

COMMISSION OF INQUIRY INTO STATE CAPTURE

HELD AT

PARKTOWN, JOHANNESBURG

10

02 JULY 2019

DAY 125

20

PROCEEDINGS ON 2 JULY 2019

CHAIRPERSON: Good morning Ms Norman, good morning everybody.
Good morning Mr Martins.

ADV THANDI NORMAN SC: Thank you. Good morning Mr Chairman.

CHAIRPERSON: Thank you.

ADV THANDI NORMAN SC: Thank you.

CHAIRPERSON: Are you ready?

ADV THANDI NORMAN SC: Yes thank you Mr Chairman.

CHAIRPERSON: Thank you.

- 10 **MR BENEDICT ANTHONY DUKE MARTINS**: Thank you. In opening the legal team wishes to present evidence that relates to the lending of a chartered Jet Airways aircraft at the Waterkloof Air Force Base on the 30 April 2013. We will examine the processes that were followed and those that were not followed. The incident falls within the ambit of term of reference 1.6. The main witness or who does implicate by way of the report that she has put up to her statement that implicate – makes reference to various persons is Ms Nonkululeko SIndane who will testify tomorrow. As a result of that report in her statement Rule 3.3 Notices were issued between the periods the 20th and the – up to the 25th June.
- 20 In respect of some of the implicated persons we are shy of one day to the 14 days and it respect of [indistinct] it is just 7 days. Maybe I need to explain the last one that was sent on the 25th June 2019 to the former President. The only reason that it was sent it is a – his mentioned in paragraph 2.1.15 and after much deliberations the legal team as a precaution decided that maybe we should send out a notice.

So he will only have 7 days up to Ms Sindane's – when she testifies tomorrow. Maybe Mr Chairman just to highlight what we have placed before you this morning the Chairperson will have Exhibit FF1 that will contain Ms Sindane's statement together with the JCPS Cluster Report that will be Exhibit FF1.

CHAIRPERSON: I am sorry you said I should have what? FF?

ADV THANDI NORMAN SC: FF1 – Exhibit FF1.

CHAIRPERSON: I have got FF8 and FF3 and FF6.

ADV THANDI NORMAN SC: Those are the ones we going to refer to in
10 evidence but I think in the box ...

CHAIRPERSON: Oh.

ADV THANDI NORMAN SC: Yes I just wanted to highlight what we have placed – everything that you will have in respect of this for now.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: What else should there be?

ADV THANDI NORMAN SC: FF1 that will be Ms Sindane's statement and the JCPS Report and then the Chairperson will also have FF2[a] and 2[b].

20 **CHAIRPERSON**: Okay FF2[a] and FF2[b].

ADV THANDI NORMAN SC: And 2[b].

CHAIRPERSON: I can see FF1 I do not see but we can deal with that later.

ADV THANDI NORMAN SC: Yes. Those are...

CHAIRPERSON: I have got FF..

ADV THANDI NORMAN SC: Yes maybe I should just make..

CHAIRPERSON: 4, 5, 6.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: 7. 8 and I see I have got FF3.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Ja.

ADV THANDI NORMAN SC: Yes thank you Mr Chairman. Just to highlight that FF2[a] and 2[b] the records that were received from the Public Protector and FF3 this is the disciplinary enquiry of Ambassador Koloane FF4 that will be the board of enquiry from the South African National Defence Force. FF5 it is referenced to emails bundle and then FF6 that is the – the exhibit that we are going to deal with this morning which has this witness' statement Mr Benedict Martins. And then FF7 it is a – an attorney Johannes Albertus Griesel we will deal with his evidence much later in the week. And then FF8 is an additional bundles documentation. Having said that Mr Chairman I just wish to highlight that there has been responses from one or – from two of the implicated persons. One Ambassador Koloane he will be arriving in the country tonight and he has asked for more time but we did indicate to him that he must bring that application before you tomorrow morning and we have been in touch with his legal representative so there will be an appearance from them tomorrow morning. Ambassador Mashele on the other hand there was a slight error in respect of his notice because his notice referred to William Mashele and yet and his name Jeffrey Mashele and it also referred to his title incorrectly so whilst we are

dealing – please we are trying resolve those issues then he then – in the end ultimately requested that he to be given some more time. And with him we had in any event had not plotted him for this week but he has agreed that he will appear before you Mr Chairman on the 8th which is next week Monday.

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: Yes. Thank you.

CHAIRPERSON: Hm.

ADV THANDI NORMAN SC: Having said that Mr Chairman I would like
10 to present the witness Mr Benedict Martins may he be sworn in?

CHAIRPERSON: Yes please swear him in or administer the affirmation?

REGISTRAR: Please state your full names for the record?

MR BENEDICT ANTHONY DUKE MARTINS: Benedict Anthony Duke Martins.

REGISTRAR: Do you have any objection with taking the prescribed oath?

MR BENEDICT ANTHONY DUKE MARTINS: I do not have an objection.

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

MR BENEDICT ANTHONY DUKE MARTINS: I do.

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

MR BENEDICT ANTHONY DUKE MARTINS: No help me God.

ADV THANDI NORMAN SC: Thank you Mr Chairman.

CHAIRPERSON: Thank you.

ADV THANDI NORMAN SC: Thank you. Mr Chairman Mr Martins' statement appears in Exhibit FF6.2 but...

CHAIRPERSON: Ms Norman I do not know whether it is because the microphone is far from you but you are not as audible as you normally are today.

ADV THANDI NORMAN SC: Yes I have flu Mr Chairman I think...

CHAIRPERSON: Oh maybe that is the reason.

10 **ADV THANDI NORMAN SC:** Maybe that is the reason but I will try and put it closer slightly. Yes.

CHAIRPERSON: Yes okay alright.

ADV THANDI NORMAN SC: Thank you.

CHAIRPERSON: Thank you.

ADV THANDI NORMAN SC: Thank you. It appears at 6.2 thank you. Mr Martins before we start with your evidence you indicated to me that you would like to make two corrections.

MR BENEDICT ANTHONY DUKE MARTINS: That is correct.

20 **ADV THANDI NORMAN SC:** Yes could you please highlight to the Chairperson where those are?

MR BENEDICT ANTHONY DUKE MARTINS: The corrections are on page 6.

ADV THANDI NORMAN SC: Could you make reference to the top numbered page – the numbering on top because that is the paginated ones.

CHAIRPERSON: Well maybe let us start first by entering this file.

ADV THANDI NORMAN SC: Just a [indistinct] finding it. Alright do that.

CHAIRPERSON: The file containing Mr Benedict Martins' statement will be marked Exhibit FFS? FF6?

ADV THANDI NORMAN SC: 6 2 thank you. Oh Exhibit 6 yes thank you. Thank you Mr Chairman.

CHAIRPERSON: Ja FF6.

ADV THANDI NORMAN SC: 2.

10 **CHAIRPERSON**: Thank you. So...

ADV THANDI NORMAN SC: Thank you. Maybe...

CHAIRPERSON: When reference is made to pages then the transcript will reflect that that is a reference to a page in that file.

ADV THANDI NORMAN SC: Thank you. Thank you Mr Chairman. Maybe before we do that Mr Martins could you please turn to page – to Exhibit FF6 and turn to Exhibit FF6.2 where your statement is contained on top there of the page numbered 3. It will be TNBMWM03. Do you see that/

MR BENEDICT ANTHONY DUKE MARTINS: Yes I can.

20 **ADV THANDI NORMAN SC**: That is the number that you must – for the purposes of the record you must maintain.

MR BENEDICT ANTHONY DUKE MARTINS: Okay.

ADV THANDI NORMAN SC: We refer to according to those numbers. Now is – are those – is that your statement? Did you identify it as your statement?

MR BENEDICT ANTHONY DUKE MARTINS: I am referring to my statement Ma'am.

ADV THANDI NORMAN SC: Yes if you turn to page 9 – 09 on top of the same Exhibit FF6.2

MR BENEDICT ANTHONY DUKE MARTINS: Yes.

ADV THANDI NORMAN SC: Is that your signature that appears on that page?

MR BENEDICT ANTHONY DUKE MARTINS: It is.

ADV THANDI NORMAN SC: Yes. And you deposed to that on the 26th
10 June 2019, is that correct?

MR BENEDICT ANTHONY DUKE MARTINS: That is correct.

ADV THANDI NORMAN SC: Yes thank you. And then – and that the contents of this statement are true and correct?

MR BENEDICT ANTHONY DUKE MARTINS: That is correct.

ADV THANDI NORMAN SC: Thank you. And then you had just typographical error that you wanted to make and that would be at page 08 – TNBMWM08, is that correct?

MR BENEDICT ANTHONY DUKE MARTINS: That is correct.

ADV THANDI NORMAN SC: Yes what is the correction?

20 **MR BENEDICT ANTHONY DUKE MARTINS:** With regard to paragraph 19.3 the second line reads: "Lenasia"

ADV THANDI NORMAN SC: Yes.

MR BENEDICT ANTHONY DUKE MARTINS: It should be Lanseria.

ADV THANDI NORMAN SC: Lanseria.

CHAIRPERSON: Oh thank you.

MR BENEDICT ANTHONY DUKE MARTINS: And on the third line the first word reads “run away” it should be runway.

ADV THANDI NORMAN SC: Runway yes.

MR BENEDICT ANTHONY DUKE MARTINS: And then the word Lenasia should be also replaced by Lanseria.

ADV THANDI NORMAN SC: Yes thank you.

CHAIRPERSON: Lenasia appears in 19.3 but does it also appear elsewhere or only there? The one that should be replaced by Lanseria?

ADV THANDI NORMAN SC: Lanseria.

10 **CHAIRPERSON:** Is it appearing only 19.3 where we should make a correction?

MR BENEDICT ANTHONY DUKE MARTINS: That is my understanding.

CHAIRPERSON: Oh okay.

MR BENEDICT ANTHONY DUKE MARTINS: From my reading.

CHAIRPERSON: Okay no that is fine.

MR BENEDICT ANTHONY DUKE MARTINS: I only noticed it on that particular page.

CHAIRPERSON: Okay no that is fine.

ADV THANDI NORMAN SC: Thank you Mr Chairman. Thank you.

20 Thank you Mr Chairman. We move for those corrections as asked for by the witness. Thank you.

CHAIRPERSON: Ja well ...

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Remember we said supplementary ...

ADV THANDI NORMAN SC: Supplementary statement.

CHAIRPERSON: Statement will have to be made.

ADV THANDI NORMAN SC: Yes.

MR BENEDICT ANTHONY DUKE MARTINS: When he gives his evidence he will talk about Lanseria instead of Lenasia.

ADV THANDI NORMAN SC: That is correct.

CHAIRPERSON: But a supplementary affidavit will need to be done.

ADV THANDI NORMAN SC: To be made. Thank you.

CHAIRPERSON: To make those – to effect those corrections.

ADV THANDI NORMAN SC: Thank you Mr Chairman.

10 **CHAIRPERSON**: Mr Martins I think you have picked up another error?

MR BENEDICT ANTHONY DUKE MARTINS: Yes I...

ADV THANDI NORMAN SC: Do you have another – yes.

MR BENEDICT ANTHONY DUKE MARTINS: I have picked up some other errors rather on page T9 – TN rather.

ADV THANDI NORMAN SC: Yes.

MR BENEDICT ANTHONY DUKE MARTINS: BMW05.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Okay I think Ms Norman you have confused Mr Martins by ...

20 **ADV THANDI NORMAN SC**: By reading the TM

CHAIRPERSON: By reading the letters when you refer to the page.

ADV THANDI NORMAN SC: Okay.

CHAIRPERSON: Mr Martins it will be enough if you just say page 8, page 9.

MR BENEDICT ANTHONY DUKE MARTINS: Okay.

CHAIRPERSON: Even ignoring the letters.

MR BENEDICT ANTHONY DUKE MARTINS: Thank you Judge.

CHAIRPERSON: And the 0 then we will know.

ADV THANDI NORMAN SC: Yes thank you.

CHAIRPERSON: But she is the one who caused the problems. Yes
what page?

MR BENEDICT ANTHONY DUKE MARTINS: Page 5 the first line point
6. There should be capital letters South African Aviation Authority.
Aviation capital A, Authority capital A.

10 **ADV THANDI NORMAN SC**: Okay.

CHAIRPERSON: Yes.

MR BENEDICT ANTHONY DUKE MARTINS: And then with regard to
paragraph 7 the second line the same mistake has occurred there.
Airports Company. Airports should be capital A, company capital C.

ADV THANDI NORMAN SC: Yes.

MR BENEDICT ANTHONY DUKE MARTINS: And the next phrase of
that sentence the Air Traffic Navigation Services. Air should also be
capital A, Traffic capital T, Navigation capital N, Services capital S.

ADV THANDI NORMAN SC: Yes.

20 **CHAIRPERSON**: Hm.

ADV THANDI NORMAN SC: Thank you.

MR BENEDICT ANTHONY DUKE MARTINS: And the last two words of
that particular paragraph Regulation Committees, capital R, capital C.

ADV THANDI NORMAN SC: Alright thank you.

MR BENEDICT ANTHONY DUKE MARTINS: Thank you.

ADV THANDI NORMAN SC: Is that all?

MR BENEDICT ANTHONY DUKE MARTINS: That is all.

ADV THANDI NORMAN SC: Thank you. Apart from those you are happy with the statement?

MR BENEDICT ANTHONY DUKE MARTINS: Yes I am.

ADV THANDI NORMAN SC: Yes thank you. Mr Martins could you just briefly tell the Chairperson about your educational qualifications please?

MR BENEDICT ANTHONY DUKE MARTINS: I hold a BA degree from
10 the University of UNISA and I hold a LLB degree from the University of KwaZulu Natal at the time I obtained the degree it was the University of Natal. And I also hold a Masters in International Law from the University of Cape Town and I also hold a Post Graduate Degree in Management Law and Economics from the University of Cape Town.

ADV THANDI NORMAN SC: Yes Thank you.

CHAIRPERSON: Thank you.

MR BENEDICT ANTHONY DUKE MARTINS: Thank you Mr Martins you understand your appearance today relates to the invitation that was made to you by the investigators and the list of questions that you were
20 furnished dealing with what is known as the Waterkloof incident?

MR BENEDICT ANTHONY DUKE MARTINS: I do.

ADV THANDI NORMAN SC: Yes. Could you just tell the Chairperson what was your position during May – April/May of 2013 within government?

MR BENEDICT ANTHONY DUKE MARTINS: During that period I was

the Minister of Transport.

ADV THANDI NORMAN SC: And when were you appointed as a Minister of Transport?

MR BENEDICT ANTHONY DUKE MARTINS: I was appointed as the Minister of Transport on the 11th June 2012 and held that position until the 9th June 2013.

ADV THANDI NORMAN SC: Yes. And what were your responsibilities as the Minister of Transport?

MR BENEDICT ANTHONY DUKE MARTINS: During May 2013 I carried
10 out my responsibilities of overseeing the Department of Transport. Those were inter alia the responsibility for National and International Airports, National Roads, Railways and Marine Transport. The responsibility for the effective implementation of transport legislation, policies and programmes that are aimed at improving the lives of South Africans and to stimulate social and economic development. The Department of Transport also has a further mandate to oversee the implementation of projects by the entities under its remit.

ADV THANDI NORMAN SC: Yes.

MR BENEDICT ANTHONY DUKE MARTINS: And those are twelve
20 entities.

ADV THANDI NORMAN SC: Yes and now let us talk about the role of the Department of Transport insofar as aircrafts wishing or even the local aircrafts landing at our various airports. What is the role of transport?

MR BENEDICT ANTHONY DUKE MARTINS: In regard to the question

that you posed Ma'am the National Aviation Security Program deals with matters of civil aviation, security and with liaison with government departments concerning matters of civil security, civil aviation security. One of the key components of aviation security is a National Aviation Security Program. The Civil Aviation Act and the Associated Regulation together with this program established the basic legal authority for the implementation of Civil Aviation Security Policies, Practices and Procedures. The South African Aviation Authority bears responsibility for the safety and security of the entire network of Airports in terms of

10 legislation and international conventions on safety and security. Sharing this responsibility are the Civil Aviation's Authorities of South Africa namely the Airports Company of South Africa, the Air Traffic Navigation Services and the Regulation Committees.

ADV THANDI NORMAN SC: Yes.

MR BENEDICT ANTHONY DUKE MARTINS: The Minister of Transport makes decisions and approvals on Aviation in consultation with the relevant agencies that a particular matter requires.

ADV THANDI NORMAN SC: Yes let us just deal with that. You have mentioned in paragraph 7 ACSA and ATNS I am just giving acronyms to

20 those. Do those agencies report to the Minister of Transport?

MR BENEDICT ANTHONY DUKE MARTINS: Those agencies fall under the Department of Transport.

ADV THANDI NORMAN SC: Of transport. And when you talk about decisions that you as a Minister would have to make give approvals on aviation's what sort of – can you just give us examples? What sort of

matters would require your approval?

MR BENEDICT ANTHONY DUKE MARTINS: The agencies concerned have got the day to day responsibility for carrying out their brief under relevant regulations and laws.

ADV THANDI NORMAN SC: Yes.

MR BENEDICT ANTHONY DUKE MARTINS: But where they require the assistance, guidance of the Minister they would consult the Minister and say in regard to this particular matter here is this international convention that we have signed and when international conventions are
10 signed they have to be processed and ratified in Parliament. So that is an example of where they would be liaison and consultation in regard to a matter.

ADV THANDI NORMAN SC: Yes. Now coming back then to the issue the Waterkloof landing when for the first time did you become aware that the Gupta family wished to have their aircraft land at Waterkloof Air Force Base?

MR BENEDICT ANTHONY DUKE MARTINS: No-one approached me on the Waterkloof landing issue.

ADV THANDI NORMAN SC: No, no I see you are reading from ...

20 **MR BENEDICT ANTHONY DUKE MARTINS:** Ja.

ADV THANDI NORMAN SC: Yes please do not read I will direct you to the relevant paragraphs. But the answer that I would like you to – the question I put to you is when for the first time did you become aware that the Gupta family wished to have their aircraft land Waterkloof?

MR BENEDICT ANTHONY DUKE MARTINS: The first time I was aware

in regard to the Waterkloof landing was when an official of the Air Traffic Navigation Services called me to say that the plane had entered South African Airspace without a requisite permit.

ADV THANDI NORMAN SC: Yes.

MR BENEDICT ANTHONY DUKE MARTINS: But in regard to the landing of the Gupta plane at Waterkloof Air Base I read it in the newspapers.

ADV THANDI NORMAN SC: Yes.

MR BENEDICT ANTHONY DUKE MARTINS: I was not formally
10 informed.

ADV THANDI NORMAN SC: Yes and then who is this official that informed you about the landing of that aircraft from ATNS?

MR BENEDICT ANTHONY DUKE MARTINS: I do not recall the name of the official but from my engagement the telephone call that I had I assumed that it was a black person that called me.

ADV THANDI NORMAN SC: Yes. And then other than that occasion did you have occasion to deal with any member of the Gupta family around the aircraft itself whether it was about the landing of the aircraft or any other matter that related to the aircraft itself?

MR BENEDICT ANTHONY DUKE MARTINS: In regard to the aircraft I
20 have got it in my statement here.

ADV THANDI NORMAN SC: Yes.

MR BENEDICT ANTHONY DUKE MARTINS: I think some time in February an approach was made by a member or members of the Gupta family to the Airports Company of South Africa in regard to seeking

permission to land at OR Tambo International Airport. As a result of that the acting CEO of ACSA Mr Bongani Maseko contacted me.

ADV THANDI NORMAN SC: Yes.

MR BENEDICT ANTHONY DUKE MARTINS: And informed me about this. My discussion with him was that the permission request that they sought was upon the aircraft landing at OR Tambo Airport. When the guests disembarked from the plane there should be a reception, a welcoming reception and Mr Maseko explained to me that in the first instance where the plane lands on the tarmac side that is the
10 jurisdiction of the Department of Home Affairs and that it would be unlikely for anybody to give permission for an aircraft to land there and for a welcoming reception to take place there. So that was the first time that I learnt about this. Then I attended a meeting which is referred to in my statement.

ADV THANDI NORMAN SC: Yes.

MR BENEDICT ANTHONY DUKE MARTINS: At OR Tambo Airport where Mr Gupta was present, Mr Tony Gupta was present and Mr – Ambassador Koloane.

ADV THANDI NORMAN SC: Koloane yes.

20 **MR BENEDICT ANTHONY DUKE MARTINS:** Ambassador Koloane was present and Mr Maseko and myself.

ADV THANDI NORMAN SC: Yes.

MR BENEDICT ANTHONY DUKE MARTINS: And at that meeting ...

ADV THANDI NORMAN SC: I am so sorry to interrupt you Mr Martins just before you get to the meeting I just want to understand the clear

request – the request that was made at the point when Mr Maseko informed you what was it that the Gupta family actually requested?

MR BENEDICT ANTHONY DUKE MARTINS: They requested that their plane upon landing at OR Tambo that they should be given permission to have this reception. This welcoming reception.

ADV THANDI NORMAN SC: They wanted to have it where? Where was this reception going to be held?

MR BENEDICT ANTHONY DUKE MARTINS: As I said earlier.

ADV THANDI NORMAN SC: Yes.

10 **MR BENEDICT ANTHONY DUKE MARTINS:** Upon their guests disembarking from the airport – for the aeroplane rather.

ADV THANDI NORMAN SC: Yes.

MR BENEDICT ANTHONY DUKE MARTINS: They wanted the reception to take place there.

CHAIRPERSON: On the tarmac?

MR BENEDICT ANTHONY DUKE MARTINS: On the tarmac.

ADV THANDI NORMAN SC: Yes.

MR BENEDICT ANTHONY DUKE MARTINS: That was my understanding.

20 **ADV THANDI NORMAN SC:** Alright. Then = then you had then a meeting you say it was at – you held a meeting with Mr Maseko and where was this meeting held?

MR BENEDICT ANTHONY DUKE MARTINS: The meeting was held at OR Tambo Airport at the if I recall the – there is a hotel when you just walk across the road from the airport.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: I think...

MR BENEDICT ANTHONY DUKE MARTINS: I think it is the Internation.

CHAIRPERSON: Oh the International Hotel.

ADV THANDI NORMAN SC: Intercontinental?

MR BENEDICT ANTHONY DUKE MARTINS: Intercontinental Hotel.

ADV THANDI NORMAN SC: Yes.

MR BENEDICT ANTHONY DUKE MARTINS: The meeting took place – that is where the meeting took place.

10 **ADV THANDI NORMAN SC:** Yes. So I am sorry when I interrupted you, you were mentioning the persons that were at that meeting who were they?

MR BENEDICT ANTHONY DUKE MARTINS: It was Mr Tony Gupta.

ADV THANDI NORMAN SC: Yes.

MR BENEDICT ANTHONY DUKE MARTINS: It was Ambassador Koloane. It was the Acting CEO of ACSA Mr Bongani Maseko and myself.

ADV THANDI NORMAN SC: Yes. Yes what transpired at the meeting?

20 **MR BENEDICT ANTHONY DUKE MARTINS:** At the meeting the request was made for this welcoming ceremony.

ADV THANDI NORMAN SC: Yes.

MR BENEDICT ANTHONY DUKE MARTINS: And at the meeting I explained that on the tarmac side was the jurisdiction of Home Affairs and that in my understanding OR Tambo Airport being such a busy airport it would not be possible and it would not be feasible to have a

welcoming ceremony and I even mentioned that I was not aware of anybody else having had such an opportunity.

ADV THANDI NORMAN SC: Yes.

MR BENEDICT ANTHONY DUKE MARTINS: Normally Ministers when they get out the plane even they – they are just escorted immediately from where they disembarked by cars to wherever they are going.

ADV THANDI NORMAN SC: Yes. And then what was then your decision at that meeting?

MR BENEDICT ANTHONY DUKE MARTINS: The decision was that we
10 could not grant that permission.

ADV THANDI NORMAN SC: Yes.

MR BENEDICT ANTHONY DUKE MARTINS: First and foremost technically I did not have the authority to do so because on the plane landing site on the tarmac site the authority governing there is the Department of Home Affairs where they have to stamp passports and process individuals arriving into the country.

ADV THANDI NORMAN SC: Yes. And then after you told them what was Mr Gupta's – Tony Gupta's reaction?

MR BENEDICT ANTHONY DUKE MARTINS: His reaction was that are
20 you really denying the guests of – the guests of the President and the friends of the President the opportunity to have this welcoming ceremony there?

ADV THANDI NORMAN SC: Yes.

MR BENEDICT ANTHONY DUKE MARTINS: And we said that irrespective of whose guests or friends it is permission cannot be

granted.

ADV THANDI NORMAN SC: Yes. And then is that how you parted?

MR BENEDICT ANTHONY DUKE MARTINS: Yes that is how we parted.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: What was your understanding of who he was referring to as the friends of the President?

MR BENEDICT ANTHONY DUKE MARTINS: Judge in his motivation that is covered in one of the paragraphs in my statement which was also covered in the JP – JCPSS Report. Mr Gupta in motivating was giving the impression that four or five Ministers from India would be arriving in that plane and some of those Ministers and people in the plane were friends of President J Z Zuma.

CHAIRPERSON: Oh. Okay. Thank you. And that was your understanding at that meeting?

MR BENEDICT ANTHONY DUKE MARTINS: Yes at that meeting

CHAIRPERSON: Yes ja okay

MR BENEDICT ANTHONY DUKE MARTINS: That was the understanding.

CHAIRPERSON: Ja okay thank you.

20 **ADV THANDI NORMAN SC:** Thank you. Thank you Mr Chairman. And then you were asked by the investigators something you have also put in your statement at page 5 if anyone approached you on the Waterkloof issue and your response to the request and the full reasons for those – and the full – I think and give – furnish full reasons I think that is what is meant in there. And then your response was that no-one

approached you on the Waterkloof issue.

MR BENEDICT ANTHONY DUKE MARTINS: That is correct no-one approached me in regard to the Waterkloof issue.

ADV THANDI NORMAN SC: Yes. Now could you just tell then the Chairperson that then you had met with him and you told him that this cannot be done that is the ceremony at – on the tarmac as they land. When else did you have this conversation either with Mr Gupta himself, Tony Gupta himself or with either Mr Maseko or any other person?

MR BENEDICT ANTHONY DUKE MARTINS: As you would see from the
10 statement.

ADV THANDI NORMAN SC: Yes.

MR BENEDICT ANTHONY DUKE MARTINS: After the engagement at OR Tambo Airport there were phone calls from him where he was asking if this really could not be accommodated and then from myself I told him that the decision taken at the airport stood and then subsequent to that in his engagement with Mr Maseko this is where Mr Maseko advised that it might be possible for them to seek permission to land at Pilanesberg and at Lanseria Airport.

ADV THANDI NORMAN SC: Yes. When you say him who is that him?

MR BENEDICT ANTHONY DUKE MARTINS: I am saying that it was
20 Tony Gupta that was pursuing this matter.

ADV THANDI NORMAN SC: Yes.

MR BENEDICT ANTHONY DUKE MARTINS: So this is the advice that he got from Mr Maseko.

ADV THANDI NORMAN SC: Mr Maseko. Yes.

CHAIRPERSON: So at this meeting at the airport the whole request was not about the aircraft landing at OR because that is normal.

MR BENEDICT ANTHONY DUKE MARTINS: Standard.

CHAIRPERSON: It was about holding this reception / ceremony that they wanted on the tarmac that is what the request was directed at?

MR BENEDICT ANTHONY DUKE MARTINS: That is correct Judge.

CHAIRPERSON: Okay thank you.

ADV THANDI NORMAN SC: Yes. Thank you. Thank you Mr Chairman.
And then was – where you meeting Mr Tony Gupta for the first time/

10 **CHAIRPERSON**: Maybe – sorry Ms Norman.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Did you ever get to understand why it was so important that the guests who arrived would have to be given a reception on the tarmac as they disembarked from the plane as opposed to being received inside the airport's building or after coming out of the – or even after coming out of the airport's building?

MR BENEDICT ANTHONY DUKE MARTINS: I surmise that the intention to have the welcoming reception on the tarmac would project the importance of the visitors arriving and the power and influence of the
20 individuals receiving them.

CHAIRPERSON: Receiving them.

MR BENEDICT ANTHONY DUKE MARTINS: Yes.

CHAIRPERSON: Yes okay thank you.

ADV THANDI NORMAN SC: Yes thank you. Thank you Mr Chairman.
Maybe you could just tell us whether in your experience when visitors

let us say Ministers when they arrive, you have already said that they get escorted from the tarmac and have you ever heard of an incident where there would be some form of celebration on the tarmac?

MR BENEDICT ANTHONY DUKE MARTINS: As I have said earlier I have never ever heard of such.

ADV THANDI NORMAN SC: Thank you and then before this meeting at OR Tambo where Mr Tony Gupta was – was present. Have you – had you met with him before or were you meeting him for the first time at that meeting?

10 **MR BENEDICT ANTHONY DUKE MARTINS:** No. It was not the first time that I met Mr Tony Gupta there.

ADV THANDI NORMAN SC: Yes.

MR BENEDICT ANTHONY DUKE MARTINS: I remember having several interactions with member of the Gupta family ...

ADV THANDI NORMAN SC: Yes.

MR BENEDICT ANTHONY DUKE MARTINS: And I can articulate ...

ADV THANDI NORMAN SC: Yes.

MR BENEDICT ANTHONY DUKE MARTINS: Some of them.

ADV THANDI NORMAN SC: Yes could you please do that?

20 **MR BENEDICT ANTHONY DUKE MARTINS:** During 2011 when I was a Deputy Minister of Public Enterprises I interacted with Mr Atul and Tony Gupta at the SABC TNA Business Breakfast which was arranged by the Department of Public Enterprises.

Again shortly after my 11 June 2012 appointment as the Minister of Transport I had several phone calls from Mr Tony Gupta who

averred that PRASA - who averred that the PRASA tender process to require locomotives had not been open and transparent and that he reserved his right to challenge the process, to challenge PRASA and to challenge the Department of Transport in court.

ADV THANDI NORMAN SC: What was that all about? Had he tendered for that tender? What – what was that all about?

MR BENEDICT ANTHONY DUKE MARTINS: I had just been shortly appointed to the Minister as a Minister of Transport.

ADV THANDI NORMAN SC: Yes.

10 **MR BENEDICT ANTHONY DUKE MARTINS:** And then a couple of days thereafter was when he called to question the tender process. My understanding was that he had tendered or he wanted to tender at a later stage and my explanation to him was that after having arrived at the department I had several briefings from the 12 entities that report to the Department of Transport and my understanding from the briefings that I had received from PRASA when mention was made about this particular tender.

My understanding was that the tender had run its course or by the time I was appointed it was about to run its course to finality.

20 So I explained this to Mr Gupta but he was insisting that in his understanding there were irregularities in the manner which the tender process had unfolded.

ADV THANDI NORMAN SC: Yes.

MR BENEDICT ANTHONY DUKE MARTINS: So my response to him was that I had only recently been appointed as the Minister of

Transport and I was not aware of all the facts concerning the matter that my limited – but that my limited understanding of the matter was that the tender process had run its course or that it was about to end.

My response to him further was that he was within his right to take whatever legal action that he felt necessary. I however suggested that it might be advisable for him first to seek clarity and obtain answers to the questions that he posed from the CEO of PRASA Mr Lucky Montana who would be able to explain the details of the tender process before he Mr Tony Gupta takes the matter to court.

10 It was as a result of seeking to mediate this matter that I organised a meeting between Mr Tony Gupta and Mr Lucky Montana. I saw nothing untoward in arranging this meeting as its aim was to clarify and give answers to the questions that Mr Gupta had posed. I did not at any stage ask Mr Montana too unduly, irregularly or illegally to assist Mr Gupta.

 There was no unlawful and/or malicious intent on my part in facilitating the meeting. I think it is important ma'am to bear in mind that and to remember that at the time the meeting occurred in 2012 the benefit of hindsight that we have today did not exist. The context and
20 the public image of members of the Gupta family was not what it is today in 2019 namely a family perceived and projected as the personification of corruption in (indistinct).

 In 2012 the Gupta brothers were not *persona non grata* as they are projected to be today. All I know then was that they were an Indian family originally from India who owned a medium sized BEE

company of moderate means named Sahara.

ADV THANDI NORMAN SC: Yes.

MR BENEDICT ANTHONY DUKE MARTINS: An important point to note further is that the meeting that I facilitated did not result in Mr Gupta obtaining the locomotives tender. Mr T Gupta was advised that the tender process could not be reversed. Mr Gupta indicated that he would consider his option of taking the tender process on review. That brought the – the discussion and meeting to an end ...

ADV THANDI NORMAN SC: Yes.

10 **MR BENEDICT ANTHONY DUKE MARTINS:** That I had with him and Mr Montana.

ADV THANDI NORMAN SC: Okay. So let us just go back to that facilitation of that meeting. When he first approached you about this tender from your evidence he had not tendered? Had he tendered at that point?

MR BENEDICT ANTHONY DUKE MARTINS: My understanding at that point was he had not tendered and he wanted to tender ...

ADV THANDI NORMAN SC: Yes.

20 **MR BENEDICT ANTHONY DUKE MARTINS:** And my response to him was that this process had run its course. So there is no way that you can tender at this late stage.

ADV THANDI NORMAN SC: Yes and then I am just trying to understand then why would there be a need then to facilitate a meeting?

MR BENEDICT ANTHONY DUKE MARTINS: No. As I explained earlier

on he was asking question in regard to how the tender was run, where it was advertised, what was not done and I said to him that after having been a few days in this post I cannot answer those questions.

The person who was relevant in the tender process would be able to give you answers to that will be Mr Lucky Montana and the issue that he had also raised was that he was going to take the tender process on review and he was going to take PRASA and the department to court.

In order to obviate that I thought that it would be easier for
10 him to have a direct interaction with somebody who had intermit knowledge of the tender process where he could pose his questions.

ADV THANDI NORMAN SC: Yes. Let us just talk about that because he would have known that you were not in the tendering process as a Minister?

MR BENEDICT ANTHONY DUKE MARTINS: Yes.

ADV THANDI NORMAN SC: Because you had just been appointed as a Minister to that portfolio when he approached you?

MR BENEDICT ANTHONY DUKE MARTINS: Yes. I am sure he would have known that.

20 **ADV THANDI NORMAN SC:** Yes, yes. I am just trying ...

CHAIRPERSON: Only ...

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: You must remember how – how long he had been in the department would not affect whether or not he is involved in tenders. Is it not?

ADV THANDI NORMAN SC: True, true yes.

CHAIRPERSON: It is the mere occupation of the ministerial position that should take him out of ...

ADV THANDI NORMAN SC: Okay.

CHAIRPERSON: Issue of tender.

ADV THANDI NORMAN SC: That is correct.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: Yes. Let us just deal with that then because you are the Minister you are not involved in any tendering
10 process. I am just trying to understand and this person has not tendered at all. No, he has not submitted a tender. By calling then Mr Lucky Montana who would have been involved in that process would he be – if Mr Montana were to fill I do not know he feels about or he felt about it.

Would it be wrong for him to feel that the Minister wanted you to have a relook at this thing because now the Minister is here? This person is complaining he is here and yet he has not tendered.

MR BENEDICT ANTHONY DUKE MARTINS: No. I do not think that he would have felt that there was need to relook at the tender. In tender
20 processes there are always losers and people would find something to register as having been abnormal in regard to a tender. So that they – they take their chances.

ADV THANDI NORMAN SC: Yes. No I am just trying to understand the logic in you facilitating the meeting. Because excuse me if I appear not to understand what you are saying but my understanding is that you

had appointed as a Minister. You were not involved and you should not be involved in the tender processes and somebody complains.

A person who has not tendered by the way. He comes to you and he says – he complains and you say he threatens litigation and then you say okay let us obviate that. Let us see what can – let us hear from Mr Montana and you were also part of this meeting. I am trying to understand what is that you were trying achieve.

MR BENEDICT ANTHONY DUKE MARTINS: Exactly what I have stated in my statement.

10 **CHAIRPERSON:** Yes. He – he says he sought to ensure that Mr Gupta got clarification or answers to his questions so that before he can decide whether to go to court or not as I understand the ...

MR BENEDICT ANTHONY DUKE MARTINS: Yes.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: The explanation.

ADV THANDI NORMAN SC: Yes I hear that Mr Chairman. I want to understand but then you were also part of that meeting?

MR BENEDICT ANTHONY DUKE MARTINS: Yes. I am the one who initiated the meeting.

20 **ADV THANDI NORMAN SC:** Yes.

MR BENEDICT ANTHONY DUKE MARTINS: So I was part of the meeting.

ADV THANDI NORMAN SC: And could you not have allowed Mr Montana to meet with Mr Gupta alone?

MR BENEDICT ANTHONY DUKE MARTINS: That would have been

possible but I initiated the meeting. At that stage Mr Montana – if I introduce him to somebody at least I should be there.

ADV THANDI NORMAN SC: Yes.

MR BENEDICT ANTHONY DUKE MARTINS: Why am I introducing him? What is the issue?

ADV THANDI NORMAN SC: Alright.

MR BENEDICT ANTHONY DUKE MARTINS: So I had to explain to him.

ADV THANDI NORMAN SC: Okay, thank you and then – so the end result was that he understood?

10 **MR BENEDICT ANTHONY DUKE MARTINS:** *Ja*, the end result was that he understood, was not happy but that was it.

ADV THANDI NORMAN SC: Yes and then when ...

CHAIRPERSON: I am sorry.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: If I understood your evidence correctly prior to that you had had some interactions with either Mr Tony Gupta or the Gupta family before the – before he phoned you (intervenes) tender?

MR BENEDICT ANTHONY DUKE MARTINS: That is correct Chair.

20 **CHAIRPERSON:** And was it one or two interactions that you had had with him or you had come to know him quite well before that?

MR BENEDICT ANTHONY DUKE MARTINS: As I – as I explained in part of the statement that I had read I had met him in different contexts. I made mention that the first time that I met him was when I was appointed after I had been appointed as the Deputy Minister of Public Enterprises ...

CHAIRPERSON: Yes.

MR BENEDICT ANTHONY DUKE MARTINS: And the Department of Public Enterprises had a TNA SABC Event – breakfast meeting – that was – which had been arranged before my arrival at the department. So when this breakfast meeting was to take place I met Mr Tony Gupta and his brother - Atul - who was involved in the media aspect of their business because at that particular breakfast meeting the Minister would have to answer questions or make a statement ...

CHAIRPERSON: Yes.

10 **MR BENEDICT ANTHONY DUKE MARTINS:** And the Deputy Minister would also have a role to play in that.

CHAIRPERSON: Okay.

MR BENEDICT ANTHONY DUKE MARTINS: So that was but one other occasion that I said ...

CHAIRPERSON: Hm.

MR BENEDICT ANTHONY DUKE MARTINS: That I had met the Gupta brothers ...

CHAIRPERSON: Hm.

20 **MR BENEDICT ANTHONY DUKE MARTINS:** And then I made mention to this particular time I had met them and then after that was at the airport.

ADV THANDI NORMAN SC: Yes and then let us talk then about ...

CHAIRPERSON: Maybe another question would be your relationship with the Gupta brothers at that time was it simply a professional relationship in your official capacity as either previous Deputy Minister

or now as a Minister or did it go beyond that?

MR BENEDICT ANTHONY DUKE MARTINS: It was simply a professional relationship.

CHAIRPERSON: Okay, thank you.

ADV THANDI NORMAN SC: Yes. Thank you and then Mr Martins then you then testify that after then you had this meeting and you had dismissed the - the function that is going to be held on the tarmac. When again then did you – when did you get this call from the ATNS Official?

10 **MR BENEDICT ANTHONY DUKE MARTINS:** If memory serves me well I received the call from the ATNS Official after the plane had landed at Waterkloof Air ...

ADV THANDI NORMAN SC: Yes.

MR BENEDICT ANTHONY DUKE MARTINS: Airbase and after the wedding had been in process or the wedding proceedings had been in process for a day to two. It was during that time. They were supposed to be in the country for four days or five days but during that period was – I think it was the second day - I speak under correction – when I received a call from an official from ATNS one morning to say that here
20 is this plane that was in the country which did not have correct papers.

The operator's permit is referred to somewhere in the statement and they – they informed me that if a plane is in the country without the requisite papers there is a fine to be imposed and I said go ahead impose the fine and ensure that the plane is not in the country without the correct papers.

ADV THANDI NORMAN SC: Yes. Would this have been the first incident that a plane without papers had been reported to you?

MR BENEDICT ANTHONY DUKE MARTINS: That was the first and only time that I recall a plane ...

ADV THANDI NORMAN SC: Yes.

MR BENEDICT ANTHONY DUKE MARTINS: Being reported in that nature.

ADV THANDI NORMAN SC: And then you deal with that aspect at page 7 of your statement paragraph 17.

10 **MR BENEDICT ANTHONY DUKE MARTINS:** That is correct ma'am.

ADV THANDI NORMAN SC: Yes. So what this plane did not have according to that statement is the Foreign Operator's Permit?

MR BENEDICT ANTHONY DUKE MARTINS: That is correct.

ADV THANDI NORMAN SC: Yes and then do you know how this 80 000 was calculated or was that not something that you got involved in?

MR BENEDICT ANTHONY DUKE MARTINS: That is not within the remit of my responsibility the calculations of the fees ...

ADV THANDI NORMAN SC: Yes.

20 **MR BENEDICT ANTHONY DUKE MARTINS:** But what I do recall was that the individual concerned who called me said that there are one or two fees but the highest fee was this 82 ...

ADV THANDI NORMAN SC: Yes.

MR BENEDICT ANTHONY DUKE MARTINS: And I said proceed with that.

ADV THANDI NORMAN SC: Thank you. Then this report then is made

to you. Were you expected to do anything about it?

MR BENEDICT ANTHONY DUKE MARTINS: Which report?

ADV THANDI NORMAN SC: The report about this plane that had landed without a Foreign Operator's Permit.

MR BENEDICT ANTHONY DUKE MARTINS: My – the official who called me was informing me – giving me information that this is what has happened. This plane is in the country without the requisite papers ...

ADV THANDI NORMAN SC: Yes.

10 **MR BENEDICT ANTHONY DUE MARTINS:** And I said what is your duty in regard to that? What are you are supposed to do and he explained that a fine has to be imposed and I said that continue, carry out what the law and regulations require.

ADV THANDI NORMAN SC: Yes.

MR BENEDICT ANTHONY DUKE MARTINS: So that is the function that was my responsibility.

ADV THANDI NORMAN SC: Your responsibility, alright and then did you receive any invitation to the wedding?

20 **MR BENEDICT ANTHONY DUKE MARTINS:** I did receive an invitation to the wedding.

ADV THANDI NORMAN SC: Yes and you deal with that at page – let me just get to it – if I may take you back to page 5 paragraph 11.

MR BENEDICT ANTHONY DUKE MARTINS: Yes, yes.

ADV THANDI NORMAN SC: Yes. Yes and could you just tell the Chairperson what you say in that paragraph?

MR BENEDICT ANTHONY DUKE MARTINS: I was invited to the Gupta wedding. The invitation was delivered to my office. The invitation was in the name of the bride and bridegroom. I did not attend the wedding.

ADV THANDI NORMAN SC: Yes. Could you tell the Chairperson the reasons why you did not attend?

MR BENEDICT ANTHONY DUKE MARTINS: There are two reasons.

ADV THANDI NORMAN SC: Yes.

MR BENEDICT ANTHONY DUKE MARTINS: Over that time of the wedding I had a personal family commitment to attend to and the other
10 reason that was given a Committee of Security Cluster Ministers had met and advised against Ministers attending that wedding.

ADV THANDI NORMAN SC: Yes and then we had – the Commission had referred you to the JCPS Cluster that would have related to that Committee of Ministers. Is that correct?

MR BENEDICT ANTHONY DUKE MARTINS: Yes.

ADV THANDI NORMAN SC: Yes and you were asked to comment specifically to some parts of that report. Do you recall that and you deal with your comments in paragraph 19 of your statement?

MR BENEDICT ANTHONY DUKE MARTINS: Yes.

20 **ADV THANDI NORMAN SC:** Yes. Mr Chairman just the – the JPS – JCPS Report is contained in Ms Sindane's statement (intervenes).

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: But if the witness is able to just tell us.

ADV THANDI NORMAN SC: Oh, just to tell us, alright.

CHAIRPERSON: He does not have to refer ...

ADV THANDI NORMAN SC: To ...

CHAIRPERSON: To read it.

ADV THANDI NORMAN SC: Alright.

CHAIRPERSON: He does not have to refer to it ...

ADV THANDI NORMAN SC: Okay.

CHAIRPERSON: If he knows exactly ...

ADV THANDI NORMAN SC: Yes. He has commented ...

CHAIRPERSON: What he wants to say. He can say it ...

10 **ADV THANDI NORMAN SC:** Alright.

CHAIRPERSON: But if he wants to refresh his memory then he can look at it ...

ADV THANDI NORMAN SC: Okay, thank you.

CHAIRPERSON: But he might be able to just tell us without us having to go to the report.

ADV THANDI NORAN: Alright, thank you. You comment on the report in paragraph 19. Could you just tell the Chairperson briefly what you say in that – in those paragraphs?

MR BENEDICT ANTHONY DUKE MARTINS: In February 2013

20 Mr Tony Gupta approached the Airport Company of South Africa to enquire about the use of OR Tambo International Airport for the arrival of at least ...

CHAIRPERSON: We must not go back.

ADV THANDI NORMAN SC: This is, yes. This is the (intervenes).

CHAIRPERSON: Are we not going back?

ADV THANDI NORMAN SC: We are going back. This is the evidence that you have already given.

MR BENEDICT ANTHONY DUKE MARTINS: Yes.

CHAIRPERSON: *Ja.*

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Direct her to something new.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Direct him to something new.

ADV THANDI NORMAN SC: Could you just go up to ...

10 **CHAIRPERSON:** And even if it is really important.

ADV THANDI NORMAN SC: No Chairman just ...

CHAIRPERSON: I know that his evidence is supposed to be very limited.

ADV THANDI NORMAN SC: No definitely. Could you just go to page – paragraph 19.4 page 8 of your statement.

MR BENEDICT ANTHONY DUKE MARTINS: Yes.

ADV THANDI NORMAN SC: You make reference to a follow up meeting. Were you part of that follow up meeting?

20 **MR BENEDICT ANTHONY DUKE MARTINS:** No I was not part of the follow up meeting. As I stated earlier ...

ADV THANDI NORMAN SC: Yes.

MR BENEDICT ANTHONY DUKE MARTINS: The correspondence between Mr Tony Gupta and Mr Maseko continued. Mr Maseko advised him of seeking the services of Lanseria Airport and the other one Pilanesberg – if I am not mistaken.

ADV THANDI NORMAN SC: Yes and when this cluster - Ministers Cluster had the Committee did you submit a statement to the Committee?

MR BENEDICT ANTHONY DUKE MARTINS: Yes.

ADV THANDI NORMAN SC: Yes.

MR BENEDICT ANTHONY DUKE MARTINS: It is referred to in the report that they compiled.

ADV THANDI NORMAN SC: In the report itself and everything that is recorded there as having – you have submitted a statement and
10 whatever it is that you said in that statement is correct – the reference to yourself in that report?

MR BENEDICT ANTHONY DUKE MARTINS: I would assume it is correct. I have not the statement I have submitted since ...

ADV THANDI NORMAN SC: Since that time.

MR BENEDICT ANTHONY DUKE MARTINS: A year in question ...

ADV THANDI NORMAN SC: Yes.

MR BENEDICT ANTHONY DUKE MARTINS: But I am sure that it would correspond to what my evidence has been here today.

ADV THANDI NORMAN SC: Yes, thank you. Maybe because I do have
20 that statement unfortunately it was received later yesterday from State Security. Mr Chairman if I may just unfortunately the bundles on this aspect are not ready. If you would just allow me before I hand up your revised bundle.

CHAIRPERSON: Yes. Do you know whether the statement says anything ...

ADV THANDI NORMAN SC: Yes I just want to ...

CHAIRPERSON: From what he has said?

ADV THANDI NORMAN SC: I just want to – to read it to him. It is a very short statement.

CHAIRPERSON: Yes but I want to find out whether you know whether it says anything different from what he has already told me.

ADV THANDI NORMAN SC: No, no, no. It does not say anything different but I think it is important for the witness to see it and then say that this is indeed what he had submitted.

10 **CHAIRPERSON:** How long is it?

ADV THANDI NORMAN SC: No it is two pages, thank you. May I then – unfortunately this is your bundle Mr Chairman. Just to have the witness have a look at it, thank you.

CHAIRPERSON: Is it a statement that he signed?

ADV THANDI NORMAN SC: Yes. It is his statement. He submitted it to the Committee.

CHAIRPERSON: *Ja*, well he can always submit a supplementary affidavit and confirm whether it is correct.

ADV THANDI NORMAN SC: Yes. What is your comment?

20 **CHAIRPERSON:** I know you – you have not been given a lot of time to have a look. Are you satisfied you have been able to read it properly to be able to say if it is correct?

MR BENEDICT ANTHONY DUKE MARTINS: Thank you Judge. I – I did read - read the statement.

ADV THANDI NORMAN SC: Yes.

MR BENEDICT ANTHONY DUKE MARTINS: It is correct.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: Thank you.

MR BENEDICT ANTHONY DUKE MARTINS: That is what I have articulated even here today.

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: Thank you. Thank you Mr Chairman and then in response to paragraph 2.1.15 of the report the question posed
10 was whether you received any instructions from the President to assist the Gupta family as alleged in that paragraph and could you just tell the Chairperson your response to that.

MR BENEDICT ANTHONY DUKE MARTINS: I did not receive any instructions from Former President Zuma to assist in that regard.

ADV THANDI NORMAN SC: Yes and did you at any stage give any instruction to anyone to allow the landing of that aircraft at Waterkloof?

MR BENEDICT ANTHONY DUKE MARTINS: I did not give anyone instructions to allow the landing because as I said in my statement the
20 Ministry of Transport or the Minister of Transport does not have authority over Waterkloof Airbase. It falls under the Department of Defence and Military Veterans.

ADV THANDI NORMAN SC: Yes. Is there anything else you wish to tell the Chairperson other than what you have testified to this morning?

MR BENEDICT ANTHONY DUKE MARTINS: There is nothing else ...

ADV THANDI NORMAN SC: Yes.

MR BENEDICT ANTHONY DUKE MARTINS: That I wish to share now.

ADV THANDI NORMAN SC: Thank you Mr Chairman. That is the evidence for this – from this witness.

CHAIRPERSON: Mr Martins we do seek to establish from current and past Members of the Executive whether they had any interactions with the Gupta family in the past and you have told me some of the interactions that you have had but I take this opportunity to ask whether you ever visited the – their residence at Saxonwold.

MR BENEDICT ANTHONY DUKE MARTINS: Judge I did ...

10 **CHAIRPERSON:** Yes.

MR BENEDICT ANTHONY DUKE MARTINS: And ...

CHAIRPERSON: And maybe you can tell me when – when it was if you are able to remember. How many times if you are able to remember and what the occasion was and what was discussed if you feel that it is something you can share.

MR BENEDICT ANTHONY DUKE MARTINS: The occasion that I went to the residence there the Gupta family had organised an Indian Food Fair. I went there. It was in the morning. I cannot recall the exact date ...

20 **CHAIRPERSON:** Yes, yes.

MR BENEDICT ANTHONY DUKE MARTINS: And they were displaying – they had chefs or cooks ...

CHAIRPERSON: Yes.

MR BENEDICT ANTHONY DUKE MARTINS: That showed how to prepare rotis.

CHAIRPERSON: Yes.

MR BENEDICT ANTHONY DUKE MARTINS: How to prepare other Indian foods ...

CHAIRPERSON: Hm.

MR BENEDICT ANTHONY DUKE MARTINS: And I was there. It had been a public invitation to members of the public.

CHAIRPERSON: Yes.

MR BENEDICT ANTHONY DUKE MARTINS: Some members of the public I assume ...

10 **CHAIRPERSON:** Yes.

MR BENEDICT ANTHONY DUKE MARTINS: And also Ministers.

CHAIRPERSON: Yes.

MR BENEDICT ANTHONY DUKE MARTINS: So I attended that.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC:

MR BENEDICT ANTHONY DUKE MARTINS: At one of the residences at Saxonwold.

CHAIRPERSON: Yes. Was it on one occasion that you visited the - their residence or was it more than once?

20 **MR BENEDICT ANTHONY DUKE MARTINS:** I think I have been there more than once.

CHAIRPERSON: Yes. Two, three times maybe much more than three?

MR BENEDICT ANTHONY DUKE MARTINS: No, no perhaps about two times.

CHAIRPERSON: About two times yes and the other time what was the

occasion if you are able to remember?

MR BENEDICT ANTHONY DUKE MARTINS: The other time was either shortly after my appointment as the Minister – Deputy Minister of Public Enterprises ...

CHAIRPERSON: Yes.

MR BENEDICT ANTHONY DUKE MARTINS: Or after my appointment as the Minister of Transport.

CHAIRPERSON: Yes.

MR BENEDICT ANTHONY DUKE MARTINS: There was a TNA
10 Breakfast Show ...

CHAIRPERSON: Hm.

MR BENEDICT ANTHONY DUKE MARTINS: That I had to address ...

CHAIRPERSON: Hm, hm.

MR BENEDICT ANTHONY DUKE MARTINS: And the format I had been told that ...

CHAIRPERSON: Hm.

MR BENEDICT ANTHONY DUKE MARTINS: That was used in the past was that a Minister would come and address speak about the department ...

20 **CHAIRPERSON:** Hm.

MR BENEDICT ANTHONY DUKE MARTINS: And thereafter questions would be asked ...

CHAIRPERSON: Hm.

MR BENEDICT ANTHONY DUKE MARTINS: And my view was that instead of just the Minister addressing the occasion it would be

advisable if the Director General, Deputy Minister and other key people be able to answer questions from the floor – from the public. So in that interaction the person I spoke to there was Mr Atul Gupta the middle brother who was involved with the arrangement of the SABC and their link to the media. So that was the context.

CHAIRPERSON: But that - that was not at the residence was it?

MR BENEDICT ANTHONY DUKE MARTINS: That meeting took place at – at the residence.

CHAIRPERSON: At the residence?

10 **MR BENEDICT ANTHONY DUKE MARTINS:** *Ja* that ...

CHAIRPERSON: So that was the second?

MR BENEDICT ANTHONY DUKE MARTINS: *Ja.*

CHAIRPERSON: Second – second meeting?

MR BENEDICT ANTHONY DUKE MARTINS: Yes.

CHAIRPERSON: But it - that one was business. You were there for business in the sense of those breakfast shows?

MR BENEDICT ANTHONY DUKE MARTINS: Yes.

CHAIRPERSON: Yes. The first one was not business (intervenes)?

20 **MR BENEDICT ANTHONY DUKE MARTINS:** The first one was not business.

CHAIRPERSON: Yes.

MR BENEDICT ANTHONY DUKE MARTINS: The second one was occasioned by they had called the office. There had been interaction. This was coming up ...

CHAIRPERSON: Yes.

MR BENEDICT ANTHONY DUKE MARTINS: And then said that can you pass there. We will discuss this.

CHAIRPERSON: Yes.

MR BENEDICT ANTHONY DUKE MARTINS: So I went there.

CHAIRPERSON: Yes and to their offices – Sahara Offices – did you ever go there?

MR BENEDICT ANTHONY DUKE MARTINS: No I have never been to the Sahara Offices.

CHAIRPERSON: You did not go there, yes. Did they ever ask you for
10 – did they ever ask you to facilitate any business for – for them in your capacity as either Minister of Transport or Deputy Minister of Public Works?

MR BENEDICT ANTHONY DUKE MARTINS: No, not.

CHAIRPERSON: They did not?

MR BENEDICT ANTHONY DUKE MARTINS: They did not.

CHAIRPERSON: Yes.

MR BENEDICT ANTHONY DUKE MARTINS: The engagement was what I referred to.

CHAIRPERSON: What you have – what you have said?

20 **MR BENEDICT ANTHONY DUKE MARTINS:** Yes.

CHAIRPERSON: Okay. No thank you.

ADV THANDI NORMAN SC: Thank you.

CHAIRPERSON: Anything?

ADV THANDI NORMAN SC: Thank you. Mr Chairman thank you. There is just one document I forgot to refer the witness to which

appears in Bundle FF8 which I have placed before – next to the witness at page 38.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: Just one question for Mr Martins to identify that document because it relates to the foreign permit that he made reference to. Page 38.

MR BENEDICT ANTHONY DUKE MARTINS: Yes.

ADV THANDI NORMAN SC: Do you identify the – it is a document from the Department of Transport. Yes.

10 **MR BENEDICT ANTHONY DUKE MARTINS:** Yes I can see.

ADV THANDI NORMAN SC: Yes. Could you just explain what that document is to the Chairperson?

MR BENEDICT ANTHONY DUKE MARTINS: The heading of the document reads:

“Department of Transport International Air Services
Act of 1993 Application for a Foreign Operator’s
Permit, Application for an Amendment to a Foreign
Operator’s Permit”

And then the rest of the print is illegible there.

20 **ADV THANDI NORMAN SC:** Yes but is this the document that would relate to the foreign permit that you spoke about earlier?

MR BENEDICT ANTHONY DUKE MARTINS: Hm.

ADV THANDI NORMAN SC: Whether one has it or not?

MR BENEDICT ANTHONY DUKE MARTINS: This particular document I have not seen before.

ADV THANDI NORMAN SC: Alright.

MR BENEDICT ANTHONY DUKE MARTINS: So I am not sure which is the – what document the relevant agency issues.

CHAIRPERSON: *Ja.* He might not know because ...

MR BENEDICT ANTHONY DUKE MARTINS: I do not know.

CHAIRPERSON: Those were operational issues.

ADV THANDI NORMAN SC: Thank you. Yes, thank you.

CHAIRPERSON: Thank you very much.

ADV THANDI NORMAN SC: That is all, thank you.

10 **CHAIRPERSON:** Thank you very much Mr Martins for coming to give evidence. We appreciate it. Thank you very much.

MR BENEDICT ANTHONY DUKE MARTINS: Thank you Judge.

CHAIRPERSON: Thank you. You are excused. Thank you.

ADV THANDI NORMAN SC: Thank you Mr Chairman the next witness – I am not sure whether we will adjourn for – for the short break before I call the next witness.

CHAIRPERSON: Is – is there much too happen when he goes there?

ADV THANDI NORMAN SC: Yes because we need to place his – his bundle there.

20 **CHAIRPERSON:** Is it not the same? Is it just one bundle? Maybe we can avoid that adjournment because we will adjourn at quarter anyway.

ADV THANDI NORMAN SC: Alright, thank you.

CHAIRPERSON: *Ja.*

ADV THANDI NORMAN SC: Thank you Mr Chairman. May the witness be sworn in?

CHAIRPERSON: Yes. Please administer the oath or affirmation.

Which exhibit are we going to use?

ADV THANDI NORMAN SC: I beg your pardon. It would be EXHIBIT FF9 Mr Chairman.

CHAIRPERSON: Nine?

ADV THANDI NORMAN SC: Nine yes – FF9.

REGISTRAR: Please state your full names for the record.

MR HENDRIK JACOBUS MARAIS: Hendrik Jacobus Marais.

REGISTRAR: Do you have any objection with taking the prescribed
10 oath?

MR HENDRIK JACOBUS MARAIS: I do not.

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

MR HENDRIK JACOBUS MARAIS: I do.

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

MR HENDRIK JACOBUS MARAIS: So help me God.

MR HENDRIK JACOBUS MARAIS: (duly sworn, states)

20 **CHAIRPERSON:** Thank you.

ADV THANDI NORMAN SC: Thank you. Thank you Mr Chairman. Mr Marais you have placed – a document placed before you EXHIBIT FF9. Do you have it?

MR HENDRIK JACOBUS MARAIS: I do.

ADV THANDI NORMAN SC: Yes. Could you please look at page – I

will give you the page number.

CHAIRPERSON: Sorry Ms Norman the file containing a statement from Air Traffic and Navigation Services will be marked EXHIBIT FF9.

ADV THANDI NORMAN SC: As – as Chairperson pleases, thank you. Thank you. Mr Marais if you look at page 1 – numbered on top of that page on your right hand corner.

MR HENDRIK JACOBUS MARAIS: Yes.

ADV THANDI NORMAN SC: Yes and I just want you to identify that statement. There is a signature also appearing at page 29 – 2-9. Do
10 you see it?

MR HENDRIK JACOBUS MARAIS: I identify the statement and it is my signature.

ADV THANDI NORMAN SC: Yes and that the contents are true and correct?

MR HENDRIK JACOBUS MARAIS: Correct.

ADV THANDI NORMAN SC: Yes, thank you. Could you just give the Chairperson briefly your qualifications?

MR HENDRIK JACOBUS MARAIS: Chairperson I started my career in the South African Air Force in 1980 as an Air Traffic Controller. I then
20 joined the Department of Transport in 1984 also as an Air Traffic Controller but just in the civilian domain instead of the military. I was an Air Traffic Controller ...

CHAIRPERSON: I am – I am sorry ...

MR HENDRIK JACOBUS MARAIS: Not a problem.

CHAIRPERSON: Mr Marais. It looks like – I mean you did place – put

your names on record before taking the oath but I was looking for the full name in the – in the statement. It does not look it appears at the beginning and it is just the initial and the surname. It looks – does not look like his full names can be found anywhere in the document.

ADV THANDI NORMAN SC: (Indistinct).

CHAIRPERSON: Am I missing something Ms Norman?

ADV THANDI NORMAN SC: No you are not Mr Chairman.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: But these ...

10 **CHAIRPERSON:** His full names should ...

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Have been given. What does H stand for?

ADV THANDI NORMAN SC:

MR HENDRIK JACOBUS MARAIS: Hendrik.

CHAIRPERSON: Sorry?

MR HENDRIK JACOBUS MARAIS: Hendrik.

CHAIRPERSON: Please spell that for me.

MR HENDRIK JACOBUS MARAIS: H-E-N-D-R ...

CHAIRPERSON: H-E-N?

20 **MR HENDRIK JACOBUS MARAIS:** Yes sir. D-R-I-K.

CHAIRPERSON: D-R?

MR HENDRIK JACOBUS MARAIS: I-K.

CHAIRPERSON: I-K, Hendrik?

MR HENDRIK JACOBUS MARAIS: Yes.

CHAIRPERSON: Thank you very much.

ADV THANDI NORMAN SC: Thank you. Thank you.

MR HENDRIK JACOBUS MARAIS: I performed as an Air Traffic Controller in the South African Air Force and in the civilian domain. Eventually became an Instructor and Manager of Training. Then moved into the Safety Management Systems of Aviation or Air Traffic Control rather and into the planning. In my current role I am the Executive in charge of delivering air traffic services for the civilian control air space in South Africa.

ADV THANDI NORMAN SC: Yes. Where are you currently employed
10 and what is your position?

MR HENDRIK JACOBUS MARAIS: My title is the Chief of Air Traffic Services employed at the ATNS Head Office in Bruma.

ADV THANDI NORMAN SC: Where is that?

MR HENDRIK JACOBUS MARAIS: In Bruma.

ADV THANDI NORMAN SC: In Bruma. Yes. What - what is the responsibility of ATNS?

MR HENDRIK JACOBUS MARAIS: ATNS is responsible to acquire and
20 deploy infrastructure and deliver the air traffic services to ensure the safety of aviation in the controlled air space within the State of South Africa and oceanic air space delegated to South Africa.

ADV THANDI NORMAN SC: Yes and how does that happen? Is it – does it happen when a plane lands or when a plane takes off? At what point do you get involved?

MR HENDRIK JACOBUS MARAIS: We are involved in the entire process. So we will receive the flight plan for the aircraft. Be that a

departure out of one of our domestic airports or landing at one of our airports or even flying between two airports within South Africa. We receive the flight plan. We are involved planning for that flight in terms of the slot coordination. When that aircraft can depart and when not.

So we minimise the delays on the flight and of course optimise fuel burn. We will take care of the departure clearance for the traffic, the start-up taxi, the take-off, the climb out, the cruise and on the other end again the descent, the approach and the landing into the destination airport.

10 **ADV THANDI NORMAN SC:** So you (intervenes).

CHAIRPERSON: So – I am sorry.

ADV THANDI NORMAN SC: Oh, I beg your pardon.

CHAIRPERSON: So – so you – so are you responsible for making sure that a flight does not take off if it is not safe to do so, does not land if it is not safe to do so among other things?

MR HENDRIK JACOBUS MARAIS: Chairman yes that is correct. We are focused primarily on safety ...

CHAIRPERSON: Yes.

20 **MR HENDRIK JACOBUS MARAIS:** And secondly on efficiency. So if it is not safe the aircraft will not depart or land. For example if there is an obstruction on the runway.

CHAIRPERSON: If there is?

MR HENDRIK JACOBUS MARAIS: An obstruction on the runway ...

CHAIRPERSON: Okay, yes.

MR HENDRIK JACOBUS MARAIS: Or traffic in the way of that traffic

...

CHAIRPERSON: Yes.

MR HENDRIK JACOBUS MARAIS: Departing or landing.

CHAIRPERSON: Yes and – and you basically give the final word if you think it is not safe that is – that is final. Nobody is going to interfere with that from outside your section?

MR HENDRIK JACOBUS MARAIS: I need to explain ...

CHAIRPERSON: Or you advice?

MR HENDRIK JACOBUS MARAIS: May I explain a bit on that?

10 **CHAIRPERSON**: Yes, please, please do.

MR HENDRIK JACOBUS MARAIS: Yes we will make the decision in terms of air traffic safety. So if there is something on the runway we will say no you are not cleared for take-off or you are not clear to land and the airplane will execute a missed approach. However the ultimate responsibility for safety of an aircraft and its occupants still lies with the pilot in command.

CHAIRPERSON: Yes, but – so – so you – you give your – you make your decision and – but there is understanding between yourselves and the pilot that the pilot makes the final decision?

20 **MR HENDRIK JACOBUS MARAIS**: Correct.

CHAIRPERSON: And if he makes a decision that is contrary to your – your decision that is his judgment call?

MR HENDRIK JACOBUS MARAIS: Yes Judge.

CHAIRPERSON: But that would not happen lightly I would imagine?

MR HENDRIK JACOBUS MARAIS: No that circumstances.

CHAIRPERSON: That is not normal circumstances?

MR HENDRIK JACOBUS MARAIS: Correct.

CHAIRPERSON: Yes. Okay. Also with regard to departure same thing? You – you make your decisions it is safe for the flight to take off?

MR HENDRIK JACOBUS MARAIS: That is correct.

CHAIRPERSON: And then the pilot decides whether to go with your decision or whether not to but if he does not go according to your decision that is his judgment call or her judgment call?

10 **MR HENDRIK JACOBUS MARAIS:** They will go with our decision. The decision for example if it is to take off where the pilot will exercise his judgment call will be when there is a problem with the aircraft and they have to reject the take-off.

CHAIRPERSON: Yes okay, okay.

MR HENDRIK JACOBUS MARAIS: So that is where they will exercise that judgement.

CHAIRPERSON: And your – your – because your decision whether an aircraft can take off or not or should or should not take off or not is based on matters outside of the aircraft and not inside?

20 **MR HENDRIK JACOBUS MARAIS:** Correct.

CHAIRPERSON: If the – if the pilot becomes aware that there is a problem with the engine that is something you do not get yourself involved in. He must know or she must know about that?

MR HENDRIK JACOBUS MARAIS: Correct.

CHAIRPERSON: Okay, thank you.

ADV THANDI NORMAN SC: Thank you. Thank you Mr Chairman. You also say when you deal with ATNS that it is a commercialised entity operating users pay – user pays. What – what is that concept?

MR HENDRIK JACOBUS MARAIS: This will be a bit of a lengthy explanation unfortunately.

CHAIRPERSON:

ADV THANDI NORMAN SC: Oh. Maybe ...

MR HENDRIK JACOBUS MARAIS:

CHAIRPERSON: Okay. If it is going to be lengthy let us

10 **ADV THANDI NORMAN SC:** Yes.

MR HENDRIK JACOBUS MARAIS:

CHAIRPERSON: Take the tea adjournment.

ADV THANDI NORMAN SC: The tea adjournment yes thank you.

MR HENDRIK JACOBUS MARAIS:

CHAIRPERSON: *Ja* we will resume at half past 11.

ADV THANDI NORMAN SC: Thank you Chair.

MR HENDRIK JACOBUS MARAIS:

CHAIRPERSON: We adjourn.

REGISTRAR: All rise.

20 **INQUIRY ADJOURNS**

INQUIRY RESUMES

CHAIRPERSON: You may proceed.

ADV THANDI NORMAN SC: Thank you Chairman. Thank you Mr Marais you were going to respond to the question about the user pays principle.

MR HENDRIK JACOBUS MARAIS: Yes madam, Judge, Atenis as a State Owned Entity is governed by on the one the safety regulation which is (indistinct) aviation authority and on the other side by the Economic Regulator, so we do our five-year plan in terms of traffic forecast and what we require to provide services to the forecast traffic, which may mean an expansion in infrastructure and personnel to deliver those services. So effectively that five-year plan then turns into a five-year budget, we consult our plans with industry and we then submit this application for a permission to levy a tariff, post consultation. A

10 regulating committee will then, in consultation with the Minister publish the permission for ATNS to levy a tariff for our services. So the users then pay a tariff and it's based on the weight on the aircraft and the distance that aircraft flies in the airspace under our jurisdiction. So a smaller aircraft and short distance will have a small tariff, a big aircraft flying a long distance in our airspace will pay a larger tariff and then we levy the tariff to afford what we install in terms of infrastructure and people we employ and deploy to deliver our services.

ADV THANDI NORMAN SC: Yes thank you and then you – in paragraph 3.2.1 you say that in order for ATNS to operate properly it has to

20 employ technical experts for it's effective operations.

MR HENDRIK JACOBUS MARAIS: Correct, we employ air traffic controllers to deliver the service, it's a specialised job, we train those people to be able to deliver the service and first and foremost again to deliver on the safety objectives, it's all about safety. Those people we train internally firstly academic and then on the job training to be able

to do that, then they're also subject to recurrency training throughout the year and of course license renewals as for pilots.

ADV THANDI NORMAN SC: Yes.

MR HENDRIK JACOBUS MARAIS: We also employ Nautical Information Management personnel which is referred to in the next paragraph, shall I continue with that?

ADV THANDI NORMAN SC: Yes.

MR HENDRIK JACOBUS MARAIS: And relevant to this is – those will be the people who will process the flight plans we receive. So they'll
10 receive the flight plan, check it and process it into the South African system and then ensure that, that information is captured in our Air Traffic Management Automation Systems.

CHAIRPERSON: Who would prepare flight plans, is it the pilot or is it somebody else?

MR HENDRIK JACOBUS MARAIS: Judge, there are a few options, if you and I were going to fly to Cape Town now and you are the pilot in command you can submit the flight plan a few ways, one via fax, the other one you can do it on an internet interface or you can phone the briefing office and read the flight plan and we will then copy it down
20 and then submit it into the system. If it's an airline operation, it will mostly be the operation centre submitting the flight plan on behalf of the pilot in command.

CHAIRPERSON: Okay and the flight plan, basically proposes that at such and such a time, a certain aircraft will be – or proposes to take off and from this airport to that destination, and then you have a look and

you are able to – you investigate whether everything will be in order at that time for it to take off from where it proposes to take off to where it will go and whether, within South Africa everything will be safe in the air and also whether – if the destination is within South Africa, whether it will be safe for it to land where it proposes to land at a particular time, is that – is that what your role is in regard to a flight plan?

MR HENDRIK JACOBUS MARAIS: To some extent, we receive the flight plan and we will then do capacity planning for the traffic. We know we are quite busy morning, midday and late afternoon, early
10 evenings because it's mostly when domestic flights operate to move business people across the country. So we'll do the capacity planning based on the flight plan and we will include the information – when you file the flight plan for example to say the runway at your destination is obstructed at the moment or it's got a problem with it or certain of the navigation aids en route or approach aids at a destination airport are not functioning and you'll know that information. The decision about safety is more tactical where we'll make the decision almost on the flying to decide, the runway is clear that aircraft can go now, if an aircraft requires to climb or descend the controller will make that
20 decision based on available information at the time as rather tactical operation more than a strategic way of doing things. I hope that answers your question?

CHAIRPERSON: Ja you did ja.

ADV THANDI NORMAN SC: Yes thank you could you explain to the Chairperson what is meant by saying, an aircraft has entered South

African airspace and you've given us some videos you can just show the Chairperson if you want us – you'll indicate which video you want played just to show – because the issue is, there has to be some permits before anyone flies into our airspace and where is that, could you just deal with those aspects.

CHAIRPERSON: Maybe before he does so, let me go back to the answer that you gave to my question, you said one of the things you have to see to when you have received a flight plan, is capacity. Can you tell me more in terms of capacity for where to do what, does that
10 relate to, are there enough pilots to go into that aircraft, are there enough hostesses to go – or is it about the ground staff, where does the capacity that falls under your responsibility – where is it located?

MR HENDRIK JACOBUS MARAIS: Judge it's really about the capacity of the airspace and where we can get traffic to fly or not. We have declared capacities for each one of the airports where we deliver a service. So for example if you're going to fly into OR Tambo, we have declared a capacity of 50 air traffic movements for the hour, will your movement exceed the 50 or will it be within our capacity limits.

CHAIRPERSON: Yes, that's aircraft in the space during a particular
20 hour?

MR HENDRIK JACOBUS MARAIS: Correct.

CHAIRPERSON: Yes you don't want to have more than X number of aircrafts at the same time more or less in the same space?

MR HENDRIK JACOBUS MARAIS: That is correct, because it influences safety for one and secondly if you exceed your capacity,

some traffic will have to hold and that will imply that we will have aircraft burning off – unnecessarily burning off fuel and of course then omissions into the atmosphere. The fuel burns is the thing that costs the airline the money so we try and balance the capacity so we don't sit with aircraft in holding stacks or burning off fuel unnecessarily on extended routings because we're struggling to fit you into our capacity limitations.

CHAIRPERSON: Okay thank you.

ADV THANDI NORMAN SC: Thank you and would that happen
10 sometimes when one flies you would hear that we've been told – the pilot will say, we have just been told to circle around because there's no space to park, something like that, would that relate to that as well?

MR HENDRIK JACOBUS MARAIS: It considers the airport capacity for example parking as you said madam, but it also considers the runway capacity and how many aircraft we can get through the runway in an hour or a specific period of time and also the spacing we use between aircraft when we sequence them into the runways and out of the runways on departure because we need to mix the amount of landings and the amount of departures and find that balance. So if we
20 have less departures for this hour we can handle more arrivals, and vice versa.

ADV THANDI NORMAN SC: Thank you, can we go back to the earlier question then, you have an aircraft flying from Indira Gandhi Airport from India coming into the South African airspace, how do you deal with that situation, what is it that you need other than the flight plan that

you've just mentioned?

MR HENDRIK JACOBUS MARAIS: As you've correctly said we'll base our service on flight plan. So the flight plan will be the early warning we received that the aircraft is on it's way to South Africa, whichever airport and then the airspace sector before us will coordinate that flight with us. So the flight – we'll have a flight plan for example from Indira Gandhi, we will then receive a notification from that airport or that air traffic control centre rather, that the traffic has departed and we call that a departure message. So it is – he told you he's coming, he's now
10 airborne and we know the aircraft is flying, that's for search and rescue purposes. So when that aircraft then transits across the Indian Ocean, it will eventually, in this example enter the Mozambique airspace to the East of us and the Mozambique navigation service provider will contact our control centre – or we call it a Johannesburg control centre, based at OR Tambo, will contact that air traffic control centre and pass the traffic information about when that aircraft will enter our airspace, at which point and at which flight level or altitude and that we call coordination. So they will coordinate the flight with us, read us the information and we'll read that back to them to confirm that we've
20 correctly received it, it's all about check and balance and then when the aircraft arrives at the airspace boundary it will be a transfer of control between the Mozambique air traffic controller and the Johannesburg air traffic controller and that traffic will then call us up on a frequency and we will issue, what we call an inbound clearance.

ADV THANDI NORMAN SC: Yes, now before you deal with that, can

you just show us on the videos as to where that entry is made, we are dealing with this one aircraft from Indira Gandhi into South Africa.

MR HENDRIK JACOBUS MARAIS: Yes I think you can just show video one and if it can just be on still then it's far easier to explain.

ADV THANDI NORMAN SC: Thank you, we don't have to play the whole video but just for you to demonstrate for us.

MR HENDRIK JACOBUS MARAIS: Is it possible to enlarge that a little bit.

ADV THANDI NORMAN SC: Can you enlarge it. Okay no they say it's
10 not possible because it's a video.

MR HENDRIK JACOBUS MARAIS: Okay so the pale grey which you see on the screen is South African airspace, the darker grey shade is the airspace to the East and North East, right off to the East there where the cursor is now, is Mozambique airspace and to the North will be Zimbabwe, above that little white line with the little jiggered point in it. The airspace at the bottom of that, the circle with two small straight lines and a smaller circle, that's the Hoedspruit Military airspace...(intervention).

CHAIRPERSON: I'm sorry, he's not following with the cursor, can you
20 not...(intervention).

ADV THANDI NORMAN SC: Can the witness be moved.

CHAIRPERSON: To move it.

ADV THANDI NORMAN SC: Yes maybe...(intervention).

CHAIRPERSON: If you can give it to – oh you can't take it to him.

MR HENDRIK JACOBUS MARAIS: Well if he moves the cursor I'll

Speak to him where the cursor is.

CHAIRPERSON: Okay just listen to him when he tells you where to move the cursor to.

MR HENDRIK JACOBUS MARAIS: Okay, so where the little pointer is.

ADV THANDI NORMAN SC: Yes.

MR HENDRIK JACOBUS MARAIS: So below, if you move the pointer to the South, down, slightly left that airspace is the Hoedspruit Military airspace, controlled airspace...(intervention).

CHAIRPERSON: What airspace is that?

10 **MR HENDRIK JACOBUS MARAIS:** Air force base Hoedspruit.

CHAIRPERSON: Okay.

MR HENDRIK JACOBUS MARAIS: And you see the lines running through that airspace, in the darker shade, very dark grey, no below that, they run diagonally across the screen, those lines...(intervention).

CHAIRPERSON: I see about three lines, is that what you're talking about.

MR HENDRIK JACOBUS MARAIS: Correct ja, three lines they almost join up in the East and then split up into a fork running down towards the South West.

20 **CHAIRPERSON:** Yes what is that?

MR HENDRIK JACOBUS MARAIS: Those are what we call R&F routes, it is area navigations...(intervention).

CHAIRPERSON: Is that the road for the aircrafts.

MR HENDRIK JACOBUS MARAIS: Correct yes.

CHAIRPERSON: So that is the track that the aircraft will fly

depending upon where they are bound. So if you then go to...(intervention).

CHAIRPERSON: So just for my own understanding, so an aircraft can't just fly anywhere it's got to follow certain – it must be on the road in quotes, it must be on a certain road, it can't just fly anywhere just because it can fly?

MR HENDRIK JACOBUS MARAIS: Correct because that's also how we do the capacity planning and moving the traffic without having too many of them conflict with each other being head on for example,
10 climbing and descending.

CHAIRPERSON: Yes okay thank you.

MR HENDRIK JACOBUS MARAIS: So then if you move the cursor to the almost middle there, where you were, more to the left, and down, that is a piece of airspace surrounding Polokwane, that is the Polokwane airport with it's airspace around controlled airspace it provides a service there and if you go slightly above that and up, that is the airspace at (indistinct) at the air force base.

CHAIRPERSON: Have you told us about three airspaces now?

MR HENDRIK JACOBUS MARAIS: Three different pieces of airspace.

20 **CHAIRPERSON:** Yes the one – the first one was right on the South, that one, is that correct?

MR HENDRIK JACOBUS MARAIS: That's correct.

CHAIRPERSON: Now when you say airspace in that context, what's the function of that airspace, what purpose does it serve?

MR HENDRIK JACOBUS MARAIS: Okay so each piece of airspace is

designed around the airport and the type of traffic it services. That is a terminal airspace, I've just referred to, the one at Hoedspruit so that will manage the traffic in and out of air force base Hoedspruit and that will be military and – I finally gained some control.

CHAIRPERSON: Okay so the purpose of the airspace that we are talking about – well let me first check, it would be around an airport, airspace.

MR HENDRIK JACOBUS MARAIS: Yes correct.

CHAIRPERSON: It will always be around an airport not just out of
10 anywhere?

MR HENDRIK JACOBUS MARAIS: It can be both.

CHAIRPERSON: It can be both.

MR HENDRIK JACOBUS MARAIS: Sorry let me – perhaps I should try to explain more...(intervention).

CHAIRPERSON: Yes, yes, I just want to understand the importance of those three airspaces or airspaces in general.

MR HENDRIK JACOBUS MARAIS: They are there to protect, really the military around Hoedspruit and the civilian traffic, the one down here where the pointer is at the moment, so there will be a piece of
20 airspace on the ground, touching the ground up to a limit above the ground and with defined horizontal limits and that's there so you can protect or the air force in this case the runway and the traffic flying around Hoedspruit air force base.

CHAIRPERSON: So it's meant to make sure that you know there aren't too many aircrafts coming within the space or coming too close

to the airport when it might not be right to do so for safety reasons?

MR HENDRIK JACOBUS MARAIS: That is true and also for the air traffic controller to have an area of jurisdiction within which they can issue the instructions to ensure the safety of the traffic.

CHAIRPERSON: Okay beyond that airspace then, the air controller doesn't issue any instructions?

MR HENDRIK JACOBUS MARAIS: No.

CHAIRPERSON: But when the aircraft enters that space, that airspace then they can get instructions from the air controller?

10 **MR HENDRIK JACOBUS MARAIS:** Correct.

CHAIRPERSON: Okay, thank you and the instructions from the air controller could include the instruction that you may land or don't land, or not really?

MR HENDRIK JACOBUS MARAIS: In terms of the runway being clear to land and safe, it does include.

CHAIRPERSON: Okay thank you.

MR HENDRIK JACOBUS MARAIS: But in terms of an approval to land it at an airport, that's not the air traffic controller's...(intervention).

CHAIRPERSON: That's general?

20 **MR HENDRIK JACOBUS MARAIS:** Correct.

CHAIRPERSON: Ja and then the air controller relates to the specific and the actual time?

MR HENDRIK JACOBUS MARAIS: Yes.

CHAIRPERSON: Okay thank you.

MR HENDRIK JACOBUS MARAIS: So this is the terminal airspace

around air force base Hoedspruit in which they will manoeuvre the traffic in and out of the airport routing to other airports or in and out of here because there will be military training. The same purpose will be served by this airspace up here to the North around Makaru and this airspace here is at Polokwane as I've indicated and that is really for civilian traffic where the other two are predominantly for military traffic with some civilian traffic included.

ADV THANDI NORMAN SC: Okay thank you.

MR HENDRIK JACOBUS MARAIS: The large grey airspace running
10 from down that line that I'm following with the cursor...(intervention).

CHAIRPERSON: Before that, you said that these airspaces can be both around an airport and not around an airport, now I can understand when they are around an airport, when they are not around an airport under what circumstances would you have them away from an airport?

MR HENDRIK JACOBUS MARAIS: I'm going to ask you to visualise a set of tins, cake tins. So the lower airspace or the control zone will be touching on the surface and it will be a smaller tin. The terminal
20 airspace above that will be a slightly larger tin on top of that and then another airspace on top. So I've spoken about control zone and terminal airspace and then we get what we call control areas and those are large pieces of airspace and that will take care of upper flight levels and those are not necessarily in the vicinity of an airport. So we will have a control area which will cover the entire airspace over Gauteng for example and Free State and joining onto a control area for Cape Town and there are no airports below that, other than some

smaller private airports for example, or airfields.

CHAIRPERSON: Okay.

MR HENDRIK JACOBUS MARAIS: Now you also have control zones sitting over large pieces of airspace where we control air traffic in the last part of the climb, the cruise and the first part of the decent and it's not in the vicinity of an airport.

CHAIRPERSON: Okay thank you.

ADV THANDI NORMAN SC: And where would the Waterkloof area be there?

10 **MR HENDRIK JACOBUS MARAIS:** It's off to the West and we can see that on the next video.

ADV THANDI NORMAN SC: On the next video?

MR HENDRIK JACOBUS MARAIS: Yes and I think we can go to number two, do you need your mouse?

ADV THANDI NORMAN SC: Oh I'm sorry before you move maybe to that are you finished on this slide?

MR HENDRIK JACOBUS MARAIS: Yes I am.

ADV THANDI NORMAN SC: Okay you were still demonstrating the large part, before you go to that one.

20 **MR HENDRIK JACOBUS MARAIS:** The large grey part by and large, I mean we don't have to see the video, I think we can remember, is what is called military training area, it's a restricted airspace, published predominantly for the purposes of military training flights. However, since they don't use that airspace continuously, we have an arrangement with the South African Air Force called flexible use of

airspace, where, when they are not occupying that airspace we can issue routes for civilian traffic through that airspace and it just optimises the routing and it can of course result in some fuel and time savings for the operators.

ADV THANDI NORMAN SC: Okay the second one, do you want us to move to the second one?

MR HENDRIK JACOBUS MARAIS: Yes please.

ADV THANDI NORMAN SC: Thank you, that's the second video, is that the one, maybe play the video and see.

10 **MR HENDRIK JACOBUS MARAIS:** Okay you can close that video, is this the second video.

TECHNICIAN: Yes.

MR HENDRIK JACOBUS MARAIS: So what we will see, and unfortunately I've got a bit of distance problem here the black target sitting over there, would have entered the South African airspace here at a position called EPSEC and that was the position coordinated by the Mozambican and navigation service provider and the traffic is then entering the airspace here, but I cannot see there but confirm that, that says DAI9900 that is Jet Airways 9900 the flight inbound from
20 Indira Gandhi to Waterkloof. At the moment it is showing the information as you can see there...(intervention).

CHAIRPERSON: Hang on one second, I'm wondering whether if for the duration of the time he was going to be showing us that, whether, if he sat closer there would be any problem with the transcript?

ADV THANDI NORMAN SC: Yes Mr Chairman because he is for the

witness, I think they will have a difficulty but (indistinct) has just suggested that maybe, if the witness could use the one but then the (indistinct) will not be able to see but if you point there to point on this one. Yes, thank you, but then we'll be able to see is it?

CHAIRPERSON: Ja those who can look at that one, can look at that one, you can look at this one.

ADV THANDI NORMAN SC: Yes thank you.

MR HENDRIK JACOBUS MARAIS: So that's then where the flight entered the South African airspace he would have obtained an inbound clearance from the Johannesburg controller...(intervention).
10

CHAIRPERSON: Oh I'm sorry, when you are using that one, the mouse can't go there but it can show us on that side.

MR HENDRIK JACOBUS MARAIS: Flight over there.

CHAIRPERSON: Oh okay yes.

MR HENDRIK JACOBUS MARAIS: Is then at that specific flight, inbound from Indira Gandhi to Waterkloof as per the flight plan...(intervention).

CHAIRPERSON: Yes let me just understand again, just remind me the Dakar portion outside that light greyish – large light greyish area, ja
20 where the mouse is, what is that?

MR HENDRIK JACOBUS MARAIS: That's the Mozambique airspace.

CHAIRPERSON: Oh that's Mozambican airspace?

MR HENDRIK JACOBUS MARAIS: Correct.

CHAIRPERSON: Oh okay and then where you have the border – kind of borderline and you then have a lighter grey area, ja there, that's the

beginning of South African airspace?

MR HENDRIK JACOBUS MARAIS: Correct Judge.

CHAIRPERSON: Okay and then the three airspaces we were talking about are in effect airspaces within South African larger airspace?

MR HENDRIK JACOBUS MARAIS: Correct.

CHAIRPERSON: Okay and then that line, if you go up, yes on the right, that line what is that, is that a route as I said, a road for an aircraft, is that an air route or what?

MR HENDRIK JACOBUS MARAIS: No Chairman, that is the airspace
10 boundary between Mozambique and Zimbabwe.

CHAIRPERSON: Oh okay, thank you, now I understand okay.

ADV THANDI NORMAN SC: Thank you, you were pointing out the Waterkloof, where is that?

MR HENDRIK JACOBUS MARAIS: Waterkloof is off to this side we will need to – this is where the aircraft initially comes in and when we go to the third recording I will be able to show you the Johannesburg and Waterkloof airspace, so we can progress to that.

ADV THANDI NORMAN SC: To the next one, thank you.

MR HENDRIK JACOBUS MARAIS: So here we will see – I'm going to
20 try and move my microphone a little bit. Do you see the little white flashes on the screen, that is just how the air traffic controller is interacting with their electronic data on the aircraft as they're issuing instructions and changing flight levels and headings for example and I think we're best off if you'd like to pause this please, thank you? So you'll see traffic flying in and out of OR Tambo over here, the North

bound runway is in use, runway 03, traffic departing off the Western runway and landing on the Eastern runway, runway 03 right. This is the control zone, the lines here, around OR Tambo, this little piece of airspace here is air force base Swartkop airspace and this here is the Waterkloof control zone with the entire airspace, where the cursor is going around now, there being the Waterkloof terminal control airspace and this race course here if van der Hoog.

ADV THANDI NORMAN SC: Yes who controls the Waterkloof airspace?

MR HENDRIK JACOBUS MARAIS: The Waterkloof airspace is
10 assigned to the South African Air Force but again by arrangement of the flexible use of airspace, we control it most of the time from OR Tambo under the Johannesburg approach control service, to optimise the routes in and out of OR Tambo because as you can see those airspaces and the airports are quite close together and OR Tambo being the busier, we can benefit from using the military airspace and should there be military requirement, we will give it back to the military and they will return it to us when they are completed with that and we can optimise the civilian traffic through there.

ADV THANDI NORMAN SC: Okay thank you, is there anything else you
20 want to show the Chairperson on that chart?

MR HENDRIK JACOBUS MARAIS: No it's not necessary, it's just that when you look at the information here from an interest point of view, you'll see that, that's the aircraft's call-sign so that will be coupled to the flight plan, the base we have on the flight plan and the radar data which we received from the aircraft transponder and then below that we

have the flight level of the aircraft, the speed and the destination or the next navigation point it is proceeding to, and that information will be displayed for any aircraft that we have a flight plan and it has a transponder on.

ADV THANDI NORMAN SC: Thank you.

MR HENDRIK JACOBUS MARAIS: Just perhaps before you go, the Waterkloof runway here is runways 01 and 19, they only have the one runway that they use for operations.

ADV THANDI NORMAN SC: Thank you, then let's deal with the flight
10 plans and the you must just demonstrate them to the Chairperson, what information is required for a flight plan and you've put up the three flight plans that this particular aircraft which we're dealing with from Indira Gandhi, what plans were put up and why, according to your understanding. I know we've jumped a bit but we'll go back to the other information that you've put up in your statement but I think because it's neatly linked to what you've just demonstrated, if you could go to page 18.

MR HENDRIK JACOBUS MARAIS: I have arrived there.

ADV THANDI NORMAN SC: Yes.

20 **MR HENDRIK JACOBUS MARAIS:** So what is in the statement is really a screenshot of the flight plan we would have received from - or for a flight JAI9900 is a Jet Airways charter and I'll quickly speak you through ways on the screenshot, it is again, of course all in code because there's a limited amount of characters we can transmit in this message type so you need to maximise each character that you use.

So at the top you'll see two letters, FF and then text followed by FAJAZQ and FAJAYF, etcetera, that will be where the flight plan was addressed to and the FF is the priority assigned to the flight plan. Since there will be ten hours elapsed between the flight taking off and landing at its destination there is no need to expedite a transmission so it would not have been a high priority as such as an emergency message for example. Then it will say the letters FPL which is the Flight Plan next to that is the aircraft's call sign and while I am speaking about call sign when I get to the next fields at the bottom

10 there will be the aircraft's registration. So the aircraft will be registered against a certain set of numbers or letters depending on the country of origin and then there will be a call sign which is what the aircraft will call itself when it communicates to Air Traffic Control. So the call sign here is Jet Airways 9900 yet the registration when you go down to the bottom will just be five letters which Victor Tango Juliet Whiskey Golf. Next to...

CHAIRPERSON: So the call sign will be like how they will identify themselves to you when they are approaching or something like that?

MR HENDRIK MARAIS: That is correct.

20 **CHAIRPERSON**: Yes okay.

MR HENDRIK MARAIS: So for example South African Airways will use a call sign Springbok

CHAIRPERSON: Yes.

MR HENDRIK MARAIS: The British Airways will use Speedbird followed by a set of numbers.

CHAIRPERSON: Yes, yes. And the choice of the call sign has it got anything to do with safety and intelligence or it is just their choice whatever word you decide to use?

MR HENDRIK MARAIS: The name is picked by the airline and it is then registered with the International Civil Aviation Organisation.

CHAIRPERSON: Oh.

MR HENDRIK MARAIS: As a three letter designator and what call sign accompanies that code.

CHAIRPERSON: Okay.

10 **MR HENDRIK MARAIS**: Numbers will be assigned in some cases depending upon safety because if you have 123 and 231 and 312 that can lead to some confusion especially on the radio.

CHAIRPERSON: Yes.

MR HENDRIK MARAIS: So we may assign a letter to those for example 132Alpha just to ensure that we have safety and we do not have communication where you have the wrong pilot who has gone and reacting to an instruction.

CHAIRPERSON: Ja. Okay.

ADV THANDI NORMAN SC: Thank you.

20 **MR HENDRIK MARAIS**: Then – next to the call sign you have two letters Y and N. The Y indicates the flight rules the aircraft will fly. We have three different types in fact four. Normally flights will fly instrument flight rules flights of this duration and they will fly then by reference to the instrumentation in the flight deck coupled to the signals they receive from ground installations or from satellites or GPS

for example. The other one is V for Visual flight rules that is where the pilot will navigate by means of visual reference to identifiable things on the ground such as roads, towns, rivers or dams for example. The Y here indicates that the flight was first going to fly instrument flight rules and then changed to visual flight rules which is quite different to what we are used to.

ADV THANDI NORMAN SC: Is this – does this mean that as long as he can see then he does not need to use the instrument? How do you distinguish between the visual and the instrument operation?

10 **MR HENDRIK MARAIS:** In this case normally it will fly instrument flight rules until the aircraft reaches a point on its route beyond which there are no more navigation aids available. So – and if you allow me to carry on a bit I will try and explain it when we get to the route of the aircraft I think it will be more clear.

CHAIRPERSON: Ja that is fine.

ADV THANDI NORMAN SC: Thank you.

MR HENDRIK MARAIS: We then have the N which stands for Charter. It is a non-schedule operation and if it was a scheduled operation it would have been S for Schedule. So it indicates what type of flight
20 rules and what type of flights they going to fly. Below that is that is the type of aircraft. This is an airbase 330200 it is heavy weight category so it will have a heavy weight turbulence influence on traffic behind it. The letters to the right and I am not going to go through all of them really explains or indicates what type of navigation communication equipment this aircraft has on board. And each letter will represent a

specific type of equipment. Below that then the letters VIDP is the aerodrome of departure which is Indira Gandhi in New Delhi and the aircraft would have taken off at 1800 which in fact eight o'clock at night in South Africa. We work on UTC's throughout aviation so we work on a standard time and that is two hours South Africa time minus two. So in this case you will see that indicates 1800 and it is then eight o'clock in South Africa in fact UTC you can also equate to GMD. Below that then is the aircraft speed and its flight level and the route it is going to fly. The five letter indicators for example behind the DCT which says

10 direct. So from take-off this aircraft is going to go direct to a position called rebon and then it gives the route as we continue. I said I would clarify the Y letter we had in the flight rules. I do not think the whole route is relevant and I do not intend to bore you with that Judge. When we get to the Hotel Bravo Victor the HBV on the second line of the route a third last set of characters. That was the navigation aid installed just to the north of the Hartebeespoort Dam and we now see that this flight is going to go to that navigation aid and from there you go visual flight rules to Air Force Base Waterkloof. The FAWK below. So they were going to navigate with instruments until they got to the

20 Hotel Bravo Victor navigation aid and then route visual flight rules to Waterkloof. They would have flown for ten hours and eight minutes. The alternate to the destination is King Shaka FALE. So if they had to divert they would have gone to Durban. Below that we have additional information regarding navigation which was not able to fit into the top field due to the limitation of characters. And then we have

communication and additional information such as the aircraft's registration. And then the EET about two thirds in the row with a / then VABF and a time and FSSS. Those are the information regions that aircraft would have crossed. So different countries air spaces. So it would have left Indian air space then entered into the Seychelles air space and finally into the Mozambican air space and then into the Johannesburg air space.

ADV THANDI NORMAN SC: Thank you.

MR HENDRIK MARAIS: And that contains all the additional information
10 for those boundaries and it then says who the operator is and what the
end route alternate airports will be. So if the aircraft had a problem en
route it would have diverted either to the Seychelles to Harare or it
would have turned back into India.

ADV THANDI NORMAN SC: Thank you. And those alternatives must
also be included in that flight – on that flight plan?

MR HENDRIK MARAIS: Yes.

ADV THANDI NORMAN SC: Okay. Now and this would simply tell you
about = it tells us about the route itself but does it tell you who the
owner of the aircraft is and the capacity of the passengers on board?

20 **MR HENDRIK MARAIS:** Yes Ma'am in fact the second last line on the
right hand side it says Operator Jet Airways. So it tells us who the
operator is.

ADV THANDI NORMAN SC: Yes;

MR HENDRIK MARAIS: Additional information such as persons on
board it will never indicate names to us I do not think we have the

capacity to process four hundred names on each flight plan. It will however tell us how many people are on board. Flight or crew members and passengers and that is for search and rescue purposes.

ADV THANDI NORMAN SC: Yes.

MR HENDRIK MARAIS: It is not transmitted in the flight plan like this. We will receive it in the Departure Message Book because that is when they have actually counted people on board and they can give us exact fuel endurance for the flight. So that information will come in the Departure Message I referred to earlier.

10 **ADV THANDI NORMAN SC:** okay thank you. And then same explanation if you turn over the page could you just highlight then the difference between the first flight plan that you find at 9.1 and the second one 9.2 and then we will deal with the third one.

MR HENDRIK MARAIS: The 9.2 differs really because the sign call signs is different. It is different flights so you will remember it was 9900.

ADV THANDI NORMAN SC: Yes.

MR HENDRIK MARAIS: This one is 9002. The equipment on board is the same, the same aircraft, the registration remains the same except
20 this flight is departing from Waterkloof and its destination is OR Tambo. So it is departing Waterkloof at 0900 in the morning with is eleven o'clock and it will fly for twelve minutes to land at OR Tambo and again the alternate airport is King Shaka.

ADV THANDI NORMAN SC: Yes. And where are times? What day – the date and the time?

MR HENDRIK MARAIS: This flight plan does not indicate a date of departure. So when you go the third row down on that flight plan.

ADV THANDI NORMAN SC: Yes.

MR HENDRIK MARAIS: It says 020731 so that will be the 2nd the 2nd May because the aircraft landed on the 30 April.

ADV THANDI NORMAN SC: Yes.

MR HENDRIK MARAIS: So that will be the day that it is filed if there is no alternate time of departure or date of departure indicated below it will be specific to that day.

10 **ADV THANDI NORMAN SC:** Alright. Thank you. And then what is then the difference between the flight plan and 9.2 and 9.3?

MR HENDRIK MARAIS: 9.2 as I said is inbound from Waterkloof to OR Tambo. 9.3 is a flight plan for the difference again the call sign. It is a Jet Airways 9901 and interestingly here the flight – the type of flight indicates a schedule that may be a small error. It should in fact have indicated N for a non-schedule or a charter flight. The same aircraft with the same equipage. The big difference here is that the aircraft is scheduled to go out of OR Tambo to Indira Gandhi in India and then of course route will be substantially different and the flight duration is 9
20 hours 37.

ADV THANDI NORMAN SC: Yes.

MR HENDRIK MARAIS: Interesting when you compare this to the flight plan in 9.1 is the shorter time it takes to go east bound than what it takes to come west bound because of the prevailing westerly winds. So it will be much quicker to go to Delhi than what it is to come from Delhi

to Johannesburg.

ADV THANDI NORMAN SC: Thank you. If you may then just go back – oh sorry, sorry on the flight plans that was the last one could you then just go back on the requirements just briefly. You have already highlighted them as you were explaining at page 13 as to what is it that is supposed to go into a flight plan. You have explained the technical part to it and if you could just explain it in layman's terms.

MR HENDRIK MARAIS: So there is two real requirements.

ADV THANDI NORMAN SC: Yes.

- 10 **MR HENDRIK MARAIS:** Excuse me It is which flights knew to file a flight plan. So if you are going to fly a scheduled or non-scheduled operations where the flight operates for reward there must be a flight plan filed. If you are going to cross an international boundary you must file a flight plan. Or if your flight will enter controlled air space except when it crosses an air route at right angles you must file a flight plan. So there are these requirements for when flights are mandated to file a flight plan and they have to file that flight plan.

ADV THANDI NORMAN SC: So if you flying from Johannesburg to Cape Town?

- 20 **MR HENDRIK MARAIS:** You will have to file a flight plan. Because you are going to fly in the Johannesburg controlled air space and you are going to operate in the Cape Town controlled air space so you – been mandated to file a flight plan. There are more when you – for example the flight requires search and rescue you will have to file a flight plan. Or when you fly on instrument rules you are mandated to file a flight

plan.

ADV THANDI NORMAN SC: Okay thank you. So if you then controlling an aircraft from ATNS towers and an aircraft has filed a flight plan is there anything else that you need to require from that aircraft before it departs or it lands?

MR HENDRIK MARAIS: No there is no requirement. The flight plan really says this is what I intend to do as the pilot in command and we will then as in navigation service provider base our service on the flight plan and based on the route aircraft as – or the pilot in command has
10 requested to fly.

ADV THANDI NORMAN SC: Thank you. And..;

CHAIRPERSON: Would you normally react to a flight plan so that the person who has sent the flight plan knows whether you are okay with it or whether there are challenges or is the position that if there is no problem you do not have to react or respond but if there is a problem then you have to be in touch with them.

MR HENDRIK MARAIS: You are correct Sir. If we do not respond or query there is no problem with the flight plan. Yet again you can also file a flight plan today for an operation tomorrow and because of
20 weather conditions or wind decided you want to change the flight level for example. And that request can also be made verbally before you start your aircraft to depart. So the first contact you will have with Air Traffic Control you will say, and request flight level for example. So those small changes are tactically handled in the system.

CHAIRPERSON: Yes, yes okay

ADV THANDI NORMAN SC: Thank you. And then at page – I beg your pardon – at page 14 you have already given the Chairperson the indication about what is to be contained on the flight plan and then could you just deal with those that you have not dealt with in the technical terms?

MR HENDRIK MARAIS: Well I think it is probably easier if we start on page 13 just to make sure we do not miss anything.

CHAIRPERSON: Yes start – you may start there.

ADV THANDI NORMAN SC: Thank you.

10 **MR HENDRIK MARAIS:** So if you are going to go down the page and it must be contained that comes in a later section you can file your flight plan with an Air Traffic Services Unit or a Briefing Office and I think we have covered that in previous information. So flight plans will be filed in respect of

a. All flights to be conducted in controlled or advisory air space.

Remember I mentioned it if you fly in controlled air space you need to file a flight plan. Except this shall not apply if

a. It is local flight.

For example a local flight will be a training flight which will take off
20 from airports such as Wonderboom, Rand Airport or Lanseria and go do a training flight and return to that airport. That will be a local flight. A flight crossing an airway or an advisory route at right angles is not required to file a flight plan. And a verified flight entering or departing from an aerodrome traffic zone or controlled zone from or to an unmanned aerodrome where no other controlled air space will be

entered. And then for an international flight you must file a flight plan. And then there are flights in the Class 1 or Class 2 licence issued and that really relates to the operation of charters. Any flight within or into designated areas or along designated routes when so required by the ATS authority to facilitate the provision of flight information alerting and search and rescue services and any within or into designated areas or along designated routes when so required by the appropriate authority to facilitate coordination with appropriate military units or air traffic service units. That abbreviation ATSU is Air Traffic Service
 10 Units. And it also applies to the adjacent states to avoid possible need for interception for the purpose of identification. And then the rest of the text is then the contents of the flight plan.

ADV THANDI NORMAN SC: Yes. And then let us talk about then the – this particular aircraft and you have already explained the differences between the three flight plans. From the moment then it left Indira Gandhi could you just tell the Chairperson its route from the moment it left on the – it would have been on the 29th because it landed at Waterkloof on the 30th.

MR HENDRIK MARAIS: So the route already be out of Indian air space
 20 out into the Indian Ocean at a route between the Seychelles and Madagascar on a track to about Phalaborwa it will enter the South African air space around there position Epsac is very close to Phalaborwa so we can just get the geography. From there it will then get to inbound clearance into Johannesburg issued by the air traffic controller. The aircraft will then start requesting descent based on how

they had planned the trajectory and the flight. We will then provide them with descent to initial levels and those descents will always be limited to what is safe. In this specific case the aircraft was cleared to different levels at different times because there was traffic below that. Other aircraft flying. Then once the descent is down to about flight level 160 and passing around about flight level 200 the traffic will be handed over to Johannesburg approach radar and that function will then position the traffic into its destination. So in this case approach radar would vector the traffic onto Waterkloof Air Force Base. Because
10 the navigation aids at Waterkloof at the time were not available.

ADV THANDI NORMAN SC: Does that mean that you could not coordinate this flight with Waterkloof?

MR HENDRIK MARAIS: No it does mean that.

ADV THANDI NORMAN SC: Pardon?

MR HENDRIK MARAIS: We – they could not receive the navigation aid on the ground at Waterkloof but we specifically coordinated the flight with Air Traffic Control at Waterkloof and it is on the recordings.

ADV THANDI NORMAN SC: Yes. And...

MR HENDRIK MARAIS: So we would – sorry Ma'am let me just
20 continue with a small explanation.

ADV THANDI NORMAN SC: Yes, yes.

MR HENDRIK MARAIS: We would call Waterkloof when the aircraft commences the descent so we know how to route the traffic. And then that will also mean how we plan to descend the traffic and position them into the whole larger Johannesburg terminal air space considering

that they need to position in that smaller piece of air space for Waterkloof.

ADV THANDI NORMAN SC: Okay. Alright and then you deal with the climb out and the crews of the aircraft at pages 16 and of course you have already dealt with the descent. Is there anything that you would like to – to highlight? I take it that when it is cruising now that is when auto pilot is in charge is that correct or not necessarily?

MR HENDRIK MARAIS: Mostly. Remember the aircraft can also climb and descend with auto pilot and I am not a pilot but they use the auto
10 pilot in many cases quite soon after take-off and until close to the runway and in many cases even during the landing depending on how the aircraft and the crew are trained and certified.

ADV THANDI NORMAN SC: Okay.

MR HENDRIK MARAIS: But in the cruise it is predominantly when the aircraft is level it may change levels during the night especially if you find the Euro tracks you will know that as the aircraft burns fuel it becomes lighter and it can then climb higher to optimise fuel burn on the aircraft. So it is less fuel burn the higher they go.

ADV THANDI NORMAN SC: Yes. And then when it then landed at
20 Waterkloof did your responsibility end at that point or do you continue monitoring it up to a certain point and if so what is that point?

MR HENDRIK MARAIS: The responsibility for ATNS would continue until that aircraft got Waterkloof in sight. Remember I mentioned that the navigation aids were not functioning.

ADV THANDI NORMAN SC: Yes.

MR HENDRIK MARAIS: So we would have continued to position that aircraft by means of radar until the pilot in command got the runway in sight. Once they got the runway in sight we would then hand them over to Waterkloof and the landing and everything thereafter would be under jurisdiction of the Waterkloof Air Traffic Controller.

ADV THANDI NORMAN SC: Okay. And...

CHAIRPERSON: I am sorry...

ADV THANDI NORMAN SC: Oh sorry Chair.

CHAIRPERSON: In terms of playing your role you or your team would
10 they physically see the aircraft on the screen from a certain point after
it has entered South African air space or they would just have an idea
where exactly it is but not see the actual aircraft on a screen or
something?

MR HENDRIK MARAIS: Judge the radar picture actually gives us an
indication exactly where the aircraft is. And it is based on a very
technical solution but we have more than one sensor that will detect
the aircraft at the same time. So we also have redundancy in the
system. So where the aircraft is displayed is actually calibrated and
computed in the system. So it is exactly where the aircraft is with
20 some very margin of error which is allowed and you will see a little
block if you recall what you saw on the screen earlier – a little block
with a call sign, the speed and the flight level and some additional
information. And that is exactly where the aircraft is.

CHAIRPERSON: Okay, okay thank you.

ADV THANDI NORMAN SC: Thank you Mr Chair. And then you dealt –

maybe you could just go to where then just you deal with the monitoring of that particular aircraft and your interpretation of its route. You deal with that at page 20 or am I going – is there any other aspect you want highlight at page – pages 17 and 18 maybe before we go to 20?

MR HENDRIK MARAIS: No I think we have covered everything up to page 19.

ADV THANDI NORMAN SC: You have covered everything thank you. Would you then just deal with what you deal with at page 20?

MR HENDRIK MARAIS: Page 20 of the statement and onwards is an
10 attempt to translate the code of the flight plan into layman's terms. So what you will see is a whole list of capital letters starting with FSSSZQZX ending right down to FAJAFDPA and right above that FAWKZTZX. Now each of those are associated to an airport or an Air Traffic Control Service or an Air Traffic Service and the lettering behind that is what kind of service that is. So Seychelles or sorry FSSSZQZX is the Seychelles. ZQZX is the flight information region and it indicates that it is an instrument flight rules aircraft. So those are all the addresses which will be included in the flight plan so it reaches all the relevant airports and air traffic services providers which will deal with
20 the flight for its duration.

ADV THANDI NORMAN SC: Yes. And you deal with that – there was an alternate airport as well which was King Shaka airport.

MR HENDRIK MARAIS: Yes.

ADV THANDI NORMAN SC: In the event that they could not land at Waterkloof.

MR HENDRIK MARAIS: You will see the destination at the bottom of the first paragraph is Waterkloof FAWKZTZX which is the control tower and then the alternative is King Shaka and that is ZTZX which is the control tower there and it is then addressed to other addresses FAJA for example is Johannesburg the general area and the FDPA is where we will process the flight plan information.

ADV THANDI NORMAN SC: In the last paragraph – in paragraph 9.4 the last three sentences there you make mention that the addresses provided here are different from the address provided in the screen
10 shot of the flight plan. The additional addresses were added by the Johannesburg briefing unit when processing the flight plan. Could you just explain that?

MR HENDRIK MARAIS: Yes if cast your mind back to the screen shot there were only three addresses in that

ADV THANDI NORMAN SC: Yes.

MR HENDRIK MARAIS: The operator in India will not necessarily know who to send all this information to in South Africa and vice versa we would not know exactly who to send it to in India. So what happens is they will dispatch the flight plan to the FIR or the region Johannesburg
20 and the flight plan processing and the information unit and the information unit or the briefing office as we call it will then look at this flight plan, see where it was sent to and where not and add the additional addresses.

ADV THANDI NORMAN SC: Who constitutes the briefing unit?

MR HENDRIK MARAIS: That is the information management offices we

spoke about earlier when I spoke about specialist resources do you recall?

ADV THANDI NORMAN SC: Yes.

MR HENDRIK MARAIS: So they will man that unit and they will forward this flight plan to where it belongs.

ADV THANDI NORMAN SC: So they will be officials within ATNS?

MR HENDRIK MARAIS: Correct.

ADV THANDI NORMAN SC: Thank you. And then the next page.

MR HENDRIK MARAIS: The next page is really starts on...

10 **ADV THANDI NORMAN SC:** It just deals with codes, am I right?

MR HENDRIK MARAIS: Correct and I know it is really the call sign and the flight rules and the type of flight which I think we have addressed.

ADV THANDI NORMAN SC: Yes. At what point then would you – that is the ATNS get to know that a particular flight did not have a foreign – overflight permit?

MR HENDRIK MARAIS: The foreign operator permit?

ADV THANDI NORMAN SC: Yes.

MR HENDRIK MARAIS: I think we have heard in earlier evidence we will know about this when the aircraft has landed and we discover that
20 it did not have one. ATNS mandate is to provide safe and efficient services and not to check for the security component of the flight. That resides with the security agencies and those who issue the foreign operator permit. The responsibility of ATNS is to ensure that we receive the flight plan and process the aircraft in accordance with the flight plan received and the services requested therein. **ADV THANDI**

NORMAN SC: Yes.

MR HENDRIK MARAIS: So we will base on routing the flight levels and the destination and we will provide that service.

ADV THANDI NORMAN SC: And then when the foreign operators permit is not there what are the steps that you take as ATNS?

MR HENDRIK MARAIS: If we notice that there is no foreign operator permit we will inform the Department of Transport if we do notice but our task is not to monitor for foreign operator permits, to issue them or to police who has or has not. We focus merely on delivery of safety
10 and efficiency as per the mandate of the organisation.

ADV THANDI NORMAN SC: Who would impose the fine?

MR HENDRIK MARAIS: Ma'am I do not know.

ADV THANDI NORMAN SC: And in all the years that you have worked with ATNS have you ever reached a point where you have had – you find that the flight does not have a foreign operator's permit where you have had to contact the Minister and where you have had to direct that a fine be imposed?

MR HENDRIK JACOBUS MARAIS: No. In my career with ATNS I have become aware of flights that did not have foreign operator permits.
20 The reporting thereof is sent to the Civil Aviation Authority and the Department of Transport. Imposition of fine ATNS does not impose any fines to anybody. We are here to provide a service and to levy a tariff for that service. It may – there is no recollection of any fines or of reporting to the Minister.

ADV THANDI NORMAN SC: And then – sorry – you deal with the flight

again at pages 21 and 22. Are there areas that you wish to highlight there?

MR HENDRIK JACOBUS MARAIS: Ma'am I think we have explained the routing ...

ADV THANDI NORMAN SC: Yes.

MR HENDRIK JACOBUS MARAIS: And those five letter points are already in Indian airspace, in Seychelles and Mozambican airspace and those five letter points are based on coordinates. They are properly out over the high seas. That is about the only point of interest.

10 **ADV THANDI NORMAN SC:** Yes.

MR HENDRIK JACOBUS MARAIS: You will notice that the flight initially cruised at flight level 340. It then changes to flight level 380 after position (indistinct).

ADV THANDI NORMAN SC: Where are you now? Sorry Mr Marais.

MR HENDRIK JACOBUS MARAIS: On page 21 ...

ADV THANDI NORMAN SC: (Indistinct).

MR HENDRIK JACOBUS MARAIS: Midway down the page.

ADV THANDI NORMAN SC: Yes.

20 **MR HENDRIK JACOBUS MARAIS:** Underlined text and that was again as they would have burnt off fuel and become lighter. They would have been able to climb higher and then the plan was again to climb higher to flight level 400. So they again optimise their burn and then from Uniform Gulf 465 it indicates where the traffic starts its plan to descend into South African airspace.

ADV THANDI NORMAN SC: Thank you and then at paragraph 10.1

there is the sequence of events. Is there anything you want to highlight?

MR HENDRIK JACOBUS MARAIS: Ma'am no. I think that is placed on record and Judge there are whole sequence of events we have since we received flight plan coordination from Mozambique ...

CHAIRPERSON: Hm.

MR HENDRIK JACOBUS MARAIS: How we worked the traffic into South African airspace, started to descent, positioned the traffic for Waterkloof until we finally transferred control of the traffic to
10 Waterkloof when it got the runway in sight.

ADV THANDI NORMAN SC: Okay, thank you. If you to go page 26 the first sentence there also dealing with the sequence. It says:

“Waterkloof Tower requests start and after departure clearance for that.”

So who would have within the Waterkloof Tower - what is the position or the level of the official who would have requested that?

MR HENDRIK JACOBUS MARAIS: That would have been an Air Traffic Controller – Military Air Traffic Controller - employed by the South African Air Force. The rank I would know. It will be an Officer.

20 **ADV THANDI NORMAN SC:** Yes.

MR HENDRIK JACOBUS MARAIS: And that air controller will then come in contact with our approach service at Johannesburg and will request to start the traffic.

ADV THANDI NORMAN SC: Yes.

MR HENDRIK JACOBUS MARAIS: If I can just expand a bit.

ADV THANDI NORMAN SC: Yes.

MR HENDRIK JACOBUS MARAIS: The request for start is that once we say the aircraft can start. We know we can accept the aircraft into our airspace. If we would rather issue a short delay for the start it is easier for the aircraft to be delayed with engines off than to burn fuel and stand there wait at the runaway end for departure. So that is really the purpose for start. Where can we fit the traffic in?

ADV THANDI NORMAN SC: Alright and then is there anything you want to highlight there – remaining paragraph 10.2?

10 **MR HENDRIK JACOBUS MARAIS:** Oh no. This is really just a flight from Waterkloof to OR Tambo. The sequence of events that happened from requesting the start and the clearance which was subsequently issued. The aircraft then got airborne. It was placed under radar control and it was positioned by radar until it landed – oh sorry – positioned onto runway 2-1 for OR Tambo.

The taxi clearance and then perhaps importantly on page 27 at the time 13:10:44 ...

ADV THANDI NORMAN SC: Yes.

20 **MR HENDRIK JACOBUS MARAIS:** Where we received an instruction from the CAA to tell the aircraft that no one should disembark until they have got approval from the Civil Aviation Authority.

ADV THANDI NORMAN SC: You got that instruction from?

MR HENDRIK JACOBUS MARAIS: The Civil Aviation Authority.

ADV THANDI NORMAN SC: That they – they must embark? No one must ...?

MR HENDRIK JACOBUS MARAIS: No one should disembark until the CAA has authorised that.

ADV THANDI NORMAN SC: Yes. Do you know how long then that aircraft was kept there without passengers disembarking?

MR HENDRIK JACOBUS MARAIS: No I do not. It reached its parking bay at 12 minutes past three and 45 seconds. Parking bay on the northern side of OR Tambo. How long the people were on the aircraft I do not know. It is not within our domain.

ADV THANDI NORMAN SC: Yes.

10 **CHAIRPERSON:** Why – what would be the normal reason for Civil Aviation Authority to say let the passengers not disembark we have given approval? What would be the normal reasons?

MR HENDRIK JACOBUS MARAIS: Judge this may require some speculation and (intervene).

CHAIRPERSON: (Intervene). It is not with your (intervene).

MR HENDRIK JACOBUS MARAIS: There may be reasons for no foreign operator permit.

CHAIRPERSON: Yes.

20 **MR HENDRIK JACOBUS MARAIS:** There may be a problem with the aircraft itself ...

CHAIRPERSON: Yes.

MR HENDRIK JACOBUS MARAIS: Or it may be grounded for some reason ...

CHAIRPERSON: Okay, okay.

MR HENDRIK JACOBUS MARAIS: Or it may even be that there could

be a communicable disease reported on the aircraft.

CHAIRPERSON: Okay.

MR HENDRIK JACOBUS MARAIS: There are so many different ...

CHAIRPERSON: Okay.

MR HENDRIK JACOBUS MARAIS: Potential options.

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: Thank you. Could I just refer you to – I just want to show you some documents. You will indicate to the Chairperson whether those do come to your attention as ATNS. You
10 have a bundle EXHIBIT FF8. It is next to you there. If you could just refer the witness to that bundle. If you could please turn to page 28.

MR HENDRIK JACOBUS MARAIS: I have page 28.

ADV THANDI NORMAN SC: Yes. Would this type of document land at your desk as ATNS? It is a request for diplomatic overflight and landing clearance.

MR HENDRIK JACOBUS MARAIS: No. It will not.

ADV THANDI NORMAN SC: It will not. You have not seen ...

CHAIRPERSON: That must probably go to International Relations Department.

20 **ADV THANDI NORMAN SC**: Yes, yes. No I just wanted to know whether they do submit any of these documents to them and then if you go to – would it be the same as the one appearing at page 31 because it is addressed to Senior Controller Air Command Unit. That would go to Waterkloof.

MR HENDRIK JACOBUS MARAIS: Yes. That will be addressed to a

Military Official not civilian.

ADV THANDI NORMAN SC: Not - not come to you, thank you. Thank you and then let us go back to your statement. You were at page 27 and you have highlighted the instruction from CAA and is there anything else you would like to highlight?

MR HENDRIK JACOBUS MARAIS: No ma'am. That information is all covered.

ADV THANDI NORMAN SC: Okay.

MR HENDRIK JACOBUS MARAIS: I have described what happened
10 there.

ADV THANDI NORMAN SC: Yes and then in conclusion what do you say in conclusion?

MR HENDRIK JACOBUS MARAIS: "ATNS is a navigation
service provider, provides air traffic services to any
flights based on flight plans received. Once a flight
plan is received we process and ensure safe
operations of the aircraft within the airspace under
our jurisdiction. By preventing collisions between
aircraft and on a manoeuvring area between aircraft
20 and obstructions and expediting and maintaining an
orderly flow of traffic."

That is really the mandate of ATNS and that is what we have executed in this instance.

ADV THANDI NORMAN SC: Yes, thank you and then when a plane you have monitored that aircraft. Would you be charging for that service?

MR HENDRIK JACOBUS MARAIS: Yes. We would charge for that service.

ADV THANDI NORMAN SC: And do you know whether in this instance you were paid or you charged Jet Airways and you were paid?

MR HENDRIK JACOBUS MARAIS: I have confirmed with our Finance Department that we did issue an invoice and that we were paid.

ADV THANDI NORMAN SC: Yes and did you not know how much that invoice was?

MR HENDRIK JACOBUS MARAIS: I think the invoice was for about
10 2 000 – R10 200. I cannot remember the exact numbers.

ADV THANDI NORMAN SC: Yes. Do you charge per hour or per minute?

MR HENDRIK JACOBUS MARAIS: Remember we charge per weight per distance flown. So this would have been for the distance flown by the aircraft and the maximum take-off weight of the specific Airbus 330.

ADV THANDI NORMAN SC: You do not take into account the landing weight because ...

MR HENDRIK JACOBUS MARAIS: No.

ADV THANDI NORMAN SC: By that time fuel has burned and the
20 aircraft is lighter?

MR HENDRIK JACOBUS MARAIS: No because then you will have a continuous discrepancy in how you bill. So Government Gazette published will refer to maximum take-off weight.

ADV THANDI NORMAN SC: Yes.

MR HENDRIK JACOBUS MARAIS: So we will treat everybody the

same.

ADV THANDI NORMAN SC: Thank you. Thank you Mr Chairman.

CHAIRPERSON: Thank you Mr Marais. You are excused. Thank you for having come to give evidence before the Commission. Thank you very much.

MR HENDRIK JACOBUS MARAIS: Thank you Judge. It was a privilege.

CHAIRPERSON: Thank you. You are excused.

ADV THANDI NORMAN SC: Thank you. Thank you Mr Chairman.

10 These are the witnesses who were scheduled for today but we could deal with the records because I wanted to place on record (intervenes).

CHAIRPERSON: How – how come we – you had such short witnesses.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: We still have quite some time.

ADV THANDI NORMAN SC: Yes, yes. We are going to just check who else we can bring forward during the lunch break.

CHAIRPERSON: Sorry.

ADV THANDI NORMAN SC: We will check who we could bring forward during the lunch break, yes.

20 **CHAIRPERSON:** Is there another one who you had planned for later in the day?

ADV THANDI NORMAN SC: No we did not plan any other witness. We planned these two witnesses for the day but ...

CHAIRPERSON: But they were very short. How did that happen?

ADV THANDI NORMAN SC: Well we did not know that this ...

CHAIRPERSON: Mr Martins was very limited.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Obviously he was – he did not even need to take an hour.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: And this witness also just did less than two – well about what? One and a half hours ...

ADV THANDI NORMAN SC: Yes, yes.

CHAIRPERSON: And he could have been less than an hour.

10 **ADV THANDI NORMAN SC**: Well maybe we misjudged ...

CHAIRPERSON: So they were very short.

ADV THANDI NORMAN SC: We misjudged them and also because these witnesses - the availability of other witnesses was also a difficulty. For instance the witness who we call tomorrow was supposed to testify today and that is one of the longest witnesses but then it transpired that she cannot come at all. Then we had to reschedule for the 3rd.

CHAIRPERSON: But why was I not told about these challenges?

20 **ADV THANDI NORMAN SC**: The challenge of the witnesses being short today I did not anticipate that. I saw the statements. They were short but sometimes witnesses with short statements they go overboard and they take longer but I could after lunch place on record what we had received from the Public Protector because that is something that we want to place on record and also deal with the – the application – the subpoena – the documents that were submitted on subpoena but that

will not take long.

CHAIRPERSON: What is there for the rest of the week?

ADV THANDI NORMAN SC: We have got two witnesses. One witness which is a long witness for tomorrow. We have got two witnesses on the 4th. We have got two witnesses on – tomorrow is the 3rd. *Ja*, the 3rd. The 3rd there is one witness which is a long witness. The 4th we have got two witnesses and the 5th we have got two witnesses and maybe a third witness on the – on the 4th and then on the 5th we have got two witnesses as well.

10 **CHAIRPERSON:** *Ja*, no. I – I think I should have been told if there was going to be this – this challenge because we need to try and use all the time available to us. Okay. You will talk to me and let me see the statements for the witnesses for the rest of the week.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: So that we can try and make sure that we do not run into this problem if it all possible for the rest of the week.

ADV THANDI NORMAN SC: Yes thank you.

CHAIRPERSON: You said you might get another witness but you are not sure for later?

20 **ADV THANDI NORMAN SC:** We could – maybe if we could adjourn for five minutes. I could just establish and then let you know Mr Chairman but they ...

CHAIRPERSON: How long would that witness be?

ADV THANDI NORMAN SC: It is difficult to tell Mr Chairman because the statements they are short but the witnesses can be referred to

various other documents and then takes longer but I could if you give us five minutes. We will establish that and then let you know before 1 o' clock.

CHAIRPERSON: *Ja*, no. It is not good if you are not already sure. Okay. I think we will have to adjourn until tomorrow. You will talk to me about the rest of the week from tomorrow.

ADV THANDI NORMAN SC: Yes, thank you.

CHAIRPERSON: That is all we have for the day. We will adjourn until tomorrow morning at 10. We adjourn.

10 **ADV THANDI NORMAN SC:** Thank you.

REGISTRAR: All rise.

INQUIRY ADJOURNS TO 3 JULY 2019