surprise we did not have that kind of micro management from the Board other than maybe from your Line Manager and it would give rise to various compliance and things of the form but not from the Board.

10 **ADV KATE HOFMEYR:** And then if you go further down that page to the last paragraph in the middle Chair as I read it Ms Kwinana is making some complaints about the CFO and the CEO and then she is also referencing some of the provisions of the Disciplinary Code of Conduct but then in the last paragraph she goes back to Dr Dahwa. She says:

20 “From the foregoing it is clear that there is no commitment on the part of Dr Dahwa to the resolutions of the Durban Road Show. No positive outcome has eventuated since we went on the roadshow judging by numerous inquiries from would be service providers that have gone unanswered. The situation as it presents itself amply demonstrates that Dr Dahwa is hell bent on sabotaging and derailing the transformation agenda of the present Government in general and that of SAA in particular. While the SAA Board is doing all in its power to translate the Government’s intent of economic empowerment

into concrete reality to extricate the African majority from the quagmire of poverty Dr Dahwa is equally doing his best to keep the same people in economic bondage. He is part of a sinister, retrogressive agenda which is aimed at traversing the transformation agenda of the present Government. His behaviour smacks of insubordination and conspiracy against the SAA Board. This purulent attitude maybe located in the fact that he does not share the agony of the people of South Africa who have emerged from centuries of economic deprivation and whose freedom was born of struggle. It is actually ironic that he is sabotaging SAA that appointed him to such a senior position essentially biting the hand that feeds him. This leaves me with no other option except to recommend that the strongest possible action be taken against him. Thank you.”

And then it is signed Jake Kwinana. Doctor Dahwa, what is your response to those criticisms of yourself?

MR MASIMBA PHILLIP DAHWA: Chair, to be honest I did not find these criticisms as warranted. I’m of – I share the same background with the black South Africans for instance. I am also a product of a struggle. Zimbabwe has not been spared in terms of this and besides my coming here and being a permanent resident of South Africa, Chair, it is a huge responsibility, I mean that has been trusted upon me by the government of Republic of South Africa and I personally do not take it lightly. In the best interest of the people of South Africa and in the best

interest of the development of South Africa I didn't think this was warranted because if I was anti-transformation I wouldn't have done the many things that I did. The what, Chair, we didn't dispute. The what was transformation and besides in the LTDS document Chair this is their; is part of the key things that I needed to do; is the how were we different because we risked breaking the laws. We risked bringing the name of South African Airways, the name of South African government into disrepute. So I do appreciate but to me this was more like a hate message that was just crafted out of bitterness to say I have not done

10 what they had required me to do. But why I had not done them Chair like I indicated earlier on. I could have done them if they were legal. Yes, even if it's meant spending the whole night chair at work I could have done it. So to me I don't understand why this was being directed at me because I also see she doesn't say this to my bosses but there my bosses never attended any of our roadshows chair I attended every single one of them. I did everything. I made it look professional. I made it because to my best of interest Chair I wanted the black people of South Africa to understand first and foremost; to get the information of how SAA operated in terms of its procurements which was something I

20 did out of my whole heart into the best interest of the country to move forward. But to me again I don't understand what a board member would direct this to me and about me.

ADV KATE HOFMEYER: Doctor Dahwa you, apologies chair.

CHAIRPERSON: Is there anything in this letter from Ms Kwinana to the Chairperson that says that what you are asked to do was not unlawful?

Is there anything that addresses your concern to say, if I do what you ask me to do I will be breaking the law?

MR MASIMBA PHILLIP DAHWA: I think the indication Chair would be maybe covered under where I said it is against my conscience.

CHAIRPERSON: Yes.

MR MASIMBA PHILLIP DAHWA: I think that is the only aspect I can think of at this juncture and why I said that. Yes, I did say that.

CHAIRPERSON: Hm.

MR MASIMBA PHILLIP DAHWA: But my conscience Chair is I know
10 right from wrong.

CHAIRPERSON: Hm.

MR MASIMBA PHILLIP DAHWA: And I'm saying I can't you know on my own accord choose.

CHAIRPERSON: You can't break the law.

MR MASIMBA PHILLIP DAHWA: To break the law.

CHAIRPERSON: Ja.

MR MASIMBA PHILLIP DAHWA: Simply because I deliberately don't want to follow the law. So that was a serious issue to me and it was against my conscience.

20 **CHAIRPERSON**: Hm okay.

ADV KATE HOFMEYER: Thank you Chair. Doctor Dahwa, you did respond to this letter. Did you not?

MR MASIMBA PHILLIP DAHWA: Yes, Chair I did respond.

ADV KATE HOFMEYER: Chair for the record we find that under tab 11 at page 245.

CHAIRPERSON: Thank you.

ADV KATE HOFMEYER: And Chair given the explanation that Doctor Dahwa has given now of his response it's actually not necessary to go through the text but what you have said now in essence Doctor Dahwa as I read this response from you is consistent with what you have just testified about. Is that correct?

MR MASIMBA PHILLIP DAHWA: Correct Chair.

ADV KATE HOFMEYER: Is there anything in this response of yours that you would like to highlight that you haven't covered already?

10 **MR MASIMBA PHILLIP DAHWA**: I think all has been covered Chair.

ADV KATE HOFMEYER: Thank you. I then like us to go back to your affidavit if we may to page 13.

MR MASIMBA PHILLIP DAHWA: Yes Chair.

CHAIRPERSON: To the extent that it may be necessary.

ADV KATE HOFMEYER: Hm.

CHAIRPERSON: You confirm that any emails that one may find in this bundle purporting to come from you and addressed to whoever correctly were from you and correctly reflect what you said in the emails or letters? So we are not going to read this whole letter, isn't it?

20 **MR MASIMBA PHILLIP DAHWA**: Ja, yes Chair.

CHAIRPERSON: Yes.

MR MASIMBA PHILLIP DAHWA: Ja.

CHAIRPERSON: But you have looked at it? Everything is in accordance with what you wanted to convey?

MR MASIMBA PHILLIP DAHWA: True Chair.

CHAIRPERSON: Ja, okay.

ADV KATE HOFMEYER: Thank you Chair. If we go to page 13 of your affidavit.

CHAIRPERSON: I think it might be necessary to just cover that for those which we don't.

ADV KATE HOFMEYER: Don't go through?

CHAIRPERSON: Go through, yes.

ADV KATE HOFMEYER: Absolutely Chair. We will make a note.

CHAIRPERSON: So that they are covered as under evidence.

10 **ADV KATE HOFMEYER**: So that there is; so we have in record.

CHAIRPERSON: Ja, ja, ja.

ADV KATE HOFMEYER: That Doctor Dahwa confirms that this is an accurate reflection of the email you sent on the 16th of October 2015. Is that correct Doctor Dahwa?

MR MASIMBA PHILLIP DAHWA: Yes, Chair.

ADV KATE HOFMEYER: And then that there is nothing in addition of its content that he wishes to.

CHAIRPERSON: Yes.

ADV KATE HOFMEYER: Raise. Thank you. We will do that in future.

20 **CHAIRPERSON**: Ja, ja.

ADV KATE HOFMEYER: Then if we go to page 13 of your affidavit.

MR MASIMBA PHILLIP DAHWA: Yes, Chair?

ADV KATE HOFMEYER: Thank you Chair. Doctor Dahwa, you deal here with a meeting that took place on the 2nd of December 2015, which is two months as I have it after the meeting that you had on the 2nd of

October where you were kept late and were being forced to sign the letters of award.

MR MASIMBA PHILLIP DAHWA: Yes, Chair.

ADV KATE HOFMEYER: Can you please tell us what happened on the 2nd of December 2015?

MR MASIMBA PHILLIP DAHWA: Thank you Chair. I beg your pardon. On the 2nd of December 2015, I think around 8 o'clock my PA told me that the Head of Transformation, Mr Thapelo Lehasa wanted to see me urgently because he had a meeting set up between me, him and one of
10 my commodity managers, Mr Thami Sogwazile with certain gentleman by the name Mr Des Van Rooyen whom they; I was made to understand was the director general for MKVA. That is the Military Veterans Associations and I didn't because I had not expected that meeting, Chair and I asked a couple of questions as to what it was about and what was going to be dealt with in that particular meeting. But Mr Lehasa then said I knew because there had been some emails sent to me about that meeting prior. So finally Chair, I was told the venue of the meeting was one of the floors. I can't remember which floor exactly. So I had to go there and when I entered into the room I saw Mr Lehasa
20 was there, Mr Thami Sogwazile was there, my commodity manager and there's the gentleman who introduced himself as Mr Des Van Rooyen; he was there as well and another gentleman who had a cap. He was tall-ish but he gave me his card to be honest but for some reasons I misplaced all that information. And then Mr Des Van Rooyen started talking that he was not happy with me because he had sent me emails

and I had not bothered responding. So I wasn't so sure what emails he was referring to and I just kept saying but Sir, I don't remember getting any such emails from you but then he went on and then he said, anyway the reason why I'm here is because I want to talk to you about MKVA business with SAA. Then I said okay. So he said there were two contracts, to particular contracts he was interested in. One was to do with security and the other one was to do with the Amadeus procurement or the Amadeus contract extension where they needed a BEE partner. Then I said okay. So I said to him, but in as far as I can

10 remember sitting here I don't remember us having a tender, a running tender for security services and however, the Amadeus contract extension was something that was still work in progress and we had not even got to the point where we are saying we are going out to tender to find it the BEE partner for Amadeus. Then he told me that you know what I was telling him he wasn't interested in. He just wanted me to give those tenders to those particular companies. Then I made a recollection that we had a security tender which had just been awarded to a company called Reshebile and at one point it is told, the award is told as well because the board felt it needed to be re-tendered. Then I

20 gave them advice in writing as well to say the only grounds for cancellation of a tender as stipulated in the triple PFA was when the scope of business would have at changed or the business had run out of funds; say that you can't afford that kind of contract and some kind of things. So as I was recollecting this then came back to say, so is it why we at one point wanted to cancel because finally the board took my

advice and we awarded. So there was no tender for me to award to the two companies. One of them was Mafoko Security and the other one I don't remember the name of the other one.

ADV KATE HOFMEYER: Is, I'll give it to you. We'll pick it up on page 14 but just before we go there, if we can just unpack it ever so slightly Doctor Dahwa.

MR MASIMBA PHILLIP DAHWA: Yes.

ADV KATE HOFMEYER: So I have your testimony to be that Mr Van Rooyen says to you that the two contracts that he wants awarded to, to
10 whom, were they companies that he was associated with? What did he explain to you?

MR MASIMBA PHILLIP DAHWA: The way Chair I got it, it was companies related to MKVA.

ADV KATE HOFMEYER: Right. And he was introduced as a director general of MKVA to you?

MR MASIMBA PHILLIP DAHWA: Yes.

ADV KATE HOFMEYER: At the beginning of the meeting. Is that correct?

MR MASIMBA PHILLIP DAHWA: That was by Mr Thapelo Lehasa, yes.

20 **CHAIRPERSON:** Could it be that you were told that he was treasurer general rather than director general?

MR MASIMBA PHILLIP DAHWA: From what I remember Chair, now it's almost 4 years close but even in my earlier writings I remember. I don't think I would have had forgotten that but from what I recollect.

CHAIRPERSON: You wrote director general when writing to him?

MR MASIMBA PHILLIP DAHWA: Yes, no not to him but when I was working on this case because after then I didn't have anything much to do with him.

CHAIRPERSON: Okay.

MR MASIMBA PHILLIP DAHWA: Then I get placed on specially the following day.

CHAIRPERSON: Okay.

ADV KATE HOFMEYER: Chair, I was interested in your question because it's one certainly that we've traversed with Doctor Dahwa
10 previously because the card, the business card of Mr Van Rooyen that was handed over in the course of the meeting is at page 264 of the papers. And you will see there that he's quite clearly indicated as the treasurer general of... (indistinct).

CHAIRPERSON: I do not.

ADV KATE HOFMEYER: Appeared not seen that?

CHAIRPERSON: But I think I've read somewhere that at some stage he was. I don't know if he still is.

ADV KATE HOFMEYER: Yes.

CHAIRPERSON: Treasurer general of that association.

20 **ADV KATE HOFMEYER:** But just this confirmation of your recollection there, Chair, it is as it is indicated on the business card.

CHAIRPERSON: Hm.

ADV KATE HOFMEYER: But Doctor Dahwa, just to be clear about your evidence. When you enter that room, what do you recall being told about Mr Van Rooyen's position?

MR MASIMBA PHILLIP DAHWA: I think what I stated in my statement is what I recall.

ADV KATE HOFMEYER: That he was director general?

MR MASIMBA PHILLIP DAHWA: Yes, Chair.

ADV KATE HOFMEYER: Thank you.

CHAIRPERSON: Hm.

ADV KATE HOFMEYER: And then we get to the point as I understand your testimony that he wants two contracts; the security... (intervention).

10 **CHAIRPERSON:** Maybe – maybe I am sorry.

ADV KATE HOFMEYER: No, no.

CHAIRPERSON: Doctor Dahwa, you said he gave you his card?

MR MASIMBA PHILLIP DAHWA: I think so; him and the other gentleman.

CHAIRPERSON: And is the card in the bundle; the card that he gave you?

MR MASIMBA PHILLIP DAHWA: That one I think it came as part of an email.

20 **ADV KATE HOFMEYER:** Yes, I think there was a follow-up with an email.

CHAIRPERSON: Oh.

ADV KATE HOFMEYER: Because, let us just see here. Yes, the business card is attached to the email.

CHAIRPERSON: Yes.

ADV KATE HOFMEYER: Actually.

CHAIRPERSON: Yes.

ADV KATE HOFMEYER: I think Doctor Dahwa's testimony earlier was that he was given it but he didn't keep it after the meeting.

CHAIRPERSON: Oh okay.

ADV KATE HOFMEYER: But it was attached to an email that we have at page 262 and then the attached card is at 264 of the papers.

CHAIRPERSON: Okay, okay.

ADV KATE HOFMEYER: Thank you.

CHAIRPERSON: No, thank you.

- 10 **ADV KATE HOFMEYER**: And then Doctor Dahwa, so he was talking about a security contract. Is that correct?

MR MASIMBA PHILLIP DAHWA: Yes, Chair.

ADV KATE HOFMEYER: And just if you could give us again your testimony there. What precisely did you say to him about that contract?

MR MASIMBA PHILLIP DAHWA: I told him that in as far as I remember there was not any security contract that was running. The one we had had just been awarded.

ADV KATE HOFMEYER: Yes.

MR MASIMBA PHILLIP DAHWA: To another company.

- 20 **ADV KATE HOFMEYER**: And you do actually give us as an Annexure to your affidavit that letter of award which had gone to the successful company. You can find that at 272 which is under tab 14 and you will see if you turn up that page.

MR MASIMBA PHILLIP DAHWA: Yes, Chair.

ADV KATE HOFMEYER: Is that the letter of award that you were

referring to?

MR MASIMBA PHILLIP DAHWA: Yes, Chair.

ADV KATE HOFMEYER: You will see at the top of the page it is dated 14 September 2015 and it's addressed to Reshebile Aviation and Protection Services and as I read the first paragraph it is congratulating Reshebile Aviation Protection Services on being awarded the above service for a period of one year and six months starting from 1 October 2015 to 31 March 2017. Do you see that?

MR MASIMBA PHILLIP DAHWA: Yes, Chair.

10 **ADV KATE HOFMEYER**: So is that what you were referring to when you said to Mr Van Rooyen it's already been awarded?

MR MASIMBA PHILLIP DAHWA: Yes, Chair because in as far as I remember that was the only security tender we had run.

ADV KATE HOFMEYER: And what was his response when you said that?

MR MASIMBA PHILLIP DAHWA: He then moved on to talking about the one for Amadeus.

ADV KATE HOFMEYER: Thank you.

CHAIRPERSON: Just to for the sake of completeness. This letter at
20 272 awarding that security tender was written by you. Is that correct?

MR MASIMBA PHILLIP DAHWA: Yes, Chair well indirectly by my category managers.

CHAIRPERSON: Oh you signed it?

MR MASIMBA PHILLIP DAHWA: I didn't sign. I don't think I was there even when it was issued. It was PPed on my behalf.

CHAIRPERSON: Oh, it was PPed yes.

MR MASIMBA PHILLIP DAHWA: Because I was aware I think.

CHAIRPERSON: Oh, but it was your decision?

MR MASIMBA PHILLIP DAHWA: Yes, Chair.

CHAIRPERSON: Okay.

ADV KATE HOFMEYER: Thank you Chair. Then let's move to Amadeus and before we get into precisely what Mr Van Rooyen said on the day, I'd like to ask you to provide us with a little bit of background about Amadeus. What is it? What services does it relate to?

10 **MR MASIMBA PHILLIP DAHWA**: Thank you Chair. The Amadeus contract pertained to provision of the online booking system which is used by airlines.

ADV KATE HOFMEYER: And what was the status of that contract at the time that Mr Van Rooyen met with you on 2 December 2015?

MR MASIMBA PHILLIP DAHWA: Maybe I need to give a bit of background.

ADV KATE HOFMEYER: Thank you.

MR MASIMBA PHILLIP DAHWA: One key aspect, Chair, of the long-term turnaround strategy was to look at various contracts that existed,
20 try and interrogate them to see if there was scope for taking out costs which were irrelevant to the operation of the business because remember SAA's major challenge was costs. It was just a high operating business cost model. So what I then did in my first three months as part of my job brief was to pick up the top 20 contracts with an SAA for renegotiation. So what that meant was I needed to

interrogate each and every contract particularly the big ones because I use the 80/20 principle rule to say maybe 20% of our total cost is coming from; I mean 80% of our total cost is coming from 20% of our contracts. So Amadeus contract happened to fall within that 20% and as part of the many other contracts that we renegotiated or that we interrogated to see if there was scope to say maybe time of procurement we bought a car with a sunroof, with this and that which we are all paying for. I then used my procurement skills to then say, how do we work together with the bidders or with rather with our
10 current suppliers to eliminate or to remove the unnecessary components in our contracts. And obviously, it means a time of procuring with the Amadeus contract in particular. We had bought this big but then later on we are on utilizing a small component of what we had procured. So Amadeus kindly cooperated and we started interrogating with an intention to make savings for South African Airways and unfortunately the Amadeus; we have got some that went through before this whole 30% issue became a big challenge but then the Amadeus fell you know squarely when things have changed and the 30% issue had just become introduced. If you recall, Chair, in my
20 statement I did say that I made savings of 211 million within record six months' time. It was purely because of the renegotiation of existing contracts and that exercise also helped me to see quite many contracts that were not finalized.

ADV KATE HOFMEYER: And Doctor Dahwa, you focusing on the saving that you were able to agree with Amadeus. What was the amount of that

saving?

MR MASIMBA PHILLIP DAHWA: That was around 19 million, Chair.

ADV KATE HOFMEYER: And what was your understanding of the saving? To whose benefit would that saving lie?

MR MASIMBA PHILLIP DAHWA: To South African Airways, Chair. Like I said it was a response to the long-term turnaround strategy where the airline was bleeding because of excessive costs and it was my duty to make sure that I weeded out all unnecessary costs within existing contracts, Chair.

- 10 **ADV KATE HOFMEYER:** Chair, I'm going to ask that we go slightly back in time just so that we can follow the background up till the meeting because Doctor Dahwa is assisting us with understanding what Amadeus was contracted for; understand your testimony then to have covered the efforts you made to find savings with it and the identification of a R19 million saving. Is that correct?

MR MASIMBA PHILLIP DAHWA: Yes, Chair.

ADV KATE HOFMEYER: Then I'd like to take you to a board decision that took place on the 26th of August 2015. You'll find it under tab 17 at page 281.

- 20 **MR MASIMBA PHILLIP DAHWA:** Yes, Chair.

ADV KATE HOFMEYER: Doctor Dahwa, can you indicate to us what this record of decision of the board relates to?

MR MASIMBA PHILLIP DAHWA: Thank you, Chair. This related to the Amadeus contract extension. That's provision of passenger bookings services.

ADV KATE HOFMEYER: Thank you. And could you read for us what the board of directors resolved? You'll find it in the fourth block on that page.

MR MASIMBA PHILLIP DAHWA: It reads,

The Board of Directors resolved to approve that SAA extend the existing Amadeus (I can't read the other part) agreement.

CHAIRPERSON: It looks like CITP.

ADV KATE HOFMEYER: Hm.

MR MASIMBA PHILLIP DAHWA: CITP. Thank you, Chair.

10 Agreement for the provision of PB Services as well as associated supplements and related agreements with Amadeus Global Travel Distribution South Africa for an additional period of three years at an estimated total savings of R19,073,000 (the other part I can't see whether it is a six or eight) 698 maybe per year calculated at 8.5 million PBs.

ADV KATE HOFMEYER: And then what decision was taken in the blocks that appear there either approved, referred back for rework or declined?

MR MASIMBA PHILLIP DAHWA: It was approved, Chair.

20 **ADV KATE HOFMEYER:** And what is the second part of that block detailing?

MR MASIMBA PHILLIP DAHWA: It reads point 1,

Amadeus should set aside 30% of the contract for partnering with a local BEE SMME in the IT space.

And another condition,

The savings that Amadeus is willing to concede should be utilized for enterprise development and or any other equity contribution which may be required from the successful BEE company.

Point 3,

Should Amadeus reject to the above proposal, SAA should so, should go out on tender with immediate effect.

ADV KATE HOFMEYER: Thank you. Can we look at that second condition? I want to understand from you what that second condition means as far as you understood it at the time. What is it saying there?

- 10 **MR MASIMBA PHILLIP DAHWA:** I think my understanding, Chair, is the savings that had been secured for South African Airways under the LTTS implementation plan were supposed to be utilized for enterprise development. And Sir, Chair, let me make a submission at this point. That SAA did not even have a transformation policy in place as at that time. So even to say we needed to use that money for enterprise development I didn't quite understand how that was going to work because we still were struggling to get that policy from the Head of Transformation for quite some time. Secondly, to say it was going to be utilized by an equity contribution which may be required from a
- 20 successful BEE company, I also don't quite understand that. I'm a non-finance person, Chair, but my, with my little understanding, buying of, I mean – I mean when you talk of equity to me it sounds like buying shares in some company and obviously from where I am sitting, Chair, I didn't quite understand how that equity would be secured in a third-party company utilizing the savings that we had got. Because also on

one hand savings come in two form. There may be a cheque written back to you to say here are your savings or it's a paper saying where you just say, okay going forward we are not going to be charging you X amount but we are going to charge you a reduced amount. So since we are still in the whole process of finalizing this whole thing, this second condition it doesn't quite make clear sense to me as to how that condition could be applied. That's my understanding, Chair.

ADV KATE HOFMEYER: Doctor Dahwa, I understand from your statement, your affidavit that amongst the things that worried you about
10 that condition was that it was going to be redirecting a saving to SAA to a third party that is going to be brought into the Amadeus contract. Is that a fair reading of your affidavit?

MR MASIMBA PHILLIP DAHWA: True, Chair.

ADV KATE HOFMEYER: And then if we return to the meeting with Mr Van Rooyen because you meet with him on the 2nd of December as I have your evidence.

MR MASIMBA PHILLIP DAHWA: Yes, Chair.

ADV KATE HOFMEYER: He first raises the security contract. You indicate to him that's already been awarded and then he moves to the
20 Amadeus contract. Is that correct?

MR MASIMBA PHILLIP DAHWA: Yes, Chair.

ADV KATE HOFMEYER: Please tell us what he said about the Amadeus contract?

MR MASIMBA PHILLIP DAHWA: He then said, there is this issue about the Amadeus contract that I understand it has been renegotiated and

there are savings of about 19 million that are there. Then he said, in search for the BEE company I would want you to use the other company that I said I needed to get the name again. There's their... (intervention).

ADV KATE HOFMEYER: Yes, let me give it to you. If you go to page 14, at the bottom of the page paragraph 44.

MR MASIMBA PHILLIP DAHWA: Yes, Chair.

ADV KATE HOFMEYER: You'll see you record there that Mr Van Rooyen then stated that he should be awarded the tender for Amadeus
10 to a company Chris Status Investments and Information Technology Solution as the BEE partner to Amadeus.

MR MASIMBA PHILLIP DAHWA: Yes, Chair.

ADV KATE HOFMEYER: Does that accord with your recollection of the company he referenced?

MR MASIMBA PHILLIP DAHWA: Yes, Chair. Then when he mentioned that I was surprised, Chair, that Mr Van Rooyen knew about the negotiation that we were having with Amadeus and what I didn't quite get is because in one meeting with Amadeus when we were still doing that to and fro going to the board back to them. The board wants 30%
20 and all those kind of things, they did mention to me and to the chief of information Mr Phinta Nkala that someone had come to them and told them that they were going to be partners for the BEE component. We tried to see if they could disclose who that someone was but they refused. So now the event of the 2nd of December made me remember now that there was that conversation which had been said somewhere

by an official from Amadeus and also like I said I was surprised to say Mr Van Rooyen knew about the savings because even at that stage, Chair, we had not even made a position. We were still moving between board, Amadeus, IT, procurement; we were still trying to find our feet in terms of concluding that whole thing but that really surprised me. Then in my response to him regarding that issue I told him that unfortunately Sir, I'm a procurement person. I wouldn't know how this 19 million would be apportioned or would be redirected or transferred or whatever it is to a third-party company and I, about the negotiation that we were

10 having with Amadeus. And what I didn't quite get is because in one meeting with Amadeus when we were still doing the to and fro going to the board, back to them, the board wants 30% and all these kind of things. They did mention to me and to the Chief of Information, Mr Phinta Nkala that someone had come to them and told them that they were going to be partners for the BEE component. We try to do see if they could disclose who that someone was that they refused. So now the event of the 2nd of December made me remember now that there was that conversation which had been said somewhere by an official from Amadeus. And also like I said, I was surprised to say Mr Van

20 Rooyen knew about the savings because even at that stage, Chair, we had not even made a position. We were still moving between board, Amadeus, IT, procurement. We were still trying to find our feet in terms of concluding that whole thing but that really surprised me. Then in my response to him regarding that issue I told him that, unfortunately Sir I'm a procurement person. I wouldn't know how this 19 million would be

apportioned or would be redirected or transferred or whatever it is to a third-party company and I even kindly said to him, I think finance would know because they deal with these issues inside out. But from a procurement point of view I had never dealt with situations where I had to move money first and foremost which had been secured for savings because the airline is bleeding and then we are saying we don't want it. We want to pass it on to third-parties. It didn't make sense to me but I did refer him in that meeting to say maybe finance people would understand what you are talking about but we didn't go into the, how
10 impossible it was to appoint his particular company.

ADV KATE HOFMEYER: And Doctor Dahwa, if we then move to page 17 of your affidavit. You summarize at paragraph 47 on that page. What aspects of the meeting were of concern to you? Can you tell us what those concerns were?

MR MASIMBA PHILLIP DAHWA: What my concerns were, Chair, is that Mr Van Rooyen knew all the details of this particular contract that we are renegotiating with Amadeus and he also knew about the discussions that were going on that would eventually require a BEE partner to partner with Amadeus and which is why most probably he
20 then came forward and say he had his company as the partner to go along with Amadeus.

ADV KATE HOFMEYER: Doctor Dahwa, was the R19 million saving public knowledge at that time?

MR MASIMBA PHILLIP DAHWA: Not at the time, Chair.

ADV KATE HOFMEYER: And do you remember Mr Van Rooyen making

specific reference to that saving in that amount?

MR MASIMBA PHILLIP DAHWA: Yes, Chair.

ADV KATE HOFMEYER: Was that something that concerned you?

MR MASIMBA PHILLIP DAHWA: Yes, it did.

CHAIRPERSON: At this meeting I don't get the impression from your evidence that Mr Van Rooyen was talking to you in the way of making a request and or making a proposal. Is my understanding correct?

MR MASIMBA PHILLIP DAHWA: Chair, I don't think he was making a request or a proposal. To me it was more of an instruction given that I
10 don't know him personally even that he was treasurer general, I didn't know. I was just a mere chief procurement officer and now I am getting this instruction to say I want you to award because the two companies were presented to me; the profiles of those two companies and obviously I didn't know what he wanted me to do with them. Because to then say I want you to award, again I couldn't understand exactly.

CHAIRPERSON: Well, you repeat the word want but that's the basis for my question because you did say earlier on he said something like he wanted you to give the, to award the tender to them or to whatever the company was and I was concerned about whether you are quite clear in
20 your mind that that's how he put it. He wanted you to do that.

MR MASIMBA PHILLIP DAHWA: Yes, Chair.

CHAIRPERSON: You are clear about that?

MR MASIMBA PHILLIP DAHWA: Yes, Chair.

CHAIRPERSON: Okay.

ADV KATE HOFMEYER: Thank you. Doctor Dahwa, you mentioned a

moment ago that you were then provided with the details of those two companies. Is that correct?

MR MASIMBA PHILLIP DAHWA: Yes, Chair.

ADV KATE HOFMEYER: Chair, I'm not suggesting we go there now but the emails that follow the meeting then do provide letters from each of those companies that were referenced by Mr Van Rooyen in the meeting. The one related to the security tender and other related to the IT tender; well, the engagement with Amadeus around the IT system. Doctor Dahwa, if we could then move to lower on the page 17 of your
10 affidavit.

MR MASIMBA PHILLIP DAHWA: Yes, Chair.

ADV KATE HOFMEYER: Well, before we go there may be a quanta question. The Chair asked you about the 2nd of October meeting. How did the 2nd of December meeting with Mr Van Rooyen end? On what terms did it end?

MR MASIMBA PHILLIP DAHWA: I think I remember very well. I did tell him that I had no tender for security to award and regarding the Amadeus contract he needed to consult maybe with finance as this was something strange to me or something that I couldn't help with because
20 it didn't sit within my procurement remit.

ADV KATE HOFMEYER: And did you have any further interactions with Mr Van Rooyen after that point?

MR MASIMBA PHILLIP DAHWA: No, Chair.

ADV KATE HOFMEYER: We'll come to what happened seven days later in the history of South Africa in relation to Mr Van Rooyen because as I

understand your evidence later that did have a bearing for you on your sense of what was going on at the time. But before we get there, if we could just turn to page 17 of your affidavit.

MR MASIMBA PHILLIP DAHWA: Yes, Chair

CHAIRPERSON: And maybe before that Ms Hofmeyer. There were other people at this meeting of the, is it 2nd of December?

ADV KATE HOFMEYER: Indeed.

CHAIRPERSON: 2nd of December where Mr Van Rooyen was speaking to you.

10 **MR MASIMBA PHILLIP DAHWA**: Yes, Chair.

CHAIRPERSON: Did they participate in the discussions or was the discussion simply between you and Mr Van Rooyen?

MR MASIMBA PHILLIP DAHWA: The discussion, Chair, was between me and Mr Van Rooyen.

CHAIRPERSON: Yes, okay.

MR MASIMBA PHILLIP DAHWA: And what I would also want to but before you, Chair, is the nature of the meeting was very unusual. I mean, I had a PA and if I was the organizer of that meeting definitely my PA needed to come and take minutes of whatever the proceedings
20 were. However, I was not the organizer of the meeting. Mr Thapelo Lehasa was and to my surprise one of my subordinates was also present in that meeting which also, it gave me.

CHAIRPERSON: Without your prior knowledge?

MR MASIMBA PHILLIP DAHWA: No, even to this date I don't know why he was there because the following day I was asked to leave.

CHAIRPERSON: Hm. Now who was the person who had told you about this meeting?

MR MASIMBA PHILLIP DAHWA: He was the head of transformation, Mr Thapelo Lehasa

CHAIRPERSON: Yes, and he was at the meeting as well?

MR MASIMBA PHILLIP DAHWA: He was him and Mr Thami Sogwazile.

CHAIRPERSON: Yes.

MR MASIMBA PHILLIP DAHWA: One of my commodity managers.

CHAIRPERSON: Yes.

10 **MR MASIMBA PHILLIP DAHWA**: Mr Van Rooyen and another gentleman that he brought along with him.

CHAIRPERSON: Yes, and you can't remember the name of the gentleman?

MR MASIMBA PHILLIP DAHWA: No, Chair.

CHAIRPERSON: Now Mr Lehasa in relation to the hierarchy in the company, in relation to you and the hierarchy of the company, where was he? Was he your senior in the company or were you on the same level?

MR MASIMBA PHILLIP DAHWA: No, we were peers.

20 **CHAIRPERSON**: Hm.

MR MASIMBA PHILLIP DAHWA: We were peers. We had same level.

CHAIRPERSON: You were peers?

MR MASIMBA PHILLIP DAHWA: Yes, Chair.

CHAIRPERSON: Yes, yes. Okay but he never said much at the meeting?

MR MASIMBA PHILLIP DAHWA: No.

CHAIRPERSON: Yes.

MR MASIMBA PHILLIP DAHWA: But what I kind of pick as well from other emails and exchanges. It appears there had been some discussions going on without my knowledge. So I think when that meeting was called I was more like the odd one out. I was trying to get to understand what it was that was going on but the two gentlemen from my team seemed to have an idea of what it is that was going on.

CHAIRPERSON: Did you ever ask Mr Lehasa how it came about that
10 called you to a meeting that ultimately appeared to have been essentially between you and Mr Van Rooyen without you having been consulted in advance about that meeting being arranged? Did you ever get to talk to him about that?

MR MASIMBA PHILLIP DAHWA: Not on the day, Chair, but what I could get was a lot of excitement from my direct report, Mr Thami Sogwazile. He looked very excited about things that were going on because you also find he had direct communications with the Chair, Ms Kwinani and them and I hope we will cover that and so most probably I was the only one who was trying to get up to terms. And in terms of
20 asking Mr Lehasa, Chair, this happened on the 2nd and on the 3rd I was asked to go on special leave. So I never got a chance. Even the cards, most probably I left them on my table because you know when you come from a meeting you may leave your things there.

CHAIRPERSON: Ja.

MR MASIMBA PHILLIP DAHWA: But the manner in which things

happen thereafter, I may not have had a chance to pick up what I thought I would need.

CHAIRPERSON: Yes. Okay thank you.

ADV KATE HOFMEYER: Doctor Dahwa, you've made references on two occasions to your concerns about the reporting lines of persons who were below you in the hierarchy and who they were engaging with.

MR MASIMBA PHILLIP DAHWA: Yes, Chair.

ADV KATE HOFMEYER: Can you tell us what that concern was?

MR MASIMBA PHILLIP DAHWA: Sorry. Chair, as head of – as head of
10 procurement of the chief procurement officer for South African Airways, I reported to chief finance officer who then in return reported to the CEO and the CEO in return reported to the board. But what was happening now in my area is I had two members of my staff reporting direct to the Chair of the board, Ms Muyeni and there is evidence to that effect and even the issue of my lying that I lied. I pick it for the first time from Mr Thami Sogwazile in one email where he said we are at a CSF team for jet fuel and we would want to let you know Doctor Dahwa that we are going to report you to senior leadership that you lied. And then I reported that case to my boss which was the CFO to
20 say this is what I am told and another issue that happened at the same time was, I was made aware by Mr Thami in a meeting in my departmental meeting that the Chair had instructed him to call for a meeting between SAA procurement team and SAAT and Mango to come and discuss some transformational issues. Then I sought for clarification to say, how could the Chair talk to my line, my direct line

and not even through my boss or boss' boss and that seemed to have been becoming more of a problem. You will also find that there is evidence to the fact that one of the Durban roadshows were that issue of 60 whatever companies, Mr Thami Sogwazile actually took it upon himself to lead on the arrangement and everything and now I was like playing second fiddle in the whole state of affairs.

CHAIRPERSON: He reported to you but now he was like taking over and doing things without your, without talking to you, without your approval?

10 **MR MASIMBA PHILLIP DAHWA:** Sure, Chair, which is why then even in my meeting with Mr Des Van Rooyen he was there. I don't know up to this minute as to why he found himself there. If I wanted most probably it should have been myself inviting him to that meeting pending on what it was going to look at and maybe if I wanted him to get first-hand information because they were the implementers of some of these issues but to my surprise he knew. And that's why I am saying most probably there were many other things happening behind my back and especially if you look at events that happened from that meeting going forward.

20 **ADV KATE HOFMEYER:** Doctor Dahwa, we're going to get to the next day, the 3rd of December in a moment because that is when I understand you were served with letters of suspension; well, a letter of suspension. But before we go there if I may just take you to page 17 of your affidavit.

MR MASIMBA PHILLIP DAHWA: Yes, Chair.

ADV KATE HOFMEYER: Because you deal with Chris topic which is the tender award cancellation for LSG Sky chef. Chair, this is a matter that Ms Mushe will also deal with but because we have the benefit of Doctor Dahwa's evidence today, I'll ask him to traverse his knowledge of that issue as well.

CHAIRPERSON: I was just thinking but I realize we might still be within time.

ADV KATE HOFMEYER: Yes.

CHAIRPERSON: I was just thinking that we not about for adjourning.

10 **ADV KATE HOFMEYER:** Yes.

CHAIRPERSON: But I was just thinking whether we had without noticing past the deadline by which he had promised to write those letters awarding tenders to the two members.

ADV KATE HOFMEYER: Yes.

CHAIRPERSON: The promise to the two members of the board.

ADV KATE HOFMEYER: Indeed.

CHAIRPERSON: But I think we are still within.

ADV KATE HOFMEYER: Indeed.

CHAIRPERSON: Ja, okay.

20 **ADV KATE HOFMEYER:** We'll come to that.

CHAIRPERSON: Ja.

ADV KATE HOFMEYER: So if we can do the cancellation and then will conclude on the letters of award and then will go to the suspension with your leave. So page 17.

MR MASIMBA PHILLIP DAHWA: Yes, Chair

ADV KATE HOFMEYER: Doctor Dahwa, you deal there with a tender that was awarded to LSG Sky chef. Do you see that?

MR MASIMBA PHILLIP DAHWA: Yes, Chair.

ADV KATE HOFMEYER: When was that letter of award issued to LSG Sky chef?

MR MASIMBA PHILLIP DAHWA: That was on the 21st of August 2015, Chair.

ADV KATE HOFMEYER: And what process had proceeded that?

MR MASIMBA PHILLIP DAHWA: A formal tender process had taken
10 place and evaluations done and an award to LSG Sky chefs.

ADV KATE HOFMEYER: Thank you. And what then happened about two weeks later on the 2nd of September 2015?

MR MASIMBA PHILLIP DAHWA: I was invited to join the board members including Ms Muyeni to Parliament in Cape Town and during the discussions pertaining to issues of SAA, the many issues you know as always out of the blues the Chair started. She just mentioned the issue about these executives they kind of, seem like they don't know what they are doing because recently there is a tender for catering which was awarded to Sky chefs which is a German company as if we
20 are saying in South Africa there are no women who can cook, you know. So straight from there, attention was moved to me to say or to explain what this was about and as the chief procurement officer in a nutshell, I just didn't want to have too many words because media was also quite interested in the whole thing. I did say to them and it was even in the newspapers online and everything that you know due procurement

process was followed and the outcome of the evaluation resulted in the tender being awarded to LSG Sky chef. Then when we had, there was a whole lot of discussion because now it really but what prompted the discussion is because in my view, Chair, the matter was taken out of proportion and I think we had taken a very narrow view of South African Airways as a brand. South African Airways, Chair, and as far as I am concerned is not a national airline. It is a global airline. It is a big name you know and it goes all its destinations define South African Airways is. It is not like Jo'burg, Cape Town and back that kind of a

10 thing. So I found those comments in my view to be kind of unwarranted for a national, I mean for a global player for an international airline.

CHAIRPERSON: The catering was to happen where?

MR MASIMBA PHILLIP DAHWA: It was to happen at OR Tambo international.

CHAIRPERSON: Yes?

MR MASIMBA PHILLIP DAHWA: But, yes.

CHAIRPERSON: Weren't they meaning that it might be flying globally but it's home is South Africa?

MR MASIMBA PHILLIP DAHWA: True, Chair, but I think in terms of

20 looking at a global player, Chair, it will be very difficult to try and localize it in many spheres and even to make it an issue because a global company in as far as I'm concerned it has to live within the confines of the international space. Because if everyone else within that space, Chair, starts making such assertions than even running that nature of business may be very difficult.

CHAIRPERSON: But your first answer was due.

MR MASIMBA PHILLIP DAHWA: Procurement process was followed.

CHAIRPERSON: Procurement processes were followed.

MR MASIMBA PHILLIP DAHWA: Yes, Chair.

CHAIRPERSON: Hm.

ADV KATE HOFMEYER: And what happened after that parliamentary session and the questions?

MR MASIMBA PHILLIP DAHWA: So when we returned home the following day I think, yes all execs were running all over like headless
10 chickens to make sure that something had been done about this and in as far as I understand I think Ms Mushe would know more. I think there was an emergency board meeting that took place not necessarily at Airways Park. If my recollection is well, at some hotel around the airport I think and then from there I was made to understand that the board had made a resolution that the award be cancelled and legal had drafted the cancellation letter for my signature. And I did append my signature because I felt all executives were in agreement that we needed to cancel that contract.

CHAIRPERSON: Well, let me ask this. When SAA issued tenders.

20 **MR MASIMBA PHILLIP DAHWA**: Yes, Chair.

CHAIRPERSON: Would there be a stipulation that only South African companies, South Africans were eligible to bid for the tenders?

MR MASIMBA PHILLIP DAHWA: No, Chair, unless we are following the triple PFA route where all this is embedded within a criteria; the evaluation criteria that would then in a way give added advantage to

South African companies but not to say this is confined only to South African companies and no one else can do that

CHAIRPERSON: So there was no stipulation that if you are not a South African bidder you may not bid for the tender?

MR MASIMBA PHILLIP DAHWA: No, there wasn't and more so, Chair, my understanding of SAA, sorry of LSG Sky chef, it's a company registered here in South Africa. So what I just don't know is its composition and all those kind of things but if we were to dig into all that you may find that it just operates locally.

10 **CHAIRPERSON**: Yes. So one, in regard to that particular tender there was no stipulation that if it was a company that was not a South African company it was disqualified from bidding from the tender? Two, you say it was, you think it was registered in South Africa?

MR MASIMBA PHILLIP DAHWA: Yes, Chair, and not to my recollection. Also, Chair, I think I would want to make a submission to you that say we had that condition by which it remains we still had an obligation to follow it through the evaluation process and then make sure that we award to the rightful person. Now that we had gone through the whole procurement process, evaluations and everything and we have awarded
20 then it still affirms my view that there must have not been that condition because if it was there obviously I would haven't thought it would have been a critical criteria pass fail. So are you a South African company yes tick, we proceed to the next level with evaluation. Are you a South African company, no, we reject because you are noncompliant or because you are not meeting what we call the critical criteria?

CHAIRPERSON: Hm. Of course.

MR MASIMBA PHILLIP DAHWA: But in as far as I know that wasn't the case, Chair.

CHAIRPERSON: Of course one leaves out the question whether it would have been Constitutional to put that kind of stipulation. Okay alright.

MR MASIMBA PHILLIP DAHWA: Of which just a small point. Which is why in my view when I look at South African Airways it's more of, you know all Africans love South African Airways. Yes, wherever you are in
10 the world when you see South African Airways fly past you your heart beats fast because it's for Africa and that's the mind-set and the spirit in which I look at South African Airways and trying to confine it to just South African borders in my view is a little bit you know unwarranted.

ADV KATE HOFMEYER: Doctor Dahwa, you indicated that you did sign the letter that cancelled the award to LSG Sky chef. Is that correct?

MR MASIMBA PHILLIP DAHWA: Yes, Chair.

ADV KATE HOFMEYER: And to whom was the contract then awarded?

MR MASIMBA PHILLIP DAHWA: It was awarded to Air Chefs

ADV KATE HOFMEYER: And... (intervention).

20 **CHAIRPERSON:** To?

MR MASIMBA PHILLIP DAHWA: Air Chefs.

ADV KATE HOFMEYER: Air Chefs.

MR MASIMBA PHILLIP DAHWA: Which is a subsidiary of South African Airways.

CHAIRPERSON: Oh okay.

ADV KATE HOFMEYER: And you know at the time who was on – who was the Chair of the board of Air Chefs?

MR MASIMBA PHILLIP DAHWA: I am not so sure but all I know is between Ms Muyeni and Ms Kwinana.

ADV KATE HOFMEYER: One of the two of them?

CHAIRPERSON: It was one of them?

MR MASIMBA PHILLIP DAHWA: Ja but I am not so sure, Chair, but I know they were involved in that board but not sure as to in what capacities.

10 **ADV KATE HOFMEYER:** Thank you. And if you go to page 18 of your affidavit paragraph 51.

MR MASIMBA PHILLIP DAHWA: Yes Chair.

CHAIRPERSON: Maybe before that.

ADV KATE HOFMEYER: Yes.

CHAIRPERSON: Ms Hofmeyer. Doctor Dahwa, you covered this but I think I immediately ask you another question and we focused on something else. Let's just go back to when you came from Cape Town.

MR MASIMBA PHILLIP DAHWA: Yes Chair.

20 **CHAIRPERSON:** Where this whole issue about SAA executives giving a tender for catering to, was it a German company there?

MR MASIMBA PHILLIP DAHWA: Yes.

CHAIRPERSON: It was a German company and implying that South Africans can't cook when that whole thing erupted, you said that when you came back.

MR MASIMBA PHILLIP DAHWA: Yes Chair.

CHAIRPERSON: There was a board meeting, an urgent board meeting and you felt like all the executives or most of the executives were against, wanted this tender to be cancelled. Just give me the picture of exactly how the situation was when you came back and just go through that again. I want to understand that.

MR MASIMBA PHILLIP DAHWA: I should say, Chair, I went on when we came back the following day we were all in office. I went back with my business as usual and later on I started, I think it was Ms Mushe who called me and told me that there was a board meeting going on
10 and she got wind that this needed to be cancelled. And legal were already busy drafting the grounds and or the cancellation letter if you may want to call it and they were coming to see me. And then later on I remember Ms Zooks, who is the current acting CEO came to my office as well and told me that there was been that resolution to say we needed to cancel this. I remember asking about the resolution which I believe I must have seen, Chair, but I'm not sure where it sitting where this was made that we needed the cancellation to happen and the...
(intervention).

CHAIRPERSON: Whilst you are talking about a resolution of the board
20 or a resolution of some of the board, your committee?

MR MASIMBA PHILLIP DAHWA: I think it was of the board because this came from the company secretary if my memory serves. Yes, and then the letter was drafted for me by legal because generally it was us drafting any letters as procurement. We draft them then we take them to legal for editing and maybe additions or anything of the form but in

this case the letter came from legal drafted and done for me and I just appended my signature and we communicated.

CHAIRPERSON: So the only discussion you had with anybody at SAA on the day around the alleged need to cancel the award was with who and who and who?

MR MASIMBA PHILLIP DAHWA: It's quite a number of people, Chair. Obvious Ms.

CHAIRPERSON: You mentioned about two or three.

MR MASIMBA PHILLIP DAHWA: Yes Ms Zooks Ramasi, we spoke
10 about it. Ms Thuli Mushe, we spoke about it and I think the commodity manager responsible.

CHAIRPERSON: Hm.

MR MASIMBA PHILLIP DAHWA: And I remember some people because people kept coming to my office and it was more like an urgent thing that needed to happen. I had to call the LSG and I spoke to some lady, even right there to notify them that they needed not to proceed with setting up because we had just awarded and they were already busy trying to mobilize to make sure that they started their work on time.

CHAIRPERSON: Had the letter to the company, had it gone to tell them
20 you have been awarded the tender?

MR MASIMBA PHILLIP DAHWA: Yes, earlier.

CHAIRPERSON: Had it gone by that time?

MR MASIMBA PHILLIP DAHWA: It had.

CHAIRPERSON: Yes.

MR MASIMBA PHILLIP DAHWA: Yes, Chair.

CHAIRPERSON: But they had not started?

MR MASIMBA PHILLIP DAHWA: No.

CHAIRPERSON: Working.

MR MASIMBA PHILLIP DAHWA: I think they were in the process of.

CHAIRPERSON: Preparing.

MR MASIMBA PHILLIP DAHWA: Mobilizing resources, yes.

CHAIRPERSON: Yes. Okay alright. So you were given a letter that had been drafted by the legal department?

MR MASIMBA PHILLIP DAHWA: Yes, Chair.

10 **CHAIRPERSON**: Which was cancelling the award?

MR MASIMBA PHILLIP DAHWA: Yes, Chair.

CHAIRPERSON: And the letter was addressed to the successful bidder?

MR MASIMBA PHILLIP DAHWA: Yes, Chair.

CHAIRPERSON: Okay.

ADV KATE HOFMEYER: Thank you Doctor Dahwa. If we just pick it up at paragraph 51 on page 18 of your affidavit.

MR MASIMBA PHILLIP DAHWA: Yes, Chair.

ADV KATE HOFMEYER: You state there,

20 I have since learned that there is currently Court litigation between SAA and LSG.

Do you see that?

MR MASIMBA PHILLIP DAHWA: Yes, Chair.

ADV KATE HOFMEYER: How did you come to learn of that?

MR MASIMBA PHILLIP DAHWA: Following these ongoing probing and

investigations by the Commission. I think they got to pick up that as part of maybe the many other things that they were looking for but I didn't know all this long that there was that litigation though I was not surprised.

CHAIRPERSON: Were you in agreement with this letter of cancellation?

MR MASIMBA PHILLIP DAHWA: I think Chair I just did it for a duty and most – mostly because all my other executives were in agreement that we just do so and if I – I didn't quite think I wanted to be the odd
10 one out to say no, no let's not do it but everyone was saying let's do it and I said it's fine we can.

CHAIRPERSON: Hm. Who had awarded the tender?

MR MASIMBA PHILLIP DAHWA: I did.

CHAIRPERSON: You had awarded the tender?

MR MASIMBA PHILLIP DAHWA: Yes, Chair.

CHAIRPERSON: And when you awarded it you were satisfied it was the correct thing to do?

MR MASIMBA PHILLIP DAHWA: Which is why I defended that even at Parliament Chair.

20 **CHAIRPERSON:** Yes, yes. Is there anything that was said to you by those who wanted the awards to be cancelled to show that you may have been wrong in awarding the tender?

MR MASIMBA PHILLIP DAHWA: Not from any board member nor from.

CHAIRPERSON: Or colleagues?

MR MASIMBA PHILLIP DAHWA: My colleagues, no nothing like that,

Chair.

CHAIRPERSON: Was that just some big noise that he should be cancelled?

MR MASIMBA PHILLIP DAHWA: Yes, and for me I took it to be a quite sensitive issue you know particularly where people were trying to arouse the feelings of the general public to say you know you guys you are like being perceived as you can't cook. I mean that was a bit too much of a statement and obviously considering the sensitivities around that matter I didn't want to be the odd one out.

10 **CHAIRPERSON**: Yes.

MR MASIMBA PHILLIP DAHWA: Trying to defend.

CHAIRPERSON: Yes.

MR MASIMBA PHILLIP DAHWA: Against such a practice but in my mind like I had indicated I knew it was not the right thing we were doing.

CHAIRPERSON: Yes, you knew it was not right?

MR MASIMBA PHILLIP DAHWA: No.

CHAIRPERSON: Yes, but you looked at the sensitivities and so on?

20 **MR MASIMBA PHILLIP DAHWA**: Around that particular discussion, yes, Chair.

CHAIRPERSON: Okay. Thank you.

ADV KATE HOFMEYER: Doctor Dahwa, if I could just follow up on that because the timeline is interesting to me. You had the meeting on the 2nd of October 2015 when you were kept there late on the Friday for the better part of what we think is about eight hours dealing with those

letters of award. Is that correct?

MR MASIMBA PHILLIP DAHWA: Yes, Chair.

ADV KATE HOFMEYER: You then as I have it signed the letter cancelling the award to LSG Sky chefs on the following Tuesday, the 6th of October 2015. Is that correct?

MR MASIMBA PHILLIP DAHWA: I would like to, I think so. Yes, Chair.

ADV KATE HOFMEYER: I could take you to the letter if it's useful but if we can take it for present... (intervention).

MR MASIMBA PHILLIP DAHWA: But I think from my statement I can
10 see it says 6th of October.

ADV KATE HOFMEYER: 6th of October.

MR MASIMBA PHILLIP DAHWA: Yes, Chair.

ADV KATE HOFMEYER: Was your willingness to sign on the 6th related at all to the events that had happened on the 2nd? Is there any connection there?

MR MASIMBA PHILLIP DAHWA: I think, Chair, if you can come again. I am failing to get something.

CHAIRPERSON: Okay. The question is certain events had taken place at the meeting of the 2nd. It was 2nd of October?

20 **MR MASIMBA PHILLIP DAHWA**: Yes.

ADV KATE HOFMEYER: Correct.

CHAIRPERSON: 2nd of October. So the question is whether your decision to sign your – to sign this letter of cancellation whether your decision to do so was in any way related to what it happened on the 2nd of October.

MR MASIMBA PHILLIP DAHWA: Okay. I think that's what I'm talking about the sensitivities around the issues. If you remember what I was struggling with and now we are like coming up with other issues along the same lines that would suggest some form of, okay you know but it was just a difficult thing and I would like to believe, Chair, because in my sixth sense I heard that there was that sensitivity which I did and want to try and cross pass with at that particular point in time. Especially that there was like agreement by all other players or executives including the board. I just thought would let the sleeping
10 dogs lie.

CHAIRPERSON: Yes, thank you.

ADV KATE HOFMEYER: Thank you. Doctor Dahwa, I then like to return to the question of the letters of award that you were kept at the office for many hours on the Friday, the 2nd of October. As I understand it from your answers to the Chair, that meeting concluded on the basis that you gave an undertaking to prepare those letters by the Wednesday of the following week. Is that correct

MR MASIMBA PHILLIP DAHWA: Yes, Chair.

ADV KATE HOFMEYER: What then happened? Did you do so?

20 **MR MASIMBA PHILLIP DAHWA:** No, I didn't and I think what I then did I wrote another board paper explaining my position which was, it must have been signed by myself as the initiator and supported by Ms Mushe and my line manager Mr Hofmeyer if I still remember. But now right up to the time when I left we had not got response to that recommendation.

ADV KATE HOFMEYER: But if you follow the chronology that we've canvassed already that Wednesday would have been the 7th of October on my calculation because the Monday was the 5th. That was when you didn't attend because you were worried about the EFF march. Correct?

MR MASIMBA PHILLIP DAHWA: Yes, Chair.

ADV KATE HOFMEYER: And then we've seen that on the 9th of October which is the Friday of that week. That is when Ms Kwinana writes that letter setting out all of her misgivings about your conduct. Is that a correct reflection of the chronology?

10 **MR MASIMBA PHILLIP DAHWA:** It is, Chair.

ADV KATE HOFMEYER: And just to have your evidence clear. Despite giving that undertaking on the Friday which you have indicated to the Chair, you gave to be released from that meeting. You did not subsequently prepare those letters. Is that right?

MR MASIMBA PHILLIP DAHWA: Yes, Chair.

CHAIRPERSON: And that letter from Ms Kwinana which was addressed to the Chairperson and made allegations that you had lied. Was that written after the deadline by which you were supposed to have written those letters awarding the tender to those two companies?

20 **MR MASIMBA PHILLIP DAHWA:** I think so, Chair, because if my understanding from the proceedings is correct is Wednesday was the 7th and then this came on the 9th or it was initiated on the 9th.

CHAIRPERSON: Okay. Well, the meeting was on a Friday.

ADV KATE HOFMEYER: Yes.

CHAIRPERSON: The EFF was according to Ms Muyeni supposed to

have happened on the Monday.

MR MASIMBA PHILLIP DAHWA: Yes, Chair.

CHAIRPERSON: And the deadline for you to send those letters was – was it a Wednesday?

MR MASIMBA PHILLIP DAHWA: Wednesday.

CHAIRPERSON: Wednesday?

MR MASIMBA PHILLIP DAHWA: Yes, Chair.

CHAIRPERSON: And the letter from Ms Kwinana that we are talking about to the Chairperson happened later that week?

10 **MR MASIMBA PHILLIP DAHWA**: On the 9th, yes, Chair.

CHAIRPERSON: On the 9th. Okay thank you.

ADV KATE HOFMEYER: Indeed Chair.

CHAIRPERSON: Are we able to say what date the Wednesday was?

ADV KATE HOFMEYER: Yes, so the Wednesday was the 7th.

CHAIRPERSON: 7th, okay.

ADV KATE HOFMEYER: So we have the Friday.

CHAIRPERSON: Ja.

ADV KATE HOFMEYER: Sorry, Monday the 5th.

CHAIRPERSON: Ja.

20 **ADV KATE HOFMEYER**: When the march is supposed to happen. Wednesday the 7th.

CHAIRPERSON: Hm.

ADV KATE HOFMEYER: The deadline for the undertake – the letters.

CHAIRPERSON: Hm.

ADV KATE HOFMEYER: And then the letter from Ms Kwinana is dated

the 9th which would be that Friday.

CHAIRPERSON: Hm.

ADV KATE HOFMEYER: But we actually saw it was emailed to Ms Muyeni actually the following Monday the 12th.

CHAIRPERSON: Yes, yes okay.

ADV KATE HOFMEYER: But that is the full sequence as I have the facts.

CHAIRPERSON: Okay. I must just say that earlier on I may have thought, I may have got confused and thought that the meeting of the
10 2nd October was 2nd December when we spoke about, when I was saying have we passed.

ADV KATE HOFMEYER: Yes, where are we?

MR MASIMBA PHILLIP DAHWA: Yes.

ADV KATE HOFMEYER: Indeed.

CHAIRPERSON: So we had passed, ja.

ADV KATE HOFMEYER: We had passed it in time.

CHAIRPERSON: Ja.

ADV KATE HOFMEYER: Indeed.

CHAIRPERSON: Okay.

20 **ADV KATE HOFMEYER**: On my schedule we were still coming to it. So that might have created the.

CHAIRPERSON: Ja, okay alright.

ADV KATE HOFMEYER: Confusion. Thank you, Chair. Before we go to your suspension which is – which occurs on the 3rd of December, I do just want to ask one or two questions about the meeting with Mr Van

Rooyen.

MR MASIMBA PHILLIP DAHWA: Yes Chair.

ADV KATE HOFMEYER: You said the conversation took place between you and Mr Van Rooyen. Is that correct?

MR MASIMBA PHILLIP DAHWA: Yes, Chair.

ADV KATE HOFMEYER: Would the other attendees at that meeting have overheard the conversation and been in proximity to do so or were they elsewhere in the room when they were talking?

MR MASIMBA PHILLIP DAHWA: They were in the room with me.

10 **ADV KATE HOFMEYER**: I beg your pardon?

MR MASIMBA PHILLIP DAHWA: We were in the same room, Chair.

ADV KATE HOFMEYER: So what they have overheard what Mr Van Rooyen was saying to you?

MR MASIMBA PHILLIP DAHWA: Yes, they did, Chair.

ADV KATE HOFMEYER: And but I understand your evidence to be they didn't participate in the conversation?

MR MASIMBA PHILLIP DAHWA: No, not even one of them, Chair.

ADV KATE HOFMEYER: Thank you.

CHAIRPERSON: Well, I don't know whether it's overhearing.

20 **ADV KATE HOFMEYER**: Hm.

CHAIRPERSON: They were, were you sitting around a table or at a table?

MR MASIMBA PHILLIP DAHWA: No, it wasn't. Normally when we do, when we did our meetings, Chair, it was on roundtables.

CHAIRPERSON: On?

MR MASIMBA PHILLIP DAHWA: On a roundtable.

CHAIRPERSON: Yes.

MR MASIMBA PHILLIP DAHWA: But in this case it wasn't a roundtable because I can visualize the two essay officials stand – I mean at the
10 walls of the room.

CHAIRPERSON: Ja.

MR MASIMBA PHILLIP DAHWA: And I was sitting pretty close to Mr Van Rooyen and another gentleman was sitting on my left.

CHAIRPERSON: Oh okay. So overhearing might, he's probably correct. So the way where they were standing.

MR MASIMBA PHILLIP DAHWA: Yes, Chair.

CHAIRPERSON: And where you and Mr Van Rooyen and the person that he was with were, where the three of you.

MR MASIMBA PHILLIP DAHWA: Hm.

20 **CHAIRPERSON**: It was like they were not meant to be part of the meeting? They were standing against the wall I think you said.

MR MASIMBA PHILLIP DAHWA: Yes, Chair.

CHAIRPERSON: And the – and were having a meeting with Mr Van Rooyen and the person that he came with?

MR MASIMBA PHILLIP DAHWA: Yes, Chair. I think what was very

unusual.

CHAIRPERSON: They would have heard?

MR MASIMBA PHILLIP DAHWA: Yes, because it was a small. It was a meeting room it wasn't like a big boarding.

CHAIRPERSON: Yes.

MR MASIMBA PHILLIP DAHWA: I mean a board room. It was a small boardroom.

CHAIRPERSON: Oh okay.

MR MASIMBA PHILLIP DAHWA: You know those side rooms where you
10 have your meetings.

CHAIRPERSON: Okay.

MR MASIMBA PHILLIP DAHWA: Yes, but that's why I then say in my view that it seemed like this was a pre-talked issue and I was the only odd one in terms of what needed to be done. So I was like being brought up to speed to say tell you what this is what needs to happen but my colleagues already knew about what the issue is about which I didn't know of

CHAIRPERSON: Yes, it is also just strange that you know nothing about a meeting you get asked to come to a meeting and you discover
20 when you are in the meeting that actually you are one of two sole participants.

MR MASIMBA PHILLIP DAHWA: True, Chair.

CHAIRPERSON: And the people who called you are there but they are not taking part in any way in the discussion.

MR MASIMBA PHILLIP DAHWA: True, Chair. So even the body

language is as well, Chair.

ADV KATE HOFMEYER: And this is not a situation where a superior or the person you report to calls you to a meeting. It's just somebody on the same level as yourself or a peer?

MR MASIMBA PHILLIP DAHWA: True, Chair.

CHAIRPERSON: Okay.

ADV KATE HOFMEYER: Thank you Doctor Dahwa. If we can then move to page 18 of your affidavit where you deal with your suspension.

MR MASIMBA PHILLIP DAHWA: Yes, Chair.

10 **ADV KATE HOFMEYER**: And that as I have it from paragraph 52 occurs on the day after the meeting with Mr Van Rooyen.

MR MASIMBA PHILLIP DAHWA: Yes, Chair.

ADV KATE HOFMEYER: So we are now in time at the 3rd of December 2015. Correct?

MR MASIMBA PHILLIP DAHWA: Yes, Chair.

ADV KATE HOFMEYER: And what happens on the day?

MR MASIMBA PHILLIP DAHWA: Thank you, Chair. I had my day as usual you know that's doing my day-to-day and somewhere around, I think it was around three-ish I got to be told that I was wanted at sixth
20 floor boardroom. So I went there... (intervention.

CHAIRPERSON: Is that the same boardroom where you have spent almost the whole day with two members of the board on the 2nd of October?

MR MASIMBA PHILLIP DAHWA: Yes, but.

CHAIRPERSON: Or was it another boardroom?

MR MASIMBA PHILLIP DAHWA: I didn't even enter into the boardroom. So but now what happens is the layout, you get to the lifts and as soon as you come out of the lifts you see the reception and then from the reception there is the various ways to the various boardrooms that are on sixth floor. So when I went to sixth floor, Chair, I saw Mr Zwane who was now the acting CEO after Ms Thuli Mushe had gone back to her original role as GM HR and he was standing with Ms Muyeni, you know just close to the reception area for six floor. Then as soon as I appeared, they moved back into the boardroom. Then I was

10 greeted by a lady know who came from like behind me. Then she introduced herself to me as the new interim chief finance officer and she told me her name that she was Ms Phumeza Nancy and with her was another gentleman who told me the name as well and she asked me that we needed to move to her office. So we took a walk into her office and soon we entered that office. She left briefly. It wasn't, I don't think that was her office but I'm not sure. It seemed like it was just a side meeting room again but she then left. She left me with a gentleman and then she came back holding some papers and then she said Doctor Dahwa, unfortunately I have been instructed to put you on

20 special leave because there are some issues that are being investigated in your area and so the company wants to put you on special leave and then I was handed over the letter. I read through it and I signed acceptance of the letter and the BMK lawyer who I was told he was an external; that is Mr Mbuleli Mukholisi was with her. He also signed as a witness to say I had been given that letter. So I just

went back to my office. I said thank you. There's nothing I could have done and I went back to my office, went through the letter properly and realized I had been suspended with immediate effect or put on special leave to use their words. So I packed my things because I then didn't know and unfortunately SAA had a history or has a history of looking executives out. So I didn't want the embarrassment of leaving then trying to come and take your things the following day and you find you have got no more access to your office. So I went to my office, I packed my things and I left.

- 10 **CHAIRPERSON**: So, in the meantime it looks like two things that happened. One, there had been a change in terms of the person acting as CEO as well as a change in terms of the person acting as chief financial officer.

MR MASIMBA PHILLIP DAHWA: Yes, Chair.

CHAIRPERSON: You had there was Mr Meyer who was the chief financial officer.

MR MASIMBA PHILLIP DAHWA: Yes Chair.

CHAIRPERSON: And you were reporting to him but on this particular and then there was Ms Mushe who had been acting CEO. Is that right?

- 20 **MR MASIMBA PHILLIP DAHWA**: Yes, Chair.

CHAIRPERSON: So, on this day it seems like you, will certainly you seem to discover that there is an acting CFO?

MR MASIMBA PHILLIP DAHWA: Yes, Chair.

CHAIRPERSON: Were you discovering that for the first time or you had been told?

MR MASIMBA PHILLIP DAHWA: It wasn't for the first time because an email.

CHAIRPERSON: There was an email?

MR MASIMBA PHILLIP DAHWA: Had been circulated to say. I think it was circulated on the 29th.

CHAIRPERSON: Oh.

MR MASIMBA PHILLIP DAHWA: If I am not mistaken.

CHAIRPERSON: But you had not met the person?

MR MASIMBA PHILLIP DAHWA: No, I had not met with her.

10 **CHAIRPERSON:** Yes. And then Mr Meyer had left when? A few days before the previous month?

ADV KATE HOFMEYER: Chair, I think we have had evidence on that.

CHAIRPERSON: Oh.

ADV KATE HOFMEYER: Ms Stimple. I think it was mid November 2015.

CHAIRPERSON: Oh.

ADV KATE HOFMEYER: Because and then Ms Nancy comes in according to her evidence on the 27th of November. So that accords with an email around the 29th.

CHAIRPERSON: Yes, yes. Okay so those two changes have happened?

20 **MR MASIMBA PHILLIP DAHWA:** Yes, Chair.

CHAIRPERSON: And Mr Zwane was now the acting CEO and Ms Nancy was the acting CFO?

MR MASIMBA PHILLIP DAHWA: Yes, Chair.

CHAIRPERSON: And the letter of suspension you got from Ms Nancy?

MR MASIMBA PHILLIP DAHWA: Ms Nancy, yes, Chair.

CHAIRPERSON: Okay thank you.

ADV KATE HOFMEYER: Thank you, Chair. Doctor Dahwa, whether this is significant are not I'm not sure but I do just want to go to your letter of suspension that you received on that date, the 3rd of December. You will find it under tab 22 on page 307 and what I have just noticed in the course of your testimony, can you confirm this is your letter of suspension that you received on the 3rd of December?

MR MASIMBA PHILLIP DAHWA: Yes, Chair.

ADV KATE HOFMEYER: Your evidence was that both Ms Nancy and
10 the lawyer who was with her Mr Mukholisi had signed that letter of suspension but if I go to page 309 I only see Ms Nancy's signature. Where, could there have been another page to this or where was that signature or might you have been mistaken?

MR MASIMBA PHILLIP DAHWA: No, I wasn't mistaken. I think there must be an omission or the last page to this document is missing.

ADV KATE HOFMEYER: We should then try and source that just for completion but you receive it. You go back to your office and as I have your testimony, you then leave the building. Is that right?

MR MASIMBA PHILLIP DAHWA: Yes, after packing up my things I did,
20 Chair.

ADV KATE HOFMEYER: And what happened thereafter? If you go to page 19 of your affidavit we can again just track the sequence of events.

MR MASIMBA PHILLIP DAHWA: Yes, Chair.

CHAIRPERSON: I am sorry.

ADV KATE HOFMEYER: Yes.

CHAIRPERSON: Before we leave the letter of suspension, you said that you had not had any interaction with Ms Nancy by the time you were given this letter of suspension?

MR MASIMBA PHILLIP DAHWA: Yes, Chair. That was my first encounter with her.

CHAIRPERSON: Yes, and you said that when she gave you the letter she said she had been instructed to suspend you or to put your special leave?

10 **MR MASIMBA PHILLIP DAHWA:** Yes, Chair, and interestingly I heard in her evidence as well that she had been instructed. She has said it herself.

CHAIRPERSON: I am sorry. Just repeat that?

MR MASIMBA PHILLIP DAHWA: I'm saying yes, Chair, and also listening to her evidence in this room I think she confirmed to that effect as well.

CHAIRPERSON: Yes, okay thank you.

ADV KATE HOFMEYER: Thank you, Chair. You will recall we did ask Ms Nancy in the course of her evidence whether she had any
20 knowledge of the grounds of suspension in this letter.

CHAIRPERSON: Yes, I was trying to remember.

ADV KATE HOFMEYER: And she had said no and she as a consequence could not justify.

CHAIRPERSON: Deal with it, yes.

ADV KATE HOFMEYER: Or deal with the veracity of the grounds.

CHAIRPERSON: Yes.

ADV KATE HOFMEYER: She had simply been given it as I understand her evidence and because she was in the direct line of reporting.

CHAIRPERSON: Yes.

ADV KATE HOFMEYER: She understood it to be her role to then issue the suspension notice to Doctor Dahwa.

CHAIRPERSON: Did we ask her who had given her instructions to suspend Doctor Dahwa?

ADV KATE HOFMEYER: I am not certain.

10 **CHAIRPERSON**: Because that's important.

ADV KATE HOFMEYER: It is important.

CHAIRPERSON: That is important and what grounds she was told. Sorry?

MR MASIMBA PHILLIP DAHWA: I think I listened to the proceedings.

ADV KATE HOFMEYER: Your recollection may be better than ours.

CHAIRPERSON: Than ours.

MR MASIMBA PHILLIP DAHWA: With keen interest, Chair.

CHAIRPERSON: Yes.

20 **MR MASIMBA PHILLIP DAHWA**: Because that pertained to my particular case.

CHAIRPERSON: Yes.

MR MASIMBA PHILLIP DAHWA: She does say that if you even go to the recording is that she got that instruction from Ms Phinana and the board Chair.

ADV KATE HOFMEYER: Thank you.

MR MASIMBA PHILLIP DAHWA: And that the charges had already been crafted by some external lawyers and so she was just given.

CHAIRPERSON: Yes.

MR MASIMBA PHILLIP DAHWA: The mandate to implement.

CHAIRPERSON: Okay. No, that is fine.

ADV KATE HOFMEYER: Thank you.

CHAIRPERSON: I think maybe some of your colleagues assisting you might need at some stage to just have a look or maybe you might, if they find it you can have a look and see whether.

10 **ADV KATE HOFMEYER:** We'll put it in.

CHAIRPERSON: Whether there's any need to bring her back and supplement on that or not.

ADV KATE HOFMEYER: Yes, indeed.

CHAIRPERSON: Ja.

ADV KATE HOFMEYER: But we are indebted to you Doctor Dahwa. I think your memory is slightly better. It might be the time of the day nothing else but we will look for the transcript Chair and follow it up if there's an issue of any gap. Doctor Dahwa, then if we go to page 19 of your affidavit and Chair, just in terms of time we very close to the end.

20 So I'm quite optimistic that we will complete in the next while but if you pick it up at paragraph 54 on page 19 of your affidavit. You reflect there what happened on the 9th of December and what you made of that event.

MR MASIMBA PHILLIP DAHWA: Yes, Chair.

ADV KATE HOFMEYER: Can you tell us about that?

MR MASIMBA PHILLIP DAHWA: Following my placement on special leave I know at times it's referred to as suspension but according to the letter I received it was a special leave. I went to seek legal counsel in Sandton and as we arrived at the place you know there was a big screen, television screen which was talking about Mr Des Van Rooyen now having been appointed the Minister of Finance. You know I tell you I was with my wife, I didn't know what to do, Chair, and I realized that I had undermined or underestimated the kind of person I had had a meeting with and literally I was shaken and ja, I just felt we were not
10 safe and we needed to make plans and so said my wife. And you find as soon as we got home, Chair, we sent a letter to Ms Nancy. We sent an email rather to Ms Nancy where I sought that I be allowed to go to Zimbabwe and be with my family and I gave my contact details that just in case you needed me for whatever reasons she would contact me on those respective numbers. And I gave that, I also copied in that letter to GM HR who was now Ms Mushe and she responded back to me and she said it's fine you can go. We will call you as in when we want you and a couple of days later we packed our bags and off I went with my family to Zimbabwe.

20 **CHAIRPERSON:** You say that you were shaken when you saw this news item, you heard this news.

MR MASIMBA PHILLIP DAHWA: Yes, Chair.

CHAIRPERSON: What is it that drove you to decide as a family or you and your wife you must go to Zimbabwe after? What's the connection between that news item of Mr Van Rooyen being made Minister of

Finance as I understand was the position and your decision to go back to Zimbabwe?

MR MASIMBA PHILLIP DAHWA: Thank you Chair. My meeting with Mr Van Rooyen on the 2nd of December followed by my suspension on the 3rd of December then followed by the appointment of the same man because he see, Chair, when you meet suppliers because to me he was more like a supplier if you want. You expect to have that relationship of a buyer supplier where you put all your cards on the table. You discuss, you engage, you see what's possible, what's not but my meeting with
10 Mr Van Rooyen wasn't that of a supplier and a buyer. It was more of an authority trying to tell you what you should do and obviously given my stance and the responses I gave and now this very same person you discover is now at that level which is where SAA would report as well because then we were reporting to national treasury. It just left me shaken literally.

CHAIRPERSON: Yes, thank you.

ADV KATE HOFMEYER: Doctor Dahwa, on page 19 you then go on to detail your response to the allegations that were made against you in the letter of suspension.

20 **MR MASIMBA PHILLIP DAHWA:** Yes, Chair.

ADV KATE HOFMEYER: Chair, just in order to aid the conclusion of the evidence. The aspects that are picked up in the letter of suspension, Doctor Dahwa, are they the same issues that were referenced in that letter that Ms Kwinana wrote on the 9th of October 2015?

MR MASIMBA PHILLIP DAHWA: Yes, Chair.

ADV KATE HOFMEYER: And we've dealt in some detail with your responses to each of those allegations as they appeared on the 9th of October 2015 letter. I have also looked carefully at your response to the charges now which are in a sense a replica of those allegations back in October.

MR MASIMBA PHILLIP DAHWA: Yes, Chair.

ADV KATE HOFMEYER: I have gone through your answers and my sense of your evidence is that you have covered your responses to
10 each of those charges but I do want to offer you an opportunity if there's an aspect of any charge made against you that you don't feel you have covered yet in your evidence to do so. And to assist you, you may just want to take a look at your response. You will find it under tab 23 at page 311.

MR MASIMBA PHILLIP DAHWA: Yes, Chair. I think the anomaly that I would want to bring to the attention of you, Chair, is I think around February I then got another set of charges which was more like a breakdown of this particular one but the gist and the theme of everything was just one and the same thing.

20 **ADV KATE HOFMEYER:** So that was February 2016. Was it?

MR MASIMBA PHILLIP DAHWA: Yes, Chair.

ADV KATE HOFMEYER: Thank you. And then at the bottom of page 19, you talk about at paragraph 56 a disciplinary process that followed.

MR MASIMBA PHILLIP DAHWA: Yes, Chair.

ADV KATE HOFMEYER: How did that unfold?

MR MASIMBA PHILLIP DAHWA: I then got to be invited at some point to come and defend or make a representation as to why I should not have been suspended. Why Ms Nancy made that position is because I was querying my being placed on special leave and I was saying to her I have been looking into SAA human resource policies and I'm struggling to find a Section that speaks to special leave because I just wanted to understand what it was because obviously the SAA handbook was part of my contract of employment. And then she didn't get back to me and I was copying HR all along and she told me not to copy HR on

10 matters that she was dealing with because... (indistinct] done that outside of me and she didn't want me to copy. And I insisted her that I was not going to stop copying HR because when you handed me the original letter there was no HR and I felt exposed in a way because I wasn't so sure whether the custodians of these policies approved of the various things that you were doing. And then when I came I saw a new set of charges and I think one other component that had been included there was that I had absconded from coming to make a representation on a particular day. Then I said, what do you mean because I had come and when I sent an email explaining myself, GM HR Ms Mushe

20 confirmed receipt but then Ms Nancy was trying to make an impression that she had not received it. But then I took out some documentation email copies and I showed it to her and then at the actual hearing they dropped that charge. Then I was also talking to my lawyers now trying to see if we could get anything.

Another issue, Chair, I need to bring to your attention is I said

and on that particular day there was a representative from HR and I did say to Ms Nancy why have you decided to take an expensive route for my hearing because within the SAA handbook there's a straightforward way of handling disciplinary issues which would involve myself getting a colleague from within and that would appoint whoever the Chairman from within not even to try and go outside. So I did ask her whether SAA would pay up for my costs because I just didn't have that kind of money, Chair, and we had just bought a property in Pretoria. So my finances were thin. So I didn't have anything to spend on legal issues
10 and she told me that she had the prerogative to decide the route she wanted to go.

CHAIRPERSON: I mean, who was – was there a lawyer from outside SAA at the disciplinary hearing? Is that what you are saying?

MR MASIMBA PHILLIP DAHWA: The hearing was conducted by lawyers that was – sorry Chair. There were three lawyers from external and Ms Nancy as the fourth person but we had three Advocates that attended my hearing.

CHAIRPERSON: And who was chairing the disciplinary hearing?

MR MASIMBA PHILLIP DAHWA: It was Advocate Cassim.

20 **CHAIRPERSON:** Cassim?

MR MASIMBA PHILLIP DAHWA: Cassim, I don't know him. He's an external.

CHAIRPERSON: Somebody from outside the SAA?

MR MASIMBA PHILLIP DAHWA: Yes.

CHAIRPERSON: But you say there were two other lawyers from

outside SAA?

MR MASIMBA PHILLIP DAHWA: That is Mr Mukholisi, the one that was there when I was handed the letter.

CHAIRPERSON: Yes, when you were suspended.

MR MASIMBA PHILLIP DAHWA: And there was a Ms Danaren who was another advocate.

CHAIRPERSON: Now you say the Chairperson was Mr Cassim?

MR MASIMBA PHILLIP DAHWA: Cassim.

CHAIRPERSON: What was the role – what were the roles of the other
10 two lawyers from outside SAA?

MR MASIMBA PHILLIP DAHWA: I queried that as well, Chair, during the day of the hearing but they told me that these were just there to support the Chair and to try and make the process much easier.

CHAIRPERSON: But you say your understanding was that the disciplinary process contained in SAA's handbook did not provide for outside lawyers to be involved in the – in a disciplinary process. Was that your understanding?

MR MASIMBA PHILLIP DAHWA: Yes, or maybe they could have used other options but unfortunately I couldn't get HR to advise me as the
20 custodians of the policy but from my general understanding and reading through the SAA handbook, you know this was supposed to be done internally first.

CHAIRPERSON: Yes.

MR MASIMBA PHILLIP DAHWA: And if there were any issues then it could be taken out.

CHAIRPERSON: But you say you did ask Ms Nancy and you said why have you taken the expensive route of bringing in outside lawyers to this a disciplinary process?

MR MASIMBA PHILLIP DAHWA: I did, Chair, and if we were to look at the ruling that was done by Advocate Cassim, he refers to all those because we really had... [indistinct] time initially with me trying to question the integrity of the process and why a bleeding airline which already did not have money can afford to splash. I don't know how much money was spent on those three Advocates to come and just tell
10 me to leave because I didn't see any fairness as to whether this was a fair hearing where people would then say if you found innocent you can stay or anything. But I think it was a fore done conclusion and even the dismissal, Chair, was done when I was off sick. I didn't even attend that hearing.

CHAIRPERSON: Before you came to the hearing, had you be notified that the Chairperson would be somebody from outside or not?

MR MASIMBA PHILLIP DAHWA: No, Chair.

CHAIRPERSON: You had not been told who the Chairperson would be?

MR MASIMBA PHILLIP DAHWA: No.

20 **CHAIRPERSON:** Yes, okay.

ADV KATE HOFMEYER: And if I can just pick up on that point about the day when you didn't attend the disciplinary hearing. Why was that?

MR MASIMBA PHILLIP DAHWA: I, you know I was so stressed because of what I was going through. You can imagine, Chair, you are in a room where there's three Advocates. You know with one, Chair, I'm

more than enough. No getting three of them all on your case and you're also perplexed that here is a new boss who has never worked with you and she's saying she's a credible witness to lay charges on me. It didn't make good sense. So I was so stressed and also this speaks to the many things that I was going through and I just found later on day one I was just feeling weak in my joints and I needed to go and see a doctor and when I went to see the doctor, he said to me we need to sign you off. And then I was signed off and I immediately communicated to Ms Nancy who and copied HR and she came back to me and said

10 we'll proceed without you and the verdict will be made and they did exactly that, Chair.

ADV KATE HOFMEYER: And what steps did you take after the decision of that disciplinary Tribunal to dismiss you?

CHAIRPERSON: Maybe before that. Before as I understand it, you attended the disciplinary hearing on the first day?

MR MASIMBA PHILLIP DAHWA: Yes, Chair.

CHAIRPERSON: For how long?

MR MASIMBA PHILLIP DAHWA: That was the whole day.

CHAIRPERSON: The whole day?

20 **MR MASIMBA PHILLIP DAHWA:** Yes, Chair.

CHAIRPERSON: During the day, during that hearing were any witnesses called by the management to give evidence about the charges against you?

MR MASIMBA PHILLIP DAHWA: Yes, Chair, they were. I remember there was a gentleman from cargo and they were witnessing over a

procurement which I had serious problems with, Chair, which I'm sure in the near future it will be looked into because that was not. That was the wrong procurement anyway but he came and said whatever he said and left. Then Ms Kwinana came as well and another lady from the strategy office. She came citing some case where I had not tried to put a shared services structure between SAA and Mango and SAA Express which was something way above my capabilities anyway. But she came and tried to testify along those lines as well as Ms Nancy, she did also testify. I am not sure what she was testifying about.

- 10 **CHAIRPERSON**: And earlier on you mentioned something along the lines that there was a meeting where what was being looked at is whether there was justification for the suspension. Did I understand you correctly? Sometime earlier. Did you say anything along those lines? That there was a time when I don't know if it was a meeting but what was being looked at was whether there had been justification for the suspension.

MR MASIMBA PHILLIP DAHWA: I think I was asked to make representation as to why I should now not be suspended and this was following my querying of being placed on special leave.

- 20 **CHAIRPERSON**: Oh okay.

MR MASIMBA PHILLIP DAHWA: And I had sought the relevant policies.

CHAIRPERSON: Ja.

MR MASIMBA PHILLIP DAHWA: To do with placing somebody on special leave. So I think at that point Ms Nancy then, I don't know with

advice from wherever she then said, okay can you come back now and tell me why I should not suspend you. So it was like a step of trying to remove me from the special leave to a suspension.

CHAIRPERSON: Yes. And the persons who testified at the disciplinary hearing they testified with regard to the charges or let me rephrase. The charges that you were facing, were they substantially in line with what was said was written in the suspension letter?

MR MASIMBA PHILLIP DAHWA: Some cases yes.

CHAIRPERSON: To a large extent?

10 **MR MASIMBA PHILLIP DAHWA**: Yes, to a large extent yes there was more to do with issues of insubordination and failing to implement the 30% set aside.

CHAIRPERSON: Yes.

MR MASIMBA PHILLIP DAHWA: As well as lying at these roadshows and... [indistinct]. So that was the bulk of those issues. Then I think they were also trying to find one or two cases where, I don't know how the system worked. Most probably there went around asking people to say, what did Doctor Dahwa do wrong for you or he did this. Okay bring it on. What did he do for you? It is like the other case, Chair, I am
20 talking about. It's a shame if we were to dig into it and I then have executives of a global airline trying to make allegations over such matters. It's, you know your heart bleeds. It's not quite a good thing.

CHAIRPERSON: Thank you.

ADV KATE HOFMEYER: Doctor Dahwa, if you go to page 20 of your affidavit.

MR MASIMBA PHILLIP DAHWA: Yes, Chair.

ADV KATE HOFMEYER: You indicated the top of that page that you took steps to challenge the dismissal. Is that correct?

MR MASIMBA PHILLIP DAHWA: Yes, Chair.

ADV KATE HOFMEYER: And what happened with that process?

MR MASIMBA PHILLIP DAHWA: When we tried to do that, we went to one of the CCMA meeting where we were just going to try and seek like some conciliation where you try and find each other and then say okay can you settle and that kind of a thing. But when we got there SAA was,
10 they tabled three months' salary and you go and I didn't agree to that and so did my lawyers and as such we left CCMA. And then the next thing was I changed lawyers. I then got a different lawyer now and after presenting my case she then said, no, no I think we needed to take a broader view to this whole thing and the lawyer wrote to SAA instructing them that we wanted to subpoena certain people including Mr Des Van Rooyen to come and be a witness as well as we wanted the report from the EY forensic audit. Because the way it happened, Chair, we had just got Ernest Yang to come and do a forensic audit and there were a whole of issues to do with contracts not being signed and which
20 is something I had raised much, much earlier leading to the changes in the procurement governance which I had done. But now the way it appeared in media it was now more like I had been asked to go on suspension because I had not done proper contracting and things like that. So I told my lawyer to that effect and they were not happy with that. Then they said no, let's get the record straight. Let's get the

report from Ernest and Yang forensic audits. Then we want to see which contracts we are talking about. Were they during your time? How did they come about because some of them I knew anyway? And we knew that or been left open backdating to the time I had – I was not with SAA. And when we made that request to SAA then SAA was quick to say, no, no I think let's come together and let's agree for a settlement. And then my lawyer advised me as well to say tell you what I think with these people they lose nothing because the monies that they using to work on you is not their money. This is government money. They will

10 splash it and drag this case as long as they want but you will be suffering and you can't move on with your profession. So I was advised to agree to settle and I accepted the advice and part of the agreement was that I would sign – I would resign from SAA and then they would give me a letter of mutual separation which they did and then was settled at six months.

ADV KATE HOFMEYER: Doctor Dahwa, since that occurred, I'm now at the bottom half of page 20 of your affidavit. You detail there some of your personal circumstances since having left SAA and in particular at paragraph 60 you talk about your current employment position. Can you

20 please tell us what your personal circumstances were like after you left SAA?

MR MASIMBA PHILLIP DAHWA: Thank you, Chair. After I left South African Airways, Chair, I obviously was troubled because this was an untimely exit and like I said I had just brought property in Pretoria which was the only family home we had and by the way I am a

permanent resident of South Africa, Chair, and so we had made our conscious decision with the family that we needed to settle in South Africa and to make it all permanent home. But then following all this, Chair, I thought it was going to help me to start afresh and move on and I would like to say, Chair, for the last 3 and a half years I have not had any formal offers for a job and I don't. You know it beats me to say why am I in this predicament simply because I was trying to do my job right in the best interest of the company, in the best interest of the black and white people of South Africa but now here I am. I am stuck

10 professional as I am simply because there were certain individuals who could abuse the power that had been entrusted and put upon them for the betterment and development of the nation but to my detriment. As we are speaking, Chair, our property in Pretoria it went to Court here in Jo'burg. That is on the 25th which is like some three days ago because the bank wants to repossess it and that is the only asset we have. I can send my children, Chair, to schools of my choice. As you can see, Chair, I'm one person who has been patriotic, very committed to the development of my profession not only personally but as well as was South African Airways. I would tell you, Chair, I met significance strides

20 when I joined SAA none of my 22 commodity managers had a qualification or a certificate in procurement. I looked into the organization structure. I think you saw it. I turned it upside down and I had to make provision for my people to address the various key issues that are required for the effective delivery of the long-term turnaround strategy and apart from that I seconded all my 22 managers to go for

special training with a chartered institute of... (indistinct) supply which was an 18 months training which I thought was making significant strides. And to my disappointment, Chair, here I am 4 and a half years later qualified as I am experienced as I am not only in South Africa but even internationally. I worked in the UK for the government for four years, Chair, in the same capacity and I've never in my whole 24/25 years of being in this profession lost a job because of people who pursued personal interests first before the interest of the companies that gave them that opportunity. So, Chair, it hurts me in very serious

10 ways that we still talking about issues of transformation. I'm part of the transformation, Chair. I share the same pain that in those respective board members talked to me about. I'm a product of that struggle. I may have all the credentials and qualifications, Chair, that you saw. They didn't come cheap. It's after my own parents sold nuts just like any other parent. They did that for my welfare and here I am today, Chair, stuck simply because I was trying to do my job right. I think that's what I would just want to say regarding my personal circumstances, Chair. Thank you.

ADV KATE HOFMEYER: Thank you. Chair, I don't have any further

20 questions for Doctor Dahwa.

CHAIRPERSON: Thank you. We will need – I will need to see the decision to dismiss him.

ADV KATE HOFMEYER: Yes.

CHAIRPERSON: I take it that full reasons were given by the Chairperson of the disciplinary inquiry. If I hope that there is a

transcript.

ADV KATE HOFMEYER: Yes.

CHAIRPERSON: Of the whole evidence given in the disciplinary inquiry, I would like to see that as well. It may be necessary, it may or may not be necessary to look more closely into that evidence because it may well be that at the end of the work of the Commission, I may have to consider whether to make a finding whether he was subjected to a disciplinary process in circumstances where there was clearly no case but it was for other reasons and if I don't know what evidence was
10 placed before the Chairperson of the disciplinary inquiry it might be difficult to get to that point. So maybe apply your mind to that and at some stage then it can be looked at.

ADV KATE HOFMEYER: Indeed Chair. We will follow that up.

CHAIRPERSON: Yes, yes. Doctor Dahwa, thank you very much for having come to give evidence and share with the Commission the experiences which you had at SAA as you have outlined in your evidence to me. I do want to hear from people including senior executives from parastatals and government departments who went through experiences that they believe were connected with people who
20 may have seen them as stumbling blocks towards whatever it is they may have wanted to do which those executives and senior managers may have regarded as wrong and may have been resisting. And I think part of your evidence is that you were pursued in the way it was done because you say you were resisting attempts to break the law and attempts to act against the interests of the entity, SAA. So I do want to

hear from many people who may have or may believe that is what they went through. I also want to hear from those against whom those allegations are made to say they were pursuing certain agendas and abuse to their power in order to get people who would agree to carry out certain instructions or to simply deal with people that they believed were standing in their way. At the end of the work of the Commission, I'll have to make findings. I'll hear everybody and then make findings. But if indeed people like you were dealt with in a certain manner because of simply standing for what was right it will be important for
10 the Commission at the end of its work to see what recommendations to make. But obviously whether or not indeed people like you were subjected to the kind of treatment that you have told me about because of that is something that I can only decide once I have heard all the evidence from everybody including those against whom you have given evidence.

MR MASIMBA PHILLIP DAHWA: You understand that?

CHAIRPERSON: Yes, but thank you very much for having come to give evidence and what you experienced. If it becomes necessary to ask you to come back again you will be asked to come back and I'm sure you
20 will come back if you are asked.

MR MASIMBA PHILLIP DAHWA: Sure, thank you so much.

CHAIRPERSON: Yes, you are excused. Thank you.

MR MASIMBA PHILLIP DAHWA: Thank you.

CHAIRPERSON: It has been a long day.

ADV KATE HOFMEYER: It has Chair.

CHAIRPERSON: On Monday we start at 10.

ADV KATE HOFMEYER: Indeed.

CHAIRPERSON: Okay. Will then adjourn today and then on Monday we start at 10.

ADV KATE HOFMEYER: Thank you Chair.

CHAIRPERSON: We adjourn.

INQUIRY ADJOURNS TO 1 JULY 2019