

**COMMISSION OF INQUIRY INTO STATE CAPTURE**

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10

**30 OCTOBER 2019**

**DAY 185**

**FINAL**

20

**PROCEEDINGS RESUME ON 30 OCTOBER 2019**

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

**ADV HOFMEYR:** Good morning Chair.

**CHAIRPERSON:** Thank you. Thank you.

**ADV HOFMEYR:** Thank you Chair.

**CHAIRPERSON:** Are you ready?

**ADV HOFMEYR:** We are indeed.

**CHAIRPERSON:** Yes.

**ADV HOFMEYR:** We are continuing with the evidence of Mr Choeu this  
10 morning but Chair if I may just in advance of continuing with the  
evidence just give you one update

**CHAIRPERSON:** Yes.

**ADV HOFMEYR:** It is in relation to the responses to the Rule 3.3  
Notices.

**CHAIRPERSON:** H'mm.

**ADV HOFMEYR:** That were sent in respect of Mr Tsotsi's evidence. He  
will be attending to give evidence tomorrow at the Commission. I  
indicated at the opening yesterday that 3.3 Notices had been sent to all  
former Board Members who were involved in the decision in early 2015  
20 to ratify the R43 million contract. There was communication over the  
course of yesterday from a Ms Naidoo to whom I did not make  
reference yesterday because at the commencement of the proceedings  
no response had been received from her by that stage. Her  
communication over the course of yesterday indicated that although the  
Notice had been sent by the Commission on the 18<sup>th</sup> of October it had

ended up in her spam folder on her e-mail. The consequence of which is that she only discovered it there yesterday.

**CHAIRPERSON**: Okay.

**ADV HOFMEYR**: She has indicated that she will try and send a response nonetheless.

**CHAIRPERSON**: H'mm.

**ADV HOFMEYR**: In anticipation of Mr Tsotsi's evidence tomorrow.

**CHAIRPERSON**: H'mm.

**ADV HOFMEYR**: But she does indicate that she only was alerted to the  
10 fact that the e-mail was there as recently as yesterday.

**CHAIRPERSON**: Okay, okay.

**ADV HOFMEYR**: That does however mean it was received by her server.

**CHAIRPERSON**: Yes.

**ADV HOFMEYR**: It was simply allocated to a folder that she was not aware of.

**CHAIRPERSON**: Ja – okay no that is fine.

**ADV HOFMEYR**: If I may then continue with Mr Choeu's evidence?

**CHAIRPERSON**: Yes.

20 **ADV HOFMEYR**: Mr Choeu we concluded yesterday on page 5 of your affidavit and I would like to pick it up there if we may? Mr Choeu you will see there the page begins with paragraph 4. It talks about a June 2011 meeting with TNA representatives. I understand that you want to make a correction to that date, is that correct?

**MR CHOEU**: Yes the date was ...(intervenes).

**ADV HOFMEYR:** Mr Choeu if you will turn on your microphone and just make sure that it is close enough to you.

**CHAIRPERSON:** And bring it closer to you.

**MR CHOEU:** The date was the 1<sup>st</sup> of August.

**ADV HOFMEYR:** Thank you. So where in the course of paragraph 4 references are made to June 2011 can I assume we should replace that with references to 1 August 2011?

**MR CHOEU:** 1 August yes.

**ADV HOFMEYR:** Thank you. We note that correction. If I can then  
10 just go back to paragraph 4.1.

**MR CHOEU:** H'mm.

**ADV HOFMEYR:** Because it is in that paragraph that you talk about a briefing document.

**MR CHOEU:** H'mm.

**ADV HOFMEYR:** That was prepared for Mr Dames for the upcoming meeting with TNA, do you see that?

**MR CHOEU:** Yes.

**ADV HOFMEYR:** And you have attached that briefing document as Annexure 1. I would like us to go there if we may?

20 **MR CHOEU:** Yes.

**ADV HOFMEYR:** You will find that at page 15.

**MR CHOEU:** H'mm.

**ADV HOFMEYR:** Can you confirm that that is the briefing from Mr Dames to which you referred?

**MR CHOEU:** This is the one that I referred to.

**ADV HOFMEYR:** Thank you.

**MR CHOEU:** Though I do not recall getting it at the time when it was sent to Mr Brian Dames.

**ADV HOFMEYR:** We have received an affidavit to which I will make reference later from Ms Wadcher who was the author of this.

**MR CHOEU:** Yes.

**ADV HOFMEYR:** She does confirm that she prepared it in June 2011 and you referenced the fact that she had done so as well.

**MR CHOEU:** Okay.

10 **ADV HOFMEYR:** I would just like to understand what was the purpose of a briefing note like this?

**MR CHOEU:** I do not understand why but you would recall that earlier mister – TNA did words to us I will just recall the name now.

**ADV HOFMEYR:** Mr Howa?

**MR CHOEU:** No, no not Mr Howa.

**ADV HOFMEYR:** Mr Roux?

20 **MR CHOEU:** Mr Roux the representative. That Mr Roux wrote – called me to say he wants to talk to us regarding subscription to newspapers he is a salesperson. And I did not meet with him immediately because Ms Raja was responsible for media and I said please do meet with this person. Now in the interim between that period and this I do not know what happened. It looks like that the 10 A Team had a number of attached bonds at Eskom but I – somebody calling the Chief Executive Officer I do not know why – because I tried to look to why did Raja send this messages not even to my name because normally what you

would to do they would do it on my behalf even if it is not my instruction.

**ADV HOFMEYR**: Right.

**MR CHOEU**: If the Chief Executives Officer says I would like this something to be done what I do is I give it to my expert and the expert sends it to me and then I send it to my boss.

**ADV HOFMEYR**: Right.

**MR CHOEU**: But this one did not follow that route.

**ADV HOFMEYR**: So did you see this at the time?

10 **MR CHOEU**: No, no, no I did not see that at the time.

**ADV HOFMEYR**: Ms Wadcher said it was fairly customary for her to prepare these sorts of briefing notes in advance of meetings.

**MR CHOEU**: Yes.

**ADV HOFMEYR**: Is that your understanding?

**MR CHOEU**: At – in advance of each and every meeting that would be done but I did not even see this in our meeting.

**ADV HOFMEYR**: Right. Let us just look at what she captured there about TNA and I would just like to highlight a few parts of it.

**MR CHOEU**: Yes.

20 **ADV HOFMEYR**: In the introductory section you will see the second sentence there says:

“TNA Media is owned by the Gupta family with Atul Gupta  
as the Executive Chairman.”

**MR CHOEU**: H'mm.

**ADV HOFMEYR**: Did you know that at the time?

**MR CHOEU:** I did know that at the time. It was all over especially remember when they started the newspaper itself.

**ADV HOFMEYR:** Yes.

**MR CHOEU:** And so it was normal information.

**ADV HOFMEYR:** Indeed. And if we go to the section on background you will see the first sentence there is the newspaper has been marred with controversy.

**MR CHOEU:** H'mm.

**ADV HOFMEYR:** Five Senior Journalists including the Editor at the  
10 time Vuyo Mvoko formerly and now currently with the SABC had resigned from the newspaper just days before it was due to be launched.

**MR CHOEU:** H'mm.

**ADV HOFMEYR:** Reasons behind the mass exit were never made public but speculation is that it has something to do with the newspaper's editorial policy.

**MR CHOEU:** H'mm.

**ADV HOFMEYR:** Given that the news – owners of the newspaper the Gupta's have close links with the Zuma family and the ANC.

20 **MR CHOEU:** H'mm.

**ADV HOFMEYR:** Again were you aware of those facts at the time?

**MR CHOEU:** I was very much aware of those facts.

**ADV HOFMEYR:** You were aware.

**MR CHOEU:** Yes.

**ADV HOFMEYR:** That they were marred in controversy and that there

had been this exodus from the Editorial staff. Thank you. If we can then go back to your affidavit at page 5.

**CHAIRPERSON:** I am sorry. So that briefing was prepared by the Media Desk within Eskom?

**MR CHOEU:** Yes within Eskom.

**CHAIRPERSON:** Oh for internal purposes?

**MR CHOEU:** For mister – for the Chief Executive Officers.

**CHAIRPERSON:** For the Chief – okay alright.

**ADV HOFMEYR:** And the Chief Executive, you, and Mr Gupta and Mr  
10 Roux had a meeting then on the 1<sup>st</sup> of August 2011, is that correct?

**MR CHOEU:** Yes that – they had requested a meeting with them.

**ADV HOFMEYR:** Now just for reference purposes Chair that is the meeting which Mr Pretorius indicated yesterday he did not attend and is that confirmed by you Mr Choeu?

**MR CHOEU:** Yes and he would not have attended.

**ADV HOFMEYR:** Right.

**MR CHOEU:** That meeting under normal circumstances.

**ADV HOFMEYR:** Tell us what happened at that meeting?

**MR CHOEU:** At that meeting the first discussions they spoke about the  
20 who they are first of course introducing their business and what have you. And that as you do know we have started a newspaper and a TV station and of course they spoke in, as I, detail here in the fact that it is a good station, good news for government. It is black owned and all these issues that I detail and the fact that they will do their level best to ensure that they support us with 49M to ensure that the South



Africans are – what do you call it? Are informed and educated on 49M and by so doing we will have been able to reduce electricity.

**ADV HOFMEYR:** Who called for the meeting?

**MR CHOEU:** I am not sure who called for the meeting at that time but normally there are only two people that most of the people will come either they will go straight to the office of the Chief Executive Officer or they will come to the – to my office. And the reason why that happens called for I think they called for the meeting. I do not think we called the meeting. And – but if you look at government contact sorry not  
10 Eskom contact there are two names there always. The Chief Executive Officer's name and my name. And those are the people if you do not know who to contact at Eskom you either go to the Chief Executive Officer or to – and I checked this morning that in fact they still have my name there. I still have to call them to remove my name as a person to be contacted.

**ADV HOFMEYR:** H'mm.

**MR CHOEU:** So that would be a normal way to contact us. Even when you go to contact the same way it is either you go to Corporate Communication or the Chief Executive Officer. And even in most  
20 instances where you go to the Chief Executive Officer the secretariat itself in the office of the – they would then just refer the letter to us to determine what should be done. Whether we should set up a meeting and organise that. So in that I do not know how that came from. However do recognise that between this meeting and the meeting with Mr Pretorius and all these type of things there had been engagement

between – with the Marketing Team.

**ADV HOFMEYR:** That is fine. I would like to just stay at the meeting if we may? I understand your evidence to be that TNA was effectively pitching their business to Eskom.

**MR CHOEU:** Yes.

**MR CHOEU:** Is that a fair summary?

**MR CHOEU:** Yes it is a fair summary.

**ADV HOFMEYR:** And what was the response from you and Mr Dames?

**MR CHOEU:** The responses was mostly for Mr Dames who was sitting  
10 in there and he was quite favourable to us supporting TNA.

**ADV HOFMEYR:** Did he make a commitment that there would be support?

**MR CHOEU:** *Ja* he made a commitment. It was there that he is making a commitment that we will support TNA.

**ADV HOFMEYR:** Yes that is certainly what ...(intervenes).

**MR CHOEU:** And as you can see he was already aware of TNA as it was – which means there was communication between him and the office of Rahiza Wadcher.

**ADV HOFMEYR:** Yes so Rahiz Wadcher had said to him prior to this  
20 meeting that TNA is mired in controversy and it has lost a whole number of its editorial staff but notwithstanding that you record that Mr Dames gave a commitment to TNA.

**MR CHOEU:** Yes.

**ADV HOFMEYR:** That they would be supported, is that correct?

**MR CHOEU:** Yes.

**ADV HOFMEYR**: Did you raise concerns about the controversy at all?

**MR CHOEU**: No I did not.

**ADV HOFMEYR**: How could he make such a commitment?

**MR CHOEU**: I do not know.

**ADV HOFMEYR**: Would there not have been processes that had to be followed before any money was spent by Eskom with TNA?

**MR CHOEU**: There would be but – I do not know what was in his mind and what have you but you know there are people who come to under normal circumstances people come in and they come with a value  
10 proposition and you like what they are doing. You not saying you will buy from them but sometimes – because that will be what do you call it? Unsolicited bid you know. That type of thing. We think we like this type of thing, we are going to follow a commercial process to do these type of things. So that is a normal process.

**ADV HOFMEYR**: Yes. This was not that though. I understand you to say he made a commitment to TNA at that meeting, is that right?

**MR CHOEU**: H'mm.

**CHAIRPERSON**: Well ...(intervenes).

**ADV HOFMEYR**: Just for the record if you will say yes.

20 **CHAIRPERSON**: Sorry.

**ADV HOFMEYR**: Sorry Chair.

**CHAIRPERSON**: There is making a commitment in principle to something which means in principle I think I can work with you but we will still look at the practicalities and the details of how we can work together.

**MR CHOEU**: No that was not the ...(intervenes).

**CHAIRPERSON**: And ...(intervenes).

**MR CHOEU**: Oh sorry.

**CHAIRPERSON**: And it may be that where I say to you at the initial meeting in principle I think we can work together. Later on when we sit down to iron out the terms and conditions of our partnership we might not agree on the terms and conditions.

**MR CHOEU**: That is true.

**CHAIRPERSON**: And then we end up not working together.

10 **MR CHOEU**: Yes.

**CHAIRPERSON**: Notwithstanding the fact that initially I may have said we can work together.

**MR CHOEU**: You are quite ...(intervenes).

**CHAIRPERSON**: That is subject to that. So – and then there is the – the commitment where it is not subject to anything. It is a commitment that I will buy your very latest Rolls Royce and that is it.

**MR CHOEU**: No, no, no, Chair I – it is very difficult for me to distinguish between the two but it was quite clear.

**CHAIRPERSON**: Yes.

20 **MR CHOEU**: At the ...(indistinct) of the meeting.

**CHAIRPERSON**: Yes.

**MR CHOEU**: That there was a ...(intervenes).

**CHAIRPERSON**: A commitment to work together.

**MR CHOEU**: To work together.

**CHAIRPERSON**: To support them.

**MR CHOEU:** To support them.

**CHAIRPERSON:** Ja your understanding of it.

**MR CHOEU:** *Ja.* They used to ...(intervenes).

**CHAIRPERSON:** It was not subject to ...(intervenes).

**MR CHOEU:** Whether it was in principle or not but there was the commitment that we will support them.

**CHAIRPERSON:** Your understanding was that it was not subject to anything? Is that correct?

**MR CHOEU:** That was my understanding.

10 **CHAIRPERSON:** Okay.

**MR CHOEU:** Chair.

**CHAIRPERSON:** Okay.

**ADV HOFMEYR:** Mr Choeu in fairness to you if we can go over the page to page 6.

**MR CHOEU:** H'mm.

**ADV HOFMEYR:** You actually describe it in terms that I think are consistent with the manner in which you have resolved the question from the Chairperson. Because you say at 5.1

20 "I interpreted Mr Brian Dames' indication to TNA that Eskom would support TNA to mean that CAD, that is your division."

**MR CHOEU:** Yes.

**ADV HOFMEYR:**

"Must contract with TNA"

**MR CHOEU:** Yes.

**ADV HOFMEYR:** Is that an accurate recordal of what you understood that meeting to be concluded on?

**MR CHOEU:** That is what was my understanding in that meeting.

**ADV HOFMEYR:** Thank you.

**MR CHOEU:** Minus the word in principle and all that.

**CHAIRPERSON:** Yes *ja*.

**ADV HOFMEYR:** No. You understood that a contract must be concluded, correct?

**MR CHOEU:** Concluded *ja*.

10 **CHAIRPERSON:** Yes. Okay.

**ADV HOFMEYR:** Just if we go back over the page to page 5, I am interested in something you say at paragraph 4.8. You say at 4.8:

“I subsequently left the meeting room soon after the discussion on the media related issues was completed.

The meeting continued with Brian Dames and the TNA delegation.”

Do you see that?

**MR CHOEU:** Yes.

20 **ADV HOFMEYR:** I understand TNA to be a media organisation, is that correct?

**MR CHOEU:** Yes.

**ADV HOFMEYR:** And you were there for the media discussions, correct?

**MR CHOEU:** Yes, yes.

**ADV HOFMEYR:** Why would the meeting continue beyond media issues

without you present?

**MR CHOEU**: No I do not know. However in most instances it is unwritten protocol that when you come into a meeting with your boss and there is a delegation that came to see him you make your presentation, talk about the issue that concern you and normally you will be the first one to leave the meeting. You do not even have to be told leave the meeting. You see say thank you very much ...(indistinct) and then you go. You do not – it is a way of not trying to end up being kicked out you know and that type of thing. You just make it is just  
10 sensible.

**CHAIRPERSON**: Easier.

**ADV HOFMEYR**: I understand.

**MR CHOEU**: *Ja* like Mr Pretorius explained yesterday because had said I kicked him out. But yesterday he explained clearly that it was because the end of the discussions that needed him came in and then you move out.

**ADV HOFMEYR**: Do you have any knowledge of what was discussed after you left?

**MR CHOEU**: Not at all.

20 **ADV HOFMEYR**: Thank you. If we can then go over to page 6?

**CHAIRPERSON**: Maybe ...(intervenes).

**ADV HOFMEYR**: Apologies Chair.

**CHAIRPERSON**: Just to go back to the question I raised earlier on. You have made it quite clear that your understanding was that Mr Dames' attitude was that your division.

**MR CHOEU:** Yes.

**CHAIRPERSON:** Must conclude a contract with TNA. The meeting had not dealt with any details about price or had it dealt with that?

**MR CHOEU:** Nothing like that.

**CHAIRPERSON:** Yes. Now was – what was your understanding about what the contract would contain?

**MR CHOEU:** That is why then Chair I went to the team responsible for marketing sponsorship and what have you who work with all these things.

10 **CHAIRPERSON:** Yes.

**MR CHOEU:** And I was not involved thereafter about the negotiations and what have you.

**CHAIRPERSON:** Yes. Yes.

**MR CHOEU:** Mr Tshepe Moremi and Pretorius were the ones who now engaged after I had communicated the outcome of our meeting.

**CHAIRPERSON:** Yes. You see it is important to get your understanding clear on that because if you get cross-examined you could be cross-examined on that.

**MR CHOEU:** *Ja*, no, no.

20 **CHAIRPERSON:** The terms of the contract to be concluded had not been discussed – had not been discussed?

**MR CHOEU:** Not at all.

**CHAIRPERSON:** As yet.

**MR CHOEU:** Not at all.

**CHAIRPERSON:** That was going to be done by other people?



**MR CHOEU**: That was going to be done by other people.

**CHAIRPERSON**: But your understanding was ...(intervenes).

**MR CHOEU**: That is normally what would happen.

**CHAIRPERSON**: That would happen *ja*.

**MR CHOEU**: *Ja* that is normally what would happen.

**CHAIRPERSON**: Yes, yes.

**MR CHOEU**: Let us say suppose I am the ...(intervenes).

**CHAIRPERSON**: Yes.

**MR CHOEU**: The one who wants water to be bought.

10 **CHAIRPERSON**: Yes, yes.

**MR CHOEU**: What I will do is I will call my team.

**CHAIRPERSON**: Yes.

**MR CHOEU**: Tell them the what I desire.

**CHAIRPERSON**: *Ja*.

**MR CHOEU**: What my desires are.

**CHAIRPERSON**: *Ja*.

**MR CHOEU**: If I want yellow water.

**CHAIRPERSON**: Yes.

**MR CHOEU**: With this type of thing.

20 **CHAIRPERSON**: Yes.

**MR CHOEU**: We need it. I saw it.

**CHAIRPERSON**: Yes.

**MR CHOEU**: I attended a conference somewhere else.

**CHAIRPERSON**: Yes, yes.

**MR CHOEU**: And I think it is something that will assist us.

**CHAIRPERSON**: Yes.

**MR CHOEU**: And that type of thing, can you please go and start the process to do this.

**CHAIRPERSON**: Yes.

**MR CHOEU**: Then they will – are the ones that are going to look at the rules and regulations.

**CHAIRPERSON**: Yes.

**MR CHOEU**: And then follow the process.

**CHAIRPERSON**: And follow the process.

10 **MR CHOEU**: So for Mr Dames did not dictate.

**CHAIRPERSON**: Yes. What the terms should be.

**MR CHOEU**: How that should be done.

**CHAIRPERSON**: Yes. Okay. And would it be correct to take it that the other people would negotiate they would have an understanding of what the usual terms and conditions are?

**MR CHOEU**: Yes.

**CHAIRPERSON**: For that kind of thing.

**MR CHOEU**: For – yes.

20 **CHAIRPERSON**: And unless there was something out of the ordinary they would try and sort it out in accordance with the norms in regard to that.

**MR CHOEU**: Yes.

**CHAIRPERSON**: That kind of thing.

**MR CHOEU**: Yes.

**CHAIRPERSON**: Oh okay.

**ADV HOFMEYR:** Thank you Chair. Mr Choeu we know what happened at that meeting between Mr Pretorius, Mr Moremi and the TNA representatives because Mr Pretorius testified about it yesterday.

**MR CHOEU:** H'mm.

**ADV HOFMEYR:** Do you recall that? You were present for his evidence were you?

**MR CHOEU:** Yes, yes but I was not at the meeting.

**ADV HOFMEYR:** No, no I was saying did you recall him testifying about that. I do apologise.

10 **MR CHOEU:** *Ja, ja* I am sorry I recall yes.

**ADV HOFMEYR:** As I recall his evidence he said he attended the meeting.

**MR CHOEU:** H'mm.

**ADV HOFMEYR:** He listened to the proposal.

**MR CHOEU:** H'mm.

**ADV HOFMEYR:** He said he would be willing to engage further on some advertising spend with the TNA but he could not support their sponsorship proposal. Do you recall him giving that evidence?

**MR CHOEU:** I recall him giving that evidence yes.

20 **ADV HOFMEYR:** Right. He also said he relayed that to you after the meeting that he came and discussed his concerns with you and he said to you he could not support the sponsorship but there could be some advertising spend and as I understood his evidence he said your response was there must be a contract with TNA for advertising and for sponsorships. Is that correct?

**ADV HOFMEYR:** It is incorrect because if he had those unhappiness about the process itself things that – he would have discussed them with mister – his boss who was in the meeting Mr Moremi and Mr Moremi would have come to me or they would have come – both of them. I am surprised that he went around Mr Moremi to come and talk to me about that. That did not happen.

**ADV HOFMEYR:** He never conveyed to you?

**MR CHOEU:** Never conveyed.

**ADV HOFMEYR:** His concerns that the sponsorship proposal could not  
10 be supported?

**MR CHOEU:** No.

**ADV HOFMEYR:** And you did not say to him he must contract with TNA?

**MR CHOEU:** No. No, no remember initially before the meeting I came to them and said that you guys this is the TNA we had the meeting and the desire is that we should work – support them you know. And then they received the proposal and when they received the proposal they decided to follow the process that they followed. At no point did they come and express their disquiet or if they did it would have come via  
20 Mr Moremi and Mr Moremi too did not come to me and say look we met with these guys, picked up ...(indistinct) report to me it is very unhappy about this therefore I do not think we should go on or I – in spite of the fact that Mr Pretorius has said it I am the Head of the division I Moremi let us not continue that way. That did not happen. I do not recall that happening.

**ADV HOFMEYR:** You do not recall it or it did not happen?

**MR CHOEU:** It did not happen. And if it had happened it would have come via Moremi.

**ADV HOFMEYR:** So in Mr Pretorius' affidavit you can take it up in the file next to you. It is Bundle MM1.

**MR CHOEU:** MM1A?

**ADV HOFMEYR:** A yes indeed. And if you turn to page 11.

**CHAIRPERSON:** He has not given me – he was not listening.

**ADV HOFMEYR:** It is MM1A. Thank you so much. Page 11.

10 **MR CHOEU:** Yes.

**ADV HOFMEYR:** Just to situate you in Mr Pretorius' affidavit on the previous page he has listed those concerns that he testified about yesterday and then paragraph 36 there he says:

“When I raised these concerns with Mr Choeu he told me that the instruction to conclude the contract with TNA had come directly from Mr Brian Dames then Eskom CEO and the Minister of Public Enterprises Mr Malusi Gigaba.”

Did you say that to him?

20 **MR CHOEU:** No.

**ADV HOFMEYR:** Never.

**MR CHOEU:** No. Nor did I must mention Mr Brian Dames saying that to me at that meeting or even after the meeting.

**ADV HOFMEYR:** So Mr Pretorius has made this up?

**MR CHOEU:** Ja. Most definitely.

**ADV HOFMEYR**: Thank you. Let us return then if we may to page 6 of your affidavit. That is in Exhibit MM2.

**MR CHOEU**: Yes.

**ADV HOFMEYR**: Mr Choeu ...(intervenes).

**CHAIRPERSON**: I am sorry.

**ADV HOFMEYR**: Apologies Chair.

**CHAIRPERSON**: What page?

**ADV HOFMEYR**: Page 6.

**CHAIRPERSON**: Oh we are still at page 6?

10 **ADV HOFMEYR**: We are in affidavit still yes.

**CHAIRPERSON**: Okay.

**ADV HOFMEYR**: If Mr Pretorius had raised those concerns with you would you have been worried about contracting for the sponsorship of the breakfasts?

**MR CHOEU**: I would have, most definitely.

**ADV HOFMEYR**: H'mm.

20 **MR CHOEU**: And I would have said to him because remember now I would have had to go back to Mr Dames so I would have said okay just put them down on paper so that we communicate properly with the Chief Executive Officer because it is very difficult to get meetings with him. So normally you would tell the Chief Executive Officer what is it that you would like to discuss with him.

**ADV HOFMEYR**: Right. If we then move over to page 7 ...(intervenes).

**CHAIRPERSON**: I am sorry. Just to make sure we are on the same page. So the meeting at which Mr Pretorius said that he had been told

that it was – this was an instruction took place before the – did it take place before the meeting of 10 June 2011 involving you, Mr Dames and Razia Wadcher?

**MR CHOEU**: No that could have been after. I am not sure of the dates now.

**CHAIRPERSON**: Yes.

**ADV HOFMEYR**: Mr Choeu if I may just be of assistance. As I understand it the meeting at which Mr Dames made the commitment to support TNA was on the 1<sup>st</sup> of August 2011, is that correct?

10 **CHAIRPERSON**: Oh – oh *ja*.

**ADV HOFMEYR**: That is the correction that we made. I think that is at page 4 Chair.

**CHAIRPERSON**: Oh you know what I did I think what you said was that wherever on that page that is page 5.

**ADV HOFMEYR**: Oh.

**CHAIRPERSON**: Of his statement there is reference to June 2011 which should say 1 August.

**ADV HOFMEYR**: Apologies.

**CHAIRPERSON**: But the one meeting says 10 June 2011.

20 **ADV HOFMEYR**: Yes.

**CHAIRPERSON**: Whereas there are a number of places I think maybe two or three where it simply says June.

**ADV HOFMEYR**: Indeed.

**CHAIRPERSON**: Without 10.

**ADV HOFMEYR**: It does indeed.

**CHAIRPERSON:** So I thought it was not intended to affect 4.1.

**ADV HOFMEYR:** Apologies Chair actually – to be absolutely clear and Mr Choeu you will correct me if I am wrong. 4.1 the reference to the 10<sup>th</sup> of June is an accurate reference because it is referring to the briefing document.

**CHAIRPERSON:** Oh – yes.

**ADV HOFMEYR:** That Ms Wadcher prepared for Mr Dames and if we go to it.

**CHAIRPERSON:** Okay.

10 **ADV HOFMEYR:** It is dated the 10<sup>th</sup> of June.

**CHAIRPERSON:** Okay.

**ADV HOFMEYR:** So the changes are where just the word June 2011 appear thereafter.

**CHAIRPERSON:** Oh in 4.2?

**ADV HOFMEYR:** Which is in 4.2 and 4.3.

**CHAIRPERSON:** Oh which is where I changed.

**ADV HOFMEYR:** Indeed.

**CHAIRPERSON:** I think I got mixed up now.

**ADV HOFMEYR:** No that is indeed correct.

20 **CHAIRPERSON:** Yes. Okay.

**ADV HOFMEYR:** And so the meeting was the 1<sup>st</sup> of August. The commitment from Mr Dames occurred at that meeting, correct Mr Choeu?

**MR CHOEU:** Yes.

**ADV HOFMEYR:** You then communicated that to Mr Pretorius, is that



correct?

**MR CHOEU:** Yes.

**ADV HOFMEYR:** There will be a contract with TNA, correct?

**MR CHOEU:** Yes.

**CHAIRPERSON:** H'mm.

**ADV HOFMEYR:** Then Mr Pretorius has the meeting with TNA at which he says he indicated they had – that Eskom could support advertising but not sponsorships and then he says he relayed that to you and shared his concerns but I understand your version to be he made no  
10 such indication to you.

**MR CHOEU:** He made no such indication to me number 1. Nor in fact him and Mr Kepe they were the ones who were supposed to determine the engagement strategy as to whether to separate notwithstanding where I say we it is because I am boss of the division I am taking responsibility.

**CHAIRPERSON:** H'mm.

**MR CHOEU:** But at that meeting they are the ones who had to say to TNA look this is how we going to engage with you.

**CHAIRPERSON:** H'mm.

20 **MR CHOEU:** We will put this thing as a combo or we will separate this. This was the engagement.

**CHAIRPERSON:** H'mm. But now that meeting where they were supposed to say that.

**MR CHOEU:** Yes.

**CHAIRPERSON:** They are meeting with TNA. Have you got a date for

that meeting?

**ADV HOFMEYR**: We do not. We know it happened – I think it was in September. It was certainly after ...(intervenes).

**CHAIRPERSON**: Oh, but it was after?

**ADV HOFMEYR**: It was indeed.

**CHAIRPERSON**: Yes.

**ADV HOFMEYR**: After 1<sup>st</sup> of August meeting.

**CHAIRPERSON**: Yes.

**ADV HOFMEYR**: I understood Mr Pretorius' evidence to confirm he was  
10 not at the August meeting.

**CHAIRPERSON**: That meeting. Yes.

**ADV HOFMEYR**: He was at the subsequent meeting. I think it is dated around September ...(intervenes).

**CHAIRPERSON**: Yes.

**ADV HOFMEYR**: But we can confirm that.

**CHAIRPERSON**: Okay. Now I think what caused me to want to have clarification is that I understood you to say that Mr Pretorius – that you did not tell Mr Pretorius that there was an instruction to conclude the contract and I was wondering about that in circumstances or if that was  
20 alleged by Mr Pretorius to have happened after the meeting of the 1<sup>st</sup> of August where Mr Dames on your evidence ...(intervenes).

**MR CHOEU**: Yes.

**CHAIRPERSON**: Had made the commitment and you had understood ...(intervenes).

**MR CHOEU**: Huh-uh.

**CHAIRPERSON:** That a contract must be concluded.

**MR CHOEU:** *Ja*.

**CHAIRPERSON:** So...(intervenes).

**MR CHOEU:** We were using the word “support”. That is normally  
...(intervenes).

**CHAIRPERSON:** You use, yes.

**MR CHOEU:** Supporting Black business. Support ...(intervenes).

**CHAIRPERSON:** But to mean the same thing?

**MR CHOEU:** It means the same thing.

10 **CHAIRPERSON:** Yes. So my - my query was between – after –  
between the meeting where Mr Dames made that commitment to TNA  
...(intervenes).

**MR CHOEU:** H’mmm.

**CHAIRPERSON:** And the meeting was it in September?

**MR CHOEU:** H’mmm.

**CHAIRPERSON:** Between – on the one side Mr Pretorius and the other  
people from Eskom and TNA. Whether you had not already told him  
what the attitude of the Group CEO was. Namely we must conclude a  
contract with TNA.

20 **MR CHOEU:** No. I told him.

**CHAIRPERSON:** You had told him?

**MR CHOEU:** *Ja* and that is why they were meeting with ...(intervenes).

**CHAIRPERSON:** Yes.

**MR CHOEU:** TNA.

**CHAIRPERSON:** Yes.

**MR CHOEU:** *Ja.*

**CHAIRPERSON:** Ms Hofmeyr you will tell me if I have missed something.

**ADV HOFMEYR:** Not at all Chair.

**CHAIRPERSON:** It is just that my – I understood you ...(intervenes).

**MR CHOEU:** Yes.

**CHAIRPERSON:** To deny – to say it is not true if he said you had told him that there is instruction to conclude the contract.

**MR CHOEU:** No, no, no. He does not say it to that Chair.

10 **CHAIRPERSON:** Sorry.

**MR CHOEU:** He does not say that I deny the fact that I told him to support.

**CHAIRPERSON:** Oh. No, no. I thought you denied the way that it was put.

**MR CHOEU:** I do not deny if he does not deny.

**CHAIRPERSON:** Okay. Ms Hofmeyr just clarify it.

**ADV HOFMEYR:** Indeed.

**CHAIRPERSON:** I am sure you understand.

**ADV HOFMEYR:** No. Certainly Chair. You communicated Mr Choeu to  
20 Mr Pretorius that there must be contract concluded with TNA. Correct?

**MR CHOEU:** To support TNA.

**ADV HOFMEYR:** And that was an instruction from Mr Dames. Correct?

**MR CHOEU:** Yes.

**ADV HOFMEYR:** What I understand you to deny is that Mr Pretorius came and expressed concerns to you after his meeting with the TNA

about the sponsorship.

**MR CHOEU**: Yes.

**ADV HOFMEYR**: Correct? You also deny what he says you said to him when he communicated those concerns ...(intervenes).

**MR CHOEU**: Yes. No.

**ADV HOFMEYR**: And that is that it was an instruction from Mr Dames who had received an instruction from Minister Gigaba. Is that correct? You deny that.

**MR CHOEU**: I deny that.

10 **CHAIRPERSON**: So just to make sure ...(intervenes).

**MR CHOEU**: And that is not the way in which ...(intervenes).

**CHAIRPERSON**: Hang on.

**MR CHOEU**: Let me ...(intervenes).

**CHAIRPERSON**: Ja. Hang on. With regard to the last denial you have made...(intervenes).

**MR CHOEU**: H'mm.

**CHAIRPERSON**: To that question. You are – what you are denying is that there was an occasion ...(intervenes).

**MR CHOEU**: H'mm.

20 **CHAIRPERSON**: When Mr Pretorius expressed concerns to you ...(intervenes).

**MR CHOEU**: Yes.

**CHAIRPERSON**: And during that occasion ...(intervenes).

**MR CHOEU**: H'mm.

**CHAIRPERSON**: You said to him ...(intervenes).

**MR CHOEU**: Yes.

**CHAIRPERSON**: There was an instruction from Mr Dames.

**MR CHOEU**: *Ja*. No.

**CHAIRPERSON**: That is what you are denying. It is the occasion ...*(intervenes)*.

**ADV HOFMEYR**: H'mm.

**CHAIRPERSON**: But you do not deny that on another occasion you had given him – you had told him that there was an instruction ...*(intervenes)*.

10 **MR CHOEU**: Yes.

**CHAIRPERSON**: From Dames. Okay.

**ADV HOFMEYR**: Indeed Chair. I am indebted ...*(intervenes)*.

**CHAIRPERSON**: So it is the occasion that you are saying did not - did not happen.

**MR CHOEU**: *Ja*. No.

**CHAIRPERSON**: *Ja*.

**MR CHOEU**: And it did not have to happen because he already knew.

**CHAIRPERSON**: Yes. Okay. Okay.

**MR CHOEU**: You see. Number one, he already knew.

20 **CHAIRPERSON**: Yes.

**MR CHOEU**: That is number one.

**CHAIRPERSON**: H'mm.

**MR CHOEU**: Number two, if he felt so strongly.

**CHAIRPERSON**: H'mm.

**MR CHOEU**: He would have discussed it first ...*(intervenes)*.

**CHAIRPERSON**: H'mm.

**MR CHOEU**: With the person who was in the meeting ...(intervenes).

**CHAIRPERSON**: Huh-uh.

**MR CHOEU**: And that person was his boss.

**CHAIRPERSON**: H'mm.

**MR CHOEU**: That is Mr Kheepe.

**CHAIRPERSON**: H'mm.

**MR CHOEU**: And Kheepe would have been the one to come to me or  
...(intervenes).

10 **CHAIRPERSON**: Not him?

**MR CHOEU**: Not – no I would not say – not him.

**CHAIRPERSON**: Not him. *Ja*, but – yes.

**MR CHOEU**: But maybe he is unhappy with Kheepe's response.

**CHAIRPERSON**: Yes.

**MR CHOEU**: He would have come to me.

**CHAIRPERSON**: Yes.

**MR CHOEU**: You understand ...(intervenes).

**CHAIRPERSON**: Yes.

**MR CHOEU**: And jump the boss and normally when you want to jump  
20 the boss you put it on paper to say ...(intervenes).

**CHAIRPERSON**: Yes.

**MR CHOEU**: To your boss – you copy your boss.

**CHAIRPERSON**: Yes.

**MR CHOEU**: You say as I told you.

**CHAIRPERSON**: H'mm.

**MR CHOEU:** I am now escalating ...(intervenes).

**CHAIRPERSON:** H'mm.

**MR CHOEU:** This matter to your boss.

**CHAIRPERSON:** *Ja, ja.*

**MR CHOEU:** There would not be a need to get out of the meeting and walk to me.

**CHAIRPERSON:** H'mm.

**MR CHOEU:** And say you know what I was with my boss in a meeting.

**CHAIRPERSON:** H'mm.

10 **MR CHOEU:** I am happy with this type of thing.

**CHAIRPERSON:** H'mm.

**MR CHOEU:** That would be ...(intervenes).

**CHAIRPERSON:** Unusual?

**MR CHOEU:** It is unusual you are saying my boss agrees.

**CHAIRPERSON:** H'mm.

**MR CHOEU:** Even if you are not saying that. Say ...(intervenes).

**CHAIRPERSON:** H'mm.

**MR CHOEU:** I am not arguing but my boss agrees.

**CHAIRPERSON:** H'mm.

20 **MR CHOEU:** No.

**CHAIRPERSON:** H'mm.

**MR CHOEU:** That did not happen.

**CHAIRPERSON:** Okay.

**ADV HOFMEYR:** Mr Choeu Mr Pretorius' evidence was also that on that occasion the one where you indicate he did not express concerns



to you.

**MR CHOEU:** H'mm.

**ADV HOFMEYR:** You indicated to him that the contract needed to be concluded quickly. Do you recall saying that to him?

**MR CHOEU:** I did not meet Mr Pretorius regarding the matter after the meeting that they discussed. They continue to the contract.

**ADV HOFMEYR:** Did you have any interactions with him after that?

**MR CHOEU:** I would have had instruction. For example let us – every month we have MANCO Meetings and at those MANCO Meetings every  
10 division talks to their issues. It is quite clear and if you can go back to Eskom is that he would have had an opportunity even there to say I need it to be stated in this meeting that we met with these people and I have my concerns.

**ADV HOFMEYR:** Did you have further involvement in that first contract at all once you had left it to Mr Pretorius?

**MR CHOEU:** No, no, no. Once the contract is – was concluded I did not have further ...(intervenes).

**ADV HOFMEYR:** I am interested in the lead up to the contract. Were you further involved between the meetings in August 2011 and the  
20 conclusion of the contract on the 13<sup>th</sup> of April 2012?

**MR CHOEU:** No. I do not think so. I do not recall having any other meeting because there was no need now to have a meeting.

**ADV HOFMEYR:** And were you following up on the conclusion of the contract?

**MR CHOEU:** No, because there was no dispute. Follow up is also

when people are not delivering as the instruction came. So there was not any.

**ADV HOFMEYR**: At page 7 of your affidavit.

**MR CHOEU**: Okay. Sorry.

**ADV HOFMEYR**: At paragraph 6.5 you say something there which is in fairness to you consistent with the evidence you have just given. You say at 6.5:

“I did not manage or oversee this contract.”

It is a reference to the first contract.

10 “The contract was managed by Pieter Pretorius.”

**MR CHOEU**: H’mmm.

**ADV HOFMEYR**: Do you see that? Is that as you recall it?

**MR CHOEU**: All contracts in the strategic marketing were won by strategic marketing. Newspapers will be done by the Ra’eesha Wadja. Corporate sponsorship would be done by – all of them have different heads that do so.

**ADV HOFMEYR**: So you deny that you ...(intervenes).

**MR CHOEU**: Ja.

**ADV HOFMEYR**: Indicated to him it must be quickly concluded?

20 **MR CHOEU**: I deny that.

**ADV HOFMEYR**: Could you please ...(intervenes)?

**MR CHOEU**: I would only participate in a contract once concluded if there is a dispute.

**ADV HOFMEYR**: H’mmm. If you can take up Mr Pretorius’ bundle which is Exhibit MM1 again ...(intervenes).

**MR CHOEU:** H'mm.

**ADV HOFMEYR:** And turn to page 133 of that bundle.

**MR CHOEU:** 133?

**ADV HOFMEYR:** Yes.

**MR CHOEU:** Yes.

**ADV HOFMEYR:** If you go to the bottom of the page there is an e-mail from yourself to Mr Pretorius and ...(intervenes).

**MR CHOEU:** What page?

**ADV HOFMEYR:** Apologies. 133.

10 **MR CHOEU:** Oh 133. Sorry. I heard it – yes.

**ADV HOFMEYR:** Do you have it Mr Choeu?

**MR CHOEU:** H'mm.

**ADV HOFMEYR:** There is an e-mail there from yourself to Mr Pretorius and Mr Roux who is the TNA representative. Do you see that?

**MR CHOEU:** Yes.

**ADV HOFMEYR:** Can you read for us what you say to Mr Pretorius in that e-mail?

**MR CHOEU:** The last one?

**ADV HOFMEYR:** Yes.

20 **MR CHOEU:** "Please meet with Jacques so you could close the deal on the TNA 49M breakfast as part of the Minister's National Campaign."

**ADV HOFMEYR:** So you were following up on the contract?

**MR CHOEU:** It is what not so a follow up as in a sense that you guys are not finishing the contract. It was a follow up in that we were

concerned and this in the concern that come that they are going to give us a breakfast that was similar to the ones that we have already seen. Well as we wanted a breakfast that has the element – strong element of 49M.

So it is not the follow up as in the – where you were tabling follow up. Please do this. Please do this. It was because – sorry. There is something I want to – I do not – forget where the e-mail is.

**ADV HOFMEYR**: Apologies. It is at page 133.

**CHAIRPERSON**: Page 133.

10 **MR CHOEU**: No, no. There is this one ...(intervenes).

**ADV HOFMEYR**: Oh.

**MR CHOEU**: But there is another one where I actually write to Roux to say – o kay. Let us go to page 132. As they are engaging now that the – all the decisions have been reached about what method they would follow and all this type of thing. My worry was that we are not going to get a type of breakfast that – because we had seen others on TV already and I write to him there on page 132.

20 “Dear Jacques, the 49M that we are proposing here are the breakfasts that would be aligned to the Minister’s 49 National Campaign. The standing design will be similar but different from a normal TNA breakfast. DPE working with Eskom and TNA will conceptualise and design the breakfast using the TNA breakfast as a framework template.”

**ADV HOFMEYR**: Can we go back just to page 133 because you said it

was not an e-mail following up on the contract ...(intervenes).

**MR CHOEU:** H'mm.

**ADV HOFMEYR:** But your language is that Mr Pretorius must close the deal. Is that not following up on the contract?

**MR CHOEU:** I am following up on ...(intervenes).

**ADV HOFMEYR:** H'mm.

**MR CHOEU:** The contract, but it is not in the way you guys are not doing your work. Please finish your work. It is that I have – in the interim we have received another information that the Minister has  
10 decided on the 49M he is going to go on a National Campaign. That is – we do not have the dates but remember the 49M was launched by the Deputy President in March. So the Minister was there.

So it was a National Campaign by the Minister that I am going to go to the townships. So our desire here with the Chief Executive – often we discuss with Chief Executives that when we do this 49M let us try to make sure that it is in alignment with what you do and I go to the guys that are talking to – what do you call them?

**CHAIRPERSON:** To TNA?

**MR CHOEU:** To TNA.

20 **CHAIRPERSON:** Huh-uh.

**MR CHOEU:** To say please let us ensure – close this because we want the National Campaign to continue and also to – but not to follow up in a classical way. You guys are not finishing the contract. No. There was no – let me repeat it again. There was never ever an indication of any disquiet unhappiness from either Mr Pretorius or Kheepe Moremi

about closing this contract.

**ADV HOFMEYR:** And at any point did they express disquiet to you about the association with TNA?

**MR CHOEU:** Yes. Not there. When we started getting the Parliamentary questions.

**ADV HOFMEYR:** So it came from Parliament, but not from Mr Pretorius?

**MR CHOEU:** Not from Mr Pretorius no – he was responsible for responding to Parliamentary questions and deal with this thing –  
10 matters.

**ADV HOFMEYR:** We will pick that up in due course.

**CHAIRPERSON:** I am sorry. I think the question – I understood Ms Hofmeyr's question to be whether Mr Pretorius and Mr Moremi, but Mr Pretorius ever expressed his concerns at any time and I think either you or she said well when the Parliamentary questions came, but you said something that suggested to me that you might not be meaning ...(intervenes).

**MR CHOEU:** H'mm.

**CHAIRPERSON:** What I thought you meant. I thought you meant that  
20 Mr Pretorius – the only time Mr Pretorius raised concerns was when Parliamentary questions started coming in, but you might not have meant that you might have meant that Parliament started expressing concern or something like that.

**MR CHOEU:** Yes.

**CHAIRPERSON:** That is what – the latter?

**MR CHOEU:** Yes and everybody at Eskom – almost generally everybody was saying but this ...(intervenes).

**CHAIRPERSON:** There is a problem here.

**MR CHOEU:** There is a problem, because it was not only on Parliament.

**CHAIRPERSON:** Yes.

**MR CHOEU:** It was also the journalists were asking a lot of questions.

**CHAIRPERSON:** Yes.

**MR CHOEU:** Ja and the team ...(intervenes).

10 **CHAIRPERSON:** H'mm.

**MR CHOEU:** That had to answer all those questions.

**CHAIRPERSON:** Yes.

**MR CHOEU:** Were working with all of us and it was a lot of disquiet. I was also ...(intervenes).

**CHAIRPERSON:** Yes.

**MR CHOEU:** Unhappy with it.

**CHAIRPERSON:** Yes, but that – does that mean that at that time then when everybody was raising questions Mr Pretorius also raised questions or not really?

20 **MR CHOEU:** Not formally with me. No.

**CHAIRPERSON:** Not with you?

**MR CHOEU:** No.

**CHAIRPERSON:** Okay.

**MR CHOEU:** No, not from me.

**CHAIRPERSON:** I wanted to understand that clearly. Okay.

**MR CHOEU:** But I do not think that he was happy and very few people were happy with the ...(intervenes).

**CHAIRPERSON:** With the whole thing?

**MR CHOEU:** With the whole thing.

**CHAIRPERSON:** Okay.

**MR CHOEU:** And I will state later ...(intervenes).

**CHAIRPERSON:** Yes. What your attitude was.

**MR CHOEU:** *Ja*.

**CHAIRPERSON:** Okay.

10 **ADV HOFMEYR:** Mr Choeu to conclude in relation to the first contract.

**MR CHOEU:** H'mm.

**ADV HOFMEYR:** I just understand your evidence to be that you accept that at the time it was concluded.

**MR CHOEU:** H'mm.

**ADV HOFMEYR:** You will recall that is the 13<sup>th</sup> of April 2012 there was no budget for it. Is that correct?

**MR CHOEU:** There was no budget for it.

**ADV HOFMEYR:** And at the time it was concluded at least the sponsorship part of it should have gone to the Sponsorship Committee  
20 for approval. Correct?

**MR CHOEU:** Correct. However I must state the team that negotiated with TNA they should – may have made the subjection at that time.

**ADV HOFMEYR:** Were you not responsible for the decisions of the team?

**MR CHOEU:** No. I was not responsible. Not at – all campaigns, I



never said in those meetings and decide how the campaign should go and we did a lot of campaigns. Energy Loss Campaign. Going to Soweto and all – that I did not decide.

**CHAIRPERSON**: What did you say the team should have made at the time – a submission?

**MR CHOEU**: H'mm.

**CHAIRPERSON**: You said something along the lines that the team ...(intervenes).

**MR CHOEU**: I said it yesterday.

10 **CHAIRPERSON**: *Ja*.

**MR CHOEU**: In hindsight ...(intervenes).

**CHAIRPERSON**: *Ja*.

**MR CHOEU**: The team should have ...(indistinct) out ...(intervenes).

**CHAIRPERSON**: Oh yes. Okay.

**MR CHOEU**: The sponsorship.

**CHAIRPERSON**: Okay.

**MR CHOEU**: They should not have bundled everything like that.

**ADV HOFMEYR**: Do you recall Mr Pretorius' reason for bundling them?

20 **MR CHOEU**: According to him upfront in his – he says that everything that had to do with media houses we walked through Mediashop and the reason they bundled it was the fact that – if you look at what he says. First of all he justified and said that when you work with media Eskom decided that everything we do with media we should take it to ...(intervenes).

**CHAIRPERSON**: Mediashop?

**MR CHOEU:** Mediashop ...(intervenes).

**CHAIRPERSON:** H'mm.

**MR CHOEU:** Because of the speed that happens between – let me give a good example. The Springboks is playing now and they go into the final. I am sure – I am not sure – I am sure it is a – he was always speaking African language. Normally salespeople in the newspapers would go to companies and say there is a possibility we are going to win. Do you not want to congratulate and then there will be an advert and we may have a breakfast where one of the people will speak?

10                    There is a bundle. Can you go for it? You call – you take them and say okay. Go to Mediashop. Make a decision. Work out and then we will do so. Sometimes they have an insert into the newspaper. We are celebrating this magnificent person. This – the hero – the birthday – this – on this particular day. We would want to have an advertorial where you write the whole advertorial and on the celebration day we will have that.

                    The other one that we normally do is there are competitions between newspapers and companies on your brand. Which company has won and then in similar way they will come to say if you win you  
20 know are – in fact when they do that it is you are on a shortlist and it has happened many times with Eskom and we have won and also come number two, number three.

                    Do we not have – want an advert. We take them there. So that – the decision was then many years ago at Eskom before I joined Eskom that the relationship with media because of the speed and he

says it – Mr Pretorius in his – it will be cumbersome to go to the normal tendering contracting way and I think that is why they at that time took the decision also working with TNA to do it that way and he does state in his affidavit.

**ADV HOFMEYR:** Mr Choeu Mr Pretorius' evidence was that – I – and so far as the sponsorship aspect of the first contract was concerned. It presented a problem, because if the sponsorship part. There should have been some opportunity to any players in the market ...(intervenes).

10 **MR CHOEU:** H'mm.

**ADV HOFMEYR:** To offer their competitive sponsorship proposals ...(intervenes).

**MR CHOEU:** Huh-uh.

**ADV HOFMEYR:** To Eskom. The only exception to that open and competitive process ...(intervenes).

**MR CHOEU:** H'mm.

**ADV HOFMEYR:** That existed in Eskom at the time as I understand his evidence was related to media buying. In other words advertising spend through agencies like the Mediashop.

20 **MR CHOEU:** H'mm.

**ADV HOFMEYR:** Is that correct?

**MR CHOEU:** Is that correct what you said, but I do not understand that.

**ADV HOFMEYR:** Why not?

**MR CHOEU:** That – why did they not follow that road because he was

part of that meeting and raise it very strongly with his boss ... (intervenes).

**ADV HOFMEYR:** H'mm.

**MR CHOEU:** Who was part of that meeting, but truly and most importantly sponsorships do not work the way he is saying. I have never seen a tender for a sponsorship. A sponsorship is a company coming to you and saying we have a dinner tonight. Celebrating this type of thing. We are selling tables.

Can you please sponsor and you go through your  
10 Sponsorship Committee? Never a tender. I have never seen a tender which says that we want somebody to sponsor this. Please come. It is always churches, schools, organisation and other companies themselves. We are going to have this event.

**ADV HOFMEYR:** H'mm.

**MR CHOEU:** We are looking for sponsors. They will sell tables at that sponsor. We will give your boss an opportunity to speak at that event and we would like to ask 5 000 one – R50 000. Sometimes they have what they refer to as sponsorship categories. Platinum, gold and all those type of thing. That happens all the time. Never as a tender.

20 **ADV HOFMEYR:** So when you say ... (intervenes).

**MR CHOEU:** So I do not understand that part.

**ADV HOFMEYR:** When Mr Pretorius said in his view there should have been an RFI that went out to the market which said something along the lines of Eskom has this 49M Campaign. We are looking at various platforms in which to get our message across and we invite you to

respond with whatever platforms you have on offer.

**MR CHOEU:** H'mm.

**ADV HOFMEYR:** Would you agree with him that that would have been the correct approach?

**MR CHOEU:** That was not in the – by the way his team was responsible to the 49M strategy and he must get – it was never in the strategy. Number two, I do not think we will call that a sponsorship. I do not know how it will be like that in his mind. He is thinking. So I cannot think for him, but I deeply understand that idea really.

10 **ADV HOFMEYR:** You do or you do not?

**CHAIRPERSON:** I am sorry Ms Hofmeyr.

**ADV HOFMEYR:** Apologies.

**CHAIRPERSON:** Can you just repeat the question to which he is answering because ...(intervenes).

**ADV HOFMEYR:** Indeed.

**CHAIRPERSON:** I think I have missed something.

**ADV HOFMEYR:** Mr Pretorius' evidence as I understood it yesterday was that there should have been an RFI that went out to the market – a request for information. Insofar as there was going to be a campaign  
20 related to 49M which would require various media houses to respond with what platforms they had available to assist Eskom in pursuing that campaign and my question to you was do you agree that would have been the correct process to follow for spend on the 49M Campaign.

**MR CHOEU:** Oh. I am not sure. First of all I do not understand the concept itself. That is number one. The way articulates the concept. I

do not understand it.

**CHAIRPERSON**: Maybe let me put it this way. The way ...(intervenes).

**MR CHOEU**: Yes.

**CHAIRPERSON**: The way I understand the question and maybe it goes fundamentally to the evidence you have just given that when it comes to sponsorships ...(intervenes).

**MR CHOEU**: H'mm.

**CHAIRPERSON**: You have never had a sponsorship being subjected to a tender process.

10 **MR CHOEU**: Yes.

**CHAIRPERSON**: Now if the position was that for the 49M Campaign ...(intervenes).

**MR CHOEU**: H'mm.

**CHAIRPERSON**: Eskom needed media ...(intervenes).

**MR CHOEU**: H'mm.

**CHAIRPERSON**: To be part of that ...(intervenes).

**MR CHOEU**: Yes Chair.

**CHAIRPERSON**: In order for its campaign to be successful.

**MR CHOEU**: H'mm.

20 **CHAIRPERSON**: What is your understanding of what Eskom would have decided to do in order to make sure that element of media necessary for the success of the 49M Campaign was secured?

**MR CHOEU**: Eskom at that time the Pieter Pretorius Team ...(intervenes).

**CHAIRPERSON**: H'mm.

**MR CHOEU:** Would have evaluated that request and because they are also using Mediashop.

**CHAIRPERSON:** H'mm.

**MR CHOEU:** Together evaluate what is the best way to deal with – got the expertise to deal with that matter ...(intervenes).

**CHAIRPERSON:** H'mm.

**MR CHOEU:** And win that matter and you are asking a very important question sir on this ...(intervenes).

**CHAIRPERSON:** H'mm.

10 **MR CHOEU:** Particular issue ...(intervenes).

**CHAIRPERSON:** H'mm.

**MR CHOEU:** Because if what Mr Pretorius says in his statement ...(intervenes).

**CHAIRPERSON:** H'mm.

**MR CHOEU:** Makes sense ...(intervenes).

**CHAIRPERSON:** H'mm.

**MR CHOEU:** He and Mr Kheepe and Mr McArdle the other part of the team. They meet with TNA.

**CHAIRPERSON:** H'mm.

20 **MR CHOEU:** He is unhappy. First of all he does not discuss it either with McArdle or with Kheepe. He does not say it here.

**CHAIRPERSON:** H'mm.

**MR CHOEU:** The junior McArdle that reports to him.

**CHAIRPERSON:** H'mm.

**MR CHOEU:** Nor the senior ...(indistinct). Nor does he make that

proposal ...(intervenes).

**CHAIRPERSON**: H'mm.

**MR CHOEU**: To say maybe here is a great idea. One, it is a bad idea.

Let us forget about it.

**CHAIRPERSON**: H'mm.

**MR CHOEU**: I am telling you or two, this is a great idea.

**CHAIRPERSON**: H'mm.

**MR CHOEU**: Let us do it in the way he is proposing.

**CHAIRPERSON**: H'mm.

10 **MR CHOEU**: He is saying nothing at all.

**CHAIRPERSON**: H'mm.

**MR CHOEU**: At that time.

**CHAIRPERSON**: H'mm.

**MR CHOEU**: There is no way where there is evidence of him suggesting and an alternative where – and he is an expert ...(intervenes).

**CHAIRPERSON**: H'mm.

**MR CHOEU**: And I accept that.

**CHAIRPERSON**: H'mm.

20 **MR CHOEU**: And Kheepe is also an expert and Mr McArdle.

**CHAIRPERSON**: H'mm, h'mm.

**MR CHOEU**: Suggesting an alternative way ...(intervenes).

**CHAIRPERSON**: H'mm.

**MR CHOEU**: And presenting it to me. First to Kheepe ...(intervenes).

**CHAIRPERSON**: H'mm.



**MR CHOEU**: And then to the MANCO ...(intervenes).

**CHAIRPERSON**: H'mm.

**MR CHOEU**: (Indistinct) says ...(intervenes).

**CHAIRPERSON**: H'mm.

**MR CHOEU**: Here is a great idea.

**CHAIRPERSON**: H'mm.

**MR CHOEU**: It happens all the time. That is why you hear sir people complaining and saying say I gave the company my idea.

**CHAIRPERSON**: H'mm.

10 **MR CHOEU**: Instead of giving me the tender.

**CHAIRPERSON**: H'mm.

**MR CHOEU**: They advertised the tender ...(intervenes).

**CHAIRPERSON**: H'mm.

**MR CHOEU**: The tender or they give ...(intervenes).

**CHAIRPERSON**: H'mm.

**MR CHOEU**: To somewhere else.

**CHAIRPERSON**: H'mm.

**MR CHOEU**: Yes. It does happen that way.

20 **CHAIRPERSON**: H'mm, but my question is do you have an understanding of how Eskom would deal with that situation namely whether the media would need to get involved in the 49M National Campaign only after through some tender process or is that something that you do not know, but they would be the ones who would know?

**MR CHOEU**: I do not know. They are the ones who would know ...(intervenes).

**CHAIRPERSON**: Yes.

**MR CHOEU**: But media – maybe we start talking to media.

**CHAIRPERSON**: H'mm.

**ADV HOFMEYR**:

**MR CHOEU**: Our – they would always ...(intervenes).

**CHAIRPERSON**: Go to the Mediashop.

**ADV HOFMEYR**:

**MR CHOEU**: Engage with Mediashop as to how should we deal with this one ...(intervenes).

10 **CHAIRPERSON**: Yes.

**MR CHOEU**: And they have. Yesterday you asked for example.

**CHAIRPERSON**: H'mm.

**MR CHOEU**: How much they spent with different ...(intervenes).

**CHAIRPERSON**: H'mm.

**MR CHOEU**: Media. I did ...(intervenes).

**CHAIRPERSON**: Yes.

**MR CHOEU**: Because that is the reason why we stopped because of that ...(intervenes).

**CHAIRPERSON**: Yes.

20 **MR CHOEU**: And ...(intervenes).

**CHAIRPERSON**: But – so in other words, just to go back to my question sitting there you can't say whether the involvement of the media in the 49M campaign should have been or should not have been subjected to a tender process, that you can't say yourself?

**MR CHOEU**: No I can't say that myself.

**CHAIRPERSON:** Yes, yes.

**MR CHOEU:** But I am saying in hindsight the breakfasts should have been dealt with differently but not through a tender.

**CHAIRPERSON:** Yes, yes.

**MR CHOEU:** You see and it may still have gone to TNA because they're asking a sponsorship, you don't tender – there is no situation where you say by the way ladies and gentlemen, organisation A is asking for a sponsorship from me. How I put a tender, is there anyone else who wants to sponsor in this matter.

10 **CHAIRPERSON:** Yes.

**MR CHOEU:** I have never – it might have happened I don't know I have never come across that situation.

**CHAIRPERSON:** Yes, no I understand what you are saying that's fine ... (intervenes).

**MR CHOEU:** But I do I must emphasise in hindsight they should have taken the sponsorship through the Sponsorship Committee.

**CHAIRPERSON:** Yes now I do want us to deal more with the issue of the sponsorship but I think I'll allow Ms Hofmeyr to pursue her questions and at the right time we can deal with that.

20 **ADV HOFMEYR:** Thank you Chair. It may be that we mover there immediately because I would like to get an understanding of who then determined that there was value in the business breakfasts from a sponsorship perspective when the first contract was concluded.

**MR CHOEU:** The people who are sitting with the TNA, Kheepe, Peter Pretorius, Mega titles sitting together.

**ADV HOFMEYR:** They decided that this would be a valuable way to pursue the 49M campaign, is that correct?

**MR CHOEU:** That is why they ultimately asked Mediashop to conclude the contract.

**ADV HOFMEYR:** Well Mr Pretorius' evidence is different to that Mr Choeu.

**MR CHOEU:** Yes.

**ADV HOFMEYR:** You'll recall Mr Pretorius says usually there's a business problem within an organisation right and that problem is load shedding for example and you devise a campaign and then you engage with your media agent to look at all the possible platforms and all the possible media and to come up with a solution. Do you agree that's the usual way in which...(intervenes)?

**MR CHOEU:** One of the usual ways.

**ADV HOFMEYR:** Is it usual for Eskom to contact the Mediashop and say, I want to spend R6 million on breakfasts with the TNA?

**MR CHOEU:** No.

**ADV HOFMEYR:** That is what happened in this case, correct?

**MR CHOEU:** Yes that's what happened in this case.

20 **ADV HOFMEYR:** And that's unusual?

**MR CHOEU:** That's unusual.

**ADV HOFMEYR:** So he then made the assessment that the business breakfasts were a good place to spend R6 million?

**MR CHOEU:** This is the team engaging with the proposition, I mean it was something for the first time that was ever presented to them and I

think that in their thinking that was a good platform.

**ADV HOFMEYR:** And you don't think they might have been influenced by the fact that you indicated to Mr Pretorius, after the meeting in August 2011 that Mr Dames had said there must be a contract with TNA for advertising and sponsorships?

**MR CHOEU:** We get a lot of instructions from our principals and they hope that in the delivery we are going to follow the rules and regulations and if something does not gel, then of course they will detail it out and follow the process – there wasn't anything like that.

10 **ADV HOFMEYR:** Chair I'm planning to move on to the second contract unless there's an aspect of sponsorship you'd like to follow up on.

**CHAIRPERSON:** Yes.

**MR CHOEU:** That's page 7?

**ADV HOFMEYR:** Yes.

**CHAIRPERSON:** Well I just want us to talk about the sponsorship, the point you have made. You have made the point that as far as sponsorships are concerned you have – tender procedures are not applicable or complied with as far as you understand the position and you know of no situation where, at Eskom, somebody approached  
20 Eskom for a sponsorship and that was opened up to a tender process.

**MR CHOEU:** No.

**CHAIRPERSON:** Now I think I can understand what you are saying but I think maybe it raises the question of the nature of what TNA wanted from Eskom and whether it was a sponsorship or it was something else. Let's talk about a sponsorship, what is your understanding of what a

sponsorship is in the context of sponsorships that are – that Eskom would normally be approached for, you talked about churches and so on and so on?

**MR CHOEU:** First of all let me say not churches they don't do religious and political organisations.

**CHAIRPERSON:** Oh but did you say churches earlier?

**MR CHOEU:** I did say churches but I was just making an example of ... (intervenes).

**CHAIRPERSON:** Yes okay alright. So what would be the features of a  
10 sponsorship as you understood it when you were at Eskom?

**MR CHOEU:** Chair we detail them quite nationally in here ... (intervenes).

**CHAIRPERSON:** If you know the page we can go there, that would be helpful but if you are able to remember you can just tell me but if you want to refer ... (intervenes).

**MR CHOEU:** In fact Mr Pretorius – if you look at page number 3.

**CHAIRPERSON:** Of your affidavit or your one?

**MR CHOEU:** Of my affidavit.

**CHAIRPERSON:** Page 3?

20 **MR CHOEU:** It starts from page 2; Eskom's sponsorship policy objectives are to ensure that a sponsorship programme are aligned with Eskom's strategic business objectives, contribute to increase Eskom brand equity as a company and/or that of its other brands because we do have subsidiaries. Yield a tangible return on investment, the next page, are clearly distinguished from stakeholder relation initiatives and

the one stakeholder initiative it's important, I would like to explain it.

**CHAIRPERSON:** Yes.

**MR CHOEU:** Donation, grants and Corporate Social Investment programmes.

**CHAIRPERSON:** Yes.

**MR CHOEU:** Can I quickly explain stakeholder initiatives?

**CHAIRPERSON:** Yes.

**MR CHOEU:** It's one which is very complicated in actually coming up.

There is a belief in the business and all over, that sometime a  
10 sponsorship request may come from what you refer to as a strategic  
stakeholder, in this instance – let me give you an example like NERSA  
which is ...(indistinct) for Eskom and all of this type of thing. They  
have a conference, you know, so they are the strategic partner. You  
are not going to get your return on investment from them, similar to if  
you sponsor a – and it happens all the time, of one of your customers  
because customers also – and I don't want to mention names of  
customers here. Customers but big customers would come to you and  
say, this is – we are finishing 10 years and Eskom did that when we did  
90 years can you please – we are going to do two things, we are going  
20 to advertise in this magazine, we're doing a nice table, what you call it,  
table magazine, something like that I don't know what it's called –  
magazine and then we need advert. Then they would then, advertise,  
this time they are not going through Mediashop they are coming directly  
to you as a partner and discuss with you and in most instances you  
have taken a decision already, that we are – this is our strategic

partner is our stakeholder we are so that – in that instance you don't go back to – you still go to Mediashop for implementation and discussion and of course they will also advise you which is the best page, which is, that type of thing but the decision to support that partner, you would have already taken that decision because of the strategic relationship between yourself because later they're going to - you are going to be requesting a similar thing from them, it's normal in the industry. Like I say NERSA is not going to – in fact NERSA more often than not will not be able to sponsor an Eskom conference but Eskom would sponsor  
 10 their conference, normal in fact, that brought other regulators from the region and then they ask us to sponsor and then we do sponsor. Even Government itself would have an event where they will call on all the organisation can you put a sign for us to be able to achieve these objectives.

**CHAIRPERSON:** Would it be normal for a sponsor for Eskom to be involved in a sponsorship which, effectively will help the person being sponsored to make money?

**MR CHOEU:** It's not – it's very unusual but it has happened where the sponsor companies that are – you know if you make a big thing as a  
 20 company it is going to impact your brand equity and all the things you do but it is not normal to do that.

**CHAIRPERSON:** Yes, you see what I'm thinking of and I haven't worked in the Corporate world, what I'm thinking of is, if I establish a football club in a certain locality, maybe it's not far from an Eskom office and we are struggling, we need a jersey for our football club,



maybe we could approach Eskom and say, could you sponsor, you know, but us a jersey for the team. It seems to me that if Eskom says, yes they will and they would say it for whatever reasons, you know, that expense would come under one or other category in their files. If they give us then they've sponsored us, that's the kind of sponsor – but they're not going to get anything directly from that. I don't know whether they would go to the extent of saying, we want the jersey to have the name Eskom somewhere or not, maybe they would but even if they wanted that for me that's still a sponsorship, you know but I'm not

10 sure whether – if I want to sell certain things as part of my business, I could go to Eskom and say, you know I have money only to buy 10 of these articles which I want to sell, please give me money so I can buy 20 so when I – so when you have given me that money then I'll buy 20 then I'll make more profit, that kind of thing.

**MR CHOEU:** Yes.

**CHAIRPERSON:** So it seems to me that generally speaking, the moment I'm wanting to make profit that doesn't seem to me to present itself as a sponsorship, I may be wrong, I don't know, do you want to comment on that?

20 **MR CHOEU:** No Chair it depends on the partner you are working with and that is why at the end of the second sponsor contract, my division – I decided we are not going to continue. For a year we stopped totally, working with this because first of all I must say the – it was just negative, it was the media itself, the reputation we thought we were going to get, you see. Parliamentary questions that had to be drafted

by – the other team works on Parliamentary questions that we pose directly to the Chief Executive Officer, all those made us to make a decision for the whole year – you'll see that it was a whole year between us concluding the second contract and the third contract. It was – what I don't want to say, Chair is that you may not sponsor – because we did sponsor even Mail & Guardian you see. So we can't say – we look at those, the team looks at what are those things what are we going to get.

**CHAIRPERSON:** Yes.

10 **MR CHOEU:** But also as I said strategic stakeholder, a stakeholder like NERSA may not meet all this but because of a special relationship between yourself and that particular organisation you would then say to them – and then there's a conversation between – and it's always in the debate a donation and a sponsorship, this ...(intervenes).

**CHAIRPERSON:** Yes, *ja*, but the Mail & Guardian one was a once-off one?

**MR CHOEU:** That is the thing.

**CHAIRPERSON:** This was to be an ongoing thing for quite some time.

**MR CHOEU:** It answers your question Chair where you talk about the  
20 purpose the purpose then became normal like 49M and all those types of things.

**CHAIRPERSON:** Yes.

**MR CHOEU:** But it was ...(intervenes).

**CHAIRPERSON:** It's like you're helping them to run their business, to make money and so on.

**MR CHOEU:** Yes that I admit that is what it became later to be.

**CHAIRPERSON:** Okay and once it is like that you wouldn't regard it as a sponsorship or you would regard it as a sponsorship still?

**MR CHOEU:** No it's just a commercial relationship...(intervenes).

**CHAIRPERSON:** It's a commercial relationship yes, okay.

**ADV HOFMEYR:** Mr Choeu, just before we – if I can just get that last part of your evidence, did I understand you to say it's a commercial relationship which has no value to you?

**MR CHOEU:** I say it may be really because I was just explaining,  
10 when it becomes like that, it may just be a commercial relationship with no value.

**ADV HOFMEYR:** And as I understood your evidence you started to form that view and that is why you didn't contract for that whole year between April 2013 and 2014, is that correct?

**MR CHOEU:** Yes.

**ADV HOFMEYR:** Thank you. Chair I see it is the time for the tea adjournment, if it is convenient.

**CHAIRPERSON:** Yes we'll take the tea adjournment, it's nearly twenty past we'll resume at 12:35, we adjourn.

20 **INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** Let us proceed.

**ADV HOFMEYR:** Thank you Chair. Chair just before we move to the second contract if we may there is one aspect on the first contract that I do not want to neglect to traverse with Mr Choeu. Mr Choeu you will

need to go to Mr Pretorius' bundle for that purpose. That is Exhibit MM1 and it is actually an e-mail that you drew our attention to earlier. It is at page ...(intervenes).

**CHAIRPERSON:** There is A and B?

**ADV HOFMEYR:** Oh A apologies. MM1A and it is page 132. And Mr Choeu if I can just remind you.

**CHAIRPERSON:** Switch on your ...(intervenes).

**ADV HOFMEYR:** To turn on your microphone.

**CHAIRPERSON:** Microphone.

10 **ADV HOFMEYR:** Thank you.

**MR CHOEU:** H'mm.

**ADV HOFMEYR:** Mr Choeu you will recall this is in the middle of the page an e-mail that you ...(intervenes).

**CHAIRPERSON:** *Ja*.

**ADV HOFMEYR:** Drew our attention to. It was in response to my questions about the e-mail on the next page in which you were telling Mr Pretorius to close the deal with TNA.

**MR CHOEU:** H'mm.

20 **ADV HOFMEYR:** If you pick it up in the middle of the page there is an e-mail there from you on Wednesday the 21<sup>st</sup> of March at 8:14 in the morning. Do you see that?

**MR CHOEU:** The middle one?

**ADV HOFMEYR:** Yes.

**MR CHOEU:** *Ja, ja* the one that I referred to earlier.

**ADV HOFMEYR:** Indeed.

**MR CHOEU:** Yes.

**ADV HOFMEYR:** What I am interested in is to whom that e-mail is sent. Because it is Mr Roux I understand your evidence to be he was the TNA representative, is that correct?

**MR CHOEU:** Yes.

**ADV HOFMEYR:** It was sent to Mr Pretorius whose evidence we heard yesterday and then it was sent to Mzwandile Radebe, do you see that?

**MR CHOEU:** Yes.

**ADV HOFMEYR:** Why was Mr Radebe copied on that e-mail?

10 **MR CHOEU:** Okay. At this stage the department – the Minister and department ...(intervenes).

**ADV HOFMEYR:** Mr Choeu you have just turned off your ...(intervenes).

**CHAIRPERSON:** Just keep it on. *Ja* do not switch it off.

**MR CHOEU:** This is such ...(indistinct) because when you speaking ...(intervenes).

**CHAIRPERSON:** *Ja* do not switch it off *ja*.

**MR CHOEU:** *Ja*. The reason we were informed by the office of the Chief Executive Officer that the Minister is going to start a National  
20 Campaign on 49M.

**ADV HOFMEYR:** This is the Minister of Public Enterprises?

**MR CHOEU:** Minister Gigaba.

**ADV HOFMEYR:** At the time Mr Gigaba?

**MR CHOEU:** Yes.

**ADV HOFMEYR:** Right.

**MR CHOEU:** And then Mr Pretorius was the leader of our team on supporting these National Campaigns. By the way what is most interesting these National Campaigns did not only – whilst the problem was Eskom they did not only involve Eskom other State Enterprises normally participated in support. And Mr Radebe was the team leader on the side of the department.

**ADV HOFMEYR:** For the National Campaign?

**MR CHOEU:** So in – for the National Campaign. So in order for the National Campaign to start we need an end – from there on Mr  
10 Pretorius would attend meetings at DPE. Sometimes they came to us just to talk about – as I said they met almost every Saturday. I hope my phone is off. They would meet every Saturday. Not they will meet every Saturday the Minister would have campaigns all over the country on Saturdays. And these were for that particular purpose.

**ADV HOFMEYR:** I understand those campaigns but this was an e-mail between yourself and Mr Roux in the context of the commercial arrangement that Eskom was entering into with TNA, is that correct?

**MR CHOEU:** Yes.

**ADV HOFMEYR:** Why then would it make sense to have a  
20 representative from the Ministry copied on a commercial relationship between Eskom and TNA?

**MR CHOEU:** No it was for a purpose of informing him that for purposes of starting the campaign and Eskom supporting that we are on course. They had to know.

**ADV HOFMEYR:** On course in what respect?

**MR CHOEU:** That we assumed – no, no let me explain it much more easier. You are working on a contract which amongst other thing it will be in support of an event which is done by a department. And Pieter Pretorius and the department they are meeting on a regular – for instance how far are you with this and this and this is a way of showing him that we are almost close to closing this particular contract.

**ADV HOFMEYR:** So you wanted to inform him that you were close to concluding the contract with TNA?

**MR CHOEU:** Yes. Not for any other reason really.

10 **ADV HOFMEYR:** Does that not give some credence to Mr Pretorius' evidence that there was an indication that the speed with which the contract had to be concluded was related to Mr Gigaba's appearance on the 12<sup>th</sup> of April at the business breakfast that was scheduled?

**MR CHOEU:** Well it does but that discussion they had already had when they were talking about the contracts themselves.

**ADV HOFMEYR:** So there was a link in timing between the conclusion of the TNA contract.

**MR CHOEU:** That was – yes there was. There was a link.

**ADV HOFMEYR:** So Mr Pretorius' evidence on that was true?

20 **MR CHOEU:** I do not know whether it was true that in their own meeting there was that discussion because he was also making assumption but nobody – I did not tell him that. I do not know where he got that information.

**ADV HOFMEYR:** But Mr Choeu this is your e-mail, correct?

**MR CHOEU:** *Ja* this is my e-mail but it has nothing to do. I am talking

about the National Campaign starting. And the National Campaign Pieter Pretorius is talking about a breakfast which was coming. And they may have in their discussion with TNA. TNA says to them we would like to – because TNA Chair was also talking to – remember when we talk about this breakfast it is an institution which is sponsoring – it is a Minister. So they are talking to the Ministers themselves and I guess that they might have informed Pieter Pretorius that we need to go quickly because we are – the breakfast with the Minister of Public Enterprises is on this particular date. But I cannot  
10 go so certain this was more to do with the whole campaign itself.

**ADV HOFMEYR:** And you were seeking to indicate to the Minister's representative that things were on track with TNA?

**MR CHOEU:** Thank you very much.

**ADV HOFMEYR:** Thank you. Chair if I may then move to the second contract? And we will pick that up at page 7.

**CHAIRPERSON:** One – just one second Ms Hofmeyr. That last sentence of that e-mail Mr Choeu.

**MR CHOEU:** Yes.

**CHAIRPERSON:** Why would the Department of Public Works ...

20 **MR CHOEU:** Public Enterprise.

**CHAIRPERSON:** Public Enterprises I am sorry. Why would it be involved in conceptualising and designing the breakfast?

**MR CHOEU:** Why would it?

**CHAIRPERSON:** That last sentence says:

“DPE working with Eskom and TNA will conceptualise



and design the breakfast using TNA breakfast as a framework/template.”

**MR CHOEU:** *Ja* because the Minister – their Minister was involved.

**CHAIRPERSON:** Was this – is the position not that as far as the breakfast shows were concerned there would be breakfast shows which have been designed and conceptualised in a certain way.

**MR CHOEU:** Yes.

**CHAIRPERSON:** And each Minister who gets invited to these would simply fit into what is already in place except that he or she would talk  
10 obviously about his portfolio?

**MR CHOEU:** Yes.

**CHAIRPERSON:** And not somebody else's. But otherwise the conceptualisation and the designing would be done at the beginning and once they start they are the same for everybody up to a certain point. Like at a ...(indistinct) time I think Eskom had agreed to do four I think and then another four later or another six later. In other words would the position be that if each Minister who was going – who was being invited would they – would their department be involved in conceptualising and designing the particular breakfast in which they  
20 would be involved?

**MR CHOEU:** First of all Chair here we talking about the Department of Public Enterprises which is our if I may use the word Mother Department.

**CHAIRPERSON:** Yes, yes, yes.

**MR CHOEU:** You see. Now they have come to a decision.

**CHAIRPERSON:** H'mm.

**MR CHOEU:** That Eskom is not communicating with its stakeholders intensively. Especially and it is important because Mr Pretorius was talking about these, especially the LSM1, 2, 3, 4.

**CHAIRPERSON:** *Ja.*

**MR CHOEU:** And what have you. And the Minister would like to use this 49M event to go to the communities which he did you see and that part of conceptualisation in fact it was different. It was different from the normal ones. Let me tell you what – if maybe Mr Pretorius should  
10 have been given the opportunity to explain because he was the one doing it. It was not the normal one. They would go – the week before they would go and meet with – and Mr Pretorius will be – meet with a Mayor in a particular area because it would be unusual for a Mayor – the Minister to arrive in an area. A DPE would be part of that particular delegation. In fact it was much more bigger they would then – I understand when you do an event in a stadium you have got to involve health and all the related matters. So all these together would come in and support the whole thing. And the Ministers leader in this department was Mr Radebe.

20 **CHAIRPERSON:** Yes.

**MR CHOEU:** So TNA and Eskom would contact him on a regular basis.

**CHAIRPERSON:** H'mm.

**MR CHOEU:** And we went out a number – I do not have a list of the Saturdays but they were not less than 5 that we went to. Witbank.

**CHAIRPERSON:** *Ja.*

**MR CHOEU**: Polokwane, the Minister and it would be a Saturday most of these type of things. And after in fact after talking at the stadium we South African Broadcasting Corporation they would go into houses specially go into house and the TV will show the Minister talking to the – what you call it? To the owner of the house and they would then take off the globes that are inappropriate and put in the LED the proper globe and that evidence is there. So this is what we were referring to. It was not like the normal so it was a whole day event that involved everybody.

10 **CHAIRPERSON**: Oh so this was in so far as this breakfast related to the 49M.

**MR CHOEU**: The whole campaign.

**CHAIRPERSON**: Campaign.

**MR CHOEU**: With 49M and what have you.

**CHAIRPERSON**: Yes. And ...(intervenes).

**MR CHOEU**: For example the Minister would in the morning start with 49M where there will be the businesspeople talking and doing – but ...(indistinct) on the 49M and then thereafter we would go to a stadium.

**CHAIRPERSON**: H'mm.

20 **MR CHOEU**: That the people who were not at the breakfast because the breakfast we had to pay to sit at the table and all. Then the people would be in the stadium. There will music and they are involved. Even artists to come in and then they would do that and then after that he would then go into the township itself.

**CHAIRPERSON**: H'mm.

**MR CHOEU:** And they will have during the week identified they working with our team identify the appropriate houses where they can go to, to go and change the bulbs.

**CHAIRPERSON:** H'mm.

**MR CHOEU:** And this is what they did Chair.

**CHAIRPERSON:** Okay no that is fine. But just to clarify is the position that all the breakfasts shows that Eskom sponsored.

**MR CHOEU:** Yes.

**CHAIRPERSON:** Were linked to the 49M campaign or only some?

10 **MR CHOEU:** All of them.

**CHAIRPERSON:** All of them?

**MR CHOEU:** All of them.

**CHAIRPERSON:** Okay. Thank you.

**ADV HOFMEYR:** Thank you Chair. I understood your evidence about the campaign to indicate that the SABC would come with to the houses.

**MR CHOEU:** Yes.

**ADV HOFMEYR:** Mr Choeu and broadcast the Minister changing light bulbs.

**MR CHOEU:** Yes, yes.

20 **ADV HOFMEYR:** Did Eskom pay the SABC for that?

**MR CHOEU:** Not for that. *Ja* you will see in that – I got it from you guys that we paid mostly South African Broadcasting Corporation and it was always a dispute between us and them but their plea was similar to us. We do not have money. We would pay mostly them for the evening warning.

**CHAIRPERSON:** Oh. The one that I think was ...(intervenes).

**MR CHOEU:** Would show the ...(indistinct) and the severity.

**CHAIRPERSON:** Ja.

**MR CHOEU:** Of – I mean for example.

**CHAIRPERSON:** During the load shedding part?

**MR CHOEU:** The load shedding part. I mean in 2012/2013 we paid them about 299 for which is about 3 million – R3 million just for that and we had as Mr Pretorius explained yesterday a lot of discussion to say this is a public announcement and they came back and said, guys  
10 you crying at your own funeral. We are not getting money from government so we would not be able to sustain. And we had to do it because there was – because we did see some reduction in the utilisation of electricity during peak hours.

**CHAIRPERSON:** Yes thank you.

**ADV HOFMEYR:** Thank you Mr Choeu.

**MR CHOEU:** And by the way it is not only South African Broadcasting Corporation I must mention so that I do not only pick them up. We also did e.tv we paid them and all small little CNBC we did pay them this money and we have a list of all the people that paid more than  
20 ...(intervenes).

**CHAIRPERSON:** Okay.

**MR CHOEU:** 100.

**CHAIRPERSON:** H'mm.

**ADV HOFMEYR:** Thank you Mr Choeu. Just to move to the second contract it is going to sound odd but I would like to just start with the

first contract so that we can look at its text and we know what period it covered because that is going to be the lead into the second contract.

**MR CHOEU**: H'mm.

**ADV HOFMEYR**: You will find the first contract in your Exhibit MM2 and you will pick it up at page 21.

**MR CHOEU**: In my exhibits?

**ADV HOFMEYR**: Yes.

**MR CHOEU**: Yes. Under?

**ADV HOFMEYR**: Page 21 it is under tab 3.

10 **MR CHOEU**: Okay tab – it is useful when you give me the tabs.

**ADV HOFMEYR**: I will do that in future.

**MR CHOEU**: Page?

**ADV HOFMEYR**: 21.

**MR CHOEU**: 21

**ADV HOFMEYR**: Can you confirm that this is the first contract that was entered into with TNA?

**MR CHOEU**: Difficult to confirm yes but it looks like it is the one that was ...(intervenes).

20 **ADV HOFMEYR**: If you go to page 24 it may assist you because it was signed on the 13<sup>th</sup> of April 2012.

**MR CHOEU**: H'mm.

**ADV HOFMEYR**: And that according to your evidence is the date on which the first contract was concluded.

**MR CHOEU**: Huh-uh.

**ADV HOFMEYR**: Do you confirm it?

**MR CHOEU:** Yes I confirm yes.

**ADV HOFMEYR:** Thank you. I would like to just look at one or two features of it. If you turn to page 22.

**MR CHOEU:** Page 22.

**ADV HOFMEYR:** There is an introductory paragraph called Overview.

**MR CHOEU:** H'mm.

**ADV HOFMEYR:** And there it records this document confirms the commitment for the provision of advertising space in the New Age newspaper and sponsorship of TNA Media PTY Limited business  
10 briefing breakfasts.

**MR CHOEU:** Huh-uh.

**ADV HOFMEYR:** Between the TNA Pty Limited and the Mediashop. Do you see that?

**MR CHOEU:** Yes.

**ADV HOFMEYR:** So this was an advertising space contract and a sponsorship contract. Is that correct?

**MR CHOEU:** Yes.

**ADV HOFMEYR:** If you go down to point 2 on that page there is a heading Event Sponsorship Commitment, do you see that?

20 **MR CHOEU:** Yes.

**ADV HOFMEYR:** And what is listed there is a number of bullets which I understand to be all the things that Eskom is going to get out of this contract. Is that as you understand it?

**MR CHOEU:** Yes.

**ADV HOFMEYR:** Now your evidence previously correct me if I am

wrong was that you made no assessment as to the value to be extracted from this commitment, is that right?

**MR CHOEU**: No we did not.

**ADV HOFMEYR**: Okay. Was that customary for Eskom to enter into a contract where it had not assessed the value to it?

**MR CHOEU**: Well when you are working with a new partner and they are new in the market and you made a decision to work with them the only thing you can see and as Mr Pretorius stated is after a certain period that you may have determined 3 months, 6 months or a year.

10 **ADV HOFMEYR**: So you do not assess value up front? You give them time to show value. Is that your evidence?

**MR CHOEU**: We give them time to show value.

**ADV HOFMEYR**: And as I ...

**CHAIRPERSON**: But I am sorry. Can that be correct?

**MR CHOEU**: Yes. Oh sorry.

**CHAIRPERSON**: Or maybe – because you – before you enter into any contract with anybody you would want to see what value you will derive from the arrangement.

**MR CHOEU**: H'mm.

20 **CHAIRPERSON**: It may be that because they are still small – maybe they have just started you would lower your standards and expectations and targets.

**MR CHOEU**: H'mm.

**CHAIRPERSON**: But certainly you must see at least potential for value.



**MR CHOEU**: Yes.

**CHAIRPERSON**: Otherwise entering into it seems meaningless?

**MR CHOEU**: Yes.

**CHAIRPERSON**: Is it not?

**MR CHOEU**: *Ja* that is what actually I am saying.

**CHAIRPERSON**: Yes. So there might not be concrete value but you must see ...(intervenes).

**MR CHOEU**: Potential.

**CHAIRPERSON**: Reasonable potential.

10 **MR CHOEU**: Yes.

**CHAIRPERSON**: And therefore you are prepared to give it a chance and at a certain stage or at certain intervals you would review the situation and see whether your expectations or your assessment of the potential is being shown to have been correct.

**MR CHOEU**: Yes.

**CHAIRPERSON**: Yes okay.

**MR CHOEU**: *Ja* and then one thing that is important which was in Mr Pretorius' I do not remember it was sent to me by the team.

**CHAIRPERSON**: Yes.

20 **MR CHOEU**: That shows all the media houses that we worked with.

**CHAIRPERSON**: Yes.

**MR CHOEU**: Some of them are online. Some of them are much, much more smaller.

**CHAIRPERSON**: Smaller yes.

**MR CHOEU**: Some of them are niche organisations. You know they all

lead to engineering and you would know then South Africa you have about 25 000 engineers and electrical engineers will be only about 12 000. So probably you will reach – but the request was try and reach each and every South African.

**CHAIRPERSON**: H'mm.

**MR CHOEU**: So there was in this contract potential.

**CHAIRPERSON**: H'mm.

**MR CHOEU**: For in the future realising value. And even sponsorship.

**CHAIRPERSON**: H'mm.

10 **MR CHOEU**: We do that.

**CHAIRPERSON**: H'mm.

**MR CHOEU**: And it is true that even there is some partners which you have worked with in the past. If Eskom can – you can ask Eskom now to give you the list of the suppliers of different types of things. Even those that have reputation disappointing you after a certain period where they do not meet their requirements.

**CHAIRPERSON**: H'mm.

**MR CHOEU**: And it is important I must mention at this point in time Chair.

20 **CHAIRPERSON**: H'mm.

**MR CHOEU**: That I think that we over – I mean I was not part of the negotiation of the contract.

**CHAIRPERSON**: H'mm.

**MR CHOEU**: But I think we overestimated the ability of TNA to do what it proposed it is going to do to us. But having known the power of

television.

**CHAIRPERSON**: H'mm.

**MR CHOEU**: Having known the power of newspapers.

**CHAIRPERSON**: H'mm.

**MR CHOEU**: They even gave and they did that where unlike any other newspaper.

**CHAIRPERSON**: H'mm.

**MR CHOEU**: Part of the newspaper I do not know whether you would think that they are newspapers was that they covered each and every  
10 province.

**CHAIRPERSON**: H'mm.

**MR CHOEU**: On top it will be Free State and it will be all the stories about the Free State and all the stories about this – what is happening in those.

**CHAIRPERSON**: H'mm.

**MR CHOEU**: No other newspaper was doing that and that is one of the – in their proposition was extremely strong for us.

**CHAIRPERSON**: H'mm.

**MR CHOEU**: So there was a lot of potential if they followed up in doing  
20 all these things that they are doing.

**CHAIRPERSON**: H'mm.

**MR CHOEU**: I mean there is a new station now that replaced them you know. Companies sponsor on that. It is doing great I mean that that was a million times much more better than the way TNA started. But you would not say I will not sponsor them either because they are small

or either – Eskom supplies everybody and if you look at this list you would be surprised as to the number of very small niche magazines – niche onlines, Facebook, LinkedIn that we do advertise and they continue to do so just to make sure that they meet all South Africans. There was another thing Chair that I must mention which was a requirement for the team was what is called share of voice. Now the international market for share of voice is 35% and that is what the board wanted us to achieve 45%. So which means we even – and with the third contract much as we not happy about it we reach at 1.33/34  
10 point. International utilities that are best their share of voice about 28. So – but I cannot – I will be not telling the truth if I would say it was because of – but there was a contribution because the circulation people who write newspaper and they dumped it all over like we have seen newspapers, Sunday Times all of them they do dump the newspapers at the airport and that type of thing. So that is why even yesterday I was very careful when we talked about the word negligible to make sure that it would difficult for me really to say that there was not some realisable value. But we questioned it.

**CHAIRPERSON:** Okay.

20 **ADV HOFMEYR:** Thank you Mr Choeu. Just three follow up questions. In your testimony just now you spoke about TNA being replaced by another entity that was doing much better. Which entity was that?

**MR CHOEU:** I forgot its name but it is on 405.

**ADV HOFMEYR:** So it is not the entity that took over TNA it is another entity entirely?

**MR CHOEU:** No, no they did not take over TNA.

**ADV HOFMEYR:** Thank you. Your evidence a moment ago was that as you sit here now I think you accept that you may have over-estimated what TNA could deliver initially. Is that a fair summary?

**MR CHOEU:** It is a fair summary. I think my team working with this should have come up with a conclusion that Mr Choeu we know we have an instruction but we have – and Mediashop should also have detailed that in their report to my team because we expected to do that. But as I mentioned yesterday by – between 2010 and 2011 the last quarter of  
10 the year Mediashop started in 2010 by March without instruction of Eskom they had already spent more than a quarter of a million. So which means that they themselves by June already maybe with an instruction of Eskom added somewhere they had already spent three quarters of a million on this particular newspaper without instructions from Eskom. So it just indicates that they themselves I am assuming because they may say something different that they saw some value. They have never ever – I have never interacted with them until the second contract when there was a dispute and I was just called in to resolve the dispute. But I have never had even them on any paper  
20 writing to our team and say, by the way we have worked with all these newspapers our analysis are stop this newspaper. So I just see that they do work with almost every newspaper including every newspaper in the country that are unpaid for. You see the ones that are dropped in – that are for location. Like Fourways would have its own I do not know what they call them newspapers. We advertise in those

newspapers which would cover on average not more than 10 000 people. But we advertise in those newspapers. So we saw some potential but I must admit that we did not realise the potential. And my argument would be even at the end it is a bad reputation and the way they started to behave that we will still impacted their ability to achieve what they could have achieved.

**ADV HOFMEYR:** Mr Choeu you said you could give a new entrant a year or so to show their value. At what stage did you come to the realisation that the value had been overestimated? Was it before you  
10 stopped the contracts in 2013?

**MR CHOEU:** No, no, no. We did not even reach the question of value and that type of thing. Immediately the negative stories came in.

**ADV HOFMEYR:** H'mm.

**MR CHOEU:** It almost overshadowed the fact that whether this student is the best student or a worse student. That is the behaviour of the student itself (intervenes).

**ADV HOFMEYR:** And that occurred in 2012 as I have it?

**MR CHOEU:** H'mm.

**ADV HOFMEYR:** The first Parliamentary questions occurred in 2012.

20 **MR CHOEU:** In 2012.

**ADV HOFMEYR:** So from at least that point had you reached the realisation that the value had been overestimated?

**MR CHOEU:** I think towards the end of 2012.

**ADV HOFMEYR:** H'mm.

**MR CHOEU:** Early 2013 ...(intervenes).

**ADV HOFMEYR:** Yes.

**MR CHOEU:** That is when I realised that you know if you look at - we got a few questions ...(intervenes).

**ADV HOFMEYR:** H'mm.

**MR CHOEU:** At the beginning of the year and we thought that this was – and then in the next year the questions started to multiply.

**ADV HOFMEYR:** Indeed. I would like to take you to the end of 2012 though, because your evidence a moment ago was that you are not aware of any reservations that had been expressed by the Mediashop  
10 ...(intervenes).

**MR CHOEU:** Yes.

**ADV HOFMEYR:** Insofar as placing ...(intervenes).

**MR CHOEU:** *Ja*.

**ADV HOFMEYR:** Advertising spend with the TNA was concerned.

**MR CHOEU:** HM.

**ADV HOFMEYR:** I would like to take you to an e-mail that we looked at yesterday.

**CHAIRPERSON:** Maybe Ms Hofmeyr – I am sorry. Just before you move away from page 22 ...(intervenes).

20 **ADV HOFMEYR:** Indeed.

**MR CHOEU:** Page?

**CHAIRPERSON:** Mr Choeu you see the first bullet point at page 22.

**MR CHOEU:** What page?

**CHAIRPERSON:** Page 22 of the bundle that has got your statement.

**MR CHOEU:** H'mm.

**CHAIRPERSON:** Under “Advertisement Commitment”.

**MR CHOEU:** H’mmm.

**CHAIRPERSON:** First bullet point. It says:

“The Mediashop (Pty) Ltd commits to spend the sum of  
R4 million ...”

**MR CHOEU:** H’mmm.

**CHAIRPERSON:** “...excluding VAT during the period of  
1 April 2012 to 31 March 2013 with TNA Media (Pty) Ltd  
in the form of advertising to be placed with the  
newspaper as per Annexure A.”

10

**MR CHOEU:** H’mmm.

**CHAIRPERSON:** I have not gone to Annexure A, but what I want to ask  
is whether it was normal that somebody who wants business from  
Eskom ...(intervenes).

**MR CHOEU:** H’mmm.

**CHAIRPERSON:** Says let us enter into an agreement with you Eskom  
in terms of which you tell me in advance that for the following period  
you will spend so much on my business. That sounds rather awkward  
and strange to me.

20 **MR CHOEU:** Yes. It was awkward and strange ...(intervenes).

**CHAIRPERSON:** H’mmm.

**MR CHOEU:** But what would happen is if we would decide – I mean the  
team would decide how much we would spend on different categories.  
*Ja.*

**CHAIRPERSON:** On different categories of newspapers and so on?



**MR CHOEU**: Of newspapers ...(intervenes).

**CHAIRPERSON**: H'mm.

**MR CHOEU**: Or on energy loss ...(intervenes).

**CHAIRPERSON**: *Ja*.

**MR CHOEU**: Or on corporate ...(intervenes).

**CHAIRPERSON**: Yes.

**MR CHOEU**: Especially the corporate advert ...(intervenes).

**CHAIRPERSON**: Yes.

**MR CHOEU**: Where the one that you cannot predict ...(intervenes).

10 **CHAIRPERSON**: Yes.

**MR CHOEU**: That you may need this type of an advert.

**CHAIRPERSON**: Yes.

**MR CHOEU**: For example you load shed in the middle of the year  
...(intervenes).

**CHAIRPERSON**: H'mm.

**MR CHOEU**: And you want to do an advert.

**CHAIRPERSON**: H'mm.

**MR CHOEU**: Then you discuss with the company ...(intervenes).

**CHAIRPERSON**: H'mm.

20 **MR CHOEU**: That is going to do the advert and more than not the ones  
will tell you in order for us to do this advert we will charge you so much  
...(intervenes).

**CHAIRPERSON**: *Ja*.

**MR CHOEU**: But this one is unusual.

**CHAIRPERSON**: *Ja*, because it says – I mean it says here – Eskom is

saying to TNA:

“Be assured of R4 million business ...”

**MR CHOEU**: Yes, yes.

**CHAIRPERSON**: “...in advance.”

**MR CHOEU**: *Ja*. Well that – what the team (intervenes).

**CHAIRPERSON**: And you agree it is strange? It is ...(intervenes).

**MR CHOEU**: It must be strange.

**CHAIRPERSON**: Yes.

**MR CHOEU**: *Ja*.

- 10 **CHAIRPERSON**: Because one would have expected that maybe the idea would be look we will give you support and how much that support is going to be over whether it is one year or whatever.

**MR CHOEU**: H’mmm.

**CHAIRPERSON**: It is going to depend on a lot of things.

**MR CHOEU**: H’mmm.

**CHAIRPERSON**: It would depend on the need.

**MR CHOEU**: H’mmm.

**CHAIRPERSON**: For example. It would depend maybe on the economic situation as we go along.

- 20 **MR CHOEU**: H’mmm.

**CHAIRPERSON**: That kind of thing. I mean I practiced as a lawyer at some stage and after 1994 some companies that used not to give legal work to Black law firms started being amenable to giving Black law firms work, but one never talked about commit yourself. That you will spend at least R1 million on me.

**MR CHOEU**: H'mm.

**CHAIRPERSON**: On my law firm. It would be as and when there is work. We will remember you and we will give you and it will depend how you do the work. You know. There are other people that we also give work and you accept that you are competing. You know. If your turnaround is very good and the service is very good they might start giving you more work and more complex work – bigger work and so on and so on, but I do not know now but it was never on the basis that ...(intervenes).

10 **MR CHOEU**: No, no.

**CHAIRPERSON**: Look ...(intervenes).

**MR CHOEU**: Chair you are right. It was unusual. Except on the sponsorship normally you come up for it as a company as to – in order for us to give you Platinum ...(intervenes).

**CHAIRPERSON**: Yes.

**MR CHOEU**: You must pay so much.

**CHAIRPERSON**: Yes, yes.

**MR CHOEU**: That is the sponsorship is ...(intervenes).

**CHAIRPERSON**: *Ja*.

20 **MR CHOEU**: A bit different.

**CHAIRPERSON**: Well that – maybe that would be - maybe that would not be (intervenes).

**MR CHOEU**: But that was not the intention here. What you are saying ...(intervenes).

**CHAIRPERSON**: Yes.

**MR CHOEU:** Is right, yes.

**CHAIRPERSON:** Yes.

**MR CHOEU:** *Ja*.

**CHAIRPERSON:** You know if we go back to my example of a jersey for a football club.

**MR CHOEU:** *Ja*.

**CHAIRPERSON:** Obviously if they are asking for a football club – for a jersey for a football club jerseys would range between certain prices and anybody who knows who deals with jerseys for football clubs would  
10 have an idea how much you may be talking about.

**MR CHOEU:** No. There is different ...(intervenes).

**CHAIRPERSON:** H'mm.

**MR CHOEU:** You are using a good example of – a team ...(intervenes).

**CHAIRPERSON:** Yes.

**MR CHOEU:** May come to you buy us jerseys.

**CHAIRPERSON:** Yes.

**MR CHOEU:** You decide to buy them jerseys.

**CHAIRPERSON:** Yes.

**MR CHOEU:** You make a decision.

20 **CHAIRPERSON:** Yes, yes.

**MR CHOEU:** Another team ...(intervenes).

**CHAIRPERSON:** Yes. Might have a specific brand.

**MR CHOEU:** They tell you ...(intervenes).

**CHAIRPERSON:** Yes.

**MR CHOEU:** In order for you ...(intervenes).

**CHAIRPERSON**: H'mm.

**MR CHOEU**: To ...(intervenes).

**CHAIRPERSON**: To support us.

**MR CHOEU**: To put your name here.

**CHAIRPERSON**: *Ja*.

**MR CHOEU**: You will have to give us ...(intervenes).

**CHAIRPERSON**: Yes.

**MR CHOEU**: This amount.

**CHAIRPERSON**: Yes.

10 **MR CHOEU**: So it will be similar to you saying that is not this  
...(intervenes).

**CHAIRPERSON**: Yes, yes.

**MR CHOEU**: But it will be similar where they will dictate  
...(intervenes).

**CHAIRPERSON**: Yes.

**MR CHOEU**: To you as – of course after negotiations ...(intervenes).

**CHAIRPERSON**: Yes, yes, yes.

**MR CHOEU**: But normally ...(intervenes).

**CHAIRPERSON**: Yes.

20 **MR CHOEU**: They will be the one who will say we will only speak with  
any person who is going to give us more than 10 million ...(intervenes).

**CHAIRPERSON**: Yes, yes.

**MR CHOEU**: To have ...(intervenes).

**CHAIRPERSON**: Yes.

**MR CHOEU**: The name ...(intervenes).

**CHAIRPERSON:** Yes.

**MR CHOEU:** On our jersey ...(intervenes).

**CHAIRPERSON:** Yes.

**MR CHOEU:** Because of our reputation.

**CHAIRPERSON:** *Ja, ja, ja*, but this is certainly different?

**MR CHOEU:** This is certainly different.

**CHAIRPERSON:** Yes. Okay. Thank you.

**ADV HOFMEYR:** Thank you Chair. I would just like to take you  
Mr Choeu to Mr Pretorius' second bundle. That is MM1N and it is the  
10 e-mail at page 665 in that bundle.

**MR CHOEU:** (Intervenes).

**CHAIRPERSON:** Ms Hofmeyr you are not going to like me for  
...(intervenes).

**ADV HOFMEYR:** My goodness. I am so sorry.

**CHAIRPERSON:** For stopping you, but I just want to mention this for  
what it is worth. This first bullet point ...(intervenes).

**MR CHOEU:** Yes.

**CHAIRPERSON:** Where I would imagine that it is TNA who must have  
sought to make sure that they know how much ...(intervenes).

20 **MR CHOEU:** H'mm.

**CHAIRPERSON:** Eskom was going to spend.

**MR CHOEU:** H'mm.

**CHAIRPERSON:** Rightly or wrongly it makes me go back to evidence  
that was given by Mr Themba Maseko ...(intervenes).

**MR CHOEU:** H'mm.

**CHAIRPERSON:** Last year before this Commission when he said he had a meeting with Mr Ajay Gupta who said according to Mr Maseko we want GCIS to give our company the whole amount of – the whole budget of 600 million that is set aside for Government advertisements and so on. So I am just mentioning that you do not need to comment or anything. I am just mentioning that ...(intervenes).

**MR CHOEU:** *Ja.*

**CHAIRPERSON:** It kind of reminds me of that, but there - there might be ...(intervenes).

10 **MR CHOEU:** No. I ...(intervenes).

**CHAIRPERSON:** There might be no connection.

**MR CHOEU:** Allow me to comment on that.

**CHAIRPERSON:** Yes, yes.

**MR CHOEU:** You may be correct because in a lot of our interactions with TNA as we worked with them is one of the reasons that I decided to instruct the team not to continue with them to do their third contract which they really wanted. Out of the blue they advert – they showed and I do not have that copy. That is why I do not ...(intervenes).

**CHAIRPERSON:** Yes.

20 **MR CHOEU:** To say anything, but they did complain about the fact that we spending much more money on other newspaper ...(intervenes).

**CHAIRPERSON:** Yes.

**MR CHOEU:** Than on them.

**CHAIRPERSON:** Yes.

**MR CHOEU:** *Ja,* and my uninformed view was that even the

Parliamentary question that wanted that type of information ... (intervenes).

**CHAIRPERSON**: Yes.

**MR CHOEU**: And I am not – I do not have any evidence ... (intervenes).

**CHAIRPERSON**: Yes.

**MR CHOEU**: But that was my view ... (intervenes).

**CHAIRPERSON**: Yes, okay.

**MR CHOEU**: But it comes out of ... (intervenes).

**CHAIRPERSON**: H'mm.

10 **MR CHOEU**: The plan to show the world that ... (intervenes).

**CHAIRPERSON**: H'mm.

**MR CHOEU**: We are spending nothing on us ... (intervenes).

**CHAIRPERSON**: H'mm.

**MR CHOEU**: Compared to the other ... (intervenes).

**CHAIRPERSON**: To other people.

**MR CHOEU**: Newspapers.

**CHAIRPERSON**: Yes.

**MR CHOEU**: But ... (indistinct) on one of their newspapers ... (intervenes).

20 **CHAIRPERSON**: H'mm.

**MR CHOEU**: The whole document that normally resides only not even in my office.

**CHAIRPERSON**: H'mm.

**MR CHOEU**: That we have picked up victorious ... (intervenes).

**CHAIRPERSON**: H'mm.



**MR CHOEU:** But with procurement ...(intervenes).

**CHAIRPERSON:** H'mm.

**MR CHOEU:** That has all the – our intentions ...(intervenes).

**CHAIRPERSON:** Your plan – advertisement plans?

**MR CHOEU:** *Ja*. How much we want to spend on this? How much we want to spend on this.

**CHAIRPERSON:** Yes.

**MR CHOEU:** They showed on the newspapers as evidence of the fact that people should ...(intervenes).

10 **CHAIRPERSON:** Spend more on them?

**MR CHOEU:** No. Stop complaining ...(intervenes).

**CHAIRPERSON:** Oh.

**MR CHOEU:** About the breakfast and advert. The other Black newspapers definitely we are not spending as much as we ...(intervenes).

**CHAIRPERSON:** And you did not know how they got that information?

**MR CHOEU:** We did not – that information would only be available to – and of course and also what members that sits on the Board Exco Committee.

20 **CHAIRPERSON:** H'mm, h'mm.

**MR CHOEU:** On the Board Procurement Committee.

**CHAIRPERSON:** H'mm, h'mm. Okay.

**MR CHOEU:** *Ja*.

**CHAIRPERSON:** Thank you.

**MR CHOEU:** It is easy to get it because at the other end it is – but it is

something that is not available to the public ...(intervenes).

**CHAIRPERSON**: Yes. As such.

**MR CHOEU**: But because of the fact that it would go from different Committees. Ultimately it is one of those

**CHAIRPERSON**: H'mm.

**MR CHOEU**: That ends up also in the board ...(intervenes).

**CHAIRPERSON**: Yes, yes.

**MR CHOEU**: To be approved.

**CHAIRPERSON**: Okay.

10 **MR CHOEU**: It was ...(intervenes).

**CHAIRPERSON**: Yes.

**MR CHOEU**: Hence advertised in the ...(intervenes).

**CHAIRPERSON**: In their newspaper?

**MR CHOEU**: In the newspapers.

**CHAIRPERSON**: *Ja*.

**MR CHOEU**: So there is some ...(intervenes).

**CHAIRPERSON**: H'mm. Okay.

**MR CHOEU**: *Ja*.

**ADV HOFMEYR**: Thank you Chair. If we go to MM1B at page 665.

20 **MR CHOEU**: Page B or MM? You said ...(intervenes).

**ADV HOFMEYR**: MM1B. So the second volume of Mr Pretorius' evidence.

**MR CHOEU**: Oh. You say ...(intervenes).

**ADV HOFMEYR**: And it is at page 665.

**MR CHOEU**: 66 – that is P17.

**ADV HOFMEYR**: Correct.

**MR CHOEU**: No. Actually it is ...(intervenes).

**ADV HOFMEYR**: No.

**CHAIRPERSON**: Did you not say 675?

**ADV HOFMEYR**: I said 665.

**CHAIRPERSON**: Oh, okay.

**ADV HOFMEYR**: Chair. It is under tab 19. Mr Choeu your evidence earlier was that you were not aware of any reservations that the Mediashop had expressed ...(intervenes).

10 **MR CHOEU**: H'mm.

**ADV HOFMEYR**: About the TNA generally and advertising in the TNA, but this is an e-mail we dealt with yesterday which is dated November 2012.

**MR CHOEU**: H'mm.

**ADV HOFMEYR**: Mr Pretorius' evidence was that it was in response to a request to Mediashop to assist with one of the Parliamentary questions that had come through to Eskom ...(intervenes).

**MR CHOEU**: H'mm.

20 **ADV HOFMEYR**: And amongst the questions asked was what sort of independent analysis was done before Eskom placed advertisements in the TNA and he took us through point three on that page.

**MR CHOEU**: H'mm.

**ADV HOFMEYR**: Which is a point written by Ms Zikalala who indicates that she had spoken to Donald. Chair the evidence was that Donald is a reference to Donald Diphoko who had previously been at Mediashop.

Do you see what she says there Mr Choeu?

**MR CHOEU**: Yes.

**ADV HOFMEYR**: So that seems to be an indication that early on in the relationship between Mediashop and TNA Mediashop had determined that it would not recommend advertising in the newspaper. Do you see that? Do you have any reason to dispute it?

**MR CHOEU**: I do not have a reason to dispute it. It was not shared with me ...(intervenes).

**ADV HOFMEYR**: H'mm.

10 **MR CHOEU**: But my question is from December 2010 ...(intervenes).

**ADV HOFMEYR**: H'mm.

**MR CHOEU**: To March who instructed them to do – when they had reached a decision, because by that time the newspaper was only three months, but they had already spent more than a quarter of a million. Number two is this is a material issue. A service provider should have written to the company to say – you see and he just says it in passing ...(intervenes).

**ADV HOFMEYR**: H'mm.

20 **MR CHOEU**: And mister – I am not copied here and he says to Mr Pretorius why is he not even saying I remind you that you know to whom did the instruction to come from. The only person – let me state it here for example. The only time I met the media – the Mediashop people face to face is once when there was a dispute on contract and they came to Eskom with the TNA ...(intervenes).

**ADV HOFMEYR**: H'mm.

**MR CHOEU:** But I would have – even then ...(intervenes).

**ADV HOFMEYR:** H'mm.

**MR CHOEU:** They should have given to Mr Pretorius this information because it is material long before when they were doing the first contract.

**ADV HOFMEYR:** H'mm.

**MR CHOEU:** When they were sitting down doing the first contract as advisors. They should have told Pieter this information and Pieter would have shared that information to Moremi ...(intervenes).

10 **ADV HOFMEYR:** H'mm.

**MR CHOEU:** And I am not disputing this but I do not know about this.

**ADV HOFMEYR:** H'mm. Mr Pretorius' evidence was that that was conveyed to him but he was instructed to require Mediashop to enter into the contract and that is why it went ahead.

**MR CHOEU:** And he instructed Mediashop.

**ADV HOFMEYR:** Indeed. Indeed. That is his evidence.

**MR CHOEU:** But why if Mediashop knew that Donald had instructed them why did they take our money and put it – our three quarters of - R300 000 of our money and put it in the newspaper that they had an  
20 instruction to themselves not to – because it was an instruction to themselves. Not to us.

**ADV HOFMEYR:** Mr Choeu it may be useful to get into hypothetical debates, but what I would like to suggest to you is that by March 2011 ...(intervenes).

**MR CHOEU:** H'mm.

**ADV HOFMEYR**: Mediashop had spent 385 000 ...(intervenes).

**MR CHOEU**: Okay.

**ADV HOFMEYR**: With TNA. They were asked in March 2012 though to enter into an agreement for Eskom to spend R4 million on TNA and R7.1 million for business breakfasts.

**MR CHOEU**: H'mm.

**ADV HOFMEYR**: It may have been at that point that an assessment was done to say there was not sufficient value and advertising ...(intervenes).

10 **MR CHOEU**: That is right.

**ADV HOFMEYR**: In that newspaper for that amount. Is that not possible?

**MR CHOEU**: It is very possible.

**ADV HOFMEYR**: Thank you.

**MR CHOEU**: What I am just answering is the fact that that information never came to us and what I am answering also Chair is that they had spent money. Yes. It was insignificant compared to – but in the quarter they had already spent on a newspaper that had three months. We got a – one got a half a million 300 - R380 000. I am just stating  
20 the fact.

**ADV HOFMEYR**: H'mm.

**MR CHOEU**: Number two, I am saying at their meeting with TNA with Eskom when they were drafting the very first contract. These are some of the issues that were material that they should have discussed with them and I do accept that maybe because it was not yet ...(indistinct).

They are doing it now because they have to answer a Parliamentary question.

Then they mention this. Without the Parliamentary question they would have not have – I assume they would not have said oh by the way we told Eskom and they are not even going to put up Pretorius you told us to do that, but I am not disputing, because I do not know. I did not work with them.

**ADV HOFMEYR:** Mr Choeu if we ...(intervenes).

**CHAIRPERSON:** Would the – I am sorry. Would the – would an amount  
10 of about R300 000 spent over three months on a new publication would that be the kind of amount that would exceed your expectation in terms of what Mediashop could spend to try and support a new entrant in the media?

**MR CHOEU:** No. I am sure. I cannot answer that one.

**CHAIRPERSON:** H'mm.

**MR CHOEU:** I can only help, (clearing of throat), to compare how much they have spent on others.

**CHAIRPERSON:** Yes. Yes.

**MR CHOEU:** They spent less on some established newspapers during  
20 that period.

**CHAIRPERSON:** Yes. No. What I am trying to understand because you do keep on going back to the question of why did they spend R300 000 on – from December 2010 to March. I am trying to understand what your issue is on that against the background of you having given evidence that it was acceptable. It was within

...(intervenes).

**MR CHOEU:** *Ja.*

**CHAIRPERSON:** The policy of Eskom to support new entrants' small businesses. *Ja.*

**MR CHOEU:** No, no, no. The two of ...(intervenes).

**CHAIRPERSON:** It gives me the impression that you are ...(intervenes).

**MR CHOEU:** *Ja.*

**CHAIRPERSON:** Criticising them.

10 **MR CHOEU:** No, no.

**CHAIRPERSON:** *Ja.*

**MR CHOEU:** I am not criticising.

**CHAIRPERSON:** Okay.

**MR CHOEU:** The issue is that a year thereafter they are saying we told you Eskom. So my question is when did you tell Eskom? The day you started to spend our money or only as honourable – advocate says when they see that we are up in the ante to decide no, no we need to warn them.

**CHAIRPERSON:** But ...(intervenes).

20 **MR CHOEU:** But it is ...(intervenes).

**CHAIRPERSON:** They would be ...(intervenes).

**MR CHOEU:** I do not think it – I would not have disputed the fact that the – in a new entrants they should have one or two adverts.

**CHAIRPERSON:** Yes. No. That is what I am coming to. I do not see why, (clearing throat), why it should be an issue with you if they only



told you after they had spent R300 000.

**MR CHOEU**: H'mm.

**CHAIRPERSON**: If spending R300,00 – R300 000 ...(intervenes).

**MR CHOEU**: Huh-uh.

**CHAIRPERSON**: Fell within what you accept as ...(intervenes).

**MR CHOEU**: Yes.

**CHAIRPERSON**: As acceptable for a – to be spent on a new entrant.

So I do not see why it would be an issue with you because then as  
Ms Hofmeyr suggests maybe they were saying as long as we spent  
10 what is acceptable for a new entrant.

**MR CHOEU**: H'mm.

**CHAIRPERSON**: There is no problem ...(intervenes).

**MR CHOEU**: H'mm.

**CHAIRPERSON**: But the moment we – Eskom was to spend more  
...(intervenes).

**MR CHOEU**: Yes.

**CHAIRPERSON**: Then we must maybe do more homework and we must  
alert Eskom and so on to certain things.

**MR CHOEU**: H'mm.

20 **CHAIRPERSON**: So that seems to me to be fine if you have no issue  
with the 300 000.

**MR CHOEU**: No, no, no. It is not so much the quantum of the money  
...(intervenes).

**CHAIRPERSON**: *Ja*.

**MR CHOEU**: And all that because it was a new entrant.

**CHAIRPERSON:** H'mm.

**MR CHOEU:** I am just saying at the end remember at the end of every financial year.

**CHAIRPERSON:** *Ja.*

**MR CHOEU:** They need to give reports.

**CHAIRPERSON:** *Ja, ja.*

**MR CHOEU:** On their experiences ...(intervenes).

**CHAIRPERSON:** Yes.

**MR CHOEU:** Because there are magazines that started and died  
10 ...(intervenes).

**CHAIRPERSON:** H'mm.

**MR CHOEU:** And all this type of thing.

**CHAIRPERSON:** H'mm.

**MR CHOEU:** News24 ...(intervenes).

**CHAIRPERSON:** H'mm.

**MR CHOEU:** They used to have a one for build, one for this.

**CHAIRPERSON:** H'mm.

**MR CHOEU:** They collapsed them and all that information is the - is very material ...(intervenes).

20 **CHAIRPERSON:** H'mm.

**MR CHOEU:** To your service provider.

**CHAIRPERSON:** H'mm, h'mm.

**MR CHOEU:** You see.

**CHAIRPERSON:** H'mm.

**MR CHOEU:** But I do not dispute that ...(intervenes).

**CHAIRPERSON:** Okay. Okay.

**MR CHOEU:** *Ja.*

**CHAIRPERSON:** Okay. Thank you.

**ADV HOFMEYR:** Thank you. If we can then return to page 7 of your affidavit ...(intervenes).

**MR CHOEU:** Where is it?

**ADV HOFMEYR:** Which is in Exhibit MM2 Mr Choeu.

**MR CHOEU:** I will get there. Page?

**ADV HOFMEYR:** 7.

10 **MR CHOEU:** H'mm.

**ADV HOFMEYR:** And I propose that we pick it up at paragraph 7 which is where you start talking about the second contract ...(intervenes).

**MR CHOEU:** H'mm.

**ADV HOFMEYR:** But I just want to get clear some facts before we go there.

**MR CHOEU:** H'mm.

**ADV HOFMEYR:** The first contract was signed on the 13<sup>th</sup> of April 2012. Is that correct?

**MR CHOEU:** Yes. I saw that.

20 **ADV HOFMEYR:** And it was for a period from 1 April 2012 to 31 March 2013.

**MR CHOEU:** H'mm.

**ADV HOFMEYR:** Is that correct?

**MR CHOEU:** Yes.

**ADV HOFMEYR:** And it was going to cover six business breakfasts

...(intervenes).

**MR CHOEU**: H'mm.

**ADV HOFMEYR**: And advertising spend in the TNA of R4 million. Is that correct?

**MR CHOEU**: Yes.

**ADV HOFMEYR**: So that is just the backdrop to the second contract.

**MR CHOEU**: H'mm.

**ADV HOFMEYR**: So if we can pick it up at paragraph 7.1. You say at 7.1:

10                    "As indicated earlier there was initially no budget ..."

**MR CHOEU**: H'mm.

**ADV HOFMEYR**: "...for the TNA sponsorship request."

**MR CHOEU**: H'mm.

**ADV HOFMEYR**: "CAD ..."

That is your division.

"...had increasingly required additional funding for its initiatives due to load shedding and the need to increase Eskom's communication around load shedding."

**MR CHOEU**: H'mm.

20    **ADV HOFMEYR**: And then you say at 7.2:

"CAD then presented a request for additional funding to the Eskom Investment and Capital Assurance Committee."

That is called ICAC.

**MR CHOEU**: HM.

**ADV HOFMEYR**: And you say:

“ICAC held a meeting on 22 June 2012.”

**MR CHOEU**: H’mmm.

**ADV HOFMEYR**: “Approved a budget of six million for - for four  
breakfasts.”

**MR CHOEU**: H’mmm.

**ADV HOFMEYR**: Do you see that?

**MR CHOEU**: Yes.

**ADV HOFMEYR**: I would like to just stop there and go through the  
10 chronology fairly carefully if we may, because we know from  
Mr Pretorius’ affidavit that he prepared a recommendation for R6 million  
approval from ICAC for the business breakfast. You will recall that.  
Will you?

**MR CHOEU**: Yes.

**ADV HOFMEYR**: I would like us to go to that document if we may. You  
will find it in MM1A at page 153.

**MR CHOEU**: MM ...(intervenes).

**ADV HOFMEYR**: 1A at page 153.

**MR CHOEU**: Which one is MM1A now? This is B – and page?

20 **ADV HOFMEYR**: 153 which is under tab 7.

**MR CHOEU**: H’mmm. Okay.

**ADV HOFMEYR**: This is the submission document that Mr Pretorius  
prepared.

**MR CHOEU**: H’mmm.

**ADV HOFMEYR**: You will see at the top of the page there it says: 49M

DPE Ministerial Campaign.

**MR CHOEU:** H'mm.

**ADV HOFMEYR:** Right and the total amount that is sought to be approved by ICAC you will see at the bottom is 44.4 million or there about.

**MR CHOEU:** Huh-uh.

**ADV HOFMEYR:** Do you see that?

**MR CHOEU:** H'mm.

**ADV HOFMEYR:** This was a submission made in May of 2012.

10 **MR CHOEU:** H'mm.

**ADV HOFMEYR:** So just after the first contract is concluded in April 2012 ...(intervenes).

**MR CHOEU:** H'mm.

**ADV HOFMEYR:** Where you had no budget.

**MR CHOEU:** Huh-uh.

**ADV HOFMEYR:** Then Mr Pretorius goes to ICAC and says it - you need 44.4 million for the 49M Campaign ...(intervenes).

**MR CHOEU:** H'mm.

**ADV HOFMEYR:** And one of the items that make up that 44 million is  
20 New Age Breakfasts. Do you see that ...(intervenes)?

**MR CHOEU:** *Ja, ja, ja.*

**ADV HOFMEYR:** In the third line?

**MR CHOEU:** Yes.

**ADV HOFMEYR:** And it is 6 million that he is requesting there.

**MR CHOEU:** H'mm.

**ADV HOFMEYR:** That is the 6 million for the first six breakfasts for which there was no budget.

**MR CHOEU:** H'mm.

**ADV HOFMEYR:** Correct? If you will just answer yes or no for the record.

**MR CHOEU:** Yes. It looks like that. I did not put together this document.

**ADV HOFMEYR:** No. Indeed, but you have referenced the fact that Mr Pretorius had to go to ICAC.

10 **MR CHOEU:** Yes. Yes.

**ADV HOFMEYR:** In order to get the budget which was not there for the first contract.

**MR CHOEU:** Yes.

**ADV HOFMEYR:** Right and this 6 million is the 6 million for the six breakfasts that had been concluded in the first contract?

**MR CHOEU:** I assume that.

**ADV HOFMEYR:** Thank you. Then if we go to the approval if we may. That is a document that you will find at the end of your bundle.

**MR CHOEU:** My bundle?

20 **ADV HOFMEYR:** Yes. That is back in MM2.

**MR CHOEU:** It cannot be MM – oh. My bundle?

**ADV HOFMEYR:** Yes. It is right at the end because these were further documents that we were able to source ...(intervenes).

**MR CHOEU:** Okay.

**ADV HOFMEYR:** In preparation for today's evidence.

**MR CHOEU:** Page.

**ADV HOFMEYR:** So if you go the last document that starts at page 133.

**MR CHOEU:** Yes. Huh-uh.

**ADV HOFMEYR:** You will see that that is the very ICAC meeting held on the 22<sup>nd</sup> of June 2012 that you said in your affidavit you did not have a copy of the minutes.

**MR CHOEU:** H'mm.

**ADV HOFMEYR:** So that is why we went and got the minutes.

10 **MR CHOEU:** Huh-uh.

**ADV HOFMEYR:** These are the minutes and if you go over to page 145.

**MR CHOEU:** Wait. 145.

**ADV HOFMEYR:** Yes.

**MR CHOEU:** Huh-uh.

**ADV HOFMEYR:** You will see under the bold writing midway down the page "resolved that" under point one there.

"ICAC approves as follows: 44.4 million for the  
2012/2013 financial year ..."

20 **MR CHOEU:** Huh-uh.

**ADV HOFMEYR:** "...for the 49M Campaign is approved under  
the Keep the Lights On budget."

**MR CHOEU:** Huh-uh.

**ADV HOFMEYR:** So Mr Choeu I want to suggest to you, you read Mr Pretorius' submission together with this resolution ...(intervenes).



**MR CHOEU:** Huh-uh.

**ADV HOFMEYR:** And as you point out there was an approved 6 million ... (intervenes).

**MR CHOEU:** H'mm.

**ADV HOFMEYR:** From ICAC in June of 2012.

**MR CHOEU:** Huh-uh.

**ADV HOFMEYR:** Does that accord with your understanding?

**MR CHOEU:** Sorry. Ja. That is according to my understanding.

**ADV HOFMEYR:** Right. So that was an approval for the first budget  
10 that Eskom did not have when it entered into the TNA first contract, but  
we are now dealing with the second contract. Right.

**MR CHOEU:** 2012/2013 financial year. Yes, because I am seeing  
these minutes for the first time ... (intervenes).

**ADV HOFMEYR:** Yes. Indeed.

**MR CHOEU:** Because I was not a member of the Committee.

**ADV HOFMEYR:** No. I fully understand and Mr Choeu let me be clear.  
If you need any further time with these documents.

**MR CHOEU:** No, no, no.

**ADV HOFMEYR:** You must please let us know. It is a particular  
20 document that you said you were not able to source and so we were  
able to obtain ... (intervenes).

**MR CHOEU:** To source.

**ADV HOFMEYR:** It for Eskom – from Eskom.

**MR CHOEU:** H'mm.

**ADV HOFMEYR:** So if we just go back to your affidavit at page 7.

**MR CHOEU:** Huh-uh. Page 7?

**ADV HOFMEYR:** Yes.

**MR CHOEU:** Ja.

**ADV HOFMEYR:** What I understand you to say here and what is consistent with Mr Pretorius' evidence is the first contract was concluded in April of 2012.

**MR CHOEU:** Huh-uh.

**ADV HOFMEYR:** It was to run for a year from the 1<sup>st</sup> of April 2012 till March of 2013 ...(intervenes).

10 **MR CHOEU:** H'mm.

**ADV HOFMEYR:** But in April 2012 there was no approved budget ...(intervenes).

**MR CHOEU:** H'mm.

**ADV HOFMEYR:** For the sponsorship of the breakfasts so he had to go to ICAS, he went to ICAS and ICAS approved a total of R44.4 million for the 49M campaign, one portion of which was the required amount for the business breakfasts that had been concluded, is that correct?

**MR CHOEU:** H'mm.

**ADV HOFMEYR:** If you'll say yes, just for the record.

20 **MR CHOEU:** Yes.

**ADV HOFMEYR:** Thank you, now what then happens though is in the course of that contract itself, there's another approach for four more breakfasts is that correct?

**MR CHOEU:** Yes.

**ADV HOFMEYR:** And who made that approach?

**MR CHOEU:** At that time the approaches who'd now – because remember what happens is the people only approach me at the initial part, the subsequent – I'll only come in when there's a dispute so I'm not sure that it came directly to me or directly to Mr Pretorius.

**ADV HOFMEYR:** But it came from TNA to Eskom.

**MR CHOEU:** Yes it will come from ...(intervenes).

**ADV HOFMEYR:** For another R4 million.

**MR CHOEU:** Because Mr McArdle was now the contact person to work with TNA, I was not interacting with TNA because now they are working,  
10 so if they want additional something they would go to Mr Pretorius yes.

**ADV HOFMEYR:** I understand and if we move to 7.4 of your affidavit, which is over the page at page 8, you talk there about a round robin request for approval of the second sponsorship request, so that was the request for four more breakfasts, is that correct?

**MR CHOEU:** I think so, I'm not sure whether it was four more breakfasts but I assumed that.

**ADV HOFMEYR:** Yes, and you say it was submitted to CAD MANCO Committee also known as the Sponsorship Committee and the round robin resolved to decline the sponsorship request, do you see that?

20 **MR CHOEU:** Yes.

**ADV HOFMEYR:** Do you recall whether you voted in favour of it or not?

**MR CHOEU:** I started the round robin, normally when you start a round robin – otherwise don't start the round robin you will start the round robin this side on the approval first, it's almost – otherwise don't

initiate something that you ...(intervenes).

**ADV HOFMEYR:** You don't support.

**MR CHOEU:** Not necessarily that you don't support it might be, I say to my junior can you please put together information for round robin, you are part of that – he's the Chairperson of the Committee. Sometimes I may not be part of that Committee, starts the round robin, he will sign on the approved so that he can go around and anyone decline, it doesn't go.

**ADV HOFMEYR:** So this one was declined by the Sponsorship  
10 Committee, correct?

**MR CHOEU:** Yes.

**ADV HOFMEYR:** Did that give you pause for thought?

**MR CHOEU:** Big time, remember now this is where we – I'm saying in – we were starting when we started getting Parliamentary questions and all, what we could have done, what we could not have done and what have you. I want to regularise the way we are going to deal with contract number two by separating the breakfasts now, we've made a mistake in the first one and I informed the company that, this is what we are going to do. Most interestingly Chair is if you look at this is  
20 that parallel to that the company has decided upfront at ICAS because ICAS is Exco Committee that we're going to allocate money for breakfast, this is what we are going to do. Now on my side I decided we need to regularise this matter and take it through where it was supposed to have gone through and that is why, Chair, I decided to stop this breakfast personally for my division at the end of the second one

at my peril.

**ADV HOFMEYR:** Mr Choeu if we could just – before we get to the end of the second one, I fully understand your evidence to be, you wanted to regularise this, you wanted it to go to the Sponsorship Committee where it should have gone initially, correct?

**MR CHOEU:** Yes.

**ADV HOFMEYR:** It goes to the Sponsorship Committee, it's declined, why is the second contract then concluded?

**MR CHOEU:** Recalled now what's happening if – just follow me, we  
10 have the first contract it has gone there was an instruction for it, we told our team, our team in their own reasoning decides to combine the sponsorship and everything. The second request comes in for additional support now, same time there are questions coming from the media and from the Parliament about this issue, the second request, you see. So I decide, well let's follow the proper procedure for breakfast, take them through to breakfast and it gets declined but Exco on its own decide you continue because we have already approved the money up-front ...(intervenes).

**ADV HOFMEYR:** Mr Choeu Exco did not decide nonetheless to  
20 approve it because what Exco had decided in June was to give R6 million for the first contract. We are now in July we're dealing with your endeavour to regularise this process.

**MR CHOEU:** Yes.

**ADV HOFMEYR:** And the Sponsorship Committee declines the further four breakfasts, how could that contract possibly have been entered

into when the Committee charged with that responsibility had declined to approve it?

**MR CHOEU**: Remember prior to that also it was this pressure from the office of the Chief Executive, of the Ministerial, what do you call it – campaigns are continuing and they need to be provided with funding and they must continue.

**ADV HOFMEYR**: So the reason now is the pressure from the Chief Executive Office?

**MR CHOEU**: There's pressure that we should continue with this  
10 breakfast yes.

**ADV HOFMEYR**: And it's linked to the Ministerial campaign?

**MR CHOEU**: Even – that is why even when I went to the Sponsorship Committee I was trying to say, let's find a way to deal with this matter before we approve all this.

**CHAIRPERSON**: Do you know why the Committee declined; it was the Committee wasn't it?

**MR CHOEU**: No, no, no it was a round robin and normally a round robin they don't put the reasons.

**CHAIRPERSON**: They don't put?

20 **MR CHOEU**: Reasons on a round robin.

**CHAIRPERSON**: Oh okay.

**MR CHOEU**: The reason is that they don't want the Chairman to start going to individual members, *ja* we have decided not to sign it ... (intervenes).

**CHAIRPERSON**: Oh so you never know the reasons.

**MR CHOEU:** You never know the reasons on a ...(intervenes).

**CHAIRPERSON:** Oh and you may not ask?

**MR CHOEU:** You can but that's not – the reason why ...(intervenes).

**CHAIRPERSON:** You are not supposed to ask?

**MR CHOEU:** You are not supposed to ask because it's outside of the meeting.

**CHAIRPERSON:** Yes so if you want to know the reasons would you need to put the same issue for discussion at a proper meeting of the Committee so that people can express different views and you  
10 understand, because you might want to see whether somebody has misunderstood something, that's why there is no ...(intervenes).

**MR CHOEU:** It's an option but normally when a round robin, it will take some time for you to decide but yes it is an option.

**CHAIRPERSON:** Okay.

**MR CHOEU:** That, even something that has been declined in a proper meeting you can go and get ...(intervenes).

**CHAIRPERSON:** Go back *ja*.

**MR CHOEU:** And get evidence to say, no, no I think that we did not articulate this thing properly.

20 **CHAIRPERSON:** Okay.

**ADV HOFMEYR:** Mr Choeu do you accept that approving the second contract was irregular?

**MR CHOEU:** I totally agree to that one, it was irregular.

**ADV HOFMEYR:** The Sponsorship Committee had said no and yet the contract went ahead, correct?

**MR CHOEU:** Yes.

**ADV HOFMEYR:** And I understand your evidence to be it went ahead because of pressure from the Chief Executive's Office is that correct?

**MR CHOEU:** Yes.

**ADV HOFMEYR:** And related to the fact that it was bound up in the Ministerial campaign on 49M is that correct?

**MR CHOEU:** Yes.

**ADV HOFMEYR:** So you signed that agreement knowing it was irregular, is that correct?

10 **MR CHOEU:** Yes but remember the reason I signed it was not because normally we sign, it was simply because of a dispute.

**CHAIRPERSON:** Because of?

**MR CHOEU:** There was a dispute between ...(intervenes).

**CHAIRPERSON:** Mr Pretorius' team?

**MR CHOEU:** No, TNA complained that Mediashop does not pay them and they're a small company they have to be paid in 15 days whereas our arrangement – but I'll confirm the – it's about 45 days so they wanted to be paid and then they decided to go to take TNA to the lawyers ...(intervenes).

20 **CHAIRPERSON:** Eskom?

**MR CHOEU:** No, Media ...(intervenes).

**CHAIRPERSON:** Mediashop?

**MR CHOEU:** No, no, no TNA to take Mediashop to the lawyers threatened them with – they received a letter from TNA's lawyers threatening them about this particular situation that you owe us money,



you don't pay us. Mediashop rightly so because they our agent. I discussed with Mr Pretorius and ultimately they wrote to me or fail to say can you please intervene on our behalf and that was the first time I met ...(intervenes).

**ADV HOFMEYR:** Mr Diphoko?

**MR CHOEU:** I don't think it was Mr Diphoko...(intervenes).

**ADV HOFMEYR:** I think it was Ms Zikalala by that stage, if I look at ...(intervenes).

**MR CHOEU:** No I mean the ...(intervenes).

10 **CHAIRPERSON:** Mediashop people.

**MR CHOEU:** Ja Mediashop people I'd rather say that but it was the boss but he is the that got elected somewhere in and took – and we came together and we – they made an agreement that they will stop fighting against each other on these issues and then I signed the contract at that point.

**ADV HOFMEYR:** Mr Choeu that's also an unusual feature of the second contract isn't it, because usually Mediashop as your agent enters into contracts like the first one is that correct. Now Eskom becomes one of three parties to a tripartite agreement correct, maybe  
20 we should just have it in front of us, Chair you'll find it Mr Choeu in Mr Pretorius' first Bundle that's MM1A and you'll pick it up at page 189 which is under tab 13.

**MR CHOEU:** Under which tab?

**ADV HOFMEYR:** Under tab 13.

**MR CHOEU:** Yes.

**ADV HOFMEYR:** And this is now a commitment letter between Eskom, the Mediashop and TNA Media, do you see that?

**MR CHOEU:** H'mm.

**ADV HOFMEYR:** Had you ever done that before, had a tripartite arrangement when Mediashop was your agent contracting with media houses?

**MR CHOEU:** No, I'd never done that before here it was through the request of Mediashop to say we have had a dispute, in order to resolve this dispute, we would like Eskom which was delaying paying us as Mr  
10 Pretorius told us delayed to pay Mediashop to commit that next time you don't have to take us, Mediashop to Court because you are the ones who are causing us not to pay these people.

**ADV HOFMEYR:** So it was ...(intervenes).

**MR CHOEU:** That was the motivation.

**ADV HOFMEYR:** And it was to TNA's benefit that they would get quicker payment was it not?

**MR CHOEU:** Not a quicker payment that would be beyond the stipulated date no.

**ADV HOFMEYR:** Indeed keeping Mediashop to the contractual terms  
20 would be a fairer description.

**MR CHOEU:** Yes.

**ADV HOFMEYR:** I understand that. So you signed this agreement.

**MR CHOEU:** Yes.

**ADV HOFMEYR:** Because of that need to get Eskom into the arrangement, is that correct?

**MR CHOEU:** H'mm.

**ADV HOFMEYR:** Thank you.

**CHAIRPERSON:** But there must have been many other small suppliers of one service or another or goods that were not being paid by Eskom on time, if somebody can help him with water, and they must have also complained and would the same reaction been given to their complaints, would the same attitude – positive attitude, response that was given to TNA's complaint?

**MR CHOEU:** No but this was not to the advantage of TNA it was – the  
10 request came from our agency.

**CHAIRPERSON:** *Ja* but it came from your agency because TNA was complaining to them, maybe to you as well, saying you people are not paying us?

**MR CHOEU:** No we were trying to protect, more Mediashop that please stop harassing Mediashop.

**CHAIRPERSON:** Yes but the point I'm making is, and you must tell me if this is not the position, I'm saying that there were many, as you indicated earlier on, many small publications and so on, suppliers that Eskom would be trying to assist or doing business with and I would  
20 imagine that paying them within the stipulated time must have been a normal complaint and would Eskom respond in the same way to them?

**MR CHOEU:** Chair I really don't want – the answer is I don't know.

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

**MR CHOEU:** Yes, however what I do know that's an area with a lot of problems because they even went to Government and as a result you

would – now people find that, normally complain that Minister's sometimes interfere but the suppliers themselves would go to Minister's and ask Minister's to step in and a number of arrangement would have – until, if you recall that the Auditor-General decided that for the first time I think, three/four years ago that it will also be now – if you don't pay your suppliers within – and it's still happening.

**CHAIRPERSON:** Ja it's a problem.

**MR CHOEU:** If you go and look at most of the reasons why some Municipalities and some – did not get an unqualified, one of the issues  
10 would be payment to suppliers, so it's a big problem.

**CHAIRPERSON:** Yes.

**MR CHOEU:** And I assume in that the number of arrangements that do come in order to try and resolve these issues. So I wouldn't say this is common or uncommon, in my knowledge it's uncommon.

**CHAIRPERSON:** Yes, okay.

**ADV HOFMEYR:** Thank you Mr Choeu. Chair we're close towards the lunch break, there is an aspect on this though I'd like to complete if I may and it's really in fairness to Mr Choeu because you referenced some correspondence Mr Choeu about this threatened legal action that  
20 TNA had communicated to the Mediashop because of late payment and I'd like to just take you to that correspondence because there's one aspect I'd like your comment on. You'll find it in the Pretorius Bundle MM1A and it's at page 186 which is under tab 12.

**MR CHOEU:** 186?

**ADV HOFMEYR:** Yes under tab 12. Now that's where an e-mail from

Sean Clarke from the Mediashop to yourself commences on the 16<sup>th</sup> of September 2012, just to orientate ourselves, that's two months Chair, before the second contract is concluded. We don't need to look at all of it Mr Choeu but I understand this to be one of the e-mails in which the Mediashop is relaying to you the threatened legal action from TNA because of late payment, is that correct?

**MR CHOEU:** Yes.

**ADV HOFMEYR:** If we can pick it up in the penultimate sentence which begins, "we request", prior to that in the e-mail the issues of the threatened legal action have been raised and then Mr Clarke says to you,

"We request therefore that because of your close relationship with the New Age that you assist the New Age withdrawing this legal action against the Mediashop."

How would the Mediashop have known that there was a close relationship between yourself and the New Age?

**MR CHOEU:** I don't know because I didn't have a close relationship.

**ADV HOFMEYR:** You didn't?

20 **MR CHOEU:** I didn't and I don't know why they say that, we didn't, because even Mediashop – I mean not – first of all Mediashop, Sean Clarke I have seen only once in my life at a meeting where we signed at. The person who dealt with us on a regular basis was Mr Roux and thereafter another person. So I thought he was saying that because it's your company – not your company, your supplier or stakeholder, you're

in charge of stakeholder because I am in charge of stakeholders so all stakeholders may claim to me or not close to me but probably Mediashop would better respond to that sentence.

**ADV HOFMEYR:** Indeed but did you take the sentence to be incorrect?

**MR CHOEU:** It is incorrect, totally incorrect.

**ADV HOFMEYR:** Did you correct it when you responded to Mr Clarke?

**MR CHOEU:** I did not respond to him directly I just told him – Peter Pretorius to arrange him to come, I don't think I ...(intervenes).

10 **ADV HOFMEYR:** Well let's just go to an earlier page 185, if we can.

**MR CHOEU:** I think I said to them I've met with these guys so come to me but I did not – what sorry?

**ADV HOFMEYR:** I asked if you had corrected their incorrect ...(intervenes).

**MR CHOEU:** No I did not.

**ADV HOFMEYR:** You didn't but you did respond to them the same day?

**MR CHOEU:** Which page are you talking to?

20 **ADV HOFMEYR:** So let's just orientate ourselves, we're at page 186 where Mr Clarke e-mails you on the 16<sup>th</sup> of September at 12 minutes past 10 right, and he requests, because of a close relationship, he says you have with the New Age that you assist in getting them to withdraw the legal action, do you see that?

**MR CHOEU:** Yes.

**ADV HOFMEYR:** I understand you to say that is false?

**MR CHOEU:** It is false.

**ADV HOFMEYR:** So my next question was, did you correct that false impression that he had of the closeness?

**MR CHOEU:** No.

**ADV HOFMEYR:** And you initially said you didn't respond but I think we can see at page 185 that you did respond, is that correct?

**MR CHOEU:** No this is the first – that I respond to say,

“Hi Sean, apology for delayed response, I have engaged with TNA on this matter”,

10           So I focused on what the issue that has to be resolved than on the niceties that come in there, these I see as niceties and persuade me. I don't know how he did that and when I respond I respond to the issue itself and I say,

“Apology for delayed response, I have and I engaged with TNA on this matter because you complained with us, I've just had a meeting with TNA and soon will reach amicable solutions”.

**ADV HOFMEYR:** And that solution as I understand it was to bring Eskom into the third – the second contract as the third party is that  
20   right?

**MR CHOEU:** No, no I thought it was to deal with the – this letter deals with resolving the issue between the lawyers and ...(intervenes).

**ADV HOFMEYR:** Yes if I can just be clear on the evidence, I understood that TNA had taken issue with the Mediashop because they were paying late under the first contract, is that correct?

**MR CHOEU:** H'mm.

**ADV HOFMEYR:** TNA threatened legal action against the Mediashop arising from that late payment, is that correct?

**MR CHOEU:** And Mediashop received a letter threatening them.

**ADV HOFMEYR:** Indeed, then we move to September 2012 and Mr Clarke's e-mail to you which says, TNA is threatening us with legal action because we're paying late, please can you intervene because of a close relationship, which I understand you dispute, you say to him in response, you've engaged TNA and there's an amicable solution and all  
10 I wanted to be clear about is that amicable solution as I understand your evidence, was that Eskom would become a party to the second agreement with TNA and Mediashop?

**MR CHOEU:** No, no, no it was to make sure that going forward you will be paid well and after that agreement in the meeting said well, our only condition we'd like you as Eskom to be part of the third contract ...(intervenes).

**ADV HOFMEYR:** The second contract.

**MR CHOEU:** The second contract by that time no.

**CHAIRPERSON:** Let me make sure I understand that. The issue  
20 about late payments was being discussed here at a time when – was this at a time when the first contract had come and gone or still during the life of ...(intervenes).

**ADV HOFMEYR:** It was still underway Chair.

**CHAIRPERSON:** It was still underway, okay now how was this issue of late payments resolved, just articulate the terms of that resolution?



**MR CHOEU:** We – I called in the parties and agreed with the parties that TNA you are wrong there's a method that we pay people unless you are small we will pay you – because they wanted what small people are getting 15 days because that's what we were paying but in the media space we had a special ...(intervenes).

**CHAIRPERSON:** Dispensation.

**MR CHOEU:** Arrangement, you pay after 45 days.

**CHAIRPERSON:** Yes.

**MR CHOEU:** So they wanted the 15 days.

10 **CHAIRPERSON:** Yes so is the position therefore that, when they thought they were being paid late, in terms of the practices and policies of Eskom they were not actually being paid late, they thought they were being paid late?

**MR CHOEU:** I'm not sure here about whether it went beyond 45 days but according to Mr Pretorius, somewhere Mr Pretorius does admit that we paid late.

**CHAIRPERSON:** Okay but you don't know the details?

**MR CHOEU:** I don't know the details but somewhere but I did not – when I met with them I did not want to get into who pays who late and  
20 so on, it was just, let's try.

**CHAIRPERSON:** But you said to them in terms of Eskom arrangements you are part of media the period is 45 days?

**MR CHOEU:** The period is 45 days.

**CHAIRPERSON:** Did they then accept that?

**MR CHOEU:** They had to but as I say I'm not very sure because it

looks like, according to Mr Pretorius, we did pay Mediashop late and therefore Mediashop had not paid – had to not pay TNA on time.

**CHAIRPERSON:** Yes but what I'm trying to establish is, you say you came in to resolve a dispute.

**MR CHOEU:** Yes.

**CHAIRPERSON:** I'm trying to understand the terms of ...(intervenes).

**MR CHOEU:** I requested them to stick to the normal terms.

**CHAIRPERSON:** Did you say to TNA the normal period is 45 days?

**MR CHOEU:** *Ja* we will pay Mediashop on time so that Mediashop  
10 ...(intervenes).

**CHAIRPERSON:** On time for them to pay you on time.

**MR CHOEU:** To pay you on time.

**CHAIRPERSON:** But that on time was on the basis of 45 days?

**MR CHOEU:** Yes.

**CHAIRPERSON:** And TNA accepted that?

**MR CHOEU:** But it was not that it must be on the 45 days  
...(intervenes).

**CHAIRPERSON:** No of course, within any time not later than.

**MR CHOEU:** Yes not later than 45 days.

20 **CHAIRPERSON:** Did TNA accept that?

**MR CHOEU:** TNA accepted that.

**CHAIRPERSON:** *Ja*.

**MR CHOEU:** *Ja* and when we came, that's what you're saying to signing the third contract, not on that day Mediashop said we would like Eskom to be part of the ...(intervenes).

**CHAIRPERSON:** Of the contract.

**MR CHOEU:** *Ja* of the contract.

**ADV HOFMEYR:** Chair at the risk of unduly belabouring this point, if I may just take us to one final document before the tea break, because it will conclude it.

**CHAIRPERSON:** *Ja*.

**ADV HOFMEYR:** Mr Choeu I – because it's relevant to precisely this debate was it because they were paying later than 45 days or was it that they were wanting a sort of special dispensation on an earlier  
10 payment and I think that, that can be resolved. In Mr Pretorius' bundle again MM1A you'll find it under tab 10 at page 178.

**MR CHOEU:** 178?

**ADV HOFMEYR:** Yes.

**MR CHOEU:** Yes.

**ADV HOFMEYR:** This is the lawyer's letter that goes from TNA's lawyers Van Der Merwe Associates Incorporated to the Mediashop do you see that?

**MR CHOEU:** H'mm.

**ADV HOFMEYR:** Have you seen this letter before?

20 **MR CHOEU:** I'm not sure I don't think – probably yes ...(intervenes).

**ADV HOFMEYR:** I think you did mention having seen a lawyer's letter, is that right?

**MR CHOEU:** Yes.

**ADV HOFMEYR:** So what's quite noteworthy about this letter, I want to suggest is that if we pick it up in the third paragraph of the text of

the letter, TNA's lawyers record,

"We confirm that you are due and indebted to our client in the amount of R4.7 million being in respect of services rendered on your special instance and request. In terms of the agreement concluded between our client and the Mediashop on or about 13 April 2012",

Do you see that?

**MR CHOEU:** Yes.

**ADV HOFMEYR:** It then records,

10 "Paragraph 5 of the aforesaid agreement clearly states that the Mediashop will make payments of any amounts due to our client within 45 days of receiving an invoice to the effect",

And then they go on and record,

"Our client furnished you with an invoice in terms of the agreement on the 18<sup>th</sup> of April 2012 in the amount of R81 million and you have subsequently made payment to our client in the amount of R3.4 odd million rand",

Mr Choeu can I just get your comment on that? TNA invoiced  
20 the Mediashop five days after it entered into an agreement with the Mediashop for a total of about R11.1 million for R8.1 million of that total. On what conceivable basis could they have been entitled to R8.1 million of that contract five days after it was concluded?

**MR CHOEU:** No I don't know why that is why when we resolved this matter we did not – if you – there's a letter somewhere where Sean had

to go and explain and say this is not correct.

**ADV HOFMEYR:** What is notable on the following page is that this is not, I would suggest a meek letter, they are threatening proceedings to liquidate Mediashop, do you see that?

**MR CHOEU:** *Ja, ja.*

**CHAIRPERSON:** So you have people who come to you saying that we are a new entrant in the business, in the media business please we would like you to support us, you – it seems to me they may have demanded that they be supported by a certain amount or no less than a  
10 certain amount for a certain period of time and you agreed to support them. The next thing they want to liquidate you within five days of concluding an agreement, what have they done within that period. I guess you might not be able to say anything about it.

**MR CHOEU:** No, no.

**CHAIRPERSON:** You don't know – *ja*, anyway let's take the lunch adjournment we will resume at 14:02, we adjourn.

**REGISTRAR:** All rise.

#### **INQUIRY ADJOURNS**

#### **INQUIRY RESUMES**

20 **CHAIRPERSON:** Okay let us proceed.

**ADV HOFMEYR:** Thank you Chair. Chair before the lunch break we were concluding on the second contract that had been entered into and we had had the benefit of Mr Choeu's evidence to explain why Eskom became a party to that third agreement. If I may just conclude on a few aspects and then we will move to the third contract if we may? Mr

Choeu can I just understand. The second contract was for a value of R4 million, is that correct?

**MR CHOEU**: Yes.

**ADV HOFMEYR**: And it was to cover – oh Mr Choeu if you will just turn on your microphone please. Not to worry.

**CHAIRPERSON**: Okay.

**ADV HOFMEYR**: And it was to cover 4 breakfasts?

**MR CHOEU**: Yes. Yes.

**ADV HOFMEYR**: It was to cover 4 breakfasts.

10 **MR CHOEU**: Yes.

**ADV HOFMEYR**: Is that correct?

**MR CHOEU**: Yes.

**ADV HOFMEYR**: And that would mean each breakfast was to cost R1 million, is that right?

**MR CHOEU**: As far as I am concerned yes I remember.

**ADV HOFMEYR**: Thank you. The other thing I was just interested in about the second contract is when I read that contract it makes no provision for an agency rebate or commission, does it?

**MR CHOEU**: It does not I think.

20 **ADV HOFMEYR**: It was just the R4 million for the four breakfasts?

**MR CHOEU**: Yes.

**ADV HOFMEYR**: Is that correct?

**MR CHOEU**: Yes.

**ADV HOFMEYR**: And then your evidence earlier was that after that agreement was concluded which was sort of November 2012 I think you

said it was towards the end of 2012 and early 2013 that you started to become quite sceptical?

**MR CHOEU**: Especially ...(intervenes).

**ADV HOFMEYR**: About the value.

**MR CHOEU**: The next year.

**ADV HOFMEYR**: Was that the early part of 2013?

**MR CHOEU**: Yes.

**ADV HOFMEYR**: And that is because again just to clarify I have understood your evidence. The parliamentary questions started to come  
10 towards the end of 2012?

**MR CHOEU**: Yes.

**ADV HOFMEYR**: Is that right?

**MR CHOEU**: Yes.

**ADV HOFMEYR**: Thank you. And then if we can pick up in your affidavit at page 8.

**MR CHOEU**: H'mm.

**ADV HOFMEYR**: You said 8.1

“To my knowledge there was no contract between TNA  
and Eskom between April 2013 and March 2014.”

20 Do you see that?

**MR CHOEU**: Yes.

**ADV HOFMEYR**: And as I understood your earlier evidence that was partly because you had made a decision by that point that this was not good for Eskom's reputation and you had concerns about the value, is that right?

**MR CHOEU:** We had concerns about the value notwithstanding that there were a lot of pushing and ...

**ADV HOFMEYR:** Is that pressure?

**MR CHOEU:** Yes a lot of pressure.

**ADV HOFMEYR:** From whom?

**MR CHOEU:** From the TNA itself and from the company. And it was interesting from the company that the pressure was that guys find a way and that is why the Chief – I mean the Chief Financial Officer got involved. The – and that is the process where I was trying to avoid  
10 because – but I do know that when I totally washed my hands of things that the procurement division started to find a way in which they can do this contract but they never succeeded.

**ADV HOFMEYR:** When was that that you washed your hands of it?

**MR CHOEU:** I am not sure but it was after signing of the second contract.

**ADV HOFMEYR:** Right.

**MR CHOEU:** And delivering on it. But I do not remember the dates quite clearly.

**ADV HOFMEYR:** But somewhere in that period April 2013 to March  
20 2014 is that right?

**MR CHOEU:** Almost *ja*.

**ADV HOFMEYR:** Yes.

**CHAIRPERSON:** Do you – when you referred to you washing your hands off this are you referring to when you made the decision that this was not good for Eskom you did not want another contract to be



concluded?

**MR CHOEU**: It was a number of things but we can put them all  
...(intervenes).

**CHAIRPERSON**: Under that?

**MR CHOEU**: Together.

**CHAIRPERSON**: Okay.

**MR CHOEU**: Because it was not only parliamentary questions.

**CHAIRPERSON**: H'mm.

**MR CHOEU**: My team was under tremendous pressure because they  
10 had to do media questions.

**CHAIRPERSON**: H'mm.

**MR CHOEU**: And there were a lot of media questions.

**CHAIRPERSON**: H'mm.

**MR CHOEU**: That had to be answered and a media question it is very  
strenuous. Not the contents the timing. You get a question at about  
four o'clock in the afternoon for five o'clock in the afternoon they need  
the response the very same evening.

**CHAIRPERSON**: H'mm.

**MR CHOEU**: You have to – and it must be signed off by the Chief  
20 Executive Officer.

**CHAIRPERSON**: H'mm.

**MR CHOEU**: So you have the problem of – you have to look for the  
Chief Executive Officer to sign off.

**CHAIRPERSON**: H'mm.

**MR CHOEU**: So because there were just so many we felt that this is

not working for us at all.

**CHAIRPERSON**: So – but washing your hands of this does it relate to the decision – your decision as far as you are concerned that you did not want Eskom to have another contract. The reasons why you came to that conclusion might be many.

**MR CHOEU**: Yes.

**CHAIRPERSON**: But it – does it relate to that?

**MR CHOEU**: It relates to that.

**CHAIRPERSON**: Yes.

10 **MR CHOEU**: I must – there was also a selfish part of it.

**CHAIRPERSON**: Yes.

**MR CHOEU**: Really was from the reputation point of view. One of the studies we did at Eskom.

**CHAIRPERSON**: H'mm.

**MR CHOEU**: Was reputation institute.

**CHAIRPERSON**: Yes.

**MR CHOEU**: And the requirement that is why I talk about the selfish part it was part of our – what you call it?

**CHAIRPERSON**: Induction pack or something?

20 **MR CHOEU**: No, no, no. The ...(intervenes).

**CHAIRPERSON**: Policies.

**MR CHOEU**: No the goals or the requirements that you had to meet for my team to get a bonus itself.

**CHAIRPERSON**: Oh performance bonus.

**MR CHOEU**: So ...(intervenes).

**CHAIRPERSON**: Performances bonuses.

**MR CHOEU**: *Ja* not performance bonus just only because you had that score.

**CHAIRPERSON**: Oh.

**MR CHOEU**: You know. Compared to – you are compared to other companies which is not good for you.

**CHAIRPERSON**: H'mm.

**MR CHOEU**: And ultimately it also hit on the bottom in that if you do not reach a certain score a certain percentage of your bonus would be  
10 taken off.

**CHAIRPERSON**: H'mm. Basically it has got something to do with that – with the fact that your involvement in a certain thing could result in your performance assessments – assessment being negative.

**MR CHOEU**: Yes.

**CHAIRPERSON**: *Ja* okay.

**MR CHOEU**: *Ja*. And just the company I mean we were ...(intervenes).

**CHAIRPERSON**: The reputation of the company.

**MR CHOEU**: Had to – *Ja* we had to answer a lot of questions really.

**CHAIRPERSON**: Okay.

20 **ADV HOFMEYR**: Mr Choeu at paragraph 8.1 on page 8 where we were you said that there was no contract between TNA and Eskom between April 2013 and March 2014.

**MR CHOEU**: H'mm.

**ADV HOFMEYR**: Are you aware of any ad-hoc breakfasts that were sponsored in that period?

**MR CHOEU:** There might have been but I do not have the details of them. There might have been. Because you see there is also something that happens at most companies and at Eskom where a certain division may feel like they want to sponsor something.

**ADV HOFMEYR:** H'mm.

**MR CHOEU:** Or a breakfast that this particular breakfast by the Department of Trade and Industry. We like what is going to happen – what is going so we want to be part of it.

**ADV HOFMEYR:** So would that have come from a division or are you  
10 aware of one?

**MR CHOEU:** No it will come from different divisions or from the Chief Executive Officer we did not have the money.

**ADV HOFMEYR:** Not from you per se?

**MR CHOEU:** Not from me per se.

**ADV HOFMEYR:** Right. Could we go in Mr Pretorius' second bundle that is MM1B.

**MR CHOEU:** MM eish – oh this one.

**ADV HOFMEYR:** And it is page 768 which is right at the end after tab  
33.

20 **MR CHOEU:** 768. I am closer to it. *Ja*.

**CHAIRPERSON:** Thank you.

**ADV HOFMEYR:** Mr Choeu do you recall this letter?

**MR CHOEU:** Yes I recall this letter now.

**ADV HOFMEYR:** It is a letter that you wrote, is that correct?

**MR CHOEU:** Yes.

**ADV HOFMEYR:** To Mr Kannan Lakmeharan?

**MR CHOEU:** H'mm.

**ADV HOFMEYR:** Correct. What position did he hold?

**MR CHOEU:** Kannan was two positions Technology and Commercial Acting but also he worked in the office of the Chief Executive Officer.

**ADV HOFMEYR:** Okay and what is the date of this letter?

**MR CHOEU:** 23 July.

**ADV HOFMEYR:** 2013?

**MR CHOEU:** Yes.

10 **ADV HOFMEYR:** Correct. And what are you saying in this letter?

**MR CHOEU:** Requesting breakfast which are the Minister of Public Enterprises. The breakfast will take – the Minister will engage with the trainees and various CEO's. The Public of Enterprise rose more than a 1000 trainees along with stakeholders. The trainees will interact directly with the Minister leadership. CEO's will be given a platform to update attendees and viewers on the initiative to impact training and create new jobs. For ease of reference I attach a propose from the New Age which provide additional information and the proposed packages. I therefore request that you approve the policy to the value

20 I am confirming provide the necessary points to execute the payment.  
Yes.

**ADV HOFMEYR:** So this is in that period where you had said you were not in favour of contracting with the TNA, is that right?

**MR CHOEU:** Yes.

**ADV HOFMEYR:** But you are as I understand this letter proposing here

in July of 2013 that Eskom should spend R1.2 million now on a breakfast that Mr Gigaba the then Minister of Public Enterprises was to be the guest speaker at, is that right?

**MR CHOEU:** Yes.

**ADV HOFMEYR:** How does that square with your concerns by that stage of the reputational impact and the lack of value?

**MR CHOEU:** It still impact that because if you can recall I said there continued to be a lot of pushing and asking and this directly came from the office of the Chief Executive Officer that we will receive this  
10 request because they are going to meet with our Minister and do this event.

**ADV HOFMEYR:** But Mr Choeu as I understand it by this stage you are very sceptical about the value and you worried about reputational interest, is that correct?

**MR CHOEU:** Yes.

**ADV HOFMEYR:** So why do you not respond and say I do not support it?

**MR CHOEU:** Well it does not work that way normally. You can but it does not work that normally. When the office of the – because – comes  
20 the Chief Executive Officer comes to you and say to you I would like you to draft a letter, here are the contents of the letter because here is the imperative we need to meet with them – the – what do you call it? The Chief Executive Officer. You say well this is what you want I will do it for you and you will approve it or not approve it. That is the view I took and I think I should have viewed it differently.

**ADV HOFMEYR:** H'mm. Let us just go to that.

**CHAIRPERSON:** Sorry I just want to hear that last portion.

**MR CHOEU:** I should have viewed that differently but I do not know why ...(intervenes).

**CHAIRPERSON:** Oh okay.

**MR CHOEU:** Whether – but my view ...(intervenes).

**CHAIRPERSON:** Yes.

**MR CHOEU:** Was that normally how it works. Even on procurement generally. I have – tell my senior can you put together a letter or a  
10 proposal this is what I want to do, this is what it must include. You send it back to him he does not like it, he sends it back to you. When you send then you said I will approve this and continue. You see.

**ADV HOFMEYR:** So was this letter proceeded by the Chief Executive Officer of Eskom telling you that he wanted you to prepare this letter?

**MR CHOEU:** Yes.

**ADV HOFMEYR:** Who was the Chief Executive at that time?

**MR CHOEU:** I think it was Brian Dames – *ja* it was Brian Dames.

**ADV HOFMEYR:** So Brian Dames who had previously told you, you must contract initially with TNA. Do you specifically recall an  
20 interaction with him at which he said you need to put together a letter ...(intervenes).

**MR CHOEU:** Not the ...(intervenes).

**ADV HOFMEYR:** Requesting approval for R1.2 million for a breakfast that Mr Gigaba is going to attend?

**MR CHOEU:** Not the date but because we met on a regular basis. We

met on a very regular – almost weekly.

**ADV HOFMEYR:** So you have a specific memory that it was another instruction from Mr Dames?

**MR CHOEU:** Another – yes it was.

**ADV HOFMEYR:** Why does Mr Dames not just approve it?

**MR CHOEU:** Just approve it. No there must be a what you refer to it – a source document that you – we have the where did this start from. There always a source document yes.

**MR CHOEU:** And why then does it not say Dear Mr Dames I refer to the  
10 discussion we had in which you instructed that I prepare a proposal for the R1.2 million that is going to be spent on this breakfast.

**MR CHOEU:** No that is not normally how you guide executive unless you are disputing for Chief Executive Officer we do not want to take an instruction. No. I was not ...(intervenes).

**CHAIRPERSON:** I am sorry Mr Choeu. Your voice is going down so ...

**MR CHOEU:** I am saying – *ja*.

**CHAIRPERSON:** *Ja*.

**MR CHOEU:** I am saying in this point in time I did not think it is necessary for me to take issue with the Chief Executive Officer over  
20 this request because in the view this is how they want the company to run and in as is mentioned in the letter he is going to be participating his part of the event with his own responsible Minister. Now it would be – your – I can understand your view but in my view it would be odd just to say no I am not going to do it. It – that is insubordination. You just do what he wants and when he – and you tell them I – there is no



budget and he tells you no, no the budget will be from Kannan. Kannan is in the office of the Chief Executive Officer directly.

**ADV HOFMEYR:** Mr Choeu how could it ever be insubordination if you are doing the right thing?

**MR CHOEU:** Well it can be insubordination after the fact when you look it in hindsight.

**ADV HOFMEYR:** Mr Choeu by this stage I understand you to have formed the view that there was no value for Eskom in these contracts, is that correct?

10 **MR CHOEU:** *Ja* there – well like – I do not like the word value because people are reading the newspapers and what have you but I am saying reputational risk was – *ja* to Eskom.

**ADV HOFMEYR:** Because your evidence earlier was that there was no value to the commercial relationship.

**MR CHOEU:** Okay. But mostly it was reputational. But remember that this is how we would do if a Chief Executive gives you an instruction and say write it to my office – write to my office and this is what you write to his office.

**ADV HOFMEYR:** H'mm.

20 **MR CHOEU:** To have evidence of the source document. When we do a trail for auditing purposes the first thing they want is where is the source document and this is the source document for that type of thing. The question then need to be for him to answer why did you approve it? Why did you give that instruction?

**ADV HOFMEYR:** Mr Choeu just at the level of governance do you

accept that when this happens – when subordinates are instructed by their bosses to write proposals that look like it is coming from the division that is a misrepresentation of the true facts?

**MR CHOEU**: It is not if it comes from the relevant department. Chief Executive Officer would ask if it is about – it is – the department responsible for Human Resources it is a Human Resources issues. I want the following people to be employed to do the same type of thing. The – all the documents, the proposals and everything will be made by that document – by that department and sent to the Chief Executive  
10 Officer. It is not misrepresentation. It might be a wrong thing but it mean not because they are the relevant division. Everything that dealt with media, communication and what have you came from my division.

**ADV HOFMEYR**: And if you disagreed with the substance of what you were being asked to write I understand you to say you did not really have an option you needed to put together the proposal?

**MR CHOEU**: *Ja*.

**CHAIRPERSON**: Would it be correct to say when you are given an instruction by your superior there are circumstances where you would comply with the instruction happily.

20 **MR CHOEU**: Yes.

**CHAIRPERSON**: There are circumstances where you would comply but not happily, maybe grudgingly, maybe with a little bit of some unhappiness but comply. And then there would be circumstances where you would say no I am not doing that?

**MR CHOEU**: *Ja*.

**CHAIRPERSON:** And that may depend on how strongly you feel about the instruction.

**MR CHOEU:** *Ja* how strong you feel about it or if you fear for your job and whatever.

**CHAIRPERSON:** Yes.

**MR CHOEU:** But the point of the matter here that I want to mention is that the persons that give this instruction are also conscious of your fears is not their fears probably. You see. They see this question – let me take this for example. The Chief Executive Officer would sign all  
10 parliamentary questions so he is aware of what is contained – what is happening in one of his divisions or other. Media queries are signed by the Chief Executive Officer not any other person. If he wants to do something and he is aware of all the risks and what have you, you also can reach a decision, he wants it let me give it to him and he will continue and follow the proper procedures. Because this does not say ...(indistinct) this is what is happening and then that person would follow a procedure. That is what you do. That is my – in my view. And I have seen this happening all of the time. If you look at all proposals they will always be – sometimes it can be the most junior person  
20 putting it together who may not even have the risk and everything and only realise when the questions are being asked that I was not – I was just putting together what was requested of me. So the bosses here were conscious of the challenges that – not me now, not my division Eskom was challenged.

**ADV HOFMEYR:** Mr Choeu are you aware whether that particular

breakfast was sponsored?

**MR CHOEU:** I am not aware but the breakfast did take place. I still recall it was one big breakfast in Pretoria. I do not remember the park but it is somewhere in Pretoria East in a very big unusual church – but I remember – yes.

**ADV HOFMEYR:** I can confirm just for the record that it was paid for.

**MR CHOEU:** Yes.

**ADV HOFMEYR:** That appears actually from an answer to the Public Protector that we looked at yesterday. Chair it is not necessary to go  
10 there. But are you aware of any process – a proper process that you describe being followed before the R1.2 million was paid?

**MR CHOEU:** No, no. It just went through the office of the Chief Executive Officer.

**ADV HOFMEYR:** And the Chief Executive approved that?

**MR CHOEU:** We were not going to get involved anymore with the technicalities of these issues.

**ADV HOFMEYR:** Despite the fact it was a sponsorship and if it had followed process it would have needed to go to the Committee as you endeavoured to do the previous year?

20 **MR CHOEU:** Yes.

**CHAIRPERSON:** So ...(intervenes).

**MR CHOEU:** And the Chief Executive Officer was aware because he signed this and agreed to it. Yes.

**CHAIRPERSON:** So was the justification for not taking it to the Committee that the instruction came from the Chief – Group Chief

Executive?

**MR CHOEU**: No I do not know.

**CHAIRPERSON**: Or is the position ...(intervenes).

**MR CHOEU**: No, no I – if you write to them.

**CHAIRPERSON**: *Ja*.

**MR CHOEU**: It is – that is the source document.

**CHAIRPERSON**: Yes.

**MR CHOEU**: The people who receive it you do not control ...

**CHAIRPERSON**: What they do with it.

10 **MR CHOEU**: What you are – you cannot even give them instruction do this.

**CHAIRPERSON**: *Ja* so it would have been the office of the Group Chief Executive which would have needed to take it to the Committee?

**MR CHOEU**: Kannan yes.

**CHAIRPERSON**: *Ja* not your division.

**MR CHOEU**: Yes.

**CHAIRPERSON**: Okay.

**MR CHOEU**: We looked at sponsorship from all over the – so they would have had to come to ...

20 **CHAIRPERSON**: To the Committee?

**MR CHOEU**: To the Committee.

**CHAIRPERSON**: H'mm, okay.

**ADV HOFMEYR**: Yes Mr Choeu sorry your last bit of testimony is precisely my understanding of it. Insofar as this business breakfast was a sponsorship it still needed to be approved by the Sponsorship

Committee, is that not correct?

**MR CHOEU**: This is what I am saying.

**ADV HOFMEYR**: Yes. And in this case it was not?

**MR CHOEU**: It was not.

**ADV HOFMEYR**: Let us move then to the third contract if we may?

**MR CHOEU**: H'mm.

**ADV HOFMEYR**: And I am back at page 8 of your affidavit in M – Exhibit MM2.

**MR CHOEU**: H'mm.

10 **ADV HOFMEYR**: And for the third contract we need to move forward in time to April 2014.

**CHAIRPERSON**: I am sorry what page are we going to?

**ADV HOFMEYR**: Apologies Chair it is page 8.

**CHAIRPERSON**: Oh okay.

**ADV HOFMEYR**: Of Mr Choeu's affidavit.

**CHAIRPERSON**: Okay.

**ADV HOFMEYR**: And we are at the bottom of page 8 at paragraph 8.2. There you talk about April 2014 and a new interim CEO of Eskom being appointed. Who was that?

20 **MR CHOEU**: Mr Matjila Collin.

**ADV HOFMEYR**: And this is the stage you gave evidence yesterday where there is now another layer of reporting. You do not report any longer directly to the Chief Executive you report to Ms Erica Johnson.

**MR CHOEU**: Yes.

**ADV HOFMEYR**: Is that correct?

**MR CHOEU:** Yes.

**ADV HOFMEYR:** Tell us about how the third contract came about Mr Choeu?

**MR CHOEU:** Erica Johnson reported to you – she said on Exco I was not sitting on Exco. On her normal meeting with Erica told Erica ...(intervenes).

**ADV HOFMEYR:** Who told Erica just so that we can have ...(intervenes).

**MR CHOEU:** Okay. Collin the Chief Executive Officer.

10 **ADV HOFMEYR:** Okay so Mr Matjila just so that we can get it clear for the record.

**MR CHOEU:** Mr Matjila.

**CHAIRPERSON:** And Ms Johnson.

**ADV HOFMEYR:** And Ms Johnson.

**MR CHOEU:** Mr Collin Matjila told Ms Erica Johnson that he would want us to sponsor the breakfast and he would want a long term contract of about 3 years. I must mention something which is not here. Simply because I do not have the documents but I do not know. Is that at the time that we totally were refusing to deal with the breakfast one  
20 of the things that as ...(indistinct) and these are things that you talk about was that if ever these breakfasts have to be ...(intervenes).

**CHAIRPERSON:** Done again.

**MR CHOEU:** Have to be engaged into.

**CHAIRPERSON:** H'mm.

**MR CHOEU:** It will have to be the office of the Chief Executive Officer

and as I recall Mr Pretorius' team as they were – Erica was writing letters to all the colleagues to ask them to indicate how much money they are going to have for different sponsorship. That he requested that the one – if there is money – got any money which is going to be allocated for TNA it must be allocated in the office of the Chief Executive Officer. And we wanted – what we also wanted to do because we were worried we wanted now to change the process of sponsorship that in – you will still have to come to the Committee but Exco, Exco we used never to be involved at all with sponsorship at all.

- 10 Exco must approve that Chairman Zondo wants to sponsor – tell us what you want to sponsor for this year and give us an amount and then you go to another one and another one and another one and that type of thing. So we were engaged at the – currently at the same time and a strong feeling was that if any money has to be allocated for TNA – because the debate of sponsoring TNA never stopped. These guys – same question – they were still happening in other departments and whatever. So they never stopped whilst we stopped for this year. So Erica was informed I do not know whether he was instructed and what have you he was to tell – to say you will have to put together a
- 20 proposal for us and then it was detailed to him, sponsor a breakfast and Erica Johnson came to me and most importantly he told me and said Chose I did tell the Chief Executive Officer that these breakfasts are not good for us for our reputation but the Chief Executive Officer insisted that he will deal with all the problems. He will deal with the procurement. He has the authority you guys just do the source



document for me and then it came to me and I worked with my team to put together the source document.

**ADV HOFMEYR**: Thank you Mr Choeu. Before we get to that document I do just recall something I wanted to ask you about. You indicated in your evidence earlier that Mr Pretorius never conveyed to you his reservations about these contracts. Do you recall giving that evidence?

**MR CHOEU**: Yes.

**ADV HOFMEYR**: Mr Pretorius' evidence yesterday included a PowerPoint presentation that he prepared.

10 **MR CHOEU**: H'mm.

**ADV HOFMEYR**: In April of 2013.

**MR CHOEU**: H'mm.

**ADV HOFMEYR**: In which he set out all the reasons why he did not recommend further contracts with the TNA.

**MR CHOEU**: H'mm.

**ADV HOFMEYR**: And that is a PowerPoint presentation you will find in MM1B.

**MR CHOEU**: MM1B page?

**ADV HOFMEYR**: Page 766 which is towards the end under tab 33.

20 **MR CHOEU**: 65. Yes you want to start 766?

**ADV HOFMEYR**: Yes because this is the part of the presentation where he sets out why the sponsorship is not recommended. He says that this PowerPoint presentation was provided to you, do you recall it?

**MR CHOEU**: No.

**ADV HOFMEYR**: You do not?

**MR CHOEU**: No. And PowerPoint would never be submitted to me.

**ADV HOFMEYR**: H'mm.

**MR CHOEU**: What would be submitted to me we have a form – if you want something to be submitted to Exco or to MANCO you put together a Word document and maybe it is here and then that Word document goes to the secretariat of the relevant Committee and then in that Committee all the members would have been expected to have read the Word document and you only present the ...(intervenes).

**ADV HOFMEYR**: PowerPoint.

10 **MR CHOEU**: The PowerPoint presentation.

**ADV HOFMEYR**: Yes. You see at this time April 2013 I understand your evidence to be you also had scepticism ...(intervenes).

**MR CHOEU**: H'mm.

**ADV HOFMEYR**: About this arrangement and what is interesting about this page is many of the things that Mr Pretorius says on this page are the things you have been testifying about today. I also understand your evidence to be by this stage you were talking to your team quite a bit about the problems with the Parliamentary questions.

The reputational risks. So are you quite sure that at no point  
20 Mr Pretorius indicated to you that he had reservations about the sponsorship?

**MR CHOEU**: Not at all. He has never ever come to me about the reservation about the sponsorship.

**ADV HOFMEYR**: So when he said at the first bullet there:

“The sponsorship does not meet the minimum

requirements and therefore it is recommended that it be declined.”

Is that consistent with your view at the time?

**MR CHOEU:** First of all I had - I would have hoped this type of presentation would have been given at the first – after the first – very, very first – remember it is Mr Pretorius that decided not to go for the Sponsorship Committee. To go to Mediashop with his boss. So after all this they should have come back with this presentation and this presentation they would have to – because members of the Sponsorship  
10 Committee sits on the MANCO.

He would have had to take this to MANCO so that they are privy when they do the evaluation to this decision. For him – I do not understand why would he bring a PowerPoint to me. You know and he is reporting to Kheepe because presentation that go to MANCO come now in an – can be done by many other people under you. They come in the name of the boss of the division.

**ADV HOFMEYR:** H'mm.

**MR CHOEU:** When I go to Exco all the documents are done for me by my team, but I am the one who will go there and if I am not a good  
20 expert I will ask Exco that I will just make an introduction and my team member will make a presentation. I am seeing this for the very first time, but the information in it ...(intervenes).

**ADV HOFMEYR:** H'mm.

**MR CHOEU:** It was quite clear – it – I mean this is – this information was quite clear to everybody.

**ADV HOFMEYR:** H'mm.

**CHAIRPERSON:** So you say the reasons that he gives here ...*(intervenes)*.

**MR CHOEU:** *Ja.*

**CHAIRPERSON:** Maybe if you have not had much time to go through all of them. Maybe it is not all of them, but those that you have been able to see.

**MR CHOEU:** Yes.

**CHAIRPERSON:** You are able to say those are true. Those were true.

10 **CHAIRPERSON:** The other time.

**MR CHOEU:** In my view ...*(intervenes)*.

**CHAIRPERSON:** Yes.

**MR CHOEU:** But they would have been – have had to be tested by the ...*(intervenes)*.

**CHAIRPERSON:** Yes.

**MR CHOEU:** Sponsorship Committee.

**CHAIRPERSON:** Yes, but to you they appear to have been valid reasons.

**MR CHOEU:** Let me ...*(intervenes)*.

20 **CHAIRPERSON:** Or reasons that you could ...*(intervenes)*.

**MR CHOEU:** Yes.

**CHAIRPERSON:** You could accommodate ...*(intervenes)*.

**MR CHOEU:** *Ja.*

**CHAIRPERSON:** As possibly true?

**MR CHOEU:** *Ja.* There is a technical thing that I need to mention

...(intervenes).

**CHAIRPERSON**: H'mm.

**MR CHOEU**: Here.

**CHAIRPERSON**: H'mm.

**MR CHOEU**: You may have a player that is very good ...(intervenes).

**CHAIRPERSON**: H'mm.

**MR CHOEU**: But this behaviour very bad.

**CHAIRPERSON**: Yes.

**MR CHOEU**: You see.

10 **CHAIRPERSON**: Yes.

**MR CHOEU**: So you do not exclude him because of not scoring goals.

**CHAIRPERSON**: Yes.

**MR CHOEU**: You include – so then I – and the fact that if you say there were selling 32 000 newspapers and the readership goes to 17.

**CHAIRPERSON**: H'mm.

**MR CHOEU**: It is a plus.

**CHAIRPERSON**: H'mm, h'mm.

**MR CHOEU**: It may not be in section – so in my evaluating of them ...(intervenes).

20 **CHAIRPERSON**: H'mm.

**MR CHOEU**: And my dislike of them really ...(intervenes).

**CHAIRPERSON**: H'mm.

**MR CHOEU**: Because it does come to ...(intervenes).

**CHAIRPERSON**: H'mm.

**MR CHOEU**: I would not just rightly write them off ...(intervenes).

**CHAIRPERSON**: H'mm. feelings...(intervenes).

**CHAIRPERSON**: The feeling was, *ja*.

**MR CHOEU**: Was around ...(intervenes).

**CHAIRPERSON**: At the time.

**MR CHOEU**: The company.

**CHAIRPERSON**: Okay.

**MR CHOEU**: And when we were answering these Parliamentary questions ...(intervenes).

**CHAIRPERSON**: H'mm.

10 **MR CHOEU**: Because they were impacting directly on (clearing of throat).

**CHAIRPERSON**: H'mm, h'mm.

**MR CHOEU**: Yes, man.

**ADV HOFMEYR**: So I understand you to say despite not having been provided with that PowerPoint you share some of Mr Pretorius' reservation about supporting the sponsorship that are contained there. Mr Choeu then let us move to Ms Johnson's indication to you that there was an instruction from the Chief Executive ...(intervenes).

**MR CHOEU**: H'mm.

20 **ADV HOFMEYR**: To put together a proposal.

**MR CHOEU**: H'mm.

**ADV HOFMEYR**: Again I am going to ask why did you not convey to her then that you were uncomfortable doing so because you did not see value in the sponsorship?

**MR CHOEU**: No, she was aware, I made a mail, she was aware. She

was uncomfortable herself.

**ADV HOFMEYR:** H'mm.

**MR CHOEU:** No, no. She was uncomfortable and I met her. So even without me telling him he did mention to me that he did inform the Chief Executive Officer.

**ADV HOFMEYR:** But you still put the proposal together and if I may we can go to it. It is at page ...(intervenes).

**MR CHOEU:** H'mm.

**ADV HOFMEYR:** 39 of your bundle. That is MM2.

10 **MR CHOEU:** MM of mine?

**ADV HOFMEYR:** Of your bundle.

**MR CHOEU:** Why do you say MM?

**ADV HOFMEYR:** Sorry. Your bundle is an exhibit it is called MM2.

**MR CHOEU:** Oh, meaning this ...(intervenes).

**CHAIRPERSON:** That is the exhibit on the spine.

**ADV HOFMEYR:** On the spine. Indeed.

**MR CHOEU:** Oh. Number – which...(intervenes)?

**ADV HOFMEYR:** Number 39. Page 39 in the top right.

**MR CHOEU:** Thanks. Sorry about – yes.

20 **ADV HOFMEYR:** Now this is the proposal. Is that correct?

**MR CHOEU:** Yes.

**ADV HOFMEYR:** And it is prepared by you. If you go over to page 42.

**MR CHOEU:** Huh-uh.

**ADV HOFMEYR:** Is that correct?

**MR CHOEU:** Yes.

**ADV HOFMEYR**: I would like to highlight just a few features of it.

**MR CHOEU**: Yes.

**ADV HOFMEYR**: The second paragraph on page 39 says:

“I have also attached The New Age Business Breakfast  
Sponsorship Proposal we have received from TNA Media  
for your consideration.”

**MR CHOEU**: H'mm.

**ADV HOFMEYR**: Do you see that?

**MR CHOEU**: Yes.

10 **ADV HOFMEYR**: And then over the page at page 40.

**MR CHOEU**: Huh-uh.

**ADV HOFMEYR**: There is a heading called “Justification”  
...(intervenes).

**MR CHOEU**: Yes.

**ADV HOFMEYR**: And that first paragraph talks all about sponsorships  
...(intervenes).

**MR CHOEU**: H'mm.

**ADV HOFMEYR**: And the role they play in Eskom.

**MR CHOEU**: H'mm.

20 **ADV HOFMEYR**: Mr Choeu can I ask you was there any doubt in your  
mind when you put this together that this contract was going to be a  
sponsorship?

**MR CHOEU**: No. There was never a doubt that is why here we -  
because sponsorship is a form of ...(indistinct).

**ADV HOFMEYR**: Indeed. All the previous contracts had referred to



sponsorships.

**MR CHOEU:** All ...(intervenes).

**ADV HOFMEYR:** You are referring to sponsorships.

**MR CHOEU:** All ...(intervenes).

**ADV HOFMEYR:** That once on a rare occasion went to the Sponsorship Committee. Is it fair to say we are in the realm of sponsorships in Eskom?

**MR CHOEU:** They are.

**ADV HOFMEYR:** Thank you. Let us go over to page 41 if we may.

10 **MR CHOEU:** Huh-uh.

**ADV HOFMEYR:** 41 indicates that the total budget will be 30 – 43.2 ...(intervenes).

**MR CHOEU:** H'mm.

**ADV HOFMEYR:** Million ...(intervenes).

**MR CHOEU:** H'mm.

**ADV HOFMEYR:** And that is at a cost of 1.2 million per event.

**MR CHOEU:** Yes.

**ADV HOFMEYR:** Mr Choeu what justified that jump to 1.2 million per event where Eskom had previously been paying one million?

20 **MR CHOEU:** What I became quite aware at the time was that when this proposal came to me it had already served at the Chief Executive Office. What discussion he was have – and it was quite clear that there is conscious discussion between the Chief – sorry – Chief Executive Officer and you will see when we come to the contract.

**ADV HOFMEYR:** So sorry. The Chief Executive Officer being

Mr Matjila and TNA?

**MR CHOEU:** *Ja.*

**ADV HOFMEYR:** Is that what you are saying?

**MR CHOEU:** *Ja.*

**ADV HOFMEYR:** So they had had prior conversations and they had somehow agreed at 1.2 million?

**MR CHOEU:** I am not sure they had, but it was quite clear that they were. It was quite clear in the e-mails that yes they have been talking.

**ADV HOFMEYR:** Did you query the R200 000 increase per breakfast?

10 **MR CHOEU:** I do not recall querying it, but I do know at what time they had – I had spoken to them that we have to look at this number and because I had asked them to look at this number they then said that they will only do it when we increase the frequency that is more than ...*(intervenes)*.

**ADV HOFMEYR:** 36.

**MR CHOEU:** Four – 36 and I made the Chief Executive Officer aware. So there is some – to say this – they agreed first and later they wrote another letter and when they agreed I sent almost like a celebratory letter to the Office of the Chief Executive Officer to Mr Freddy Ndo  
20 copying the Chief Executive Officer that these guys now that we are doing this.

They have reduced – it is now R1 million. Not what they had requested on the proposal that they had discussed you – they discussed. Later they wrote a letter and said no, no, no. We – you misunderstood us. We said that it will be lowered by 200 million per

breakfast on condition that you increase the frequency to above 36.

**CHAIRPERSON**: What I do not understand Mr Choeu is how you as Exco ...(intervenes).

**MR CHOEU**: H'mm.

**CHAIRPERSON**: Who have been approached by this small new newspaper ...(intervenes).

**MR CHOEU**: H'mm.

**CHAIRPERSON**: And they asked you to sponsor their breakfast show.

**MR CHOEU**: H'mm.

10 **CHAIRPERSON**: End up being like you are begging them for something. It is like they are dictating terms to you, but you are Eskom.

**MR CHOEU**: H'mm.

**CHAIRPERSON**: You are Eskom.

**MR CHOEU**: H'mm.

**CHAIRPERSON**: You have been around for a long time. You have financial muscle.

**MR CHOEU**: Yes.

**CHAIRPERSON**: They are the ones who need you. Not you needing  
20 them, but here now they talk about lowering the amount and you are celebrating.

**MR CHOEU**: Yes.

**CHAIRPERSON**: H'mm. Whereas you should be the one saying we will only do this for you under the following terms and conditions.

**MR CHOEU**: H'mm.

**CHAIRPERSON**: Take it or leave it.

**MR CHOEU**: H'mm.

**CHAIRPERSON**: That is what I do not understand.

**MR CHOEU**: I like ...(intervenes).

**CHAIRPERSON**: It is like you are under some kind of hold or control to comply with whatever they want to do as Eskom.

**MR CHOEU**: Yes. That was the situation ...(intervenes).

**CHAIRPERSON**: That was the situation.

10 **MR CHOEU**: In my mind it was this – you can see it quite clearly. It was.

**CHAIRPERSON**: H'mm.

**MR CHOEU**: It was a situation.

**CHAIRPERSON**: What brought that situation about?

**MR CHOEU**: Well if you get your Chief Executive Officer thinking that something is good. Is doing extremely well and ...(intervenes).

**CHAIRPERSON**: H'mm.

20 **MR CHOEU**: They go there and they speak in those events and they answer Parliamentary questions and they are happy to subject themselves to the embarrassment of Parliamentary questions. Subject themselves to the embarrassment of the media. Then ...(intervenes).

**CHAIRPERSON**: Do – did you ever think that this situation where this giant Eskom was acting like this to this small newspaper came about because of anything connected with something that was mentioned by the person who wrote that briefing about TNA and said that you know TNA is said to have – to be close to the President and so on?

Is it possible that that was playing in the minds of some people within Eskom for this situation to arise where this giant is acting like this?

**MR CHOEU**: Chair to tell you the truth ...(intervenes).

**CHAIRPERSON**: H'mm.

**MR CHOEU**: I have never ever discussed – there is never a situation where the Chief Executive Officer have ever said to me the Minister so – said this and said this. If the Minister's name was concerned it would be like in let us put together a letter. We are going to do this event  
10 with the Minister. Not like we have been instructed. I will be lying.

Mr Brian Dames never ever, ever implicated the Minister in what we are doing. The discussions were that we are supporting – get them as I come up because I want the – we are supporting the small new newspaper. It has got good news whenever we are attacked by other newspapers.

They are doing extremely well and what have you, but to answer you on your ultimate question I mean it is all these type of things that I mentioned and they are there about what Mediashop said about itself, but also when we started seeing all Ministers – I mean  
20 they would arrange any Minister to come and speak at a particular breakfast. We are the State-Owned Enterprise.

I am – I was the head of stakeholder engagement that included Government relations. It was not always easy to get a meeting with ...(intervenes).

**CHAIRPERSON**: A Minister?

**MR CHOEU:** A Minister.

**CHAIRPERSON:** H'mm.

**MR CHOEU:** You see. Discuss on any – the – this breakfast would be on a Friday on any Friday they would meet the Minister. Something that was not mentioned – we did not mention because it was not even a part of the proposition but what they would allow a company sponsoring to is that – you know we – there is – not that I am no more working. I forget these things.

Let me call it an anteroom where in the morning you would  
10 come in and sit with the Minister and you can articulate all problems about the same department and you know as we having tea/coffee and those meetings would take about – up about 30 minutes or whatever. They could arrange those type of thing.

So they did have that – I have no doubt have – had a lot of influence in the mind of including myself. I cannot exclude myself in that because I am not talking – they demonstrated it. It was there. It was available and it was taken as a garment relation expert I could see that these guys have a lot of influence. So that had a lot to do with that Chair.

20 **CHAIRPERSON:** I think that is very – I think that is quite helpful. You see I heard evidence from Mr Themba Maseko last year and part of his evidence was that Mr Ajay Gupta said to him on the occasion when they had a meeting and according to Mr Maseko Mr Ajay Gupta was demanding that the whole advertising budget of GCIS or of Government – Government's spend on advertising should be directed to TNA.

Mr Maseko said when he resisted this idea ...(intervenes).

**MR CHOEU:** H'mm.

**CHAIRPERSON:** And told Mr Ajay Gupta that no it does not work like that. You know.

**MR CHOEU:** H'mm.

**CHAIRPERSON:** You cannot do that. He said he demanded that he should do it and said if there was any Minister ...(intervenes).

**MR CHOEU:** H'mm.

**CHAIRPERSON:** Who was giving him problems about this or was not  
10 cooperating he must – Mr Maseko should tell Mr Ajay Gupta  
...(intervenes).

**MR CHOEU:** H'mm.

**CHAIRPERSON:** And I cannot remember the actual wording, but my recollection is that Mr Maseko said Mr Ajay Gupta said we will summon that Minister here. Mr Maseko said to me he objected to this man talking like this about his seniors.

**MR CHOEU:** Huh-uh.

**CHAIRPERSON:** You know. So it is – it seems to me that if it is true that that is what Mr Ajay Gupta said to Mr Maseko.

20 **MR CHOEU:** H'mm.

**CHAIRPERSON:** He may have sought to show Mr Maseko what kind of influence ...(intervenes).

**MR CHOEU:** H'mm.

**CHAIRPERSON:** He had or the family had.

**MR CHOEU:** *Ja.*

**CHAIRPERSON:** Which you seem to be talking about in terms of influence them. They seem to be able to get Ministers easily and so on.

**MR CHOEU:** Yes, sir.

**CHAIRPERSON:** Ja. Okay.

**MR CHOEU:** But there is something that also Mr Maseko ... (intervenes).

**CHAIRPERSON:** H'mm.

**MR CHOEU:** Mentioned and I am not saying it applies to me, but  
10 ... (intervenes).

**CHAIRPERSON:** Yes.

**MR CHOEU:** I think one of the important things he mentioned that many of my colleagues could have talked like this had they had access that I had with Luthuli House. He mentioned that somewhere upon ... (intervenes).

**CHAIRPERSON:** Yes, yes.

**MR CHOEU:** That he ... (intervenes).

**CHAIRPERSON:** Yes.

**MR CHOEU:** Had comfort to an extent in that there is somebody to call  
20 and I do recall that as I said Mr Dames has never ever said any Minister said this to me and what if you in the negative or ... (intervenes).

**CHAIRPERSON:** Ja.

**MR CHOEU:** Or in that way ... (intervenes).

**CHAIRPERSON:** Yes.



**MR CHOEU**: He said I was current relations. So he had said many things ...(intervenes).

**CHAIRPERSON**: Yes. *Ja*.

**MR CHOEU**: But I recall that in Parliament one of the things that he mentioned that the manner in which he was spoken to in a meeting he attended and with the Guptas somewhere. He was extremely angry. He used the word “angry”.

**CHAIRPERSON**: Mr Dames?

**MR CHOEU**: *Ja*. Dames.

10 **CHAIRPERSON**: Is that so?

**MR CHOEU**: But I do not know the ...(intervenes).

**CHAIRPERSON**: The details?

**MR CHOEU**: The details of that meeting.

**CHAIRPERSON**: Okay.

**MR CHOEU**: When he was asked have you met the Guptas and he ...(intervenes).

**CHAIRPERSON**: H’mmm.

**MR CHOEU**: Said that he was extremely, extremely angry to have been spoken to ...(intervenes).

20 **CHAIRPERSON**: H’mmm.

**MR CHOEU**: Like that.

**CHAIRPERSON**: But was he talking about being spoken to by members of Parliament ...(intervenes)?

**MR CHOEU**: No, no, no. By ...(intervenes).

**CHAIRPERSON**: Oh, by the Gupta family.

**MR CHOEU:** *Ja.*

**CHAIRPERSON:** The Gupta family.

**MR CHOEU:** I do not know who among the Gupta ...(intervenes).

**CHAIRPERSON:** *Ja*, but what ...(intervenes).

**MR CHOEU:** Yes.

**CHAIRPERSON:** Oh.

**MR CHOEU:** That the meeting ...(intervenes).

**CHAIRPERSON:** Yes.

**MR CHOEU:** Was not a cordial meeting.

10 **CHAIRPERSON:** Yes, yes.

**MR CHOEU:** As he had expected.

**CHAIRPERSON:** Yes.

**MR CHOEU:** First of all he went – he was taken there under false pretext according to him. Number two, the manner in which he ...(intervenes).

**CHAIRPERSON:** H'mm.

**MR CHOEU:** He was spoken to.

**CHAIRPERSON:** H'mm.

**MR CHOEU:** He did not like it.

20 **CHAIRPERSON:** Well that is quite important. Thank you.

**ADV HOFMEYR:** Mr Choeu notwithstanding that as I have it until 2013 Mr Dames was the one who was instructing you to entering into the contracts with TNA. Is that correct.

**MR CHOEU:** Yes.

**ADV HOFMEYR:** Now we are in 2014 and you have put together the

proposal for Mr Matjila ...(intervenes).

**MR CHOEU:** Huh-uh.

**ADV HOFMEYR:** For the R43 million contract ...(intervenes).

**MR CHOEU:** *Ja*.

**ADV HOFMEYR:** And we are at page 41 in your Exhibit MM2.

**MR CHOEU:** H'mm.

**ADV HOFMEYR:** Can I just clarify? Did you put this proposal together?

**MR CHOEU:** I put it together, but there were changes that were done  
10 in consultation with his office.

**ADV HOFMEYR:** With Mr Matjila's office?

**MR CHOEU:** Yes.

**ADV HOFMEYR:** If you are at page 41.

**MR CHOEU:** H'mm.

**ADV HOFMEYR:** You will see at the bottom there - there is a section called "Key Assumptions".

**MR CHOEU:** H'mm.

**ADV HOFMEYR:** Where you set out the outcome of certain research that was undertaken with regard to the 49M Campaign and it indicated  
20 that:

"Opportunities such as sponsorship of the business briefings contributed to an 87% awareness by the public of the 49M Campaign."

**MR CHOEU:** H'mm.

**ADV HOFMEYR:** Where is that information from?

**MR CHOEU:** That information is from a study which was done by Mr Pieter Pretorius. I do not have it with me, but yes.

**ADV HOFMEYR:** Well Mr Pretorius' evidence yesterday was that there was market research done on the 49M Campaign ...(intervenes).

**MR CHOEU:** Huh-uh.

**ADV HOFMEYR:** But there was no way in which you could link the public awareness of the campaign to the sponsorship of the business briefings. Do you recall that evidence?

**MR CHOEU:** I recall that evidence.

10 **ADV HOFMEYR:** And he said that insofar as that statement was made to the Public Protector it was false. Do you recall that?

**MR CHOEU:** I recall that, but the study – he said for the first time when he was putting together that your affidavit – his affidavit – when he was putting together to the Public Protector because he did that study.

**ADV HOFMEYR:** H'mm.

**MR CHOEU:** He did not say so.

**ADV HOFMEYR:** Well his evidence ...(intervenes).

**MR CHOEU:** So ...(intervenes).

20 **ADV HOFMEYR:** Is that he did and his evidence is that he sought to resist the pressure to draw this link between the awareness for the public campaign and the business briefings.

**MR CHOEU:** Ja. Alright.

**ADV HOFMEYR:** Mr Choeu are you aware of anyone else raising concerns about this causal link between the sponsorship of the

business breakfasts and awareness of the 49M Campaign?

**MR CHOEU**: I do not recall that. Let us have it. When we talk about 49M I think here and this is what I am thinking now is that the study was about the whole campaign.

**ADV HOFMEYR**: Yes. Indeed it was.

**MR CHOEU**: You see.

**ADV HOFMEYR**: H'mm.

**MR CHOEU**: And ...(intervenes).

**CHAIRPERSON**: Not about the breakfast shows.

10 **MR CHOEU**: *Ja*.

**CHAIRPERSON**: H'mm.

**MR CHOEU**: So the breakfast may have contributed 1% ...(intervenes).

**ADV HOFMEYR**: H'mm.

**MR CHOEU**: Or 20% or 30% and all those type of thing, but on – when we received this study this was just 49 – so we are talking 49M.

**ADV HOFMEYR**: H'mm. Indeed.

**MR CHOEU**: *Ja*.

**ADV HOFMEYR**: I think that is entirely consistent with Mr Pretorius' ...(intervenes).

20 **MR CHOEU**: *Ja*.

**ADV HOFMEYR**: Evidence, but then I want to know why you drew any link between the outcome of that research and the business breakfasts in a proposal for Eskom to spend R43 million on them?

**MR CHOEU**: Because that is the information I got from Mr Pretorius information. I had contacted my team to say what are the issue and

they gave me this information which is the information they gave to the Public Protector.

**ADV HOFMEYR**: Yes.

**MR CHOEU**: All that this type of information I would not have sourced it anywhere but from my Marketing Team.

**ADV HOFMEYR**: And you were not aware of concerns being raised about that causality?

**MR CHOEU**: No. Not at all.

**ADV HOFMEYR**: Okay. I would like to take you to some places where  
10 that was drawn to your attention, if I may.

**MR CHOEU**: Where is that?

**ADV HOFMEYR**: Okay. Let us start in – it is in Mr Pretorius' bundle.

**MR CHOEU**: Yes.

**CHAIRPERSON**: I am sorry. Ms Hofmeyr.

**ADV HOFMEYR**: Yes.

**CHAIRPERSON**: I just want to make sure before you proceed that we are on the same page – excuse me. That last paragraph at page 41 the way you have just referred to.

**ADV HOFMEYR**: Yes.

20 **CHAIRPERSON**: Mr Choeu ...(intervenes).

**MR CHOEU**: Yes, sir.

**CHAIRPERSON**: That second sentence which goes up to the third line. Is it meant to say?

“There is a recent research that was undertaken  
...(intervenes).”

**MR CHOEU:** H'mm.

**CHAIRPERSON:** "...with regard to the 49M Campaign ..."

**MR CHOEU:** Yes.

**CHAIRPERSON:** "...and that research has indicated that opportunities such as sponsorship – such as the sponsorship of the business briefings contributed to an 87% awareness by the public of the 49 Million Campaign."

Did it mean to say the breakfast shows have made some  
10 contribution to a situation where the 49 Million Campaign where the awareness ...(intervenes).

**MR CHOEU:** H'mm.

**CHAIRPERSON:** By the public ...(intervenes).

**MR CHOEU:** H'mm.

**CHAIRPERSON:** Of the 49 Million Campaign ...(intervenes).

**MR CHOEU:** H'mm.

**CHAIRPERSON:** Has risen to 87%?

**MR CHOEU:** No. I said recent research undertaken with regard to 49M – and research was taken ...(intervenes).

20 **CHAIRPERSON:** *Ja.*

**MR CHOEU:** By Mr Pretorius.

**CHAIRPERSON:** *Ja.*

**MR CHOEU:** Indicate that opportunities such as the sponsorship of the business briefing ...(intervenes).

**CHAIRPERSON:** H'mm.

**MR CHOEU**: This step contributed to a – 87% awareness of the public of 49M Campaign and I think I took it directly from the research that Mr Pretorius ...(intervenes).

**CHAIRPERSON**: Yes, but what I am trying to establish is whether you sought to say or this research sought to say to the extent that you now had an 87% awareness of the 49 Million Campaign.

**MR CHOEU**: Huh-uh.

**CHAIRPERSON**: It is because of this breakfast ...(intervenes).

**MR CHOEU**: No.

10 **CHAIRPERSON**: Shows or it was to say ...(intervenes).

**MR CHOEU**: The campaign.

**CHAIRPERSON**: It is because of among others is ...(intervenes).

**MR CHOEU**: Among others ...(intervenes).

**CHAIRPERSON**: *Ja*.

**MR CHOEU**: The 49M, but I think I took the paragraph just as it is ...(intervenes).

**CHAIRPERSON**: Yes.

**MR CHOEU**: From the ...(intervenes).

**CHAIRPERSON**: But I want ...(intervenes).

20 **MR CHOEU**: *Ja*.

**CHAIRPERSON**: To understand you. Obviously you took it for a reason.

**MR CHOEU**: Yes.

**CHAIRPERSON**: You understood it in a certain way. So the - I am asking whether it was meant to say it had – it has had some



contribution even if you do not specify how much contribution to raising awareness to 87% ...(intervenes).

**MR CHOEU**: Huh-uh.

**CHAIRPERSON**: Or whether it was to say it is responsible for us having reached 87% awareness.

**MR CHOEU**: No, no. It was not that all of it is responsible ...(intervenes).

**CHAIRPERSON**: *Ja*.

**MR CHOEU**: For 87%.

10 **CHAIRPERSON**: It was simply that somewhere there is some contribution that is made.

**MR CHOEU**: I – that has always been my argument Chair.

**CHAIRPERSON**: H'mm.

**MR CHOEU**: Let me say.

**CHAIRPERSON**: H'mm.

**MR CHOEU**: Even when there was always an indication that how are you sure.

**CHAIRPERSON**: H'mm.

**MR CHOEU**: That is zero and I say.

20 **CHAIRPERSON**: H'mm.

**MR CHOEU**: I do not think so really.

**CHAIRPERSON**: H'mm.

**MR CHOEU**: There is some circulation. There are some people watching ...(intervenes).

**CHAIRPERSON**: H'mm.

**MR CHOEU**: And also the questions themselves ...(intervenes).

**CHAIRPERSON**: H'mm.

**MR CHOEU**: Or Parliamentary questions ...(intervenes).

**CHAIRPERSON**: H'mm.

**MR CHOEU**: And the media questions.

**CHAIRPERSON**: H'mm.

**MR CHOEU**: Though negative ...(intervenes).

**CHAIRPERSON**: H'mm.

**MR CHOEU**: Did talk most – almost most of them were talking about  
10 49M ...(intervenes).

**CHAIRPERSON**: H'mm.

**MR CHOEU**: And I can only assume ...(intervenes).

**CHAIRPERSON**: H'mm.

**MR CHOEU**: Based on that that some level of other leadership or  
awareness happened.

**CHAIRPERSON**: H'mm.

**MR CHOEU**: The numbers are the ones that I cannot defend as I got  
them from the study that was conducted.

**CHAIRPERSON**: Okay. Alright. I just wanted to make sure I  
20 understand exactly.

**ADV HOFMEYR**: Indeed Chair.

**CHAIRPERSON**: Yes.

**ADV HOFMEYR**: Can I just follow up on that? I am going to take you  
to the Public Protector's response in a moment ...(intervenes).

**MR CHOEU**: H'mm.

**ADV HOFMEYR:** But Mr Choeu the evidence that was given by – well the response that was assembled by the Mediashop when the Parliamentary questions came through asking for whether there had been independent analysis done. Said there is no way that that analysis can be done.

Do you recall that? They said not for a specific media. They said this campaign is run on a holistic basis ...(intervenes).

**MR CHOEU:** Yes.

**ADV HOFMEYR:** And it is not possible then to attribute any particular  
10 awareness in the 49M Campaign to a particular advertisement or a particular briefing. Do you recall that?

**MR CHOEU:** Yes.

**ADV HOFMEYR:** Yes, so actually he causality point that sought to be made here, and I am following up on your question Chair hadn't been the subject of any independent study had it?

**MR CHOEU:** No.

**ADV HOFMEYR:** No.

**MR CHOEU:** But as you do understand to issues of causality this causes this ...(intervenes).

20 **ADV HOFMEYR:** Indeed, it is almost impossible to establish isn't it?

**CHAIRPERSON:** It can be difficult *ja*.

**MR CHOEU:** *Ja*, no I understand and sometimes we speak as if you caused this and ...(intervenes).

**ADV HOFMEYR:** But in this proposal Mr Choeu that is asking Eskom to commit R43 million to TNA there is an attempt at making a causal

link, isn't there?

**MR CHOEU:** Maybe an attempt but I am saying the sense that it – indicate that opportunities such as this you know and they will have to give that and make a decision, but I would not have made a direct causality between the two.

**ADV HOFMEYR:** Except you authored this letter.

**MR CHOEU:** *Ja*, and I should not have just expunged this and have it as ...(indistinct) and our study people also should have probably drafted it much more better for us.

10 **ADV HOFMEYR:** Indeed Mr Choeu and in fairness to you that is in essence where Mr Pretorius ended up frankly yesterday, he said that statement was false it should not have gone to the Public Protector and I understand you to say now you agree with that, this should not have found its way into a proposal for R43 million to be spent with the TNA.

**MR CHOEU:** *Ja*, the statement was false after Mr Pretorius reflected on it but as he got it from the study it is what he is – he maybe he could argue with this that – and I agree with you that you can't make that causality.

**ADV HOFMEYR:** You can't.

20 **MR CHOEU:** But the point of the matter he did the study and the study said that and that's what he put in the Public Protector. Today in retrospect when after all the things that happened and after speaking to MediaHouse and what have you he comes back and say it's gone, and I think that he is still at Eskom it's something that – because I am sure they are still using the same company, to engage with that company to

say but how did you give us information that would make us to answer such an important document.

**ADV HOFMEYR:** Mr Choeu I don't want to belabour the point but as I understand Mr Pretorius' evidence the study never drew that causality link because it couldn't, it is that for purposes of answering the Public Protector's question that link was falsely made, that is as I understand his evidence.

**MR CHOEU:** Well that is where we got from what he put together.

**ADV HOFMEYR:** Mr Choeu I don't – I know we are running out of time  
10 so I just want to, if you want to go to the document I am happy for us to do so, but I do have a question, the Public Protector response spoke about a 73% awareness, not an 87% awareness, do you have any idea where the 87% came from?

**MR CHOEU:** I don't know, we might have made a mistake, it might have been a mistake *ja*.

**ADV HOFMEYR:** Certainly.

**MR CHOEU:** *Ja*, because all those figures as you can see we took it from there.

**ADV HOFMEYR:** Thank you. And then just to conclude on this point  
20 at 42 ...(intervenes).

**MR CHOEU:** Where are we now?

**ADV HOFMEYR:** We are back in the proposal, in your affidavit at page 42.

**MR CHOEU:** Page – wait, wait, wait for me, page 42, yes?

**ADV HOFMEYR:** The conclude ...(intervenes).

**MR CHOEU:** Annexure 6?

**ADV HOFMEYR:** Indeed.

**MR CHOEU:** Oh.

**ADV HOFMEYR:** Oh apologies, just before Annexure 6, Annexure 6 commences on page 43 and we are at page 42.

**MR CHOEU:** Okay.

**ADV HOFMEYR:** It is the last page of your proposal to Mr Matjila.

**MR CHOEU:** Oh, *ja*.

**ADV HOFMEYR:** You see Chair back to your question about what was  
10 sought to be conveyed in that paragraph we were focusing on. This proposal concludes before recommendation with the following sentence:

“Therefore continued use of this sponsorship tool which  
has produced tangible results ought to be supported.”

Mr Choeu I put to you that that inclusion of 87% was precisely  
designed to indicate to the reader that there were tangible results that  
had been achieved through the business briefings, and that that had  
even been quantified in the order of 87% and then to conclude the  
proposal on the basis that you should continue to use this tool because  
it had produced those very tangible results that had been referred to  
20 earlier in the letter. Is that a fair reading?

**MR CHOEU:** No, as I said that was an assumption, the 87 as you indicated now I am – whether it was 87 or 82 at that time when he was writing this, even if it was 56 yes it was trying to show that you know you want to – this is ...(intervenes).

**ADV HOFMEYR:** This is a good thing.

**MR CHOEU:** *Ja.*

**ADV HOFMEYR:** It is producing tangible results for Eskom.

**MR CHOEU:** *Ja*, and that is what the Chief Executive also wanted to put me together they had this studies themselves, but I don't think they made that mistake of 87 hours.

**CHAIRPERSON:** Well that leads me to a question I wanted to ask you earlier, am I correct in understanding that as at the time of writing this proposal you were personally against these breakfast shows?

**MR CHOEU:** Yes.

10 **CHAIRPERSON:** Is that right?

**MR CHOEU:** Yes.

**CHAIRPERSON:** Yes, now the Chief – Group Chief Executive Officer has asked you to prepare a proposal.

**MR CHOEU:** Yes.

**CHAIRPERSON:** You prepare that proposal. That proposal has got your name, on the face of it one is entitled to say if there are any opinions, views, expressed in that proposal they are your views, that's now before the interim chief executive signs, once you have signed, is that right?

20 **MR CHOEU:** No you are right to that extent but normally in the company that is how we work, we collect information that's relevant to an event and the signature but it is a proposal it is not that you are saying this should be somebody else has to go and evaluate your proposal, it has to go into a system. If we want to buy a boiler and somebody says in my view this is the boiler and all this type of thing,

that's in his view and what he has done. Ultimately if something goes wrong with the boiler you can't blame him because then the tender guys have to go in, the procurement guys have to go in and ultimately it has got to be approved.

Similarly with this proposal the Chief Executive Officer had to put – of course his team in his office put other documents and go to Exco to go and ...(intervenes).

**CHAIRPERSON:** No, no before we ...(intervenes).

**MR CHOEU:** But I do admit that to a certain extent your name gets  
10 ...(intervenes).

**CHAIRPERSON:** Yes I am talking before it reaches the point where some technicians or technical people must look at whatever and whatever and verify. When the person to whom the proposal is addressed, in this case the interim executive officer or anybody who sees the proposal with your name and signature on is entitled to say where you say for example this must be supported is entitled to say that's your genuine view, isn't it?

**MR CHOEU:** Ja, I think that is so but in corporate it doesn't work that way, you get the views of all the people that reports to you,  
20 ...(indistinct) and then of course as a Board you express your view and then you sign off on it.

**CHAIRPERSON:** Yes, but what I am saying is ...(intervenes).

**MR CHOEU:** Yes, yes.

**CHAIRPERSON:** It is – you are not supposed to put your signature  
...(intervenes).



**MR CHOEU**: No you have to.

**CHAIRPERSON**: To a view that you don't support, isn't it?

**MR CHOEU**: *Ja*, probably.

**CHAIRPERSON**: You accept that? It is like you mustn't vote yes when you don't actually mean yes.

**MR CHOEU**: *Ja*, no reluctantly Chair but that's how in Corporate that's how we do it, we put together proposals.

**CHAIRPERSON**: Yes, no, no, we will talk about whatever justification there may be for doing it that way, but I just want us to get through the  
10 first ...(intervenes).

**MR CHOEU**: Okay, no, no, no, you are quite correct.

**CHAIRPERSON**: *Ja*, that's how one should understand it.

**MR CHOEU**: Okay.

**CHAIRPERSON**: *Ja*, but you are saying that although it is so there is a context that must be understood in regard to the corporate – tell me about that context.

**MR CHOEU**: The context is that the company wants to sell something, let's say that we want to put certain types of lights, and it happened all the time, and you believe that those lights are not as good as what the  
20 people are saying and that type of thing, and they both say no, no, no we have taken a decision we want to put them, they are good for us in order for you, your job is to put together a proposal for us, you know how to put a proposal, put a proposal, and then sign it, that will always be the context and it happens most of the time.

**CHAIRPERSON**: Well maybe we go back to the proposition I put to you

earlier with which I think you agreed that when you get an instruction there may be an instruction with which you happily comply, there may be another one where you comply but you are not so happy and then there is one where you say no, I am not complying with this one. So now it may be therefore that you might not be fully in support of a certain view but it must be that you feel you can reconcile yourself with it, you can live with it, with your name reflected as in supporting that view if you put your signature to it, but where you feel very strongly, where you say I can't associate myself with this you would even refuse  
10 to sign.

**MR CHOEU:** Chair you are quite correct, but I think I will be much more comfortable with the second one where reluctantly you do it, but you are saying you know what these guys know all the challenges and what have you, there might be discussions that I am not aware of, I am just given instruction to do this, sometimes you can even say I am not going to express my views because they will not be accommodated since they know themselves, and so I will give them what happened and you hope that they will follow the proper procedure and somewhere else the expert will be able to say no.

20 **CHAIRPERSON:** H'mm.

**MR CHOEU:** Our division was quite clear, we are not going to attend the breakfast, we don't have the money to do it at all, and whoever has to do it the Chief Executive Officer should take charge of that.

**CHAIRPERSON:** Ms Hofmeyr?

**ADV HOFMEYR:** Thank you Chair. Mr Choeu do you accept that

Eskom spends public funds?

**MR CHOEU:** Definitely.

**ADV HOFMEYR:** Are you aware that the directors of Eskom, who would include the Chief Executive Officer, have legal obligations not to undertake wasteful expenditure?

**MR CHOEU:** Big time.

**ADV HOFMEYR:** If there was no value in the business breakfasts of TNA or negligible value do you accept that that might have constituted wasteful expenditure?

10 **MR CHOEU:** It depends on the circumstances of the wasteful expenditure, but yes over value yes.

**ADV HOFMEYR:** Who was going to check whether Eskom was entering into a contract for wasteful expenditure when it committed R43 million to this third contract?

**MR CHOEU:** The Exco.

**ADV HOFMEYR:** Thank you. What I would then like to do is go to the correspondence as it plays out in the process to conclusion of the contract and for that purpose I need to take you just through a series of e-mail exchanges Mr Choeu, they are in your bundle, MM2, and they  
20 commence ...(intervenes).

**CHAIRPERSON:** I'm sorry Ms Hofmeyr, your last question that you asked I just want to put a flow up because it may be relevant for the e-mails that you are going to.

**ADV HOFMEYR:** Indeed.

**CHAIRPERSON:** Wasn't this going to be under your division, this R43

million, was it not – was it going to shift to the Group, to the CEO?

**MR CHOEU**: To the Group Chief Executive Officer, yes that is why it came from him, we had the ...(intervenes).

**CHAIRPERSON**: Under the previous contracts it would have been under your division?

**MR CHOEU**: Under me and all that.

**CHAIRPERSON**: In which case you would have been the ones who must check whether you might be getting to a situation which will result in wasteful expenditure.

10 **MR CHOEU**: Yes those type of things.

**CHAIRPERSON**: Okay, but now ...(intervenes).

**MR CHOEU**: Internal Audit would come in and check that, which they did all the years, that we are doing other contracts?

**CHAIRPERSON**: Well but I would imagine that apart from the you as the head would have had an obligation to make sure that your division doesn't do anything that could result in wasteful expenditure.

**MR CHOEU**: Most definitely yes.

**CHAIRPERSON**: Yes, yes, yes. So under contract one and contract two that would have fallen under your division to do – to check.

20 **MR CHOEU**: *Ja*.

**CHAIRPERSON**: But then now because it was going to be under the Group Chief Executive then they would have to do that?

**MR CHOEU**: Yes.

**CHAIRPERSON**: Okay, alright.

**ADV HOFMEYR**: And Mr Chair just another follow up question, you

said it would be Exco's responsibility to check for wasteful expenditure, is that correct?

**MR CHOEU:** *Ja.*

**ADV HOFMEYR:** Is that because this contract had a value of greater than R3 million?

**MR CHOEU:** No, because it – the value would not be so much it would – let's say the value would be plus, but all wasteful expenditures, regardless of the amount internal audit takes them to Exco ultimately before they go to the Board Audit Committee because the Board has to  
10 determine in different divisions how many wasteful expenditures we have and it will be under the – *ja*, so I am putting Exco here as the ultimate body that will approve something to go to the Board.

**ADV HOFMEYR:** Yes, I think we might be at cross-purposes, I am interested in stopping wasteful expenditure from ever taking place.

**MR CHOEU:** Exco.

**ADV HOFMEYR:** Right, so it is Exco and in the context of sponsorships are you aware that any sponsorship to the value greater than R3 million in Eskom had to go to Exco for approval?

**MR CHOEU:** Yes.

20 **ADV HOFMEYR:** Right, so this contract would fall into that category, correct?

**MR CHOEU:** Yes, yes.

**ADV HOFMEYR:** If we then go to the correspondence Chair if we may and we start at page 50.1.

**CHAIRPERSON:** Same bundle?

**ADV HOFMEYR:** Same bundle MM2.

**CHAIRPERSON:** Okay.

**ADV HOFMEYR:** We just start here, I would just like your help with this, this is an e-mail from Mr Matjila to yourself on the 1<sup>st</sup> of April, that is the day that Mr Matjila assumed the position of interim CEO, is that correct?

**MR CHOEU:** Yes.

**ADV HOFMEYR:** What is this e-mail about?

**MR CHOEU:** Each and every – I am responsible, I am the webmaster,  
10 I have to make sure that when you get appointed I get our picture, I get your CV and we will shorten your CV and make sure it is on a website.

**ADV HOFMEYR:** Thank you, so Mr Matjila was giving you his CV for that purpose?

**MR CHOEU:** For that purpose.

**ADV HOFMEYR:** Understood. And then if you go over to page 50.6, because following that e-mail is just the copy of Mr Matjila's CV, you will see in the same week, on the 4<sup>th</sup> of April that's 50.6 Mr Howa is writing to Mr Matjila and copying you.

**MR CHOEU:** H'mm.

20 **ADV HOFMEYR:** And it is congratulating him on his new appointment and saying that he is looking forward to partnering with Eskom.

**MR CHOEU:** H'mm.

**ADV HOFMEYR:** Why were you copied on that e-mail?

**MR CHOEU:** Because this is the Mediashop talking to Eskom and because I assume because of the fact that they have been trying,

remember we said earlier on they have been trying and pushing to get additional contract so it might have been the way to show me that I am, if I look at something there our business briefings and the purpose of Eskom to sponsor some of these which means it would be my responsibility.

**ADV HOFMEYR:** Understood.

**MR CHOEU:** Yes, as a strict agreement between ourselves, much like we had at independent so I imagine a relationship that I am not even aware of, that's the reason why.

10 **ADV HOFMEYR:** Thank you, and then we move a bit further in April if you go over the page to page 51, here it is an e-mail between yourself and Mr Matjila is that correct.

**MR CHOEU:** Yes.

**ADV HOFMEYR:** And what is this e-mail conveying to Mr Matjila?

**MR CHOEU:** This is – let me just explain here, because these e-mails are not in the chronology. TNA wants to have this breakfast, I put together a proposal for the Chief Executive Officer, it goes to the Chief Executive Officer office, and assuming that the Chief Executive Officer will then follow whatever process he wants to do. Ultimately he signs  
20 – he wants a contract to be signed between Eskom and TNA. Now in my office there is a person who works in my office, Pendela Dlamini, who by the way when we were delivering the other breakfast was the coordinator of the first one, she was the one who was doing the running, received this contract and then instructed the contract must be seen by Mohamed.

**ADV HOFMEYR:** That's Mr Adam.

**MR CHOEU:** Mr Adam, Mr Adam looks at the contracts and Mr Adam after looking at the contract, the most interesting thing is, and I must mention up front there the template – the contract, comes first from New Age, and say TNA this is the type of contract we would like Eskom to sign. We say no, this contract must go to Mr Mohamed Adam. Mr Mohamed Adam looks at the contract, makes a number of changes, sends it back to Pelele, Pelele copies me and Pelele also sends it back now to TNA, to say this is how we would like the contract to look like.

10           TNA responds and say no but you guys have changed the contract to modify the exit clause.

**ADV HOFMEYR:** Mr Choeu if I may just interrupt there because you are jumping ahead chronology.

**MR CHOEU:** Okay.

**ADV HOFMEYR:** So if we could just go systematically from page 51 all of the e-mails that you describe are going to unfold in due course, okay. At page 51 you, Mr Choeu, are sending an e-mail to Mr Matjila and you say:

20           "Hi Colin, the TNA 49 Million Breakfast Sponsorship contract is attached for your perusal and approval. This is the version we plan to forward to the TNA."

**MR CHOEU:** Yes.

**ADV HOFMEYR:** So I understand your evidence to be prior to this the legal department had looked at it.

**MR CHOEU:** I think so.



**ADV HOFMEYR:** I think that is accurate because if you look at the attachments ...(intervenes).

**MR CHOEU:** But I am copying Fred Indhoe, that's the office of the Chief Executive Officer, Neville Selanco, that's Head of Legal reporting to ...(intervenes).

**ADV HOFMEYR:** Mr Adam?

**MR CHOEU:** Ja. Tsholofelo Molefe, that is the Chief Financial Officer.

**ADV HOFMEYR:** Correct.

**MR CHOEU:** Ja, because they are involved now so the money I don't  
10 want to touch ...(indistinct).

**ADV HOFMEYR:** And just on the attachments it says this is revision 8, reviewed by Legal Department, right. Do you see that?

**MR CHOEU:** Oh yes, revision 8 yes.

**ADV HOFMEYR:** I am just saying that is further confirmation that this had been through the lawyers, and then I would like to draw you to two changes that the Eskom lawyers made to this contract.

**MR CHOEU:** Yes.

**ADV HOFMEYR:** The first is at page 54.

**MR CHOEU:** H'mm.

20 **ADV HOFMEYR:** This is where you were starting to jump ahead so I just want to track it chronologically. There is a clause there called duration, clause 2, do you see that?

**MR CHOEU:** Yes.

**ADV HOFMEYR:** Now one of the things that the Eskom Legal Team wanted to add, well there's one revision in 2.2 which reads:

“This agreement shall commence on the effective date and shall continue for a period of three years and terminate on the 30<sup>th</sup> of April 2017.”

**MR CHOEU:** H'mm.

**ADV HOFMEYR:** The previous version had been only one year, are you aware of that?

**MR CHOEU:** No, no I am not aware but I take from you.

**ADV HOFMEYR:** Right, but now it is going to a three-year contract and then in 2.2 they say the following:

10           “Eskom reserves the right to withdraw its sponsorship at any time in the event of a breach by TNA Media of any of the terms of this agreement, as per clause 9 of this agreement or ...”

And this is the clause of significance.

“... for any other reason on 30 days written notice to TNA.”

Do you see that?

**MR CHOEU:** Yes.

20           **ADV HOFMEYR:** Mr Pretorius' evidence yesterday was that that type of exit clause was standard in these types of agreements, and he explained why, he said Eskom was in a precarious financial position at this point, it would always have wanted an exit clause in agreements of this nature, because media spend quite frankly is a nice to have when your company is in a difficult financial position. Are you aware of that?

**MR CHOEU:** I am not aware of that, I heard him saying that but I don't know how the other contract did look like.

**ADV HOFMEYR:** Okay but you don't dispute his evidence about the other contract.

**MR CHOEU:** I don't dispute that evidence.

**ADV HOFMEYR:** Right so then we move to the follow up, which is ...(intervenes).

**CHAIRPERSON:** I am sorry Ms Hofmeyr, the amendments I wanted to say the ones in red, but I see this is not red, maybe brown, were those  
10 made by Eskom legal people or lawyers.

**MR CHOEU:** Ja, Eskom lawyers.

**CHAIRPERSON:** Lawyers.

**MR CHOEU:** When you look at my e-mail it has got a Mr Solanco was the second in command in the ...(intervenes).

**CHAIRPERSON:** In the hierarchy in the Legal Team.

**MR CHOEU:** In the hierarchy of the Legal Team.

**CHAIRPERSON:** Legal division, yes when I said all Eskom legal people it is because I wanted to make sure that whether it is internal lawyers or outside lawyers.

20 **MR CHOEU:** No internal, internal lawyers.

**CHAIRPERSON:** Internal okay, okay.

**ADV HOFMEYR:** And then that protection for Eskom is followed up at page 59, if we can just go there.

**CHAIRPERSON:** I don't know whether Ms Hofmeyr you have mentioned this at 2.1 or whether you are going to come back to it, then it is

strange, is it not Mr Choeu, that TNA sends Eskom a draft agreement whose clause 2.1 said, no, no I am sorry, 2.2 the – 2.2 said – well it wasn't 2.2 maybe when it was sent by TNA but it had a clause that said Eskom reserve the right to withdraw its sponsorship at any time in the event of a breach by TNA of any of the terms of this agreement, oh okay, no I think I now understand the clause, so TNA wanted Eskom to be only able to withdraw sponsorship if there was a breach on their side.

**MR CHOEU:** Yes.

- 10 **CHAIRPERSON:** But your legal department added a clause to say even if there is no breach Eskom should be able to give you 30 days' notice to terminate – to withdraw.

**MR CHOEU:** I will guess that is what it means, I am not a lawyer.

**CHAIRPERSON:** *Ja*, no, no that's fine *ja*, now I understand *ja*.

**ADV HOFMEYR:** Indeed, that is as we understand it.

**CHAIRPERSON:** Yes.

**ADV HOFMEYR:** And as Mr Pretorius indicated yesterday.

**CHAIRPERSON:** Yes, yes, yes.

**ADV HOFMEYR:** That is an important clause for Eskom.

- 20 **CHAIRPERSON:** Yes, yes, yes.

**ADV HOFMEYR:** Particularly in its financial position and given that media spend is not a core aspect of the Eskom business.

**CHAIRPERSON:** Yes, yes.

**ADV HOFMEYR:** And Chair just to confirm that point what the Legal Team also did at Eskom was at page 59 to add clause 11.2.

**CHAIRPERSON:** Yes.

**ADV HOFMEYR:** Which in case there was any doubt from clause 2.2 can be overcome by 11.2 because there again it is stipulated:

“Eskom will have the right to terminate this agreement  
for any reason on 30 days written notice.”

**CHAIRPERSON:** Yes, yes.

**ADV HOFMEYR:** And then Mr Choeu if we move to page 63.

**MR CHOEU:** 63, yes.

**ADV HOFMEYR:** I would actually like to follow the e-mail train from  
10 the relevant earliest e-mail and so if you go over the page to 64, you  
will see an e-mail there in the middle of the page from Ms Kuer to a Ms  
Dlamini, who is Ms Kuer?

**MR CHOEU:** Legal.

**ADV HOFMEYR:** Legal, and Ms Dlamini is sitting in your office as I  
understand it.

**MR CHOEU:** In my office.

**ADV HOFMEYR:** And it says re sponsorship. It says:

“Dear Pelele, I have revised the payment clause to link it  
to each event and strengthen the right to cancel in terms  
20 of clause 12.2. I have enclosed version 9 of the draft  
agreement.”

**ADV HOFMEYR:** Chair just to assist. By the time the agreement  
becomes draft 9 that termination clause is now 12.2. It was previously  
11.2, but you can rest assured it is the same cancellation clause. It is  
that – Eskom can do so on any basis on 30 days’ notice. Then just to

follow the correspondence. If you go back to page 63.

**MR CHOEU:** H'mm.

**ADV HOFMEYR:** Ms Kuer clarifies for Ms Dlamini who had asked some follow up questions about that version. She says:

“Hi Pelele, I am mad ...”

I think that is supposed to be “made”.

“...the changes as per Mohamed instructions ...”

I take that to be a reference to Mr Adam. Is that right?

**MR CHOEU:** H'mm.

10 **ADV HOFMEYR:** “...on payment and the issue relating to cancellation for convenience. Please advise what you require from us as version eight was drafted as per your instructions.”

And then Ms Kuer writes to you later in that day.

**MR CHOEU:** H'mm.

**ADV HOFMEYR:** Do you see at the top of the page?

**MR CHOEU:** Yes.

**ADV HOFMEYR:** And she says there:

20 “Dear Chose, please be advised that as per the delegation of authority the CE - the Chief Executive – is the one authorised to sign the Sponsorship Agreement on behalf of Eskom as the sponsorship exceed R3 million.”

**MR CHOEU:** H'mm.

**ADV HOFMEYR:** “Further the CE is required to do so in

consultation with Exco ...”

**MR CHOEU:** H’mmm.

**ADV HOFMEYR:** “...or he can delegate it to ICAC.”

That is the Committee we saw ...(intervenes).

**MR CHOEU:** Earlier on.

**ADV HOFMEYR:** Mr Pretorius went to.

**MR CHOEU:** H’mmm.

**ADV HOFMEYR:** “The sponsorship is in excess of R3 million  
must be subject to the approved budget.”

10 **MR CHOEU:** H’mmm.

**ADV HOFMEYR:** Do you see all of that?

**MR CHOEU:** Yes.

**ADV HOFMEYR:** Did you communicate any of that to Mr Matjila?

**MR CHOEU:** Yes. It was communicated. Remember this is in  
response from a question by Mr Freddy Ndou. I do not know whether  
you have that communication. It was not out of the blue.

**ADV HOFMEYR:** Right.

**MR CHOEU:** *Ja*.

**ADV HOFMEYR:** I think that comes later actually ...(intervenes).

20 **MR CHOEU:** *Ja*.

**ADV HOFMEYR:** But let us just be clear ...(intervenes).

**MR CHOEU:** But that was in relation to that.

**ADV HOFMEYR:** So you recall communicating to Mr Matjila?

**MR CHOEU:** Most definitely.

**ADV HOFMEYR:** There is a process?

**MR CHOEU:** There is a process.

**ADV HOFMEYR:** It requires Exco if the sponsorship is for more than 3 million?

**MR CHOEU:** Yes.

**ADV HOFMEYR:** This sponsorship is for more than 3 million?

**MR CHOEU:** Ja and I – if Mr Mohamed should have been there these discussions about the contract itself ...(intervenes).

**ADV HOFMEYR:** H'mm.

**MR CHOEU:** Were happening between Mohamed was on Exco – was  
10 not Exco – and the Chief Executive Officer.

**ADV HOFMEYR:** H'mm. H'mm.

**MR CHOEU:** They were talking about – so it was not like the Chief Executive Officer is not aware ...(intervenes).

**ADV HOFMEYR:** Yes.

**MR CHOEU:** Of the delegation of authority. Especially he had been a Board Member for quite some time ...(intervenes).

**ADV HOFMEYR:** H'mm.

**MR CHOEU:** And sat on the ...(indistinct) Committee which is the Committee that do that.

20 **ADV HOFMEYR:** H'mm.

**MR CHOEU:** Yes, but Famieda tells me and if you look I even said to Famieda ...(intervenes).

**ADV HOFMEYR:** Ms Kuer.

**MR CHOEU:** Ms Famieda – Ms Kuer. This is the surname – sorry. The cellular phone for Mr Ndou. Feel free to talk to him directly. Which



means feel free to talk to the Office of the Chief Executive Officer because I am getting confused about the legal issues.

**ADV HOFMEYR:** H'mm.

**MR CHOEU:** It was my way of saying you know if you asking question who the delegation authority is. Now it has to come to me and then I have to pass there. I look stupid because these are legal issues not – so feel free and I allow her. I say feel and I give the cellphone because normally when we – an e-mail may take a very long time.

**ADV HOFMEYR:** H'mm. The last point she makes in that e-mail at the  
10 top of page 63 is that:

“The sponsorship is in excess of 3 million and must be  
subject to the approved budget.”

**MR CHOEU:** H'mm.

**ADV HOFMEYR:** What was the sponsorship budget at that stage?

**MR CHOEU:** I do not know but go back. Remember we were trying to – we were in the process and I do not know whether you came across those documents, but I saw them somewhere. We are asking each and every division now to tell us – let me for the purpose of the Chairman here. At Eskom in the past we would not know what the sponsorship is  
20 except your sponsorship. You would have your own sponsorship.

**CHAIRPERSON:** For your division?

**MR CHOEU:** For your division and that and you would sponsor whatever you like. The only thing that you have to do is you have to go to the Sponsorship Committee so that they can see whether you – what you are sponsoring is – so this time around they wanted to centralise

sponsorship under me.

**ADV HOFMEYR:** H'mm.

**MR CHOEU:** So we went to different – and that process had not been completed.

**ADV HOFMEYR:** So I can tell you because it comes up in the documents later. The sponsorship budget at that point in your division was 30 million. Does that sound right?

**MR CHOEU:** In my division?

**ADV HOFMEYR:** H'mm.

10 **MR CHOEU:** Probably before that process because it actually came much more down than that because ...(intervenes).

**ADV HOFMEYR:** Well the Financial Director said that it was at 40 million – 30 million at this stage.

**MR CHOEU:** Okay. No, no.

**ADV HOFMEYR:** Do you have any reason to dispute that?

**MR CHOEU:** No. I do not have any reason to dispute that.

**ADV HOFMEYR:** But what is being signalled here by legal is that it must be subject to the approved budget of your division. Is that correct?

20 **MR CHOEU:** No. Not my division. The sponsorship is – they know this thing comes from the Chief Executive Officer already. They are not involving me. You see because ...(intervenes).

**CHAIRPERSON:** So it is an approved budget of whatever division is responsible for it?

**MR CHOEU:** Is responsible ...(intervenes).

**CHAIRPERSON**: H'mm.

**MR CHOEU**: But also because it is 3 million it must be approved by the Chief Executive Officer.

**CHAIRPERSON**: And Exco.

**ADV HOFMEYR**: And Exco.

**CHAIRPERSON**: H'mm.

**MR CHOEU**: And Exco.

**CHAIRPERSON**: H'mm.

**ADV HOFMEYR**: H'mm.

10 **MR CHOEU**: So I am out of ...(intervenes).

**CHAIRPERSON**: You out of it?

**MR CHOEU**: Out of it. Even if it was me who wanted it.

**CHAIRPERSON**: *Ja*.

**MR CHOEU**: *Ja*.

**CHAIRPERSON**: *Ja*.

**MR CHOEU**: Immediately I put it at 3 million the powers ...(intervenes).

**CHAIRPERSON**: *Ja*.

20 **ADV HOFMEYR**: Okay. We will come back to that in due course when we get to the Financial Director's correspondence but let us just move to page 67 if we may.

**MR CHOEU**: H'mm.

**CHAIRPERSON**: Before you do that ...(intervenes).

**ADV HOFMEYR**: Apologies Chair.

**CHAIRPERSON**: Ms Hofmeyr. I see that when I asked Mr Choeu about Clause 2 ...(intervenes).

**MR CHOEU:** H'mm.

**CHAIRPERSON:** I asked him about only one question and forgot the other. clause 2 of the draft agreement that was ...(intervenes).

**MR CHOEU:** H'mm.

**CHAIRPERSON:** That was sent by TNA to Eskom.

**MR CHOEU:** Yes.

**CHAIRPERSON:** It looks like – am I right to think that that it looks like TNA had in mind that the agreement will be for one year, but Eskom lawyers said three years.

10 **MR CHOEU:** No. I am not sure, but I do not know, but I think ...(intervenes).

**CHAIRPERSON:** I see three years and I see what appears like one year. So certainly there was year – maybe there was a space before year without indicating how many years and then as was added to years and then there is three in a figure and then there is three in brackets. There is on and then E has been added. Is that something you know nothing about?

**MR CHOEU:** No, no, no.

**CHAIRPERSON:** Oh. Okay. Okay. I do not know whether Ms Hofmeyr  
20 something that you are ...(intervenes).

**ADV HOFMEYR:** There is something we can – I might be able to shed light on.

**CHAIRPERSON:** Ja.

**ADV HOFMEYR:** Ms Dlamini was in your office. Is that correct?

**MR CHOEU:** H'mm.

**ADV HOFMEYR**: Mr Choeu. At page 64 ...(intervenes).

**MR CHOEU**: H'mm.

**ADV HOFMEYR**: She responds to a query from Ms Kuer.

**MR CHOEU**: H'mm.

**ADV HOFMEYR**: Ms Kuer in the middle of the page is talking about the payment clause. That ...(intervenes).

**MR CHOEU**: Page 64?

**ADV HOFMEYR**: Yes.

**MR CHOEU**: H'mm.

10 **ADV HOFMEYR**: That is being linked to each event and to strengthen the right to cancel in terms of clause 12.2 and then Ms Dlamini responds to her and says:

“Hi Famieda, the contract version eight was sent to the CE earlier.”

We saw that e-mail ...(intervenes).

**MR CHOEU**: H'mm.

**ADV HOFMEYR**: Previously.

20 “I think I will wait and see what he says now. There is a strong preference for the year one, year two and year three payment per version eight.”

**MR CHOEU**: H'mm.

**ADV HOFMEYR**: “Is there a significant difference between the two versions?”

**MR CHOEU**: H'mm.

**ADV HOFMEYR**: So where would Ms Dlamini have got that information

from?

**MR CHOEU**: I do not know. No, no. This is – that is why I am not copied here. The reason I am not copied here is because Ms Dlamini is aware that as it comes to the contract itself what should be in the contract must ultimately be what the Chief Executive Officer is comfortable to sign. So if you look at 80% of the e-mails of all the changes.

My name is not there. It is always between TNA this is the change we want and – what do you call it? Mohamed Adam and the  
10 Office of the Chief Executive Officer ...(intervenes).

**ADV HOFMEYR**: H'mm.

**MR CHOEU**: And as you see I am excluded from all the technicalities what we want, what you do not know and the most important person there at that – of course there they are talking to themselves.

**ADV HOFMEYR**: H'mm.

**MR CHOEU**: They are talking to themselves. Ja. I am not there. That just – but she does not get it from me, because it is - they are talking between the office of the Chief Executive Officer Freddy Ndou ...(intervenes).

20 **ADV HOFMEYR**: And your office?

**MR CHOEU**: And the office. She is in my office doing – they e-mailed the Office of the Chief Executive Officer is Freddy Ndou.

**ADV HOFMEYR**: I understand.

**MR CHOEU**: And Mohamed - I must mention ...(intervenes).

**ADV HOFMEYR**: Yes.

**MR CHOEU:** Is also speaking to the Chief Executive Officer.

**ADV HOFMEYR:** Yes, yes, but when TNA interacts with Eskom they see mainly to correspond with you. Is that correct?

**MR CHOEU:** Not all of the time. Yes.

**ADV HOFMEYR:** But predominantly?

**MR CHOEU:** Predominantly.

**ADV HOFMEYR:** Thank you.

**MR CHOEU:** Of the division.

**ADV HOFMEYR:** So let us go to 67 for that e-mail.

10 **MR CHOEU:** 67.

**ADV HOFMEYR:** Chair and Mr Choeu we were previously in e-mails ...(intervenes).

**MR CHOEU:** Sorry, sorry.

**ADV HOFMEYR:** On the 24<sup>th</sup> of April. We now move to e-mails around the 29<sup>th</sup> of April and I would like to pick it up in the middle of the page where Mr Howa writes to you Mr Choeu. Do you see that?

**MR CHOEU:** H'mm.

**ADV HOFMEYR:** Now this is after they have received revision nine ...(intervenes).

20 **MR CHOEU:** Yes.

**ADV HOFMEYR:** Which is the one we were looking at Chair and his reads:

“Hi, Chose, thank you for taking my call earlier about the current draft which is a little bit different to the one agreed between us previously.”

So was it you were coming to the agreements with TNA about the terms of the contract?

**MR CHOEU:** No and I think he was referring to the contract number one – number two. The old contract.

**ADV HOFMEYR:** Well I am not sure that can be right, because he says:

“The current draft is a little bit different to the one agreed between us previously. On reading it the changes noted include ...”

10           So he is talking about changes in the current draft ... (intervenes).

**MR CHOEU:** Yes.

**ADV HOFMEYR:** Of the third agreement.

**MR CHOEU:** Yes.

**ADV HOFMEYR:** So had you agreed with him previously different terms?

**MR CHOEU:** No. Not at all, because remember – go back. When the contract arrived I sent it to legal straight away. So I would not have agreed with him on a contract and then sent it to legal.

20           **ADV HOFMEYR:** H'mm. So why is he saying the one that was agreed between you previously?

**MR CHOEU:** I do not know. ... (indistinct) to that. I do not know.

**ADV HOFMEYR:** Did you go back to him and say we did not agree anything previously?

**MR CHOEU:** No, no. I did not go. I took back to Mohamed to the



legal, because the decision on the contract and how it should be especially to be signed by the Chief Executive Officer. It must be Mohamed who decides that.

**ADV HOFMEYR**: Well we will come to that engagement in a moment but let us go on in this e-mail if we may. Mr Howa goes on. He says:

“On reading that changes noted include ...”

**MR CHOEU**: H’mmm.

**ADV HOFMEYR**: “...paragraph 2.1 in which a termination clause  
has been added. Our understanding is that paragraph  
10 2.2 with its breach conditions would cover termination.”

**MR CHOEU**: H’mmm.

**ADV HOFMEYR**: “Paragraph 12.2 ...”

The very ones we have been focusing on. His comment there is:

“We are 100% behind termination based on breach but  
have some difficulty with the introduction of this kind of  
clause which was not included in the previous versions  
or agreements.”

And then he ends off by saying:

“I am sure that this is an oversight in drafting and is  
20 easily correctible. After which I would be happy to  
receive a corrected version.”

**MR CHOEU**: Yes.

**ADV HOFMEYR**: It is a key protection for Eskom in the agreement.

**MR CHOEU**: H’mmm.

**ADV HOFMEYR**: Is it not?

**MR CHOEU:** Yes.

**ADV HOFMEYR:** Mr Choeu, but Mr Howa seems to think it is an oversight in drafting. Why do you think he formed that view?

**MR CHOEU:** I do not know.

**ADV HOFMEYR:** H'mm.

**CHAIRPERSON:** It seems very strange ...(intervenes).

**ADV HOFMEYR:** It does.

**CHAIRPERSON:** That he should think that.

**ADV HOFMEYR:** And that it is easily correctible, but nonetheless that  
10 is what he says to you on the 29<sup>th</sup> of April ...(intervenes).

**MR CHOEU:** H'mm.

**ADV HOFMEYR:** And then Mr Choeu at the top of the page you then  
...(intervenes).

**MR CHOEU:** Which page?

**ADV HOFMEYR:** The same page 67.

**MR CHOEU:** Oh. 67, yes.

**ADV HOFMEYR:** I think this was what you were referring to  
...(intervenes).

**MR CHOEU:** *Ja*.

20 **ADV HOFMEYR:** In your testimony a moment ago. You take Mr Howa's  
e-mail and you forward it to Mr Adam ...(intervenes).

**MR CHOEU:** *Ja*.

**ADV HOFMEYR:** And the rest of his Legal Team.

**MR CHOEU:** Yes.

**ADV HOFMEYR:** Right and you say:

“Hi Famieda, please refer to mail from TNA below and assist – respond.”

Right.

**MR CHOEU:** H'mm.

**ADV HOFMEYR:** So you were leaving it up to them to respond to Mr Howa.

**MR CHOEU:** *Ja.*

**ADV HOFMEYR:** Correct? Let us find that response if we may. It is at page 80.

10 **MR CHOEU:** Page?

**ADV HOFMEYR:** 80.

**MR CHOEU:** Okay. We jumping to 80. Yes ma'am.

**ADV HOFMEYR:** Now this is Mr Adam. If we go to the top of the page there.

**MR CHOEU:** H'mm.

**ADV HOFMEYR:** The bottom of the page Chair is the e-mail we have just seen where Mr Choeu forwards it to Mr Adam and says:

“Please refer to the e-mail and respond.”

20 And then we have Mr Adam responding to you and the rest of his team.

**MR CHOEU:** H'mm.

**ADV HOFMEYR:** Chair it is going to be relevant later, but the 29<sup>th</sup> of April 2014 was a Tuesday. So that is the day on which this communication is taking place and Mr Adam says to you there Mr Choeu:

“Chose, you need to make a call based on commercial need. It was not an oversight. It was deliberately drafted to allow for cancellation on 30 days’ notice. I would recommend retaining our wording.”

**MR CHOEU**: H’mmm.

**ADV HOFMEYR**: Do you see that?

**MR CHOEU**: Yes.

**ADV HOFMEYR**: What did you do with that indication to you?

**MR CHOEU**: I agreed with this indication and Mohamed was discuss –  
10 you see this – also Mohamed was discussing it with the Chief Executive Officer. That is why you will see in the Gobodo information. He even gives justification as to why he thought that he did not sign the contract as was proposed by – what do you call it? By Mohamed and the contract that I sent to TNA was the contract that Mohamed wanted TNA to sign.

**ADV HOFMEYR**: Correct.

**MR CHOEU**: Ja.

**ADV HOFMEYR**: And then Mr Howa comes back and says I think there must be an oversight because you have added a termination clause.

20 **MR CHOEU**: Yes.

**ADV HOFMEYR**: That will benefit Eskom and Mr Adam responds to you after you forward Mr Howa’s e-mail to him and he says:

“Chose you need to make the call based on commercial need. It was not an oversight. His recommendation is that it be retained.”

**MR CHOEU:** Huh-uh.

**ADV HOFMEYR:** Do you recall that?

**MR CHOEU:** Yes, yes. I recall that.

**ADV HOFMEYR:** What did you do?

**MR CHOEU:** What I did is I think I informed the Chief Executive Officer and I sent the contract back as the changes were to Howa to say we – this is what Eskom wants. Not what you want.

**ADV HOFMEYR:** H'mm. Let us pick it up at page 83 then, because that is when – in the Friday of the week ...(intervenes).

10 **MR CHOEU:** H'mm.

**ADV HOFMEYR:** You engage with Mr Matjila.

**MR CHOEU:** Wait. Yes.

**ADV HOFMEYR:** So just to recap. On Tuesday Mr Adam of the Legal Department says Mr Choeu you must make a call on this. In his view we must retain the clause. It was not an oversight. It protects Eskom. Right.

**MR CHOEU:** H'mm.

**ADV HOFMEYR:** And then on the Friday of the week you write to Mr Matjila directly copying Mr Ndou and you say:

20           “Hi Colin, attached are two copies of contract versions signed by TNA. I had final discussions with them on Wednesday.”

          That is the day after Mr Adam had relayed to you the importance of that clause and you say:

          “We have reached agreement on almost all clauses. Still

in dispute is the clause regarding termination. TNA does not want Eskom to include the following clause.”

And then you quote 12.2 which is the right to cancel on 30 days’ notice and then you add.

“You will notice that they have removed the clause from both signed versions of the contract.”

**MR CHOEU:** Yes.

**ADV HOFMEYR:** Why did they sign a version of the contract Mr Choeu that did not have the clause that would protect Eskom in it?

10 **MR CHOEU:** Because they did want it. This is clear and that is what I am telling the Chief Executive Officer to say – and I was conscious all the time that Mohamed is busy talking to the Chief Executive Officer regarding this. Now I take a contract that comes from legal. Send it to TNA and TNA says no, no. You recall that we do not want this.

We are not going to sign it. We are signing the following one and I go to the guy who wants the contract. You see and his office to say this is the contract and I mention there – I mention I had a final discussion with them on Wednesday. We have reached agreement on all clauses. Still in dispute is the clause regarding termination. In my  
20 mind I thought I am making him aware that this is still in dispute.

**ADV HOFMEYR:** Mr Choeu can I say when I look at this correspondence and I am putting this to you in fairness.

**MR CHOEU:** H’mmm.

**ADV HOFMEYR:** It seems a number of people within Eskom thought that his was your decision to make. You see the Financial Director –

we will come to her later – thought the relevant budget was the sponsorship budget.

**MR CHOEU**: H'mm.

**ADV HOFMEYR**: You will see what she says later about it ... (intervenes).

**MR CHOEU**: H'mm.

**ADV HOFMEYR**: Exceeding it. You have got Mr Adam saying to you, you must make the call on commercial need ... (intervenes).

**MR CHOEU**: H'mm.

- 10 **ADV HOFMEYR**: Because this after all is a sponsorship and it is always been dealt with by your division. Were they all misunderstanding the position?

**MR CHOEU**: I was not disputing what they are saying. That is why I sent the contract with that clauses ... (intervenes).

**ADV HOFMEYR**: H'mm.

**MR CHOEU**: To TNA.

**ADV HOFMEYR**: But whose ultimate decision was it to make, because Mr Adam said you need to make the decision on whether to retain the termination clause.

- 20 **MR CHOEU**: No. I am – this is as I am saying is still in dispute. I totally did not agree. That is why it is totally unfair and that is why in fact if you read the Zondo thing – that is why – sorry Chair.

**CHAIRPERSON**: I have written anything.

**ADV HOFMEYR**: Not to your knowledge Chair.

**CHAIRPERSON**: No. Not to my knowledge.

**MR CHOEU:** The Gobodo Report says I was involved. Everybody was involved. Legal was involved – anybody, but there it is clear that the clause was taken out by the – TNA.

**ADV HOFMEYR:** H'mm.

**MR CHOEU:** And I mention it in my communication to the guy who has got to sign this. It is the Chief Executive Officer and later when the Chief Executive Officer is being asked why did you sign the contract with the – and he says I thought it was on – I – him – he does not say Chose. He says I thought it was onerous on TNA and let me say as  
10 these things happen.

Mohamed is talking to him and they are disagreeing. You see. Listen the legal guy is talking to him ...(intervenes).

**ADV HOFMEYR:** Mr Choeu ...(intervenes).

**MR CHOEU:** And these are legal issues. I do not want to get involved in the legal issues, but notwithstanding the fact that I do not want to be involved in the legal issues. I mention here that this clause – Chief Executive Officer before you sign be careful. It is in dispute.

**ADV HOFMEYR:** Mr Choeu how do you know that Mr Adam was having these conversations with Mr Matjila?

20 **MR CHOEU:** Because Mr Adam and I reported to Erica Johnson and we had our meeting on a regular basis and he – his office was next door to my office and they had been unfair when he said a decision has got to be made because the decision about the ...(indistinct) sponsorship had now gone to the Chief Executive Officer.

**ADV HOFMEYR:** Did you communicate that to them at all? Did you say



you are wrong to think it is my decision to make?

**MR CHOEU:** No. I did not. You kept you asking me that type of question. Did I communicate ...(intervenes).

**ADV HOFMEYR:** H'mm.

**MR CHOEU:** This. I may have spoken to them, but it was quite obvious that they aware this is the Chief Executive Officer because Mohamed was talking to the Chief Executive Officer.

**ADV HOFMEYR:** Mr Choeu ...(intervenes).

**MR CHOEU:** And in anyway if it was my decision to take the decision I  
10 did was to send to TNA the contract with the right clause. I did not  
remove it and sign this. I send them the contract with the right clause.  
This is what I did and it is confirmed here.

**ADV HOFMEYR:** And Mr Choeu if you go to page 104.

**MR CHOEU:** One – on my package?

**ADV HOFMEYR:** In your same Exhibit MM2.

**MR CHOEU:** Okay. Yes.

**ADV HOFMEYR:** You will see that Ms Dlamini sends to Mr Matjila,  
Mr Ndou and copied to you the signed contract attached.

**MR CHOEU:** H'mm.

20 **ADV HOFMEYR:** Do you see that?

**MR CHOEU:** Yes.

**ADV HOFMEYR:** Can you just help me with something there? The  
contract if you go to the signature page at 114.

**MR CHOEU:** H'mm. 11 – oh 11.

**ADV HOFMEYR:** 114.

**MR CHOEU:** H'mm.

**ADV HOFMEYR:** Just help me. Were you a witness to this contract?

**MR CHOEU:** Yes. I witnessed the contract.

**ADV HOFMEYR:** Which signature is yours?

**MR CHOEU:** The first one.

**ADV HOFMEYR:** The first one and is the signature adjacent to yours the signature of Mr Matjila?

**MR CHOEU:** Mr Matjila and then Mr Ndou.

**ADV HOFMEYR:** Okay. Now you sent the signed version of the  
10 contract to Mr Matjila on the 2<sup>nd</sup> of May ...(intervenes).

**MR CHOEU:** H'mm.

**ADV HOFMEYR:** But this was dated and signed on the 30<sup>th</sup> of April.  
How is that possible?

**MR CHOEU:** I sent them the version?

**ADV HOFMEYR:** On the 2<sup>nd</sup> of May. It was after you had the meeting.  
That was the Friday.

**MR CHOEU:** H'mm.

**ADV HOFMEYR:** You had the meeting on the Tuesday. I can give you  
the reference again if you would like. It is ...(intervenes).

20 **MR CHOEU:** Wait, wait, wait. This was signed on the 30<sup>th</sup> of April.

**ADV HOFMEYR:** H'mm.

**MR CHOEU:** By Howa.

**ADV HOFMEYR:** Well that is the prior page. Look at page  
...(intervenes).

**MR CHOEU:** Wait.

**ADV HOFMEYR:** 113.

**MR CHOEU:** 113.

**ADV HOFMEYR:** 113 at Midrand on the 30<sup>th</sup> of April 2014, Howa signs it.

**MR CHOEU:** Yes.

**ADV HOFMEYR:** You see. Then the signature for Eskom indicates that it was signed at Johannesburg on the 30<sup>th</sup> of April 2014.

**MR CHOEU:** No. I am not sure of this, but that – all those signatures looks like – even the writing there belongs to Howa. I do not see our  
10 date there. I cannot confirm that. I hope this can be investigated.

**ADV HOFMEYR:** Yes, because what is curious is that you forwarded it on the 2<sup>nd</sup> of May to Mr Matjila indicating the concern about the termination clause. Right?

**MR CHOEU:** Yes.

**ADV HOFMEYR:** And that was a contract that at that stage had been signed by Mr Howa on the 30<sup>th</sup> of April, but then we have the final version signed by Mr Matjila indicating a day – two days earlier than you sent him the contract flagging the problem. Do you see that?

**MR CHOEU:** Ja. I see that.

20 **ADV HOFMEYR:** H'mm.

**MR CHOEU:** That is why ...(intervenes).

**ADV HOFMEYR:** Do you have any ...(intervenes)?

**MR CHOEU:** That is why I said it was – and I said it quite more clearly at the beginning. It was quite aware that there was a lot of communication between Mr Matjila and – what – they – we are going

through the motions, but this I am only aware now of the disparities. Indeed.

**ADV HOFMEYR:** H'mm.

**MR CHOEU:** But I did tell him that whatever contract you are going to sign. Please know that this contract is not the contract we want.

**ADV HOFMEYR:** You told him that verbally?

**MR CHOEU:** No. In that – in writing. It is better to – you see why we - why do it verbally and say did you write it even if I wrote to him.

**ADV HOFMEYR:** No. I understand. My question ...(intervenes).

10 **MR CHOEU:** And my sure he must have spoken to me ...(intervenes).

**ADV HOFMEYR:** H'mm.

**MR CHOEU:** About it, but I know that Mohamed was engaged all the way with him. I do not know Erica Johnson because Erica was also there.

**ADV HOFMEYR:** Mr Choeu just to conclude this aspect. My concern ...(intervenes).

**MR CHOEU:** H'mm.

**ADV HOFMEYR:** Is that the final agreement that is signed by Eskom ...(intervenes).

20 **MR CHOEU:** H'mm.

**ADV HOFMEYR:** Appears to have been signed on the 30<sup>th</sup> of April.

**MR CHOEU:** H'mm.

**ADV HOFMEYR:** The only written record of you drawing to Mr Matjila's attention the concern about the removal of the termination clause ...(intervenes).

**MR CHOEU:** H'mm.

**ADV HOFMEYR:** Is two days later.

**MR CHOEU:** H'mm.

**ADV HOFMEYR:** On the 2<sup>nd</sup> of May.

**MR CHOEU:** No. I hear that.

**ADV HOFMEYR:** But is your evidence that you would have communicated that verbally to him at some prior point?

**MR CHOEU:** *Ja*.

**ADV HOFMEYR:** Okay. Thank you. If we can then just return to your  
10 affidavit and there I would like to ...(intervenes).

**CHAIRPERSON:** Ms Hofmeyr.

**ADV HOFMEYR:** Yes.

**CHAIRPERSON:** We are at 16:02. We may go beyond 16:00, if that suits everybody, but I would not like us to go beyond 16:30.

**ADV HOFMEYR:** Certainly.

**CHAIRPERSON:** Mr Choeu would that, would that be fine with you if we continue beyond ...(intervenes).

**MR CHOEU:** *Ja, ja*. I am fine.

**CHAIRPERSON:** Would that be fine? Okay.

20 **ADV HOFMEYR:** Chair if I may. I am very optimistic (intervenes).

**CHAIRPERSON:** Yes.

**ADV HOFMEYR:** That we will finish Mr Cheou's evidence by 16:30.

**CHAIRPERSON:** Yes okay.

**ADV HOFMEYR:** However, we have asked Mr Pamensky who has been waiting the whole day to remain ...(intervenes).

**CHAIRPERSON**: Yes.

**ADV HOFMEYR**: I wonder if we could just get a message to him now that he will not commence today.

**CHAIRPERSON**: Yes, let's do that.

**ADV HOFMEYR**: If we are only going to sit until 16:30. We are scheduled to start at 09:00 tomorrow so if we could commence with Mr Pamensky tomorrow at 09:00.

**CHAIRPERSON**: Which I think we must change ...(intervenes).

**ADV HOFMEYR**: Okay.

10 **CHAIRPERSON**: From last night, I think we, when I agreed to it, it was during the day yesterday or the day before yesterday.

**ADV HOFMEYR**: Indeed.

**CHAIRPERSON**: From last night I am not feeling too great, so I think I must not start early if I want to recover pretty soon.

**ADV HOFMEYR**: Indeed.

**CHAIRPERSON**: So, let us start at 10:00.

**ADV HOFMEYR**: Certainly.

**CHAIRPERSON**: So that I do not have to rush in the morning.

**ADV HOFMEYR**: Indeed.

20 **CHAIRPERSON**: Depending on how I feel in the afternoon, we might go beyond 16:00 if necessary and if everybody is fine with it.

**ADV HOFMEYR**: We will alert the witnesses for tomorrow to that prospect.

**CHAIRPERSON**: Yes, yes.

**ADV HOFMEYR**: At this point.

**CHAIRPERSON:** Yes, yes.

**ADV HOFMEYR:** Thank you Chair. We are indebted. We will get that message across. Mr Choeu if we can then try and wrap this up. We have dealt with the third contract. You are aware that SNG found that you had been involved in the removal of the termination clause.

**MR CHOEU:** I actually, make a very – when they did that and tell me I was – I only heard that when the Board was in Parliament – during those Parliamentary hearing. No-one, no chief executive officer, not anybody, even as I speak to you, no one has officially informed me  
10 about that. Seeing the report itself I have been privileged by this process itself, and I am surprised to say I got involved, because they did where did I sign it, because if it is involved, Mohammed was involved, Pelele was involved, the Chief Executive Officer in fact was involved in a few. Expunging anything, no.

**ADV HOFMEYR:** And Mr Choeu are you aware that disciplinary proceedings against you were recommended?

**MR CHOEU:** No, we are talking after the fact, because ...(intervenes).

**ADV HOFMEYR:** But no-one at the time communicated that to you?

**MR CHOEU:** Not at all.

20 **ADV HOFMEYR:** No member of the Board of Eskom?

**MR CHOEU:** Not at all. I do not remember an e-mail or something like that coming to me.

**CHAIRPERSON:** So, when you retired you didn't know that there was this finding that has made against you?

**MR CHOEU:** No, no I already became; I was aware on my own through

the Parliamentary process.

**CHAIRPERSON**: Oh okay.

**MR CHOEU**: But I have not seen the report in fact.

**CHAIRPERSON**: But prior to the Parliamentary ...(intervenes).

**MR CHOEU**: No-one.

**CHAIRPERSON**: Session, nobody had ever told you?

**MR CHOEU**: No one has ...(intervenes).

**CHAIRPERSON**: You were not aware of the report.

**MR CHOEU**: Ever came to me and say, you know that there  
10 ...(intervenes).

**CHAIRPERSON**: Finding against you.

**MR CHOEU**: The SNG itself?

**CHAIRPERSON**: *Ja*.

**MR CHOEU**: Did not even contact me.

**CHAIRPERSON**: Did they interview you?

**MR CHOEU**: They interviewed me at the beginning.

**CHAIRPERSON**: And asked you about this issue?

**MR CHOEU**: No, no, no. They asked me about ...(intervenes).

**CHAIRPERSON**: About other things.

20 **MR CHOEU**: Not about the changes there and then, and then the  
report was done, I was not involved, I was not told by anybody.

**CHAIRPERSON**: Yes.

**MR CHOEU**: However, Chair, you know this illegal issue you don't  
know what is happening. Maybe everything fell into places because  
then there was Mr Majila was gone, then it was Mr Stoner, and then a



different Board. And then it was my boss Erica Johnson left the company who would have spoken to me maybe so.

**CHAIRPERSON**: Yes.

**MR CHOEU**: I don't know the reasons why ...(intervenes).

**CHAIRPERSON**: So maybe it was just because of the change of personnel within the leadership of the Organisation.

**ADV HOFMEYR**: The Chairperson of the Board remain the same, did he not?

**MR CHOEU**: *Ja* he remain, Mr Tsotsi?

10 **ADV HOFMEYR**: Yes.

**MR CHOEU**: Yes.

**ADV HOFMEYR**: He was a continues member of the Board despite that change. Is that correct?

**MR CHOEU**: Yes.

**ADV HOFMEYR**: And Ms Mabude was another member of the Board, who was both in the old Board and in the new Board. Is that correct?

**MR CHOEU**: I stand corrected.

**ADV HOFMEYR**: Thank you. I do not think it will be disputed.

20 **CHAIRPERSON**: I am sorry what was the answer? What was the answer to that?

**MR CHOEU**: You know there were so many changes, I know the Chairman, but Ms Mabude I am not sure whether ...(intervenes).

**CHAIRPERSON**: Whether you know him?

**MR CHOEU**: I know her very well.

**CHAIRPERSON**: Yes.

**MR CHOEU**: But whether he had left because the change, you see it will be the timing.

**CHAIRPERSON**: Yes, okay.

**MR CHOEU**: The fact that – yes, she was a Board member yes. But the pivot and the changes ...(intervenes).

**CHAIRPERSON**: That is what you are not sure about.

**MR CHOEU**: Because what they did Chair, what makes it difficult, they did not take the Board away. All of it ...(intervenes).

**CHAIRPERSON**: At the same time.

10 **MR CHOEU**: They would take two here out, one there ...(intervenes).

**CHAIRPERSON**: Okay.

**MR CHOEU**: Synchronising the date. One has to look at them.

**CHAIRPERSON**: Okay.

**ADV HOFMEYR**: Indeed. Chair will deal with Mr Pamensky about that.

**CHAIRPERSON**: Yes.

**ADV HOFMEYR**: But for present purposes I do not take it to be disputed.

**CHAIRPERSON**: Okay.

20 **ADV HOFMEYR**: There were two members of the old Board that remained on the new Board.

**CHAIRPERSON**: Yes.

**ADV HOFMEYR**: Despite the change in 2014.

**CHAIRPERSON**: Okay.

**ADV HOFMEYR**: Which was just after the SNG report.

**CHAIRPERSON**: Okay.

**ADV HOFMEYR**: And the issue of the Board ratifying the contract with concerned. Mr Choeu were you aware that the Eskom Board ratified the 43 million contract?

**MR CHOEU**: After the fact.

**ADV HOFMEYR**: After the fact.

**MR CHOEU**: *Ja*.

**ADV HOFMEYR**: When did you come to learn that?

**MR CHOEU**: I am not sure. Remember that – of my position. I am no longer an Eskom member so ...(intervenes).

10 **ADV HOFMEYR**: Indeed.

**MR CHOEU**: We are unprivy.

**CHAIRPERSON**: So, there were some things that you would not know by virtue of the fact ...(intervenes).

**MR CHOEU**: Not even some things ...(intervenes).

**CHAIRPERSON**: That you are no longer ...(intervenes).

**MR CHOEU**: The majority of things issues that happened to the Board were always confidential.

**CHAIRPERSON**: Okay.

20 **MR CHOEU**: Once, unless you are – in fact there was a point where Exco members were only called to the Board when the Board has to deal what is relevant to them.

**CHAIRPERSON**: Okay.

**MR CHOEU**: They came upon where people are saying are, what do you call it, leaks and all these type of things, but to answer your question rightly. No, I only became aware after the fact that this

contract has been ratified by the Board.

**ADV HOFMEYR**: And when you say after the fact, are we in 2015 that you learned, or 2016 or 2017. Do you have any idea?

**MR CHOEU**: No, no, no. Very close but not – because one of the decisions was that the breakfast was going to continue.

**ADV HOFMEYR**: H'mm.

**MR CHOEU**: And then in that resolution ...(intervenes).

**ADV HOFMEYR**: Right.

**MR CHOEU**: They said that my division must then go and continue with  
10 the breakfast.

**ADV HOFMEYR**: Yes, that is the point that I wanted to ask you about ...(intervenes).

**MR CHOEU**: *Ja* just to ...(intervenes).

**ADV HOFMEYR**: Mr Pretorius ...(intervenes).

**MR CHOEU**: Normally what would happen is that they will give you only – you will never get the discussions and everything – they will give you only the ...(intervenes).

**CHAIRPERSON**: That which relates to you.

**MR CHOEU**: Not even all that relates to you.

20 **CHAIRPERSON**: Or that department.

**MR CHOEU**: The decision.

**CHAIRPERSON**: Oh okay.

**ADV HOFMEYR**: Now part of the decision was – may have been – there is a bit of a query Chair about when this decision was actually taken, but we are going to probe that with some later witnesses. But

the resolution – the round robin resolution recorded that your division would be instructed to obtain maximum value from the contract. Do you recall that?

**MR CHOEU:** I recall that.

**ADV HOFMEYR:** And did you do any reports to the reports to the Board about that?

**MR CHOEU:** No. Wait, wait, wait, I cannot say. Just recall that, and one thing that is important because it does not come out a lot. Every division reported to the Board, every Board meeting to the Committee.

10 So we reported to the what is called the SASS Committee. Religiously about venues we did, but not in the manner as – I do not know whether you asking, because you gave us this decision ...(intervenes).

**ADV HOFMEYR:** Yes.

**MR CHOEU:** No, no. We would go and tell them; we had this breakfast. So many people and all, so that would be in the minutes of the sustainability, those were the SASS Committee.

**ADV HOFMEYR:** Oh, we would have to look in the Committee that is helpful. Because we have looked at the main board meetings and we did not pick up any reporting there. But you are indicating it would

20 have been at Committee level?

**MR CHOEU:** Ja.

**ADV HOFMEYR:** Thank you.

**MR CHOEU:** But we never did a 49M breakfast ...(intervenes).

**ADV HOFMEYR:** Yes.

**MR CHOEU:** Comprehensive report only.

**ADV HOFMEYR**: Understand.

**MR CHOEU**: We talked about what we did last month. *Ja*.

**ADV HOFMEYR**: Let's then conclude if we may at page 10 of your affidavit. The last topic I would like ...(intervenes).

**MR CHOEU**: Sorry.

**ADV HOFMEYR**: Apology. Page 10. This is in MM2.

**MR CHOEU**: Yes.

**ADV HOFMEYR**: I hope to be swift here Mr Choeu. It is just the topic of subscriptions to the TNA newspaper.

10 **MR CHOEU**: Yes.

**ADV HOFMEYR**: Which you pick up at paragraph 9 there. Until this point we have been talking about the business breakfast and we have not been talking much about or at all about subscriptions to the newspaper. You say two things here. You say at 9.1;

“During the June 2011 meeting with TNA the matter of subscriptions were also discussed”.

I take it that must also be corrected to the 1<sup>st</sup> of August meeting. Remember you changed it earlier.

**MR CHOEU**: Yes, yes, yes.

20 **ADV HOFMEYR**: Right. We will make that change. You say:

“I was not involved in this, but I called Ms Wadja on the possibility on the possibility of Eskom subscribing to the TNA newspaper”.

**MR CHOEU**: Yes.

**ADV HOFMEYR**: And you say;

“Ms Wadja managed everything related to newspapers within corporate affairs division”.

Do you see that?

**MR CHOEU**: Yes.

**ADV HOFMEYR**: Did you have no other involvement in the subscription with TNA beyond what you recorded paragraph 9.1?

**MR CHOEU**: In as far as the – we should subscribe to newspapers, the only way that we – I was involved is when now they started, can they please deliver free newspapers to Eskom.

10 **ADV HOFMEYR**: So, you weren't involved prior to that when you were paying for the newspapers?

**MR CHOEU**: No, we call that – let us go back to the beginning. Jack Woe when he came to me – when he wrote to me, the very first, at the beginning. About the fact that he would like us to subscribe the newspapers I referred the matter. Ra'eesha and doctor – I mean Mr Pretorius spoke a lot about what happened in that meeting, and the reason why I was not apart from the fact that I delegated the responsibility to other people, is the intricate in which the newspapers were working at Eskom.

20 **ADV HOFMEYR**: Okay. Let's go to some of the documents if we may, and I hope to be brief. The first subscription was for 30 newspapers. Do you recall that?

**MR CHOEU**: I may recall that, but that is why I wanted to explain first, because they may have followed a process. The newspaper – sorry the library working with Ms Wadja who decide on procurement of

newspapers, and the classical way they would do it is the library will have its own newspapers. The media desk also ensured that they have almost each and every newspaper for purposes of responding to questioning and monitoring what is happening – that is number two. Number three and most unique was that each and every executive, and I am not sure whether, even GM, you would fill up a form every year of the newspapers that you would want to delivered at your office and the magazines and all those type of thing. And the Regions had a different system. So, it was not as centralises as – and that is why I send – and

10 I am sure that is why they took 30 newspapers. Probably what they did, I suspect they contacted the GM's or whoever to say which one of you would want to get a TNA newspaper.

**ADV HOFMEYR**: Yes.

**MR CHOEU**: But I do not know the process that they followed.

**ADV HOFMEYR**: Okay. Let's go to Bundle MM1B if we may.

**CHAIRPERSON**: That is at page.

**ADV HOFMEYR**: And I want to pick up page 805 Chair.

**CHAIRPERSON**: 80 ...(intervenes).

**ADV HOFMEYR**: It is right towards the end, under tab 33.

20 **CHAIRPERSON**: 705?

**ADV HOFMEYR**: Apologies. 805.

**MR CHOEU**: 805.

**CHAIRPERSON**: Okay.

**ADV HOFMEYR**: This is an annexure to Ms Wadja's affidavit, and it sets out the spent ...(intervenes).



**MR CHOEU:** Sorry 8?

**CHAIRPERSON:** 05.

**ADV HOFMEYR:** 05.

**MR CHOEU:** Oh 8.

**CHAIRPERSON:** *Ja* I think I confused you when I said 7. 805.

**MR CHOEU:** Yes.

**ADV HOFMEYR:** So, this is an annexure to Ms Wadja affidavit in which she confirms that the first subscription for newspapers with TNA was for 30 copies on a daily basis. Mr Choeu you can pick up under the  
10 heading 2.2 subscription.

**MR CHOEU:** Oh yes ...(intervenes).

**ADV HOFMEYR:** Do you see that?

**MR CHOEU:** Yes.

**ADV HOFMEYR:** The first bullet says;

“Eskom has committed R25 148, on the New Age for the year and the table below outlines comparisons of subscriptions at MPW”.

Is that Megawatt Park?

**MR CHOEU:** Yes.

20 **ADV HOFMEYR:** You can see we have been doing quite a bit of Eskom evidence we know the acronyms.

“And Midrand Offices”.

She says;

“Additional areas unconfirmed”.

But you looked down there, and what I just want to highlight is

the New Age is about the sixth line down and it reflects 30 copies at R25 000 or thereabouts. Do you see that?

**MR CHOEU:** Yes.

**ADV HOFMEYR:** The next – the highest number of copies of any newspaper on this paper as I have it is Business Day. Do you see that further down the page?

**MR CHOEU:** Yes.

**ADV HOFMEYR:** And there it is 140 copies per day and costs in the order of R319 000. Do you see that?

10 **MR CHOEU:** Yes.

**ADV HOFMEYR:** That as I read this table is the most copies of any newspaper that being procured at this time. Is that a correct reading Mr Choeu?

**MR CHOEU:** Yes.

**ADV HOFMEYR:** But what then happens, is after Eskom agrees to get 30 daily copies at a cost of R25 000,00, they then commit to taking 2 000 daily copies. Were you aware of that?

**MR CHOEU:** I maybe aware of it, but I do not recall that because of the fact that I was not so closer because Elsa Wood, who was in charge  
20 of the library and others were working together.

**ADV HOFMEYR:** Mr Choeu, Ms Wadja says you instructed her to increase the subscription from 30 daily copies to 2 000 daily copies. You will find that, if you go back a bit at page 799.

**MR CHOEU:** Yes.

**ADV HOFMEYR:** She says in her affidavit at 799 at paragraph 10.1;

“After the above meeting”.

That is a meeting that was happening in 2011.

“Between Brian Dames and the TNA leadership I was verbally requested by Mr Cheou to increase Eskom’s TNA subscription from 30 daily copies to 2 000 daily copies”.

**MR CHOEU:** Yes.

**ADV HOFMEYR:** She says;

10 “She could not find e-mail correspondence detailing my request for the library to increase the subscriptions, however Ms Roots e-mail outlined the details”.

So is Ms Wadja incorrect when she said you requested her to increase them from 30 to 2 000?

**MR CHOEU:** No not at all. Remember Ms Wadja started speaking to Mr Agu in June, and they have talking about that I was not involved in the decision of the newspapers.

**ADV HOFMEYR:** Not at all?

20 **MR CHOEU:** Not at all to say increase from – that is the only time that I was ever involved in the newspapers is when they wanted to deliver free newspapers.

**ADV HOFMEYR:** The only time Mr ChoEU?

**MR CHOEU:** Not, I may have – let me say I may have spoken to them, but to make a decision to say, make this 2 000.

**ADV HOFMEYR:** Yes.

**MR CHOEU:** I would have received a proposal from, unless there is a

proposal, I would have received a proposal from New Age to do so. Is there a proposal here?

**ADV HOFMEYR**: Well Mr Choeu there is a letter from you in July of 2012 ...(intervenes).

**MR CHOEU**: Where is it?

**ADV HOFMEYR**: At page 816.

**MR CHOEU**: 8, sorry.

**ADV HOFMEYR**: Asking for the 2 000 copies.

**MR CHOEU**: Oh ja.

10 **ADV HOFMEYR**: To now be increased to 4 000 daily copies. So, this is at page 816. As I understand it, it is letter written to the Library/Tender Committee, and if you pick it up at the third paragraph on that page, it reads;

“In this regard a strategic decision has been taken to provide Eskom employees around the Country with complementary copies of the publication. As but one of many options adopted to achieve the above. Due to the interest from employees we found it necessary to recently extent the distribution to 4 000 copies”.

20 And if you go over the page, at 817.

**MR CHOEU**: Yes.

**ADV HOFMEYR**: “Corporate Affairs request that the New Age newspaper subscription contract renewed for period of two years with an option to amend the subscription numbers each years, based on the needs of the

organisation. We trust that this will be met favourably”.

Is that your signature in support?

**MR CHOEU**: *Ja*, that is my signature, but I do not recall this letter very well – because the – as I have said the newspaper mostly was the responsibility of the library but here it looks like I did make a recommendation of this nature.

**ADV HOFMEYR**: And you approved it.

**MR CHOEU**: Yes.

**ADV HOFMEYR**: You supported ...(intervenes).

10 **MR CHOEU**: Yes.

**ADV HOFMEYR**: Going from 4 000 daily copies.

**MR CHOEU**: Yes.

**ADV HOFMEYR**: Mr Choeu at the time that you went to 2 000 daily copies, the highest number of other copies from any other newspaper was a 140. What could possibly have justified getting 2 000 copies of the New Age?

**MR CHOEU**: I do not think what could have justified that. I think it was a mistake.

**ADV HOFMEYR**: Do you know what the cost was?

20 **MR CHOEU**: Uh-uh.

**ADV HOFMEYR**: It cost Eskom 1.3 million Rand.

**CHAIRPERSON**: Mr Choeu.

**MR CHOEU**: Yes.

**CHAIRPERSON**: The documents that are, excuse me in this bundle where your statement is.

**MR CHOEU:** Yes.

**CHAIRPERSON:** I take it you have had the chance to look at all of them prior to giving evidence.

**MR CHOEU:** No, no this one I did not see; it is not in my bundle that was sent to me.

**CHAIRPERSON:** Or ...(intervenes).

**ADV HOFMEYR:** It is an annexure to Mr Pretorius' bundle.

**CHAIRPERSON:** Oh, it is not in your bundle. Okay.

**ADV HOFMEYR:** Indeed.

10 **CHAIRPERSON:** Alright. Okay. So, you did not remember it, but now that you see it ...(intervenes).

**MR CHOEU:** *Ja* now that I see it ...(intervenes).

**CHAIRPERSON:** Okay.

**ADV HOFMEYR:** Do you know what the 4 000 was going to cost Eskom?

**MR CHOEU:** I do not remember ma'am.

**ADV HOFMEYR:** That one as I have the record Mr Choeu was not entered into, but it would have cost Eskom 7 million Rand if it had been approved.

20 **CHAIRPERSON:** That is annually?

**ADV HOFMEYR:** Over the two years.

**CHAIRPERSON:** Over the two years.

**ADV HOFMEYR:** It was going to be two years when it increased to 4 000.

**CHAIRPERSON:** Yes.

**ADV HOFMEYR**: But when it was increased to 2 000 that was an annual subscription and that cost 1.3 million and that was paid.

**CHAIRPERSON**: Okay.

**ADV HOFMEYR**: But you agree now Mr Choeu that it was an error to have spent 1.3 million on 2 000 daily copies of the TNA. Is that right.

**MR CHOEU**: Yes but I do not know how it is an error so I am not making a rebuttal to this, but across the Country what other people were paying, because this was now for the whole Country.

**ADV HOFMEYR**: Yes indeed. My point simply is that ...(intervenes).

10 **MR CHOEU**: We may ...(intervenes).

**ADV HOFMEYR**: The next largest was a 140 forty copies.

**MR CHOEU**: Across South Africa?

**ADV HOFMEYR**: For Megawatt Park and Midrand.

**MR CHOEU**: So, I do not know how much ...(intervenes).

**ADV HOFMEYR**: I see. There have might have been higher numbers in the other divisions.

**MR CHOEU**: The whole Country were receiving papers of this other division, so I do not know.

20 **ADV HOFMEYR**: And with the 2 000 for Megawatt or was it for the whole country?

**MR CHOEU**: It was for the whole country.

**ADV HOFMEYR**: Thank you.

**MR CHOEU**: They were going to deliver at different places.

**ADV HOFMEYR**: Understood.

**CHAIRPERSON**: I think it might be important to put figures

...(intervenes).

**ADV HOFMEYR**: For the whole – indeed.

**CHAIRPERSON**: For the papers nationally.

**ADV HOFMEYR**: Indeed. We will do that. Eskom will certainly have that information.

**CHAIRPERSON**: Yes, but off course I take it that before you approved or supported the idea that 4 000 copies should be purchased daily, you would have, excuse me, wanted to know what the cost would be?

**MR CHOEU**: Yes.

10 **CHAIRPERSON**: Otherwise you would not approve without knowing what cost – the cost implications would be for Eskom.

**MR CHOEU**: *Ja* I think that I should assume that.

**CHAIRPERSON**: Yes, what I mean is, you might not remember now ... (intervenes).

**MR CHOEU**: Yes.

**CHAIRPERSON**: The cost were going to be.

**MR CHOEU**: Yes.

**CHAIRPERSON**: But before approving you have asked what would this cost the company.

20 **MR CHOEU**: Yes.

**CHAIRPERSON**: You just can't remember what the answer must have been.

**MR CHOEU**: Yes.

**CHAIRPERSON**: Okay.

**ADV HOFMEYR**: It is not necessary to go there, but it is recorded in



a later mandate request as being 7.056 million. Thank you. Mr Choeu ... (intervenes).

**CHAIRPERSON:** But it does mean that if there were a number of newspapers that were purchased for various offices of Eskom that were purchased by Eskom for its staff and so on at high figures, I mean if even the 100 and whatever, that you were talking about that was highest ... (intervenes).

**ADV HOFMEYR:** Yes, yes (intervenes).

**CHAIRPERSON:** It was just for Megawatt Park. If for the whole  
10 country, there was then it certainly would go quite high.

**ADV HOFMEYR:** Indeed.

**CHAIRPERSON:** If that is true, then it would mean that Eskom must have been spending a lot of money on simply newspapers its staff. Millions.

**ADV HOFMEYR:** Indeed.

**CHAIRPERSON:** Ja. Okay. Alright.

**ADV HOFMEYR:** Thank You. Mr Choeu in summary then if I may, we have about two minutes to go which should just about do us. I would just like to conclude on a few aspects in summary in relation to your  
20 evidence so that we can be clear as to my understanding of it. Mr Choeu the first and the third TNA contract for the business breakfasts were concluded despite there being insufficient budget available for those contract. Is that correct?

**MR CHOEU:** Yes.

**ADV HOFMEYR:** And without there being Sponsorship Committee

approval. Correct.

**MR CHOEU**: Yes correct.

**ADV HOFMEYR**: The second contract was concluded despite the Sponsorship Committee actually declining to support that contract. Is that correct?

**MR CHOEU**: Yes.

**ADV HOFMEYR**: And the contract of 43 million was found by SNG to have constituted irregular expenditure. Are you aware of that?

**MR CHOEU**: Now ...(intervenes).

10 **ADV HOFMEYR**: Again. At the time you were not aware.

**MR CHOEU**: Not at all.

**ADV HOFMEYR**: You were aware that they were investigating it though, weren't you?

**MR CHOEU**: No, no. I was very much aware.

**ADV HOFMEYR**: And you also were aware of the process that needed to be followed for sponsorships. Is that not correct?

**MR CHOEU**: Yes.

**ADV HOFMEYR**: And you accept that those processes were not followed in relation to the TNA contracts.

20 **MR CHOEU**: All the contracts.

**ADV HOFMEYR**: And Mr Choeu you also knew that the Legal Department had advised that that termination clause in the third contract should remain. Is that correct?

**MR CHOEU**: Yes.

**ADV HOFMEYR**: And despite that it was concluded without the

termination clause. Correct.

**MR CHOEU**: Yes.

**ADV HOFMEYR**: I am sure you will also accept that when Mr Adam relayed his view to you, he said that it was to make the commercial decision. You accept that that is what his e-mail said.

**MR CHOEU**: No I don't accept that, but I did carry out his instruction like that.

**ADV HOFMEYR**: You do not accept ...(intervenes).

**MR CHOEU**: I do not accept that I did not carry his – I carried his  
10 instructions which were signed to TNA were contracts just as he wanted.

**ADV HOFMEYR**: Indeed. And then when the issue arose, you met with TNA and you forwarded a signed version of the contract to Mr Matjila without the clauses.

**MR CHOEU**: With an e-mail saying this is in dispute.

**ADV HOFMEYR**: Understood. Understood. And finally, no disciplinary steps were ever taken against you in relation to the conduct on the third contract.

**MR CHOEU**: Yes.

20 **ADV HOFMEYR**: And not in relation to the second contract either.

**MR CHOEU**: No.

**ADV HOFMEYR**: Thank you. Thank you Chair those round  
...(intervenes).

**MR CHOEU**: The point is not any of the two contracts were found irregular by internal audit as the third one.

**ADV HOFMEYR:** I understand that.

**CHAIRPERSON:** But off course you have said that they were all irregular, insofar as they were sponsorships.

**MR CHOEU:** Yes, Chair but with the *proviso* that the team – the Marketing Team, because it is not me who followed that process.

**CHAIRPERSON:** Yes, no *ja*, but I am talking about your own view.

**MR CHOEU:** The two teams ...(intervenes).

**CHAIRPERSON:** Yes.

**MR CHOEU:** That it interview, because they were dealing with a media  
10 house, they then decided that the best way, and as it even appears on Mr Pretorius statement that the best way to deal with this combo is to do it through Mediashop.

**CHAIRPERSON:** But in terms of your view that is different.

**MR CHOEU:** Where in retrospect we look it, which they should have sub waited ...(intervenes).

**CHAIRPERSON:** Yes.

**MR CHOEU:** That should have sub waited, not looked at the whole combo as one.

**CHAIRPERSON:** Yes. Now I think that you have said that certainly at  
20 a stage – a certain stage maybe when Parliamentary questions started arriving and journalist started asking questions about this contracts you concluded that this agreements with – between Eskom and TNA were wrong. And they were ...(intervenes).

**MR CHOEU:** Eating on our reputation. Big time.

**CHAIRPERSON:** *Ja* they were damaging your reputation as Eskom and

as far as you were concerned you did not want to – you did not want Eskom to continue with them. Is that right.

**MR CHOEU**: That is quite correct.

**CHAIRPERSON**: Yes. And in terms of value, on whether they added any value to Eskom against the background the money that Eskom was putting into them. Are you – what is your position? I know we have discussed it before, but I want to be quite clear where you stand on that. Are you saying, right from the beginning they did not add any value worth mentioning to Eskom against the money that Eskom was  
10 putting into it or are you saying they did add some value but it was negligible value?

**MR CHOEU**: I don't about negligible value ...(intervenes).

**CHAIRPERSON**: I am trying to ...(intervenes).

**MR CHOEU**: They did add some value. I would say that and I am saying that because there was some certain level of leadership. And I compare them with niche market that. But having said that, the value that they added, even if it was 100%, the reputation attached was so devastating that maybe ...(intervenes).

**CHAIRPERSON**: It was not worth it.

20 **MR CHOEU**: Yes sir.

**CHAIRPERSON**: Yes.

**MR CHOEU**: But people were reading the newspapers, people got to know about what is happening. People got to know, so even I would argue, I may not argue 87% or 0% but they had an impact on people knowing and understand, especially when the Minister started going to

different areas, getting into houses. And television coming in there, they did have some impact. But at a terrible reputation.

**CHAIRPERSON**: Let us leave out the damage to the reputation. Are you saying that when you look at the millions of Rands that Eskom put into them, are you saying that Eskom was justified in entering into this contracts?

**MR CHOEU**: No, we could have done better.

**CHAIRPERSON**: *Ja*.

**MR CHOEU**: But I do not want to talk about it because I don't know  
10 about the ...(intervenes).

**CHAIRPERSON**: Well on what you know.

**MR CHOEU**: Yes.

**CHAIRPERSON**: On what you know.

**MR CHOEU**: *Ja*. No, no, no.

**CHAIRPERSON**: Are you able to say Eskom was justified in entering into them, bearing in mind the money that, the millions of Rands that Eskom put into it?

**MR CHOEU**: Chair they could have got in there – much more. I don't know the word cheaper is better, not at the amount at which they did.

20 **CHAIRPERSON**: Well when you are putting it like that, it is like you are running away from saying justified or not justified. And that is what I want.

**MR CHOEU**: Maybe it is because I don't, I understand the word justify so much that, because what I am saying is ...(intervenes).

**CHAIRPERSON**: Was there ...(intervenes).

**MR CHOEU**: For example an advert ...(intervenes).

**CHAIRPERSON**: Yes.

**MR CHOEU**: Gives you a certain value.

**CHAIRPERSON**: Yes.

**MR CHOEU**: Media exposure, be it three minutes, four minutes, five people gives you a certain value. So, I think it would wrong to totally say there was no value, but I think we have paid just too much for that.

**CHAIRPERSON**: Well you see value – a certain value is so negligible, that you should not even mention it, if in the end what you pay for it is  
10 unjustified. Is it – would you agree with the proposition?

**MR CHOEU**: I would agree with the proposition, adding also I still recall – as I argued earlier on, that you have a very expensive player who plays extremely well and he scores the goal, and he win the awards.

**CHAIRPERSON**: Yes.

**MR CHOEU**: You know you get billions out of him.

**CHAIRPERSON**: Yes.

**MR CHOEU**: But the reputation maybe so ...(intervenes).

**CHAIRPERSON**: Yes.

20 **MR CHOEU**: Devasting, but even with that value, and that is where I am ...(intervenes).

**CHAIRPERSON**: No I understand that part, that is why I am taking the reputational risk up aside because maybe that is what you see when the contract is running. You know. Off course at the beginning of the contract you have a duty to make an assessment whether there may be

a risk to your reputation.

**MR CHOEU**: H'mm.

**CHAIRPERSON**: In some cases, you make the assessment and you think they will be no risk and then conclude the contract. In some cases, you would think there would be no risk, but a risk happens and it materialises and your reputation is damaged.

**MR CHOEU**: H'mm.

**CHAIRPERSON**: But that only happens when the contract is running. But I look at when Eskom was approached. I am trying to see whether,  
10 when you look at what Eskom spent, and what Eskom may have got, if you think it got any value from this.

**MR CHOEU**: H'mm.

**CHAIRPERSON**: Whether you would say, leaving out the reputational risk.

**MR CHOEU**: Yes.

**CHAIRPERSON**: Whether you would say, no it was – we were justified as Eskom to enter into this contract. That is what I am trying to ... (intervenes).

**MR CHOEU**: No, no, no ... (intervenes).

20 **CHAIRPERSON**: You would not be able to say that.

**MR CHOEU**: I find it very difficult to say that.

**CHAIRPERSON**: Yes. Okay. Thank you.

**ADV HOFMEYR**: Thank you Chair.

**CHAIRPERSON**: Nothing.

**ADV HOFMEYR**: Nothing further.



**CHAIRPERSON:** Thank you very much Mr Choeu. We appreciate that you came to give evidence. If a need arises, we will ask you to come back, but for now you are excused. It looks like you want to say something.

**ADV HOFMEYR:** I think Mr Choeu is complaining that he has been here for two day. So, I do apologise for that. Part of it might have been to the extent to which you wanted to answer some of the questions, but that is what happens in these proceedings.

**CHAIRPERSON:** Yes. But thank you very much Mr Choeu. So, we will  
10 then adjourn and then ...(intervenes).

**ADV HOFMEYR:** If we can just conclude the proceedings.

**CHAIRPERSON:** We will adjourn and then tomorrow we will start at 10:00.

**ADV HOFMEYR:** At 10:00, indeed. Thank you.

**CHAIRPERSON:** Thank you.

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