

COMMISSION OF INQUIRY INTO STATE CAPTURE

HELD AT

PARKTOWN, JOHANNESBURG

10

24 JANUARY 2020

DAY 205

20

PROCEEDINGS RESUME ON 24 JANUARY 2020

CHAIRPERSON: Good morning Ms Hofmeyr, good morning everybody.

ADV KATE HOFMEYR: Good morning Chair.

CHAIRPERSON: Are we ready?

ADV KATE HOFMEYR: We are indeed ready.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: Chair when we concluded yesterday I indicated that the legal representatives of Mr Tsotsi would like to ask some questions in re-examination and so if may hand over to my learned
10 friend?

CHAIRPERSON: Oh okay now I seem to remember that I thought we were done with Mr Tsotsi. Or did you tell me only after I had release him?

ADV KATE HOFMEYR: We – we concluded yesterday on the basis that we would be returning today for the re-examination.

CHAIRPERSON: Yes I know...

ADV KATE HOFMEYR: So – but ...

CHAIRPERSON: No I think I had forgotten that part now.

ADV KATE HOFMEYR: Not a problem.

20 **CHAIRPERSON:** But at a certain stage yesterday I released him.

ADV KATE HOFMEYR: Yes.

CHAIRPERSON: And that must have been ...

ADV KATE HOFMEYR: Oh no sorry that was Mr Jackson who was our witness who might have come up yesterday.

CHAIRPERSON: No, no.

ADV KATE HOFMEYR: Oh.

CHAIRPERSON: With regard to Mr Tsotsi.

ADV KATE HOFMEYR: Oh.

CHAIRPERSON: When we finished I excused him.

ADV KATE HOFMEYR: Oh goodness none of us were on the ball.

CHAIRPERSON: But now what I am wondering is whether when I did so you had not told me that his legal team would like to re-examine him and that.

ADV KATE HOFMEYR: No we – we had dealt with it before the tea.

10 **CHAIRPERSON:** Or whether you had already.

ADV KATE HOFMEYR: But unfortunately Chair I had not picked that up.

CHAIRPERSON: So I must have completely forgotten.

ADV KATE HOFMEYR: As did I. I was not aware at that point that Mr Tsotsi had been released.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: But thankfully he is here nonetheless.

CHAIRPERSON: He is here. Good morning Mr Tsotsi.

MR TSOTSI: Good morning Chair.

20 **CHAIRPERSON:** Yes. No I – I think when I released you I had forgotten whatever had been discussed.

ADV KATE HOFMEYR: And I do apologise for not picking that up.

CHAIRPERSON: Yes. No thank you very much but thank you for coming back. Yes Mr Ngcebetsha you want to re-examine?

ADV KATE HOFMEYR: Thank you.

ADV JOHN NGCEBETSHA: Thank you Chair.

CHAIRPERSON: Yes.

ADV JOHN NGCEBETSHA: Mr Tsotsi there was some discussion yesterday on whether the board did apply its mind on the commercial value regarding the contract that it considered to ratify and ultimately did ratify. Would you be kind enough to share with the commission what your understanding is in as far as that is concerned?

MR TSOTSI: Yes. When we were discussing the matter of whether to ratify the contract or to cancel it the matter of the contract being a bad
10 one was premised solely on the idea and the knowledge that the contract had been entered into irregularly. That was the sole premise upon which the notion of a bad contract in our minds was premised on.

ADV JOHN NGCEBETSHA: Just for clarity before you proceed. That to you would have as a Board meant that to the extent that it is deemed to be irregular it is bad or is it that there is no value that Eskom was to acquire from the contract?

MR TSOTSI: No the contract being a bad one had to do not related to the value that Eskom could – could get out of the contract. It was solely related to the fact that the contract was entered into irregularly.

20 **ADV JOHN NGCEBETSHA:** Fair enough. Now a lot was canvassed on the legal opinion obtained from the attorneys firm Ledwaba Mazwai and invariably they gave you two options which was

- a. You may cancel the contract and they raised the obvious flag of there would be challenges in the light of the fact that there was no termination clause and therefore you could be open to

litigation.

- b. That you may consider to ratify the irregularity of the contract and thus be able to obtain some value.

Now explain to me how you as a Board understood that?

MR TSOTSI: Chair our understanding was clearly that if we were to ratify the contract the only thing that we would have to insist upon is that some means of mechanism be found to extract as much value out of the contract. So we then decided that it would be detrimental – it would be more detrimental to the company if we cancel the contract
10 because we were opening ourselves up to claims of non-performance and also possible legal costs that may arise out of that and obviously with no possibility of exercising any value out of the contract. So it was the – shall I say the better of the two evils if you like for us in our – in our thinking. And so given that we then took the view that let us then ensure that we get optimal value from what is left of the contract. So that was the position that we had taken and that is how we arrived at the decision we arrived at.

CHAIRPERSON: Before you proceed Mr Ngcebetsa. Maybe let us just do this Mr Tsotsi in the light of the fact that I released you
20 yesterday when you were still going to come and be re-examined. Do you confirm that you consider the oath that you took yesterday to be still binding on your conscience as you continue with your evidence?

MR TSOTSI: Yes I do.

CHAIRPERSON: Thank you.

ADV JOHN NGCEBETSHA: Thank you Chair. So the extent to which

you say you looked at what optimal value and choose between the two evils. Let us just go through that scenario. In your understanding as a Board and in your understanding as an individual who led the Board as Chairman had you exercised the option of cancellation? What value? What were the implications of that as you understood the report or the advice from the lawyers?

MR TSOTSI: Well clearly there would have been what I would understand to be wasteful expenditure on the part of the Board if we had taken the option to cancel the contract. Because we would – we
10 would have incurred loss and the company would have had to be subject to a claim and that is where the loss would arise from. So I think that in our view the option of ratifying the contract prevent that loss from occurring was a better option.

ADV JOHN NGCEBETSHA: Do you distinguish...

CHAIRPERSON: One second.

ADV JOHN NGCEBETSHA: Sorry.

CHAIRPERSON: But do you accept that if the position was that there was no commercial value to the contract – in the contract to – for Eskom then having paid or paying R43 million could well actually also
20 be a fruitless expenditure and when I use that terminology now I am not being technical I am just using it as a lay person. In other words if somebody says after the year or I cannot remember for how long the contract was that were you – Eskom was going to spend R43 million after a year or two or three comes and says, you have paid R43 million here what did you get in return if you are not able to put up something

that says this is the value we got then somebody could say, so that R43 million is wasted. So that is – that is the meaning I am attaching to fruitless expenditure which might not be exactly the same as the technical meaning for accountants and auditors maybe. But that is what I am saying. In other words you might say – let us ratify because you are scared of litigation but if you ratify a contract that has got no value for Eskom you could still face the same situation on the basis that you cannot really justify the payment of R43 million in terms of how has it helped Eskom.

- 10 **MR TSOTSI**: Chair there – I concur with what you are saying and in fact I think that is what the lawyers were essentially saying by saying that it would be used for – advisable for us to establish commercial value of the contract.

CHAIRPERSON: So the answer is you understand that?

MR TSOTSI: Yes.

CHAIRPERSON: Yes. Okay.

ADV JOHN NGCEBETSHA: Thank you Chair. Let us just maybe establish what is the – what was the knowledge of the Board in terms of what this contract represented? What were you getting as Eskom?

- 20 **MR TSOTSI**: Chair the – the contract spelt out what the outputs would be and I think if one wants to get into the detail it is there in the – in the contract itself.

CHAIRPERSON: In the docket – in the contract.

MR TSOTSI: Yes.

CHAIRPERSON: Hm.

MR TSOTSI: So in terms of you know the bottom line outputs they are spelt out in the contract.

CHAIRPERSON: Well if there are two ways of dealing with this. One is if you think it is important to highlight those then the contract can be put in front of you. But if you are happy that we can look at the contract later that is fine. Mr Ngcebetsa can indicate what he prefers.

ADV JOHN NGCEBETSHA: Thank you Chair perhaps let me – let me see if we can make quicker progress of the different - perhaps let me – let me see if we can make quicker progress on a different...

10 **CHAIRPERSON:** Without ...

ADV JOHN NGCEBETSHA: Yes.

CHAIRPERSON: Yes okay.

ADV JOHN NGCEBETSHA: And if needs be we will get there. The – yesterday you mentioned that the evaluation of the commercial value ordinarily would have rested with the Executive team as they were negotiating the contracts. Is that correct?

MR TSOTSI: Correct.

ADV JOHN NGCEBETSHA: Was in your mind the Board seized with an evaluation of the commercial value or not at the time that you
20 considered ratification?

MR TSOTSI: Well the issue there for us was that the contract under normal circumstances would not have come to the Board in the first place. Because the delegation of authority for that level of expenditure is within the competence of management. The only reasons the contract came to us was because of the irregularity which was in fact

occasioned by a member of the Board and because the Board was the only authority in the organisation that could have addressed that issue because it was beyond the level of management. Because the Chief Executive is a member of the Board. So the overriding consideration for us was this problem of the irregularity. The Board would only have engaged itself on the issue of value only insofar as the fact that it is a normal course that there should be a value in any contract that the company enters into. So naturally because we were now dealing with this issue the issue of value had to come up in the discussion. But the

10 substantive preoccupation of the Board had to do with this transgression that occurred in the signature of the contract. That was the primary preoccupation. As a consequence therefore Chair the Board then insisted that management must do its - its utmost to get value out of this contract once – from then on because it is very clear that without extracting value out of the contract it will be an exercise which would result in fruitless expenditure by the company if the contract continues and there is no attendant attempt to exact value from the contract. So we needed to – to add that to you know the – well it was added to the resolution that was passed. The Round Robin

20 Resolution.

CHAIRPERSON: While Mr Ngcebetsha is looking at his notes I am trying to recall yesterday's evidence. Did we end up with the position that you said at the time of ratifying by the time the Board ratified the contract the question of its commercial value had not been determined. Is there where – what you said?

MR TSOTSI: That is correct Chair.

CHAIRPERSON: That is correct.

MR TSOTSI: Yes.

CHAIRPERSON: Okay.

ADV JOHN NGCEBETSHA: Thank you Chair. Principally what I am trying to get Mr Tsotsi and the witness – or rather the witness to clarify which I think he has done.

CHAIRPERSON: Hm.

ADV JOHN NGCEBETSHA: Firstly is that the commercial value – let
10 me just put it a [indistinct] position.

CHAIRPERSON: Ja put it with ja.

ADV JOHN NGCEBETSHA: Firstly that the – this is my proposition as I understand your evidence. Correct me where I am wrong. Your understanding is the genesis that allows the contract to be entered into invokes the management to have considered commercial value. Are we correct?

MR TSOTSI: Yes that is correct.

ADV JOHN NGCEBETSHA: That having done so they entered into a contract which later through the SNG Report corroborated by the
20 Ledwaba Mazwai Report indicated that it was irregularly entered into.

MR TSOTSI: Correct.

ADV JOHN NGCEBETSHA: That further it came to the Board to consider the issue of irregularity principally?

MR TSOTSI: Yes.

ADV JOHN NGCEBETSHA: Consequently the Board would have to

consider what position to take on cancellation versus ratification.

MR TSOTSI: Correct.

ADV JOHN NGCEBETSHA: Now at that point what we now know is that the Ledwaba Mazwai Report says:

“Absent of a termination clause if you cancel you are facing as a company the possibility of TNA accepting this as a repudiation which simply means that for non-performance you will pay them for the full balance of the contract without any goods or services being delivered.”

MR TSOTSI: Correct.

- 10 **ADV JOHN NGCEBETSHA:** The alternative is that if you do ratify it you would at least extract the value of goods or services, is that correct to understand?

MR TSOTSI: Correct yes.

ADV JOHN NGCEBETSHA: So – so did the Board apply itself to a commercial consideration perhaps different from the original one that the management team would have looked at? That is the question I am trying to understand.

- MR TSOTSI:** The Board did apply itself to consider commercial considerations yes because it would not make sense for the Board to
20 ratify the contract in the absence of some commercial consideration.

CHAIRPERSON: You have anticipated my next question Mr Tsotsi. I am glad you have anticipated it. Okay Mr Ngcebetsha continue.

ADV JOHN NGCEBETSHA: And what was the commercial value than that the Board in its limited scope looked at?

MR TSOTSI: Sorry I did not get the question.

ADV JOHN NGCEBETSHA: What was the commercial value that the Board considered?

CHAIRPERSON: Okay I think – I think maybe if I could put it in another way.

ADV JOHN NGCEBETSHA: Sure.

CHAIRPERSON: Yes. Maybe it should be preceded by any earlier question.

ADV JOHN NGCEBETSHA: Yes.

CHAIRPERSON: Was there value that the Board attached or conceded
10 existed in the contract before it ratified?

MR TSOTSI: The Board did consider that there was value in the contract.

CHAIRPERSON: Yes and then I think the next question, what was that value?

ADV JOHN NGCEBETSHA: Yes. Okay.

MR TSOTSI: What we then – what we then looked at in terms of how the contract was initially – from inception how it was put together was a representation that Mr Matjila sent to the Board though he was not able to be there personally to make the representation. So we then said we
20 should reinforce the idea that there has got to be commercial value in this contract. There has got to be a realisation of the commercial value in the contract otherwise it is not worthwhile for the Board to ratify the contract. We were not competent ourselves to establish what level of value there is. I mean we do not have the capacity to quantify the – the quantum of value but we understood from what Matjila had put

forward that there is an expectation that there will be deliverables on the basis of the contract which would then result in some value for the company. So it was then up to management to then put together a capacity or a mechanism to ensure that value does get extracted from the contract.

ADV JOHN NGCEBETSHA: Put differently and I give you another proposition. On paper there would have been value and you chose as you put it the lesser evil.

MR TSOTSI: That is correct yes.

- 10 **ADV JOHN NGCEBETSHA:** By taking the option that allowed you to have a chance to re – convert that into writing – I mean into reality.

MR TSOTSI: Yes that is correct yes.

ADV KATE HOFMEYR: Chair.

CHAIRPERSON: Hm.

ADV KATE HOFMEYR: Just apologies just to note at this point. It is very important in our submission for the weight that is ever to be attached Mr Tsotsi's evidence that in re-examination he is asked not leading questions.

CHAIRPERSON: Yes, no, no.

- 20 **ADV KATE HOFMEYR:** We have raised this before in re-examination so I would just caution my learned friend insofar as that is concerned.

CHAIRPERSON: Well you – you saw that as you were standing I was – I was smiling because...

ADV KATE HOFMEYR: On route to make the point.

CHAIRPERSON: Because I think all three of us including Mr

Ngcebetsa knew – knew that that was leading.

ADV KATE HOFMEYR: Indeed.

CHAIRPERSON: I am not being unfair to you Mr Ngcebetsa.

ADV JOHN NGCEBETSHA: Shall we – shall we rephrase it is fine?

CHAIRPERSON: Ja.

ADV JOHN NGCEBETSHA: It is alright.

CHAIRPERSON: Okay.

ADV JOHN NGCEBETSHA: Thank you Chairperson. Do you yourself distinguish between commercial value assessment that led to the – at
10 the genesis of the contract negotiation and the commercial value assessment when the Board had to consider ratification? Do you make any distinction between the two or not?

MR TSOTSI: Commercial assessment of the contract would have had to have been done at the inception of putting the contract together.

ADV JOHN NGCEBETSHA: Yes let us be direct. Do you make a distinction between the two? Are they the – exactly the same thing or they are a little bit different?

MR TSOTSI: They are the same.

ADV JOHN NGCEBETSHA: Ja.

20 **MR TSOTSI:** Yes.

ADV JOHN NGCEBETSHA: If they are exactly the same then you have to clarify to the Chairperson why yesterday in your evidence you said the Board did not have to consider a commercial consideration and today you say it did. Because on the face of it it looks like a contradiction. What do you mean?

MR TSOTSI: You see yesterday I was trying to explain Chair the focus of what the Board was considering and the reason why in any case that all of this was happening was because of the fact that there had been an irregularity that was picked up which irregularity then triggered the entire process that we went through. So the focus of the Board was on that matter. The matter of commercial value of the contract was essentially raised as a result of what are the considerations that one must take into account when a contract of this nature is to be ratified. So that consideration then speaks to what was in fact intended in the

10 contract? Irrespective of it having been entered irregular – into irregularly. What was the intent in terms of benefit for the company? Was there any intent that there should be benefit for the company? And when I say this I am saying this is what the Board said that in any case there was an intention for the com – for the contract to benefit the company. Not to the extent to which that would have happened we were not competent to quantify but what we do know is that there was an intent that the contract should benefit the company. So this is where perhaps I did not put myself – I did not put it clearly or I did not make it clear.

20 **CHAIRPERSON:** Well I think it is better that I should raise my – put these questions to you now so Mr Ngcebetsha has the opportunity to ask you further question arising from them if there is anything that he thinks needs clarification. Yesterday you had – you testified about the Round Robin Resolution and said that you signed it and admitted that you did not read it maybe as carefully as you should have. You

discovered afterwards that there were some errors in the statement you – you owned up to that as I understood your evidence. That was fine. Now for me – oh the next thing is you said earlier on that the Board had to consider the issue of commercial value before it could ratify because otherwise and I may be putting words in your mouth, otherwise it would not make sense to ratify a contract that might not have any value. Now I may be putting words into your mouth but that is because it is what is in my mind but when you answer you can clarify for the record where I am saying you said something you did not say. But so for me it makes

10 a lot of sense when you say, there is no way we could ratify as a Board a contract without satisfying ourselves or without asking the question, is there value for the company in this contract? Now as I understand it – as I understand your evidence you did consider that issue as a Board. The next question is, what did you do about it? And I think at some stage I understood you to be saying, well we said to management they must make sure the company gets value out of this contract and so on. My difficulty is I would not expect a Board such as your – a Board of Eskom I would not expect any Board to ratify a contract without satisfying themselves that there is value in the contract – the contract

20 has value for the company. Now of course if you are told by somebody that you have no reason to think they are misleading you – if you are told, no this is the value or blah, blah, blah, blah you might not need to go behind that to check whether that is true.

You might not need to go behind that to check whether that is true. That - that depends on how - how much you - trust you have in

the person who tells you that there is value and maybe this is the value, but where there is - particularly where there is a lot of money involved I would expect that as a Board you would say - the Board would say you management wants us to ratify this.

We - if we ratify it we take full responsibility for it and be - we will not ratify it unless you satisfy us that it has commercial value. Tell us where the commercial value is and if they say no - if they tell you something that you think is nonsense. You must say we - then we are not ratifying depending or you must say well we ratifying even
10 though there is no value, because of A, B, C, D.

Whatever the A, B, C, D is. So that is - that is where my - my concern is.

MR TSOTSI: Yes.

CHAIRPERSON: So - so you - you can address this concern in whatever way ...

MR TSOTSI: Yes.

CHAIRPERSON: You - you would like to.

MR TSOTSI: Thank you Chair. Perhaps it did not come across as clearly yesterday ...

20 **CHAIRPERSON:** Hm.

MR TSOTSI: But as I said not long ago that the commercial consideration at the time when the contract was being put together is what we understood to be the attempt to demonstrate value in the contract - commercial value or the existence or potential for commercial value.

So that in itself we did not relate that ability to demonstrate that via Mr Matjila with the transgression that resulted in the - in the regularity. In other words what I am saying Chair is that we did not pass judgment on Mr Matjila's capacity to demonstrate value in the contract based on the transgression that he incurred in signing of the contract.

So that - that then says to me that even if this contract did not come to the Board and it proceeded in a normal fashion we as a Board would have understood that the responsibility of management is
10 to make certain that there is commercial value for the company when they enter into a contract.

Now it is probably easy post facto to establish whether indeed to establish whether indeed the understanding we had at the time was correct or not, but I do not think that removes the latitude that one must give ...

CHAIRPERSON: Hm.

MR TSOTSI: To management when they say we are confident that the way we have entered into this contract will indeed result in value for the company. That Chairman is the reason why I for one did not really
20 see the - the reason to go back and - and re-establish - if you like ...

CHAIRPERSON: Hm.

MR TSOTSI: Whether in fact there is commercial value in the contract or not, because it is not the first time that Eskom is doing something like this and like I say if we have found at the end of the day that in fact there was an error in judgment by management. Then that would

be something that would then have to be dealt with at that time, but we have to have confidence in their ability to execute the mandate that they have in the interest of the company and this occasion is no different and should not be confused by the fact that there is any regularity that occurred which the Board was seized with at the time. I do not know if I am making myself clear Chairman.

CHAIRPERSON: Well if I say you do then I - I should not have another question. Let - let me ask this question. Am I correct to understand your - you to say as you ratify it - the contract - you had not satisfied
10 yourself - yourselves as the Board as yet that there was commercial value in the contract for Eskom, but what at least yourself maybe - here I think you did not want to speak for other people necessarily.

You - your - your attitude was Matjila says there is value in the contract. I do not want to second guess him. Am I - is - am I under - am I understanding your evidence correctly?

MR TSOTSI: Correct Chair.

CHAIRPERSON: Yes. Okay. Of course you - you would accept would you not that while that approach might give confidence to the management that we are allowed to determine what has commercial
20 value and what has no commercial value for the company the Board is accepting what we say they are not scrutinising.

They - they are not second guessing us. If later on it is shown that the contract had no commercial value. Then it could be said that you had an opportunity to check whether there was commercial value before you ratified and because you did not do that

maybe Eskom then lost a lot of money because maybe if you had checked you could have stopped the - the contract.

Let us leave out for now the arguments about whether there was the route of going to court and declaring it invalid was there or not, but you - you - would you accept that there could be criticism from that angle?

MR TSOTSI: Yes. I do accept Chair.

CHAIRPERSON: Yes. Okay. Thank you. Mr Ngcebetsa.

ADV JOHN NGCEBETSHA: Thank you Chairperson. Just to round off
10 this. In the Ledwaba Mazwai report was the option availed that you could actually go to court to - to get this contract cancelled?

CHAIRPERSON: Or declared invalid.

MR TSOTSI: No.

ADV JOHN NGCEBETSHA: Yes. Declared ... (intervenes).

CHAIRPERSON: Cancelled or declared invalid.

ADV JOHN NGCEBETSHA: Yes.

CHAIRPERSON: Hm.

MR TSOTSI: No. There was no such.

ADV JOHN NGCEBETSHA: *Ja*. To the best of my recollection three
20 options were raised. First ratification. Secondly, cancellation at your insistence the company. Thirdly, approaching them on a goodwill basis to see if you could renegotiate the terms of the contract. Is that correct?

MR TSOTSI: Yes. That is correct.

ADV JOHN NGCEBETSHA: Right. So my last question here hopefully

and then I can move onto another issue is did the Board understand that or let me put it differently was there any process that the Board set in motion to - to be considered to see if any party - in this instance Mr Matjila or any of the Executive Team Members - that in the event that there was no value that could be realised would face some consequences?

MR TSOTSI: Chair, I - at the time when I was involved with this matter we had not reached that consideration. It is possible that they could have arisen with the - with the Board after I left. After they - they then
10 had then some experience of - of the contract.

ADV JOHN NGCEBETSHA: Fair. Now I want to treat the second point for me which is the ratification - rather the round robin resolution. In a discussion yesterday it became clear that there were some omissions if not inaccuracies in the round robin resolution. Can we - are you able to identify what in your mind were those inaccuracies or incomplete omissions?

CHAIRPERSON: And if you want to look at ...

MR TSOTSI: Ja.

CHAIRPERSON: The resolution that ...

20 **MR TSOTSI:** Yes. I think that would help me ... (intervenes).

CHAIRPERSON: Maybe somebody can help - can help him with what page that is.

ADV JOHN NGCEBETSHA: Page 145 of EXHIBIT MM3.

MR TSOTSI: 145?

ADV JOHN NGCEBETSHA: Ja. It actually starts on 143. MM3.

MR TSOTSI: Huh-uh. MM3. No. This bundle. 143. Yes. Okay.

CHAIRPERSON: Have you got it?

MR TSOTSI: Yes. I have Chair.

CHAIRPERSON: Yes. Okay.

MR TSOTSI: Hm.

CHAIRPERSON: I - I think the question was whether you are able to specify what errors or inaccuracies and I would add omissions you later identified in the resolution.

MR TSOTSI: The first one Chair would be the statement that says that:

10 “The parties that were involved in this matter are no
longer within the sphere of Eskom’s ...”

CHAIRPERSON: On what page?

MR TSOTSI: Sorry. One - 144.

CHAIRPERSON: 144. Yes.

ADV JOHN NGCEBETSHA: Paragraph.

MR TSOTSI: The last - the second last bullet ...

ADV JOHN NGCEBETSHA: Yes.

MR TSOTSI: From the bottom of the page.

CHAIRPERSON: Yes.

20 **MR TSOTSI:** Begins with that:

 “The parties that were involved in this matter are no
longer within the sphere of Eskom’s operations.”

CHAIRPERSON: Yes.

MR TSOTSI: I understood that to mean that both Mr Matjila and Mr Choeu are no longer ...

CHAIRPERSON: Within Eskom?

MR TSOTSI: Within Eskom and that was ...

CHAIRPERSON: Not true.

MR TSOTSI: Not correct.

CHAIRPERSON: In regard to both of them?

MR TSOTSI: In regard to one of them.

CHAIRPERSON: Yes.

MR TSOTSI: It is true about Mr Matjila, but it was not true about Mr Choeu, because he was still working ...

10 **CHAIRPERSON:** *Ja.* Okay.

MR TSOTSI: In - in the company.

CHAIRPERSON: Okay.

ADV JOHN NGCEBETSHA: Was Mr Matjila at the time of this round robin resolution still a Board Member?

MR TSOTSI: No.

ADV JOHN NGCEBETSHA: So he was no longer Interim Chief Executive nor a Board Member?

MR TSOTSI: Correct.

20 **ADV JOHN NGCEBETSHA:** Thank you and Mr Choeu was still an employee?

MR TSOTSI: That is right.

ADV JOHN NGCEBETSHA: Right. Now the key issue regarding that is what steps if any did you take to - to deal with this inaccuracy or omission?

MR TSOTSI: Alright. Yesterday what we dealt with was the fact that I

only picked up this matter after the round robin had been returned. In fact the reason why I had reason to relook at it was because the Secretariat came to me and told me that the round robin had been signed and it was - and I wanted to see who had signed or had not signed the round robin and then on looking at the document I realised that there was a - there were these errors in it and I then elected to deal with this matter at the next Board Meeting, because it was not too far from then.

I think it was something like a week or so before that next meeting and so at that next meeting - like I said yesterday. I do not recall whether I initiated the conversation regarding these errors, but what I do recall is that there was a remark which was made by one of the Board Members when the issue of the TNA was - was mentioned.

That there had been an understanding that the round robin reflected the fact that Mr Choeu was no longer in the company and that was not - and - and understood that that was questionable. I of course made the point that no. There is an error in the - in the round robin in - in that regard and I seem to recall that I made an apology to the Board to say that not only was - not only was there an error, but also that there was some information that the Board had not received that they should have received.

ADV JOHN NGCEBETSHA: Now in - in your understanding as a Board and as your own personal self on whom did the duty to institute disciplinary proceedings lie on? The Board or the management?

CHAIRPERSON: Be - before that ...

ADV JOHN NGCEBETSHA: Yes.

CHAIRPERSON: Mr Ngcebetsha you had asked him to identify the errors ...

ADV JOHN NGCEBETSHA: Oh yes.

CHAIRPERSON: He has identified only one.

ADV JOHN NGCEBETSHA: Okay. *Ja*.

CHAIRPERSON: There maybe more.

ADV JOHN NGCEBETSHA: Okay. So let us see if there is another one.

10 **CHAIRPERSON:** Let us - let us complete that first.

MR TSOTSI: Okay. Then - the - the subsequent - the following sentence thereafter is clearly not correct also for the same reason that the first one is not, because it has nothing to do with Mr Chose. The rotation of the Board had nothing to do with Mr Chose.

CHAIRPERSON: Hm. Yes.

ADV JOHN NGCEBETSHA: Would it have anything to do with Mr Matjila?

MR TSOTSI: Yes. It was actually in reference to him that it applies.

CHAIRPERSON: Hm.

20 **ADV JOHN NGCEBETSHA:** *Ja*. So would you say it is - is it - is it inaccurate?

MR TSOTSI: It is inaccurate. Yes.

ADV JOHN NGCEBETSHA: As it relates to?

MR TSOTSI: To Mr Choeu.

CHAIRPERSON: Hm.

ADV JOHN NGCEBETSHA: Is it inaccurate? Does it relate to Mr Matjila?

MR TSOTSI: No. It is not.

ADV JOHN NGCEBETSHA: I see. What else did you pick up that was ...?

MR TSOTSI: Okay. Let us see. I think those are basically the issues of the inaccuracy as far as I can remember.

CHAIRPERSON: Okay.

MR TSOTSI: Yes.

10 **CHAIRPERSON:** Okay. I thought there were more than that, but it may be because I - I may have misunderstood something. I thought there was - you had said something also in relation to the paragraph that comes after the bullet point at page 1-4-5. That says:

“The Board recognises that there is value.”

But I may have misunderstood you.

MR TSOTSI: Chair, the - the contention of Ms Hofmeyr yesterday was that ...

CHAIRPERSON: Hm.

MR TSOTSI: This is incorrect, because her understanding was that the
20 - the Board had in fact said that was no value in the contract ...

CHAIRPERSON: Yes.

MR TSOTSI: And then we then talked about commercial value ...

CHAIRPERSON: Yes.

MR TSOTSI: Vis-à-vis, the intrinsic value of the contract.

CHAIRPERSON: Yes and you said the Board had not passed judgment

on whether there was not ... (intervenes)?

MR TSOTSI: What I said yesterday ...

CHAIRPERSON: Huh-uh. Yesterday.

MR TSOTSI: If - if I recall correctly.

CHAIRPERSON: Yes.

MR TSOTSI: Is that the Board did not say there was no commercial value ...

CHAIRPERSON: Yes.

MR TSOTSI: In the contract.

10 **CHAIRPERSON**: Yes. Yes.

MR TSOTSI: And the - the issue of value did not - was not an issue that the Board passed judgment on ...

CHAIRPERSON: Hm.

MR TSOTSI: In terms of lack of value ...

CHAIRPERSON: Hm.

MR TSOTSI: In the contract.

CHAIRPERSON: Hm.

MR TSOTSI: Vis-à-vis commercial value ...

CHAIRPERSON: Hm. Hm.

20 **MR TSOTSI**: And that is the point I was trying to stress to say ...

CHAIRPERSON: Hm.

MR TSOTSI: Notwithstanding the fact that there was the perception that the irregularity occasioned the problem with understanding that the contract was not favourable ...

CHAIRPERSON: Hm. Hm.

MR TSOTSI: From Eskom's perspective.

CHAIRPERSON: Hm. Hm.

MR TSOTSI: Did not preclude the fact that there could and would be commercial value in the contract.

ADV JOHN NGCEBETSHA: Ja. So I - let me leave it at that. I do not want to boarder into leading or ...

CHAIRPERSON: Ja.

ADV JOHN NGCEBETSHA: Argument. Ja. Let us leave it at that. I think ...

10 **CHAIRPERSON:** Okay.

ADV JOHN NGCEBETSHA: I understand what you are saying.

CHAIRPERSON: You had asked a question about disciplinary.

ADV JOHN NGCEBETSHA: Yes.

CHAIRPERSON: Yes.

ADV JOHN NGCEBETSHA: What was your understanding on who - on whom the duty to discipline an employee - full time employee of Eskom - where did it lie with the Board or with the Management Team?

MR TSOTSI: Chair, my understanding is that the duty lies with management. The execution lies with management.

20 **ADV JOHN NGCEBETSHA:** And you - what then would your - would have been your reasonable expectation in - in the light of these clear transaction - transgressions in as far as the employee that remained in the manner - in the form of Mr Choeu?

MR TSOTSI: My expectation would have been that management would institute an inquiry which would lead then to a disciplinary process,

because of what transpired at the time of the signing of this contract.

ADV JOHN NGCEBETSHA: So of course you left as you said on 31 March 2015?

MR TSOTSI: Correct.

ADV JOHN NGCEBETSHA: Do you know if anything was done by then?

MR TSOTSI: No. I do not know.

ADV JOHN NGCEBETSHA: Right.

CHAIRPERSON: I - I wonder Mr Tsotsi - this is just a thought that comes to my mind as I listen to the evidence. I - I wonder whether it
10 would have been open to management or the Executives or CEO to discipline any employee or Mr Choeu for what he did if subsequently the Board had ratified that contract.

MR TSOTSI: Chairman ...

CHAIRPERSON: You - you might not be able to say. It is just a thought.

MR TSOTSI: Yes.

CHAIRPERSON: If you say look I cannot comment. I will accept.

MR TSOTSI: Yes. Chair, I - I would not know. I think it would depend on the - on first of all what the ...

20 **CHAIRPERSON:** Maybe reasons for ratification.

MR TSOTSI: Yes.

CHAIRPERSON: Hm.

MR TSOTSI: Reasons for ratification and I think it will also depend on how the management or rather not the management, but the Board views then that - that situation. Whether in fact ratification will absolve

him from - from being disciplined.

CHAIRPERSON: Because my - my understanding of ratification is that you are actually saying to somebody. I approve what you did. You understand what I mean?

MR TSOTSI: Yes.

CHAIRPERSON: I approve what you did. You might have done it without checking with me whether I would give it my blessing, but now that I have seen it I approve. That is - that is the ordinary meaning that I attach to ratifying. It may well be that in a particular context it
10 might mean something else, but we can leave it at that, but I was just sharing with you what was going on in my mind. Okay.

MR TSOTSI: I thought that would apply to Mr Matjila ...

CHAIRPERSON: Hm.

MR TSOTSI: But ...

CHAIRPERSON: Hm.

MR TSOTSI: I think Mr Choeu would have been ...

CHAIRPERSON: Hm.

MR TSOTSI: Charged with something different.

CHAIRPERSON: Oh. Okay. You - you must help me, because I might
20 not recall the nitty-gritty. Maybe - maybe it might be - it might apply to Mr Matjila as you say. Not to Mr Choeu.

MR TSOTSI: Yes.

CHAIRPERSON: I might not recall the nitty-gritties about the difference in terms of what they did. Yes.

ADV JOHN NGCEBETSHA: Perhaps to assist to direct.

CHAIRPERSON: Yes. Yes.

ADV JOHN NGCEBETSHA: What was the complaint against Mr Choeu?

MR TSOTSI: The complaint - if I recall very well against Mr Choeu - was the fact that he had been party to removing the termination clause in the contract. That was the complaint which was raised by the SNG Report.

ADV JOHN NGCEBETSHA: And what - what were the implications in your mind of the removal of the termination clause?

MR TSOTSI: The removal of the termination clause then creates
10 exposure for Eskom and it - it means that the ability of the Board and management to protect the integrity of the company is diminished ...

CHAIRPERSON: Hm.

MR TSOTSI: By that action. So from the Board's standpoint there would have been a fiduciary problem that could be associated with the Board in - in that action.

CHAIRPERSON: Well - well now that you have reminded me exactly what he had done. Maybe it applies to him as well ...

MR TSOTSI: Oh.

CHAIRPERSON: Because he does something wrong in relation to a
20 contract. That contract in respect of which he did something wrong is brought to you to approve. You aware that - you are aware of the thing - the wrong thing that he had done - he has done to the contract and you say nevertheless we embrace the contract. If you look at it from ...

MR TSOTSI: I see.

CHAIRPERSON: The idea of approving. You - you ...

MR TSOTSI: Yes.

CHAIRPERSON: You embrace it with the absence of that termination clause.

MR TSOTSI: Yes.

CHAIRPERSON: You do not say no, no, no. This - this is bad. We cannot approve a contract that does not have such an important clause for Eskom to escape if it needs to escape from - from this. So, but again I am just sharing thought that are going through my - in my mind. Giving you an opportunity to say that is not how we saw it.

10 This is how we - we saw it or maybe we - we can see that point, but we did not think of it or we thought of it, but because of A, B, C, D we nevertheless thought we would ratify. I am just wanting to make sure that I do not skip these concerns in my mind ...

MR TSOTSI: Hm.

CHAIRPERSON: And - and after you are gone I worry about them without hearing what you might say if - about them if you have anything to say.

MR TSOTSI: Ja. I - I appreciate Chair. That interpretation.

CHAIRPERSON: Hm.

20 **MR TSOTSI:** It - as I say I - maybe not ...

CHAIRPERSON: You ...

MR TSOTSI: Maybe not being conversant with the law. I - I am ... (intervenes).

CHAIRPERSON: But feel free ...

MR TSOTSI: I am limited in - in ability ...

CHAIRPERSON: Feel free to - to say I do not think I can comment or I can comment - I cannot comment if that is the position. I am - I was just sharing with you.

MR TSOTSI: Yes.

CHAIRPERSON: If you - you have something to say you can say, but if you feel that you are unable or it is something that might need further thought. It is fine.

MR TSOTSI: Yes Chair. I think - I think let me just leave it at that for - for my perspective. Yes.

10 **CHAIRPERSON:** Okay. Thank you.

ADV JOHN NGCEBETSHA: *Ja*. Thank you Chair. I must say that the nature of this conversation is a bit leaning more on the legal technical side which ...[intervenes]

CHAIRPERSON: I - I agree. I agree.

ADV JOHN NGCEBETSHA: And my limitation is that I do not want to lead the witness, but ...[intervenes]

CHAIRPERSON: *Ja*.

ADV JOHN NGCEBETSHA: Should the opportunity present itself to make submissions ...[intervenes]

20 **CHAIRPERSON:** To - to present arguments. Yes. *Ja*. No, no, no.

ADV JOHN NGCEBETSHA: In terms of argument ...[intervenes]

CHAIRPERSON: Yes. No, no. That is ...[intervenes]

ADV JOHN NGCEBETSHA: To contextualise our ...[intervenes]

CHAIRPERSON: Yes. *Ja*.

ADV JOHN NGCEBETSHA: Understanding of the ...[intervenes]

CHAIRPERSON: Yes.

ADV JOHN NGCEBETSHA: Evidence.

CHAIRPERSON: Yes. No, no. That - that is fine. The - the whole idea is simply that something is presented to the Board that has got worrying features ...[intervenes]

ADV JOHN NGCEBETSHA: Hm.

CHAIRPERSON: And one expects the Board to apply their mind to - to the issues and then make a decision, maybe on some issues they may say we need advice, on others they say we can make a decision blah-
10 blah-blah, but as I say there should be an opportunity for argument maybe in writing or something at a later stage ja.

ADV JOHN NGCEBETSHA: But more importantly on this question did Ledwaba Mzwai opinion deal with the issue of Mr Choeu, did they have a recommendation about him, whether he could be disciplined or not

MR TSOTSI: Yes they did deal with, they did deal with it, and they concurred in their comment with the SNG conclusion about the disciplinary.

ADV JOHN NGCEBETSHA: Did the Board accept that advice to implement it?

20 **MR TSOTSI:** Yes the Board accepted that advice.

ADV JOHN NGCEBETSHA: Thank you very much. Now if I may move to the next issue and perhaps before I forget it's at your initial stages of your testimony yesterday you mentioned you had been led to believe by Mr Dan Matjile the then Chief Executive that the contract had been in place prior to your commencement as Chairman of your duties.

MR TSOTSI: Yes.

ADV JOHN NGCEBETSHA: And then later on my learned friend was ably able to demonstrate to you that the contract was only entered into in April of 2012 which would have been some few months after you commenced your role as Chairman of the Board.

CHAIRPERSON: Just raise your voice Mr Ngcebetsa.

ADV JOHN NGCEBETSHA: Thank you. My learned friend was able to demonstrate by reference to documents that the first contract was entered into sometime in April 2012 before your commencement of
10 duties as Chairman of the Board.

MR TSOTSI: That's correct.

ADV JOHN NGCEBETSHA: Now what is your comment there?

CHAIRPERSON: I'm sorry, I am not sure if that is correct, I thought that Mr Tsotsi's evidence, certainly at the beginning was that when he was appointed as Chairperson of the Board Eskom had a contract with TNA already but I think Ms Hofmeyr sought to say it was entered into after he had been appointed, that's my recollection.

ADV JOHN NGCEBETSHA: That's precisely what I am saying.

CHAIRPERSON: Oh no I think you may have said something different.

20 **ADV JOHN NGCEBETSHA:** Alright, okay, maybe that was a slip of the tongue, that is exactly what I am trying to say. Do you want to clarify how that confusion could have come about?

MR TSOTSI: Chair yes I was not understanding that we were talking about the contracts to do with the broadcast, the breakfast. Eskom had a relationship with TNA and that had to do with the newspapers, before

I arrived, so there was some contract that existed which had to do with them selling newspapers to Eskom and to other SOE's, so I – my statement was essentially just to say there had been some relationship with TNA, but the one that we were focusing on to do with this particular issue of breakfast came about after I came yes.

CHAIRPERSON: Came about after, ja, okay.

ADV JOHN NGCEBETSHA: The nature of such relationship were you privy to?

MR TSOTSI: Well I would not ordinarily be privy to them, to it, but in
10 this instance because the newspapers were all over the place, I was – I had an occasion to ask the Chief Executive why we're having so many of his newspapers and I was told that ...[intervenes]

CHAIRPERSON: Were they noticeably many?

MR TSOTSI: They were in heaps Chair around – strategically placed ...[indistinct].

CHAIRPERSON: I think I have heard some evidence that elsewhere also there were heaps and bundles and bundles of them.

In other departments or SOE's or Provincial Departments, so you noticed that there were lots of newspapers from – was it the – the
20 New Age?

MR TSOTSI: It was the New Age ja

CHAIRPERSON: It was the New Age.

MR TSOTSI: Yes.

CHAIRPERSON: Okay, that's when you enquired what's the story and then you got to know.

MR TSOTSI: Yes.

CHAIRPERSON: Okay, alright.

ADV JOHN NGCEBETSHA: As a matter of fact would you have been privy to the details of this contract had there been no irregularity entered into by Mr Matjila, even the under subject of conversation now.

MR TSOTSI: Well we would not have been privy to the contract *per se* but because we were invited to this breakfast, sometimes even making a presentation obviously we would be aware of the but as to when contracts were entered into, even the value you would not know unless
10 you specifically asked. The delegation of authority for these contracts was you know at management level, it was not – it had not exceeded management level to the extent that it needed to be decided by the Bard.

ADV JOHN NGCEBETSHA: As a matter of interest and I thought I concluded on this point but now that you mention it, you yourself were invited with management members to the breakfast sessions you say?

MR TSOTSI: On occasion I will be invited yes.

ADV JOHN NGCEBETSHA: Would there be value in you going there for Eskom?

20 **MR TSOTSI:** Well clearly I would see value because I would get an opportunity to say something, to present something.

ADV JOHN NGCEBETSHA: Alright I don't want to belabour the point, let's move on.

CHAIRPERSON: I know that we have taken as much as we have taken because I have also been asking questions but I don't know if you have

too many things to clarify, I don't know how much more time?

ADV JOHN NGCEBETSHA: Perhaps five to seven minutes.

CHAIRPERSON: Okay that's fine.

ADV JOHN NGCEBETSHA: Thank you. Now two points and then I think we will be done. The first one is you mentioned something about a conversation you had with Mr Tony Gupta, which in your mind later on he made certain further statements that in your mind were threatening. Can you explain what you meant by that and maybe for the benefit of the Chairperson let me make the point that discussing with my
10 colleague, the evidence leader, there is a session coming up to focus on other aspects but this one still is within the TNI, so that's why I want to cover it. Thank you.

MR TSOTSI: Yes Chair following on the conversation that I had with Tony Gupta as I said yesterday at their office clearly he was not happy that I did not or was not willing to assist them, even though I tried to explain to them that Eskom was a process-orientated organisation and these things had to be done that way. He was very unhappy about it.

I then occasion to again run into him at the SONA which was now in February of the following year, in 2015.

20 **CHAIRPERSON:** 2015?

MR TSOTSI: Yes. I had had a meeting where the Minister had called me specifically ...[intervenes]

ADV JOHN NGCEBETSHA: Which Minister?

MR TSOTSI: Minister Brown, whereupon the Minister had – well in this instance she was not happy about the fact that I was said to be

interfering with management but that's something we can deal with in my next submission.

CHAIRPERSON: Okay.

MR TSOTSI: But what is pertinent here is the fact that on that same day I got a call from Tony Gupta, and he wanted to speak to me and ...[intervenes]

CHAIRPERSON: Is that before or after the meeting with the Minister?

MR TSOTSI: It was after meeting with the Minister.

CHAIRPERSON: Okay.

- 10 **MR TSOTSI:** Essentially that meeting with the Minister was a fallout between the Minister and myself, to be quite frank.

CHAIRPERSON: Okay.

MR TSOTSI: And the irony of it is that I got a call from Gupta, Tony Gupta for me to speak to him. At that meeting he was very forthright.

CHAIRPERSON: Okay now is that a meeting between you and Tony Gupta?

MR TSOTSI: Tony Gupta yes.

CHAIRPERSON: So he called you and asked if the two of you could meet. Same day?

- 20 **MR TSOTSI:** Okay alright, and you met, and it's one of those meetings where the person doesn't even offer you a seat, and you talk standing and that's the end of the conversation.

CHAIRPERSON: Well you had had such a meeting with the Minister previously.

MR TSOTSI: Yes I seem to run into those kind of things.

CHAIRPERSON: *Ja*, okay yes.

MR TSOTSI: Tony Gupta was very clear and he said to me Chairman you are not assisting us and by us I understood him to mean his organisation. So I said ...[intervenes]

CHAIRPERSON: TNA or the Gupta Family?

MR TSOTSI: I assumed he meant the Gupta Family.

CHAIRPERSON: Yes okay.

MR TSOTSI: Because he had asked me previously and that we will also deal with later on my other encounter with him, for some business
10 favour so I understood him to be talking on behalf of their business as an organisation.

CHAIRPERSON: And entities *ja*.

MR TSOTSI: Yes.

CHAIRPERSON: He said you are not assisting ...[intervenes]

MR TSOTSI: You are not assisting us, those were his words.

CHAIRPERSON: Mmm.

MR TSOTSI: So I asked him, I said I don't understand what you mean I am not assisting you. He said every time we want something from you, from Eskom you are not coming forth with something, and mind
20 you this would have been about the third or further or rather it had occurred about three or four times that he asked me something.

CHAIRPERSON: Yes, and was it true that each time you ...[intervenes]

MR TSOTSI: I was not able to assist him each time and I think if one looks at the portfolio committee proceedings you would know what

issues were raised there, and on this particular occasion then he then said to me Chairman we are the ones who put you in the position you are in and we are the ones who can take you out of this position, so ...[intervenes]

CHAIRPERSON: And this would have been around February 2015.

MR TSOTSI: This was February 2015, the day before the SONA.

CHAIRPERSON: Mmm.

MR TSOTSI: And then I said to him you do what you have to do and let me do the job that the cabinet has asked me to do, and that then
10 was the end of the meeting, he simply showed me the door and I left. So in essence Chairman this was –I took this to be a clear threat and that something was imminent and of course as had occurred I then left Eskom in the matter of a month later.

CHAIRPERSON: Mmm, in about a month after that?

MR TSOTSI: In about a month after that?

CHAIRPERSON: Yes, yes, and had said – did you say he had said they had put you there, they can take you out, how did he put it?

MR TSOTSI: That is exactly the way he put it, he said we are ones who put you there, and we are the ones who can take you out of there.
20 So it was very unambiguous, it was very clear.

CHAIRPERSON: Did you know what he was talking about when he said they were the ones who put you there?

MR TSOTSI: Chairman I could only speculate ...[intervenes]

CHAIRPERSON: Or is that something that you will deal with later, you could only speculate?

MR TSOTSI: Yes I could only speculate.

CHAIRPERSON: You had no personal knowledge of precisely what he was talking about.

MR TSOTSI: No I did not have a personal knowledge of precisely what he was talking about.

CHAIRPERSON: Yes, yes.

MR TSOTSI: But I could connect the dots in terms of where this could be coming from.

CHAIRPERSON: Yes.

10 **MR TSOTSI:** And what would be going on.

CHAIRPERSON: Yes, do you want to share that with me?

MR TSOTSI: Or is it a long story that you want to tell when you come back?

MR TSOTSI: I would rather we do that Chair when I come back.

CHAIRPERSON: Okay, that's fine, as long as in the end we deal with it. Yes Mr Ngcebetsha?

ADV JOHN NGCEBETSHA: For what it – for the purposes of now did this failure as alleged on your part include the TNA conversation he had with you earlier in which he asked you, as you put it yesterday, make
20 this thing go away.

MR TSOTSI: Oh definitely, I was quite clear that that was the case because don't forget this – that conversation took place I would say about a month and a half prior to him telling me what I have just said now, so that would have been fresh in his mind I would imagine.

ADV JOHN NGCEBETSHA: When you left Eskom end of March was it

something that you had preferred to do or you did not?

MR TSOTSI: Chairman in my submission to Parliament I made the point that my exit from Eskom was orchestrated from somewhere, I still believe that and I hope that someone will have the decency to come here and tell us exactly what happened. But when I connected those I still believed that it was orchestrated.

ADV JOHN NGCEBETSHA: Last point, you did make mention yesterday of your interaction with Minister Gigaba.

MR TSOTSI: Yes.

- 10 **ADV JOHN NGCEBETSHA:** And how you received a telephone call from him in which you viewed him to have been irate with you. Do you want to tell the Chairperson and the Commission what the nature of your relationship had been with him?

MR TSOTSI: Chair perhaps I should have said this yesterday but you know one reason why I was very perplexed at the approach by Minister Gigaba and the conversation was that I'd always had a good relationship with him, I worked very well with him and I think there was mutual respect, and I mean I had known him for quite some time, prior to my being Chairman of Eskom during his days of the Youth League of
20 the ANC and when I was now Chairman I had occasion a number of times to spend a substantial amount of time with him, work related time we are talking about, and whenever I needed to meet with him or speak to him about an issue he was always available, he would always make the time.

CHAIRPERSON: Oh ja he was always – at the time?

MR TSOTSI: Yes he was always available he always made the time.

CHAIRPERSON: You had a good working relationship?

MR TSOTSI: Very good working relationship with him. That is why I was able to pick up immediately, as I said yesterday, that somebody put him up to what he said, I don't believe that this came from him, I believe that someone had put him up to it, and maybe he will be able to tell us, I don't know but that is my conviction.

CHAIRPERSON: Yes, yes I mean you are saying that you had known him for a long time.

10 **MR TSOTSI:** Yes.

CHAIRPERSON: From the time of his – when he was in the Youth League you had known him.

MR TSOTSI: Yes.

CHAIRPERSON: And after you had become Chairman of the Board of Eskom and he was Minister you had had a lot of time to work with him, spent a lot of time on work related matters with him, you had discussions with him, the type of person that, the type of relationship that you had with him was a very good one.

MR TSOTSI: Yes.

20 **CHAIRPERSON:** And you say that what he said to you on the occasion when he made that call to you, maybe you didn't say this but this is how I understood, maybe the tone of how he spoke to you, you said but this is not the person that I know, it is like somebody that I don't know. Is my understanding of your evidence correct?

MR TSOTSI: Very correct Chair.

CHAIRPERSON: Yes, okay, it was out of character for him to act towards you in this manner.

MR TSOTSI: Very much so.

CHAIRPERSON: To speak like this to you?

MR TSOTSI: Very much so.

CHAIRPERSON: Yes okay.

ADV JOHN NGCEBETSHA: Thank you very much Chair and thank you for indulging us, that is all that we have on re-examination.

CHAIRPERSON: Thank you Mr Ngcebetsa. It is a – it is always
10 good when one is dealing with experienced practitioners.

ADV JOHN NGCEBETSHA: Thank you sir.

CHAIRPERSON: I think one can tell. Okay, thank you.

ADV KATE HOFMEYR: Thank you Chair, Chair there is an aspect evidence of Mr Tsotsi's evidence today that is a development on the evidence yesterday and I wonder if there could be one or two follow up questions from my side, I don't intend to take long at all, but with your leave.

CHAIRPERSON: Just a few minutes?

ADV KATE HOFMEYR: Indeed.

20 **CHAIRPERSON:** Okay, alright.

ADV KATE HOFMEYR: It is just to get a point of clarification on commercial value Mr Tsotsi, it seems to have dominated yesterday and this morning, but it is quite important for the records of this commission and any findings that may be made that we are absolutely clear as to your evidence on this.

As I understood your evidence yesterday you accepted at the time the Board took the Round Robin decision it itself had not assessed the commercial had not assessed the commercial value of the contract is that right?

MR TSOTSI: Yes correct.

ADV KATE HOFMEYR: I understood you today though to give a different answer and say that no there had been consideration of commercial value and for that purpose you relied on what Mr Matjila had said in his representations and then you added a few other
10 considerations, for example that this was not the first contract, that Eskom had previously contracted with TNA, and so there would have been commercial value in it, did I understand your testimony this morning correctly?

MR TSOTSI: Not quite, when I said that there have been other contracts that Eskom had entered into and Eskom had had to understand that there is commercial value for itself I was not specifically referring to TNA, I was referring to contracts in general.

ADV KATE HOFMEYR: Then let me confine my question, did I understand you today to say that the Board took into account Mr
20 Matjila's representations on commercial value to arrive at a decision that there was commercial value in the contract?

MR TSOTSI: The Board looked and in its discussion looked at what was before it and one of the things that was before it was in a presentation that Mr Matjila had made.

ADV KATE HOFMEYR: I really do want to get clear here Mr Tsotsi

thank you.

MR TSOTSI: Yes.

ADV KATE HOFMEYR: Those were discussions ...[intervenes]

CHAIRPERSON: But he might not have finished, have you finished your answer?

MR TSOTSI: No.

ADV KATE HOFMEYR: Apologies.

CHAIRPERSON: *Ja*, just finish it.

MR TSOTSI: I was saying that the Board had looked at what was
10 before it and one of the things that was before it was this
representation by Mr Matjila. The Board had wanted Matjila to come
and make the representation in person, because that would have
allowed us an even better opportunity to come to the conclusion, but
what we then said was that we are not here questioning the fact that
when the contract was put together there was a consideration that there
would be commercial value in the contract. That we were not
questioning.

And so we understood that in order that we should proceed
forward we would proceed forward on the understanding that there has
20 been a consideration that the contract would have commercial value
from Mr Matjila, so we were separating the issue of irregularity and the
issue of the fact that ordinarily this contract would have had to have
been assessed by management for its commercial value, hence we did
not say the contract does not have commercial value because our
understanding is that the contract necessarily would have been

assessed for commercial value by the management.

Now what then we said was that given that let us then ensure that management continues to extract as much commercial value in the contract going forward.

ADV KATE HOFMEYR: Do you accept that your lawyers advised you that yourselves as a Board determine whether the contract had commercial value

MR TSOTSI: They did make that statement yes, they did make that advice.

10 **ADV KATE HOFMEYR:** And when you say it was necessarily the case that management had previously assessed commercial value, why would that necessarily have been the case?

MR TSOTSI: Because that's the mandate they have.

ADV KATE HOFMEYR: Yes but this was an irregularly concluded contract, whys should reliance be placed by the Board being asked to ratify irregular conduct on the version of the person who committed the irregular conduct?

MR TSOTSI: My understanding is that Eskom has a commercial division and a division that looks after these kinds of contracts, and
20 that work would have been by people in that division and this work is not the first time they are doing this type of work. What Mr Matjila did as a Chief Executive was to sign off on the contract, he himself probably was not involved in doing the work, so his action does not preclude the fact that Eskom as an organisation would have had the capacity to evaluate whether contracts have commercial value for the

company or not and the Chief Executive also relies on these people to have arrived at that conclusion so his signature of the contract and irregular signature of the contract does not take away the commercial value of the contract in our view, that is what we say.

ADV KATE HOFMEYR: Did you enquire of Mr Matjila whether he had assessed the commercial value himself?

MR TSOTSI: The Board did not have the opportunity to speak to him directly.

ADV KATE HOFMEYR: Because Mr Tsotsi the evidence of Mr Choeu, 10 who is the only other person who was involved from the division in assessing the value of this contract was that it was Mr Matjila who instructed him to put together the proposal so that the R43million contract could be concluded, and then one Mr Choeu had done so they entered into contractual negotiations, removed the termination clause and then that contract was signed with Mr Matjila. If you had known those facts at the time would you have with caution approached what Mr Matjila told you about the value of the contract?

MR TSOTSI: If we had known that Eskom did not do the necessary to evaluate the commercial value of the contract then not only would we 20 have not taken forward the contract the way we did but we would have certainly sought some retribution of some sort.

ADV KATE HOFMEYR: Thank you Chair those are my questions.

CHAIRPERSON: Thank you, just one last question. Shouldn't the Board have said we want to be satisfied that there is commercial value on this contract before we can ratify these irregularities that have been

committed here, because if we – if you as management fail to satisfy us that there is commercial value for Eskom in this contract we would see no valid reason to ratify this contract and all of these irregularities. The only thing that can persuade us to ratify something that is so wrong, is if when we look at the commercial value of the contract we say it is with us, doing what we would normally not do, namely ratify these irregularities.

MR TSOTSI: Chairman you know I think in hindsight there is a lot of merit in what you are saying, I certainly agree there is a lot of merit in
10 it, but at the time when we're dealing with this matter I certainly was clear on the fact that one needed to separate what ordinarily Eskom would do in a situation like this had there not been an irregularity.

Even if for argument's sake as a Board we had heard that Eskom was entering into a contract with TNA the first question we would have asked was is there any value in this contract for the company.

CHAIRPERSON: Precisely *ja*.

MR TSOTSI: That would have been the first question.

CHAIRPERSON: That must be the first question yes.

20 **MR TSOTSI:** Yes. So I think if you picture the situation at the time it was our understanding that this is what the company is supposed to do, their job is to ensure that contracts that are signed by Eskom have a value for the company, otherwise they have no reason to be in the company.

CHAIRPERSON: Exactly *ja*.

MR TSOTSI: So this is how we proceeded in terms of our understanding of the fact that necessarily there must be value in this contract if Eskom is signing a contract of this nature, irrespective of in fact who the contract has been contracted with.

CHAIRPERSON: Of course.

MR TSOTSI: So the fact that we did not take the step ourselves to verify in hindsight to me says perhaps it would have been a bigger insurance for us to say we are certain that there is value in this contract but our understanding of value in the contract is because that
10 is what management is supposed to do, that is what they have been engaged by the company to do.

CHAIRPERSON: Mmm, mmm.

MR TSOTSI: And if the judgment as to the individual who was involved in the transgression shouldn't have clouded or should not cloud the fact that the company has got the capacity and normally would have the capacity to ensure that its contracts have value for the company, so that is where we were in our minds, and by the way Chairman there is something also, which was at the time very important, and that was the fact that Eskom was in a going concern situation, and it was a very
20 critical situation.

In fact I recall even ...[intervenes]

CHAIRPERSON: When you say going concern situation are you saying that its status as a going concern was in danger or something like that?

MR TSOTSI: Serious danger.

CHAIRPERSON: Okay.

MR TSOTSI: To the extent that I called, I spoke to the FD, in fact the FD ...[intervenes]

CHAIRPERSON: To who?

MR TSOTSI: The Financial Director.

CHAIRPERSON: Oh, the Financial Director.

MR TSOTSI: And he said to me Chairman we have a very serious cash flow problem in the organisation, we may not even be able to pay salaries come January, and I recall very clearly asking the Minister, calling the Minister and saying Minister – not asking but cautioning the
10 Minister that there is a situation, it is a very serious situation for the organisation.

The reason I am raising this Chair in the circumstances is that that undoubtedly was the preoccupation that the company had, so this TNA matter though it was important it was certainly superseded by this consideration, so I think in fairness it is possible that had we been seized only with this matter There could probably have been greater clarity in terms of how to deal with the situation, such as what you have just indicated, but it doesn't take away from the fact that we felt the way did.

20 **CHAIRPERSON:** Yes. Well of course that might raise another issue or maybe it's not another issue but the question that arises is whether that situation that you have just talked about wasn't a further reason for the Board to say what, R43million, when we are in this situation we need to know, not to suspect, that there may be commercial value. We need to be satisfied if we ratify this that it is in the interest of this company to

have – for us to ratify this contract.

What do you say to that?

MR TSOTSI: Chair I would say the corollary to that would be if we did not ratify it, because don't forget we had just these two options, if we did not ratify then we would be exacerbating the very situation I have just described by creating a loss for which we would have no opportunity to claw back any value because cancelling the contract would have been a worse evil, so I hear what you are saying but at the same time that has become also a consideration, in fact it was a
10 consideration for some of the Board members in their statements at the meeting.

CHAIRPERSON: I think the difference between what I am thinking and what you have just said may be this, that what I am putting to you is that the fact that the company was in that precarious situation financially placed even – may have placed even a bigger obligation on you, not necessarily to decide whether to cancel or not to cancel but to satisfy yourself one way or another whether there was commercial value before you ratify it, as opposed to ratifying in the hope that management had done their job, you understand?

20 **MR TSOTSI:** I understand very well Chair.

CHAIRPERSON: Yes, yes, I don't know if you want to say anything but that's what is going on in my mind.

MR TSOTSI: Yes Chair I think on reflection it is a fair point to make, however as I say that was not a consideration at the time.

CHAIRPERSON: Yes, yes, no, no, no I understand, I just wanted to

make sure that you make an input on what is in my mind which may not remain like this later but at the moment that is what I was thinking.

MR TSOTSI: It is enriching Chair, it is enriching.

CHAIRPERSON: Yes thank you, thank you.

ADV KATE HOFMEYR: Thank you Chair.

CHAIRPERSON: You are done, I think now I can release you properly, thank you very much Mr Tsotsi, we will see you when you come back.

MR TSOTSI: Thank you.

CHAIRPERSON: Thank you very much.

10 **ADV KATE HOFMEYR:** Chair I note that we are just ...[intervenes]

CHAIRPERSON: You are excused, *ja, ja*.

ADV KATE HOFMEYR: I note that we are just before the tea adjournment and we do need to rearrange things for the next witness.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: Could we take the tea break now and then return at half past?

CHAIRPERSON: Yes, okay, that will be enough time for you?

ADV KATE HOFMEYR: It will indeed.

20 **CHAIRPERSON:** Okay, alright. We will adjourn for tea now and return at half past eleven. We adjourn.

ADV KATE HOFMEYR: Thank you Chair.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Are we ready, good morning.

ADV MICHAEL MBIKIWA: We are ready Chair.

CHAIRPERSON: Yes.

ADV MICHAEL MBIKIWA: Good morning.

CHAIRPERSON: Yes. Yes.

ADV MICHAEL MBIKIWA: Chair the next witness is Mr Joseph Jackson.

CHAIRPERSON: Hm.

ADV MICHAEL MBIKIWA: If I could ask if he could be sworn in?

CHAIRPERSON: Yes before that I just want to say something. I do not
10 want anything I say to be misinterpreted. Earlier on before tea I made
some remarks about Mr Ngcebetsha's experience. Nobody must ever
think that it was a comparison.

ADV MICHAEL MBIKIWA: No offence taken I assure you Chair.

CHAIRPERSON: Between yourselves and him. It was simply the fact
that although most of those who have appeared for some witnesses or
implicated persons have been very good. There has been one or two
exceptions where one – where I felt that I wish there was more
experience. So – so I am very happy with the performance of the
present team. Okay alright I just want to make sure that nobody
20 misunderstands that. Okay please administer the oath or affirmation?

REGISTRAR: Please state your full names for the record?

MR JACKSON: Joseph Frank Jackson.

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

MR JACKSON: No I do not.

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

conscience?

MR JACKSON: I do.

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

MR JACKSON: So help me God.

CHAIRPERSON: Thank you. Thank you Mr Jackson. You may then continue.

ADV MICHAEL MBIKIWA: Chair to start could I ask that the file
10 containing Mr Jackson's affidavit and annexures is admitted as Exhibit MM5?

CHAIRPERSON: Mr Joseph Frank Jackson's affidavit and annexures thereto will be admitted as Exhibit MM5 and the lever arch file containing them will be marked accordingly. Yes.

ADV MICHAEL MBIKIWA: Thank you Chair. Mr Jackson the file in front of you is the file that contains your affidavit and annexures and some additional documents. My intention is that we will stay in that file for most if not all of your evidence. To the extent that we move away from it the files alongside you are numbered MM1 to MM7 and I will
20 refer those to you at the appropriate time.

MR JACKSON: Thank you.

ADV MICHAEL MBIKIWA: Can I start by asking you just to turn to page 1 of the – of MM. Is that the affidavit that you submitted to the commission?

MR JACKSON: That is correct.

ADV MICHAEL MBIKIWA: And can I ask you to turn to page 15.

MR JACKSON: Yes.

ADV MICHAEL MBIKIWA: Is that your signature?

MR JACKSON: That is my signature, correct.

ADV MICHAEL MBIKIWA: And are there are corrections that you would like to make to the affidavit before we begin?

MR JACKSON: No. I am comfortable thank you.

ADV MICHAEL MBIKIWA: Thank you. So Mr Jackson let us pick it up at page 2 of your affidavit where you talk about the history of your role
10 at Transnet. Can you tell us when you joined Transnet and what positions you have held since you have been there?

MR JACKSON: I will do that. Good morning Mr Chairman.

CHAIRPERSON: Good morning Mr Jackson.

MR JACKSON: My employ at Transnet started on the 16 August 1994.

CHAIRPERSON: Hm.

MR JACKSON: At Spoornet in Kimberley.

CHAIRPERSON: Hm.

MR JACKSON: I was employed at Spoornet now known as Transnet freight Rail as a communications practitioner. From January 1997 until
20 September 2006 two years of which the last two years I spent in Cape Town where I was responsible for the Regional Communications Department on behalf of Transnet. Between October 2006 and December 2014 I was appointed as the Brand and Publicity Coordinator for Transnet Group Corporate and Public Affairs and they were based in Johannesburg. At the end of December 2014 I joined Transnet Group

Capital as an internal Communication Specialist a position I still hold. All these positions I was appointed into by a normal recruitment process albeit the last one which was a lateral transfer. My role as Brand and Publicity Coordinator was the first of its kind for Transnet. What Transnet wished to achieve was to establish whether there was any brand equity in the Transnet brand. That being the commercial value derived from the consumer perception of Transnet's brand. The view then would be either to change the brand in totality, keep it as it or maybe then just refresh certain aspects of it. So following from a
10 brand development statutory development and an implementation plan it was then decided and this was after extensive research Mr Chairman in 2006 that indeed they would rebrand as Transnet. That meant changing the logo, the names of operating divisions, our signage, our livery, its entire corporate identity. And it is the Transnet we now know it to be. My major function then as Brand and Publicity Coordinator at the time was to manage and facilitate and monitor the rollout of this brand throughout the organisation. And all its operating divisions. Also to the public specific stakeholders as well as to the media. I would have to look at the approval of certain implementation strategies
20 as they pertained to the brand and the production of the annual report. As Brand and Publicity Coordinator I reported to the General Manager Transnet Group Corporate and Public Affairs and that was Mr Mbonisa Sigonyela. I would also just like to mention maybe it might be something I can say that my affidavit as it relates to the information I have provided is specific to my role as Brand and Publicity Coordinator.

Thank you.

CHAIRPERSON: Okay.

ADV MICHAEL MBIKIWA: Thank you. And so what that means is that we are interested for today's purposes in the position you held really between 2006 and 2014.

MR JACKSON: Yes.

ADV MICHAEL MBIKIWA: Now I understand your evidence to be that ordinarily that position would not entail responsibility for advertising.

MR JACKSON: Yes that is correct.

10 **ADV MICHAEL MBIKIWA:** So how – how did it come to be that advertising fell within your range of responsibilities?

MR JACKSON: Mr Chairman we had a – an incumbent appointed during my period as an advertising manager, Mr Archie Masebe also the first such a position. However he resigned in July 2011. Towards the end of that year Mr Sigonyela had requested I assist with some of the responsibilities of the advertising manager until such time that a permanent replacement could be found and that is how I came about assisting.

ADV MICHAEL MBIKIWA: And just explain to us how those functions –
20 those advertising functions differed from the – the other functions that you did in the normal course of your job?

MR JACKSON: Okay so the main responsibility obviously for advertising would be to promote the Transnet brand. Obviously to also make our consumers as well as customers aware of our services. From a brand point of view I was responsible for its identity. So that would

include logos, correct templates, the correct font being used, design layout etcetera. Whereas advertising you work closely with an appointed advertising agency who then looks at placement of advertisements. Who looks at sponsorships and recommends on an advisory capacity on where to place certain advertisements or campaigns based on your strategy. So ja – that – I do not know if that answers the question.

ADV MICHAEL MBIKIWA: Ja.

MR JACKSON: But it was – it was a different added responsibility.

- 10 **ADV MICHAEL MBIKIWA:** Thank you. And can you just explain to us what kinds of advertisements a company like Transnet would be placing?

MR JACKSON: Well primarily in the absence of any major campaign or some strategic objective it is normally your tender recruitment advertisements mostly because that is always as part of our business Mr Chairman.

ADV MICHAEL MBIKIWA: And you – you referred to working together with agencies.

MR JACKSON: Yes.

- 20 **ADV MICHAEL MBIKIWA:** What was the name of the agency that was employed during your tenure?

MR JACKSON: I do believe that was in 2011 Transnet had via an open tender process sought the services of an advertising agency and they were appointed and they were called The Agency. Yes.

ADV MICHAEL MBIKIWA: Thank you. The commission has heard

some evidence on the role that agencies play in providing services in the context of advertising and sponsorship. Can you just sort of briefly explain to us what role The Agency played for Transnet?

MR JACKSON: Okay so The Agency would be our advisor. An expert in their specific expertise which was the placement of advertisements where and why depending your – what your desired outcome would be as far as the campaign is concerned. So for instance they would be able to advise on demographic reach, number of circulation. They also had the opportunity to negotiate on your behalf. So you knew that you
10 would most likely get the best price based on their relationships but also buying power within that environment. Ja I think that is what we would do.

ADV MICHAEL MBIKIWA: Thank you. Now if you can turn to page 5 of your affidavit at – at paragraph 21 you refer to an advertising guideline.

MR JACKSON: Yes.

ADV MICHAEL MBIKIWA: That was prepared by your predecessor Mr Masebe.

MR JACKSON: Yes.

ADV MICHAEL MBIKIWA: But you say that it was never approved or
20 made official.

MR JACKSON: Correct.

ADV MICHAEL MBIKIWA: Why was that?

MR JACKSON: It was prepared and a draft had been provided as I have stated however there is a certain process that had to – that needed to have followed – been followed it – for example it needed a –

an eventual signoff by EXCO to make it official. However it never reached that stage. So it was never formalised in the sense that it became company policy.

ADV MICHAEL MBIKIWA: Okay. And – and so what – what guided Transnet’s advertising strategy?

MR JACKSON: Honestly there was no policy.

ADV MICHAEL MBIKIWA: Can we go to the policy briefly? The draft policy.

MR JACKSON: Yes.

10 **ADV MICHAEL MBIKIWA:** I will refer to it as. Because even though it was never made official it is – I think it is useful to look at what its author envisaged.

MR JACKSON: Ja.

ADV MICHAEL MBIKIWA: If you turn to page 21 of your bundle that is at the JJ1 tab.

MR JACKSON: Yes.

ADV MICHAEL MBIKIWA: And you look under purpose. It says:

20 “The purpose of the policy is to utilise Transnet advertising resources and reach the target market in the most cost effective manner. To have a framework for setting and achieving advertising objectives. To enable advertising measurement so the organisation knows what works and what does not.”

Mr Jackson even though this was never adopted as a policy would you say that those were kind of advertising principles by which Transnet

sought to adhere?

MR JACKSON: Yes. Generally I would agree.

ADV MICHAEL MBIKIWA: If we can return to your affidavit.

MR JACKSON: Yes.

ADV MICHAEL MBIKIWA: At page 6. And particularly from page 23 – sorry paragraph 23 where you describe the pressure that your superior Mr Sigonyela exerted on you to use TNA for newspaper advertising. Can you first describe what role it was that you specifically played in relation to the placement of an advertisement in the newspaper?

10 **MR JACKSON**: Okay. I would say at the state that Mr Sigonyela had requested I assist with the advertising portfolio he also requested I become more involved in the placement of recruitment and tender adverts which meant that from a branding point of view I took sole responsibility for the placement of the ads and how they looked Mr Chairman. So they needed to be in the correct format, correct font and consistent throughout the organisation which I had to sought of sign off on.

ADV MICHAEL MBIKIWA: And what instruction did Mr Sigonyela give you in respect of the placement of advertisements?

20 **MR JACKSON**: At some stage he then instructed me to advise my colleagues that they must advertise these recruitment and tender adverts in the TNA.

ADV MICHAEL MBIKIWA: And why did he say that?

MR JACKSON: There was no reason except you must do this.

CHAIRPERSON: Just repeat that?

MR JACKSON: He made it clear that it – I must just – it is an instruction it must be done.

CHAIRPERSON: Hm. Okay.

ADV MICHAEL MBIKIWA: He gave no reason as to why advertisements should be placed specifically in TNA?

MR JACKSON: No he did not Mr Chairman.

CHAIRPERSON: Was that to mean all advertisements or ...

MR JACKSON: Specifically...

CHAIRPERSON: Or that at least some should go there?

10 **MR JACKSON:** No.

CHAIRPERSON: All?

MR JACKSON: So it is specifically recruitment and tender which I had an oversight on.

CHAIRPERSON: Yes.

MR JACKSON: From a branding point of view.

CHAIRPERSON: Yes.

MR JACKSON: Those all.

CHAIRPERSON: Okay.

MR JACKSON: Had to be advertised in the newspaper.

20 **CHAIRPERSON:** In New Age.

MR JACKSON: In New Age.

ADV MICHAEL MBIKIWA: And had he told you before or since to – to use particular publications for advertisements?

MR JACKSON: No.

ADV MICHAEL MBIKIWA: On page 6 of your affidavit at paragraph 24

you refer to an email from Rajeshree Moodley of Transnet Freight Rail is that one of the operating divisions of Transnet?

MR JACKSON: That is correct Mr Chairman ja.

ADV MICHAEL MBIKIWA: Can I ask you to turn to that email it is JJ2 on page 36?

CHAIRPERSON: What page again?

ADV MICHAEL MBIKIWA: Page 36 Chair.

CHAIRPERSON: Okay.

ADV MICHAEL MBIKIWA: So this is an email from Rajeshree Moodley
10 it is to Mr Sigonyela and it refers to a telephonic conversation that they had had and you will see that at item 2 it says:

“In addition to the current publications currently
being utilised we should also use the New Age and
Sowetan”

That is Ms Moodley recording a telephonic conversation she has had with Mr Sigonyela. Does that accord with the kind of instruction that you were given?

MR JACKSON: Yes that is correct Mr Chairman.

ADV MICHAEL MBIKIWA: If I can ask you then to turn just two page
20 forward to page 38. And this is an email from Samantha Baadjies at Transnet Property Durban.

MR JACKSON: Yes.

ADV MICHAEL MBIKIWA: Is this also an operating division of Transnet?

MR JACKSON: It is a specialist division.

ADV MICHAEL MBIKIWA: A specialist division.

MR JACKSON: Within Transnet correct.

ADV MICHAEL MBIKIWA: And she says:

“Hi Joseph I have changed the font to ...”

CHAIRPERSON: I am sorry you – you are – I must catch up with you.

ADV MICHAEL MBIKIWA: Apologies Chair. We are on page 38.

CHAIRPERSON: Before we got there what position did Rajeshree Moodley hold at Transnet Freight Rail at the time?

MR JACKSON: I almost am of the opinion she was from procurement.

10 I could be mistaken but ...

CHAIRPERSON: Ja.

MR JACKSON: Ja.

CHAIRPERSON: Ja that is your recollection.

MR JACKSON: That is my recollection yes Mr Chairman.

CHAIRPERSON: Okay. Okay alright. And then what page did you say we must go to?

ADV MICHAEL MBIKIWA: Just two pages forward Chair on page 38.

CHAIRPERSON: Okay. Yes.

20 **ADV MICHAEL MBIKIWA:** At the bottom is an email from Samantha Baadjies to Mr Jackson and it says:

“I have changed the font to Tahoma as requested. I plan to advertise in Sunday Tribune or Zululand Observer. I will however confirm once I receive the quotes as there is a limited budget.”

Mr Jackson can you read your response?

MR JACKSON: Okay. Mr Chairman my response says:

“Hi Samantha, thanks for this it looks good. We can also recommend you make use of the New Age newspaper. Thanks. Regards. Joseph.”

CHAIRPERSON: Was that – was that when you were starting to give effect to the instruction?

MR JACKSON: Correct Mr Chairman.

CHAIRPERSON: From Mr Sigonyela?

MR JACKSON: Correct.

CHAIRPERSON: Okay alright.

10 **ADV MICHAEL MBIKIWA:** Apart from Mr Sigonyela’s instruction did you have any particular reason to suggest the New Age newspaper?

MR JACKSON: None.

ADV MICHAEL MBIKIWA: Did you know anything about its circulation within that area?

MR JACKSON: No. Mr Chairman it was a new newly founded newspaper so indeed it would not have any circulation figures. We would not be privy to any demographic reach they would have or readership numbers. So no. There would – I would not be able to recommend it.

20 **CHAIRPERSON:** I just said it is Sigonyela but I suspect it is Sigonyela.

MR JACKSON: Ja.

CHAIRPERSON: Do you know?

MR JACKSON: I – I am ...

CHAIRPERSON: I am sure it is Sigonyela because I see his first name is Mboniso so that probably...

MR JACKSON: Mboniso.

CHAIRPERSON: So that probably is Mxhosa or...

MR JACKSON: Yes it is.

CHAIRPERSON: Or Zulu so – but I – in which case it would be Sigonyela as opposed to Sigonyela. Ja okay.

ADV MICHAEL MBIKIWA: Thank you Chair. Mr Jackson you – you say – you attach a lot of importance to the words recommend in that email. Can you explain why you used that word?

MR JACKSON: Mr Chairman I was of the opinion that operating
10 divisions were not compelled to – to advertise in any newspaper based on our instruction. There – as much as they followed the same communication strategy as we had they were autonomous in who they customer was and also as far as their budget. So I was of the opinion that if they did not have budget or there were certain circumstances that indicated that they – they could not afford this other newspaper that they were at the discretion to use the newspapers they had decided upon. So instead of instructing you must I decided to use the word recommend.

CHAIRPERSON: To the extent that you used the word recommend.

20 **MR JACKSON:** Yes.

CHAIRPERSON: For the reasons that you have given.

MR JACKSON: Yes Mr Chairman.

CHAIRPERSON: Would that have been in line with Mr Sigonyela's instruction to you or was it contrary to it?

MR JACKSON: It was contrary Mr Chairman.

CHAIRPERSON: Yes.

MR JACKSON: It was an instruction that they must.

CHAIRPERSON: Yes.

MR JACKSON: It was not a – an option.

CHAIRPERSON: Yes. Yes.

MR JACKSON: So...

CHAIRPERSON: But you chose consciously.

MR JACKSON: So I consciously ...

CHAIRPERSON: To say recommend.

10 **MR JACKSON:** And in some of them I would include if your budget permits.

CHAIRPERSON: Yes ja okay.

MR JACKSON: So it is your discretion.

CHAIRPERSON: Ja okay.

MR JACKSON: Ja.

CHAIRPERSON: Okay.

ADV MICHAEL MBIKIWA: In fact Mr Jackson your evidence in your affidavit is that Mr Sigonyela did not react well to the use of the word recommend?

20 **MR JACKSON:** No he did not Mr Chairman. I was verbally reprimanded for not having followed an instruction. I was told to be incompetent and if I were to continue doing this he would find someone that would follow his instructions.

CHAIRPERSON: Now the way you worked in regard to this portfolio involving advertising did you yourself sometimes place advertisements

in newspapers or was the position that other people made those decisions or other people placed advertisements in newspapers but they could not do that without hearing from you first and that is where you would come in to say, place it in that newspaper or in that newspaper or not in that newspaper. What was the position?

MR JACKSON: I think this is how the position played out Mr Chairman. There was no such official process in place to do that. Ja. The real – how it came about was my involvement when I was asked to be more involved in the...

10 **CHAIRPERSON:** Involved.

MR JACKSON: From a brand point of view.

CHAIRPERSON: Yes.

MR JACKSON: And have a consistency throughout the organisation.

CHAIRPERSON: Hm.

MR JACKSON: And through means I received the instruction now.

CHAIRPERSON: Yes.

MR JACKSON: Now why do you that? You must instruct them to advertise in the New Age newspaper.

CHAIRPERSON: So – so...

20 **MR JACKSON:** So that is not what would normally...

CHAIRPERSON: So your role ended with – was supposed to end with recommending?

MR JACKSON: Correct.

CHAIRPERSON: But you were instructed to instruct?

MR JACKSON: Instruct yes.

CHAIRPERSON: And at least in the – on the instances that has been referred to up to now you recommended.

MR JACKSON: Yes Mr Chairman.

CHAIRPERSON: And you just said that Mr Sigonyela reprimanded you for that and threatened that if you were not following his instruction he would find somebody who would follow his instruction.

MR JACKSON: Yes Mr Chairman.

CHAIRPERSON: Okay.

ADV MICHAEL MBIKIWA: Mr Jackson if we can then turn to paragraph
10 41 and following in your affidavit that is on page 7. Here you talk about the big interview.

MR JACKSON: Yes.

ADV MICHAEL MBIKIWA: Can you tell us what the big interview was?

MR JACKSON: The big interview was a weekly insertion in the New Age newspaper which profiled a media personality.

CHAIRPERSON: I am sorry I am interrupting both of you. You have – you have given evidence about this but maybe there is value in just reading that paragraph 27 of your affidavit.

MR JACKSON: 27 Mr Chairman.

20 **CHAIRPERSON:** Ja.

MR JACKSON:

“Between late 2013 and mid 2014 Mr Sigonyela requested verbally that when approached for such advise I should tell Transnet’s operating divisions that the recruitment and tender advertisements must

be placed in the TNA newspaper.”

CHAIRPERSON: Yes okay I just thought that that is important.

ADV MICHAEL MBIKIWA: Thank you Chair.

CHAIRPERSON: Ja.

ADV MICHAEL MBIKIWA: I am grateful.

CHAIRPERSON: Okay.

ADV MICHAEL MBIKIWA: Mr Jackson we were at paragraph 31 and following and you were about to explain to the commission what the big interview was.

10 **MR JACKSON**: Yes. Mr Chairman the big interview was a week insert into the New Age newspaper which aimed at profiling a media personality and then profiling and showing them in their both public and private life. That was what that had aimed to achieve or do.

CHAIRPERSON: So they would – they would have a space reserved for that?

MR JACKSON: That is correct Mr Chairman.

CHAIRPERSON: Maybe there will be a picture of that person and his or her story?

MR JACKSON: That is correct.

20 **CHAIRPERSON**: Okay alright.

ADV MICHAEL MBIKIWA: Did the people interviewed have anything to do with Transnet?

MR JACKSON: No.

ADV MICHAEL MBIKIWA: Can I ask you to turn to page 33 this is the approach that is made to Transnet with a proposal for the big interview.

MR JACKSON: Yes.

ADV MICHAEL MBIKIWA: And if we go to JJ4 at page 40.

CHAIRPERSON: Did you earlier on say 33? Or did I?

ADV MICHAEL MBIKIWA: Apologies Chair I am in paragraph 33.

CHAIRPERSON: Oh.

ADV MICHAEL MBIKIWA: Mr Jackson refers to it from paragraph 33.

CHAIRPERSON: Oh. Okay. So I must go to 40?

ADV MICHAEL MBIKIWA: But I am going to ask you to turn to page 40.

10 **CHAIRPERSON:** Okay.

ADV MICHAEL MBIKIWA: Which is where the email correspondence is contained.

CHAIRPERSON: Okay.

ADV MICHAEL MBIKIWA: And if we start Mr Jackson at the bottom of page 40 where Mr Jacques Roux.

MR JACKSON: Yes.

ADV MICHAEL MBIKIWA: Emails Ms Natasha Minnie.

MR JACKSON: Yes.

ADV MICHAEL MBIKIWA: And says:

20 "Hi Natasha"

And if you go over the page.

"As discussed telephonically herewith please find our
proposal for Transnet to sponsor the big interview."

Who is Jacques Roux?

MR JACKSON: Jacques Roux introduced himself as a representative

or I would imagine a sales marketer on behalf of the New Age making this proposal.

ADV MICHAEL MBIKIWA: And Ms Minnie?

MR JACKSON: Ms Minnie was the Executive at the Agency responsible for the Transnet account Mr Chairman.

CHAIRPERSON: That is Natasha Minnie?

MR JACKSON: That is correct Mr Chairman.

CHAIRPERSON: Okay.

ADV MICHAEL MBIKIWA: And Mr Jackson if we turn to page 42 that -
10 that is the proposal that is attached to Mr Roux's email?

MR JACKSON: That is the proposal Mr Chairman.

ADV MICHAEL MBIKIWA: Can you take us through this? What - what is being proposed here?

MR JACKSON: Okay. It - it says:

“Please can you clarify?”

Because this is obviously what he had proposed as part of what he shared with Ms ... (intervenes).

ADV MICHAEL MBIKIWA: Sorry Mr Jackson. I am - I am asking you about page 42.

20 **MR JACKSON:** Oh. Sorry. Sorry.

ADV MICHAEL MBIKIWA: Where - where the actual proposal is contained.

MR JACKSON: Oh. There we go.

ADV MICHAEL MBIKIWA: And ...

MR JACKSON: You will see that it includes as part of the proposal ear

piece - spaces which is basically on the side of the page. That would be a logo being placed. Strip add which is more ...

CHAIRPERSON: Well - I am sorry. So that is a proposal signed by Jacques Roux that we just talked about and it is addressed to - what? The Agency.

MR JACKSON: Correct Mr Chairman.

CHAIRPERSON: What - what was the Agency again? I know we ...

ADV MICHAEL MBIKIWA: The Agency Chair ...

MR JACKSON: They were actually.

10 **ADV MICHAEL MBIKIWA**: Sorry.

MR JACKSON: Sorry. Mr Chairman they were actually called the Agency. *Ja*. That was - they operated under the name the Agency.

CHAIRPERSON: That is new The New Age?

MR JACKSON: No, no, no.

CHAIRPERSON: Who is that?

MR JACKSON: The agency that was appointed by Transnet.

CHAIRPERSON: Oh. Okay. That is

MR JACKSON: Yes.

CHAIRPERSON: That was their name?

20 **MR JACKSON**: That was their name.

CHAIRPERSON: Oh. Okay. Alright. So this was addressed to the Agency?

MR JACKSON: Yes sir.

CHAIRPERSON: Which was a separate entity from Transnet?

MR JACKSON: Correct.

CHAIRPERSON: But related to Transnet ...

MR JACKSON: Yes.

CHAIRPERSON: Or not related?

MR JACKSON: No. They were. We had an open tender process.

CHAIRPERSON: A subsidiary or something?

MR JACKSON: No. We had an open tender process seeking the expertise of an advertising agency.

CHAIRPERSON: Oh. Okay. No ... (intervenes).

MR JACKSON: And the account was awarded ...

10 **CHAIRPERSON:** Okay.

MR JACKSON: To them. Yes.

CHAIRPERSON: I think I missed something earlier on. *Ja.* Okay. Alright. Okay. So - yes then you can continue ...

MR JACKSON: Hm.

CHAIRPERSON: On the proposal.

MR JACKSON: Okay. So Mr Chairman they proposed ear spaces which is either side of the - of the newspaper ...

CHAIRPERSON: Huh-uh.

20 **MR JACKSON:** Where a logo would - you had the opportunity to put your logo.

CHAIRPERSON: Huh-uh.

MR JACKSON: A strip add which was at the bottom of a newspaper.

CHAIRPERSON: Huh-uh.

MR JACKSON: Again you could design something specific with the Transnet logo or a message. Whatever you - you deemed - you would

want ...

CHAIRPERSON: Huh-uh.

MR JACKSON: And then obviously naming rights. So the big interview would call the - be called the Transnet big interview and you would have those rights as part of your - your sponsorship.

ADV MICHAEL MBIKIWA: And you will see there that there is a price in the table - in the main table of R327 576,00. Over what period would that amount be pay - payable?

MR JACKSON: I think and this is where the confusion came. This
10 seemed to be the total for the entire campaign. Right. It is - it is for the month.

ADV MICHAEL MBIKIWA: Right.

MR JACKSON: It is only for the month.

ADV MICHAEL MBIKIWA: And - and if you look to the top left at that smaller table.

MR JACKSON: Yes.

ADV MICHAEL MBIKIWA: Where it says total value.

MR JACKSON: Yes.

ADV MICHAEL MBIKIWA: Would that be the - the total over the entire
20 six month period?

MR JACKSON: Six months. That is correct. The R1 965 456,00.

CHAIRPERSON: I am sorry.

ADV MICHAEL MBIKIWA: Thank you.

CHAIRPERSON: What is - what - how much was the space that would be given to Transnet for this purpose?

MR JACKSON: It was a page Mr Chairman.

CHAIRPERSON: The whole page?

MR JACKSON: The whole page.

CHAIRPERSON: So - I am sorry. So you would - if you accepted the proposal as Transnet. You would decide what you are going to write in that space and what picture - whose picture you want to put in?

MR JACKSON: No Mr Chairman. That was not part of the initial agreement. It was at their discretion. What ... (intervenes).

CHAIRPERSON: It was at ...

10 **MR JACKSON:** Yes.

CHAIRPERSON: It was to be at their discretion?

MR JACKSON: Yes.

CHAIRPERSON: So - but what was their discretion?

MR JACKSON: That is ...

CHAIRPERSON: Or what to put in their?

MR JACKSON: According to the proposal as they - they set it about. It would have been a - a media personality who would have been of interest to the public. So based on that it could be anybody.

CHAIRPERSON: To do what with Transnet?

20 **MR JACKSON:** It - it did not serve its purpose for Transnet.

CHAIRPERSON: So I mean Transnet could pay and they go and take whoever they liked?

MR JACKSON: That is correct Mr Chairman.

ADV MICHAEL MBIKIWA: In ...

CHAIRPERSON: And what is - what is - what was the need for

Transnet on - on that basis?

MR JACKSON: The - the items listed here as part of ...

CHAIRPERSON: Just to put your logo?

MR JACKSON: Yes.

CHAIRPERSON: *Ja*.

ADV MICHAEL MBIKIWA: Chair, if you look in the proposal you will actually see a list of some of the people that they have included in this interview in the past. Piet Byleveld, Archbishop Desmond Tutu, SABC CEO Phil Molefe etcetera.

10 **CHAIRPERSON:** *Ja*, but really it is nothing for Transnet or am I missing something?

MR JACKSON: No Mr Chairman. You are not missing ...

CHAIRPERSON: *Ja*.

MR JACKSON: *Ja*.

CHAIRPERSON: You just - the proposal wants - wants you as Transnet to just ...

MR JACKSON: Put money.

CHAIRPERSON: Sponsor their business?

MR JACKSON: Again if - if you were to ask you should be able to
20 influence your customer or stakeholder ...

CHAIRPERSON: Hm.

MR JACKSON: Directly through these sort of interventions ...

CHAIRPERSON: Hm.

MR JACKSON: But we were not at liberty ...

CHAIRPERSON: Hm.

MR JACKSON: Or we did not have that as part of this agreement.

CHAIRPERSON: Yes. Okay. Continue.

ADV MICHAEL MBIKIWA: (Coughing) excuse me Chair.

CHAIRPERSON: I think you got it from me.

ADV MICHAEL MBIKIWA: If we can then turn to page 40 Mr Jackson.

That is JJ4 ...

MR JACKSON: Yes.

ADV MICHAEL MBIKIWA: And in the middle of the page
Hanlie Van Eck sends an email to Jacques Roux and she says:

10 “Hi there Jacques, please can you send me a visual
example of the sponsorship. Please can you also
clarify ...”

And then the first bullet point.

“...that the cost for the sponsorship is
R327 576,00.”

Your evidence a moment ago was that was in fact the monthly
price?

MR JACKSON: Yes. That is correct Mr Chairman.

ADV MICHAEL MBIKIWA: It appears that Ms Van Eck is from
20 something called Planet Media SA.

MR JACKSON: Yes.

ADV MICHAEL MBIKIWA: What is that?

MR JACKSON: It is the advisory service specifically that an expert in
media placement and would be able to establish value or return an
investment on advertisements that were placed in newspapers or any

media.

ADV MICHAEL MBIKIWA: And then further up the page Martha Moremi emails - forwards the email to you and says:

“We are still waiting for the publication to answer the questions before we can finalise the evaluation.”

Who is Ms Moremi?

MR JACKSON: Ms Moremi was the Account Executive assigned to the Transnet account by the Agency Mr Chairman.

10 **ADV MICHAEL MBIKIWA:** And - and what evaluation is she referring to when she says before we can finalise the evaluation?

MR JACKSON: She refers to the email below from Hanlie to Jacques Roux wanting to establish the - the facts as they appear in his proposal in view of wanting to give the - the advice back as to whether this would be of any value to Transnet.

ADV MICHAEL MBIKIWA: Thank you. If I can then ask you to turn to JJ5 which is at page 44 and this is from Natasha Minnie to - to Hanlie Van Eck and she says:

20 “Hi Hanlie, not sure if I sent this to you, but somehow I think I did. Client has phoned and is putting me under pressure for an evaluation of this proposal.”

Who would have been applying that pressure?

MR JACKSON: As the client that would be Transnet. That would be my - my boss - Mr Sigonyela.

ADV MICHAEL MBIKIWA: And - and was there any particular urgency associated with this proposal?

MR JACKSON: Not as far as I am concerned Mr Chairman. It was following process. If I do not - I do not - I cannot say that there - there should have been any pressure.

ADV MICHAEL MBIKIWA: Chair, we have an affidavit from Ms Van Eck from - from Planet Media. If I can ask you to turn there Mr Jackson. It is at page 139. Chair unfortunately the - the email correspondence has been - is - is contained within the body of the affidavit and this text is
10 quite small. We have got a magnified version of it. If you turn to page 146.

CHAIRPERSON: Yes.

ADV MICHAEL MBIKIWA: And Chair, Ms - Ms Van Eck's affidavit is obviously at this stage only presented to the Commission on a provisional basis subject to your - your direction in due course.

CHAIRPERSON: Hm.

ADV MICHAEL MBIKIWA: Mr Jackson, at the bottom of the page Ms Moremi sends an email to you and Mr Sigonyela and that is on 14 December and there she - she confirms what I understand you to
20 have said about the - the cost of the sponsorship at 327 000 per month or 1.9 million over six months.

MR JACKSON: Yes. That is correct Mr Chairman.

CHAIRPERSON: And at that stage when she advises on this - these costs still the only benefit - if any - that Transnet is guaranteed is whatever benefit would flow from placing its logo on the relevant page?

MR JACKSON: Yes Mr Chairman.

CHAIRPERSON: Hm. Thank you and for that in six months you would pay just under two million?

MR JACKSON: Yes sir. Yes Mr Chairman.

ADV MICHAEL MBIKIWA: And then just the - the email immediately above. Ms Van Eck responds and says:

“Hi there all, based on this cost the sponsorship is
extremely expensive and not worth the ROI.”

I assume Return on Investment?

10 **MR JACKSON:** Yes.

ADV MICHAEL MBIKIWA: “I recommend we do not proceed.

As per my previous mail to Jacques (see attached)
the total cost was confirmed at 327 576 for 22
weeks. At this deal it was fantastic, but not as it
stands now.”

So as I understand ...

CHAIRPERSON: I am sorry. What was fantastic? Is - is paying so
much to - for - for putting your logo on - on a newspaper page?

ADV MICHAEL MBIKIWA: Chair, as I understand it and Mr Jackson
20 please ...

CHAIRPERSON: Ja.

MR JACKSON: Ja. No Mr Chair. She was ...

CHAIRPERSON: Oh. There was something else?

MR JACKSON: Correct. She was under the impression that it was
confirmed at 327 576 for 22 weeks. So it was a longer period.

CHAIRPERSON: Even if it was ...

MR JACKSON: Even if it was ...

CHAIRPERSON: That is my question.

MR JACKSON: Even at - she says at least it would have been better ...

CHAIRPERSON: Hm.

MR JACKSON: But still she is of the opinion that was too expensive.

CHAIRPERSON: It is just that she says it was fantastic. I mean I do not know. Maybe you communications people ...

MR JACKSON: I just think it was sub - sub ...

10 **CHAIRPERSON:** Maybe you communications people know that there is some value. I do not see much value if all - all you are going to have is just put the - the logo unless there is some message that goes with it, but maybe people in your field say no. There is some value.

MR JACKSON: For 22 weeks we could consider ...

CHAIRPERSON: Oh. Okay.

MR JACKSON: Or look at ...

CHAIRPERSON: Okay.

MR JACKSON: And maybe

CHAIRPERSON: Okay.

20 **MR JACKSON:** Like you rightly put it ...

CHAIRPERSON: Yes.

MR JACKSON: Provide messaging that ...

CHAIRPERSON: Yes.

MR JACKSON: Talks to an - an audience ...

CHAIRPERSON: Ja.

MR JACKSON: But not at what ...

CHAIRPERSON: *Ja.*

MR JACKSON: That amount was - was then ...

CHAIRPERSON: Yes.

MR JACKSON: Agreed to. Yes.

CHAIRPERSON: Okay.

ADV MICHAEL MBIKIWA: If we can then turn to - back to the annexures to your page affidavit to page 57.

CHAIRPERSON: Maybe before you do that. If all you will put in the newspaper is Transnet's logo. What purpose - what value does that give Transnet?

MR JACKSON: You see Mr Chairman you have the opportunity in that instance for - from - I am talking from the brand point of view. That you are top of mind in people's everyday life. What makes this difficult in this scenario is that we have not tested the reach of this newspaper or who is reading it.

So there - at this stage we could not say that indeed we would be getting awareness or anything of value to be honest.

CHAIRPERSON: You see maybe I could understand a situation where a new company that is not known comes up and says we want to - to be known in the market. We want our customers to know about us. One of the ways we will do is have our logo in front of - in their eyes each time they pick up this newspaper. Even if there is no message.

Let them just know there is an organisation like this. Maybe I could understand that, but when you talk about Transnet. Whatever

names - there have been a change of names. Really Transnet is known - has been known for a long time. Why do you want it to be known more than that for?

MR JACKSON: I - I ...

CHAIRPERSON: You - you must help me. Maybe because I am not in communications there is something i do not understand, but I am saying it is - it is a known entity.

MR JACKSON: I - I agree with you Mr Chairman. I think in this instance I would like to respond by and this is my using my
10 communications ...

CHAIRPERSON: Ja.

MR JACKSON: Hat. All publicity is good publicity, but in this instance I cannot defend it and that is what I ...

CHAIRPERSON: Yes.

MR JACKSON: I want to be clear.

CHAIRPERSON: Yes. Yes.

MR JACKSON: What is difficult as well is when you also sponsor ...

CHAIRPERSON: Hm.

MR JACKSON: You would hope that there is some association with ...

20 **CHAIRPERSON:** Hm.

MR JACKSON: Who you are getting involved in.

CHAIRPERSON: Hm.

MR JACKSON: To - be beneficial to you.

CHAIRPERSON: Hm. Hm.

MR JACKSON: In this instance nothing can be further from there,

because we do not know this ...

CHAIRPERSON: Hm.

MR JACKSON: New publication.

CHAIRPERSON: Hm.

MR JACKSON: So we had no benefit either. Even in that - in that sense.

CHAIRPERSON: Hm.

MR JACKSON: There was no association.

CHAIRPERSON: Hm.

10 **MR JACKSON:** So from a - from that business point of view.

CHAIRPERSON: Hm.

MR JACKSON: It - it should be - you are right in questioning. Yes.

CHAIRPERSON: I mean when - before the Commission started with its hearings there was some suggestion that the Commission could engage - you know - specialists in communication and so and so on, but I decided no, because I said the Commission is there. A lot of people have interest in it. The media will be talking about it.

People will get to know about it. We will call media conferences and the media will come. People will talk about the - the
20 Commission. So why should we pay money to specialist. To do what for the Commission? The - the Commission is known and will be known even more as it does its work. So I look at Transnet and say really.

Why, but I do not want anybody to start thinking there is no need for communication specialists. I am sure - I am sure there is, but that issue of just placing a logo just seems - I have difficulty in

understanding what value, but maybe I will get to understand as I hear more evidence, but it would be different if there is some message that goes with the logo for me. Okay.

ADV MICHAEL MBIKIWA: Thank you Chair. Mr Jackson, can I ask you to turn to page 57?

MR JACKSON: Just say that again. Sorry. 57?

ADV MICHAEL MBIKIWA: 57. It is Annexure 8. Have you got 57?

MR JACKSON: I do. Oh sorry. This is 157 - 57. Sorry about that. Yes.

10 **ADV MICHAEL MBIKIWA:** And this is another email from Ms Van Eck. She starts by setting out the proposal. Can I ask you to read from below the - the last bullet point?

MR JACKSON: Sure.

20 “So based on the above costs we cannot justify this feature. From the point of view of no interim ABC having being provided as yet and verified circulation is concerned. However from an association point of view this feature is definitely well written and it would be beneficial to be associated with this. It is a shame that the TNA is not prepared to offer more value so that it becomes a partnership. At this stage the offer stands as it is. As the offer stands at the moment it is the recommendation not to support the sponsorship. Kind regards, Hanlie Van Eck.”

ADV MICHAEL MBIKIWA: Thank you. Can we go back to where it says?

“From a value point of view no interim ABC has been provided.”

MR JACKSON: Yes.

ADV MICHAEL MBIKIWA: What is - what is an interim ABC?

MR JACKSON: That is a - an indication of a newspaper's circulation numbers. It is reach and the specific demographic that it targets. So it is - it is statistics we can use in order to understand where specifically
10 if it is targeted at a specific audience or a message we wish to - to communicate. So the TNA at this stage had none of that available.

ADV MICHAEL MBIKIWA: Indeed. ABC - the evidence we have heard already is the Audit Bureau of Circulation and Chair in the course of Mr Pretorius' evidence we obtained an affidavit from the Audit Bureau of Circulation to confirm that TNA never applied for a - accreditation and so in other words you knew nothing about the circulation of the newspaper into which you would be placing the advertisement?

MR JACKSON: That is correct Mr Chairman.

CHAIRPERSON: And that on its own would have been critical to know.
20 Is it not?

MR JACKSON: Absolutely Mr Chairman.

CHAIRPERSON: Yes, because otherwise you may be wasting money.

MR JACKSON: It is a huge risk Mr Chairman.

CHAIRPERSON: *Ja. Ja.*

MR JACKSON: It is money spent.

CHAIRPERSON: Because it is fruitless. *Ja*. It might be fruit ...

MR JACKSON: Yes.

CHAIRPERSON: *Ja*. Okay.

ADV MICHAEL MBIKIWA: If - if we can then just two pages over to page 59 and - and this is another email from Ms Van Eck and it is over a conversation that she has had with Mr Sigonyela and she says:

“As per our telecon it would be great if we could get some free advertising space to give us value for this proposal.”

10 She sets out there - what does FPFC stand for?

MR JACKSON: It is Front Page Full Colour ads that would be added. So it would appear as - on the front page additional advertising which again Mr Chairman would be a Transnet logo.

CHAIRPERSON: Would be?

MR JACKSON: A Transnet logo ...

CHAIRPERSON: Okay.

MR JACKSON: On the front page.

CHAIRPERSON: Hm.

MR JACKSON: So they - they agree to additional.

20 **ADV MICHAEL MBIKIWA:** And - and she concludes by saying:

“If that were the case I would recommend we support the sponsorship.”

MR JACKSON: That is correct Mr Chairman.

CHAIRPERSON: Maybe - maybe it might be worthwhile reading that email in full - if we have not read it - into the record.

ADV MICHAEL MBIKIWA: Indeed Chair.

CHAIRPERSON: Hm.

ADV MICHAEL MBIKIWA: That email reads:

“Hi there Mboniso, as per our telecon it would be great if we could get some free advertising space to give us value for this proposal. Six FPFC ads or 12 Half Page FC ...”

Which is Full Colour?

MR JACKSON: Yes.

10 **ADV MICHAEL MBIKIWA:** “...would give value of 775 000,00.

Four Full Page Full Colour ads or eight Half Page Full Colour would give value of R516 672,00. Of course the six Full Page Full Colour ads (12 Half Page ads) would be preferred, but even if we only get four Full Page Full Colour ads (eight Half Page Full Colour ads). It would assist in justifying the cost to value ratio of the proposal. If that were the case I would recommend we support the sponsorship. Please let me know if you have any additional - if you need any additional information.”

20

CHAIRPERSON: So what is the difference between what she would not support earlier and what she will - is prepared to support now? Is it the size of ...

MR JACKSON: Mr Chairman ...

CHAIRPERSON: Huh-uh.

MR JACKSON: Basically they had agreed or they had now negotiated additional advertising space. So it would be included. Not only inside the publication, but on the front page as well you would be given the opportunity to advertise by your - your logo. So in her mind that constituted further value and she would then be in the position to - to support or try and justify the costs that were associated Mr Chairman.

CHAIRPERSON: But in terms of front page was it still just going to be putting logo - a logo without necessarily any guarantee ...

MR JACKSON: That is ...

10 **CHAIRPERSON:** Or - or putting a message?

MR JACKSON: That is correct Mr Chairman. It would have - it would have been a logo and it would then have most likely a big interview. So the - the logo with the association of the sponsorship of the big interview.

CHAIRPERSON: Hm.

MR JACKSON: That is it.

CHAIRPERSON: But the - the interview now could be anybody?

ADV MICHAEL MBIKIWA:

MR JACKSON: That is correct Mr Chairman.

20 **CHAIRPERSON:** Who might have nothing to do with ...

MR JACKSON: Transnet.

CHAIRPERSON: Transnet?

MR JACKSON: Yes. That is correct.

CHAIRPERSON: I must confess I still struggle to see the value even with that. Okay. Alright.

ADV MICHAEL MBIKIWA: Well Chair in - in Mr Jackson's affidavit he does too.

CHAIRPERSON: Hm.

ADV MICHAEL MBIKIWA: Can we go there to page 10 Mr Jackson at paragraph 46?

MR JACKSON: Yes.

ADV MICHAEL MBIKIWA: You - you say that you found the decision to - to now participate in the big interview suspicious and you did not see it as justifiable. Can you elaborate on that?

10 **MR JACKSON:** Mr Chairman, as I have said in my affidavit I - I was suspicious because the advice received was clear. It was not worth the money we were requested to participate in the sponsorship and literally a day later that decision changed.

CHAIRPERSON: Hm.

MR JACKSON: Based on fee advertising as you rightly put. Really did not mean anything more than what we - what we agree. So I - that was my - my thought and became suspicious as to why - why this change and remember again. It is a new newspaper. So even if it was front page.

20 **CHAIRPERSON:** Hm.

MR JACKSON: There was still no guarantee as to what return on the investment we were going to receive. So we were putting the spend - spending of this money - it was at risk.

CHAIRPERSON: Hm.

MR JACKSON: We had no way to - to justify it regardless of what we

said was adding value and *ja*. That is what I believe.

ADV MICHAEL MBIKIWA: At - at this stage you still knew nothing about the circulation data?

MR JACKSON: None.

ADV MICHAEL MBIKIWA: You knew nothing about who the newspaper was reaching?

MR JACKSON: No. Remember it still has been a new public - they - they had nothing. We could not even guess or have them guess.

ADV MICHAEL MBIKIWA: Hm.

10 **MR JACKSON:** It - it was completely new.

ADV MICHAEL MBIKIWA: And - and did you raise these kinds of concerns with Mr Sigonyela?

MR JACKSON: Yes. I did Mr Chairman.

ADV MICHAEL MBIKIWA: And what was his response?

MR JACKSON: That it was not important at that stage.

CHAIRPERSON: What was not important?

MR JACKSON: My question and my concern.

CHAIRPERSON: Is that what he said?

MR JACKSON: Yes.

20 **CHAIRPERSON:** And he ...

MR JACKSON: And that was ...

CHAIRPERSON: It was basically dismissive?

MR JACKSON: That is correct. That was the end of the conversation.

CHAIRPERSON: *Ja*.

ADV MICHAEL MBIKIWA: If we can then turn Mr Jackson to the - the

first internal memorandum that approved the sponsorship. That is - that is at JJ11 on page 66.

CHAIRPERSON: I am sorry. Just remind me what was - oh Mr Sigonyela was General Manager Corporate and Public Affairs?

MR JACKSON: That is correct Mr Chairman.

CHAIRPERSON: For the whole of Transnet?

MR JACKSON: For the whole of Transnet.

CHAIRPERSON: Okay.

ADV MICHAEL MBIKIWA: And - and he was the person to whom you
10 reported?

MR JACKSON: That is correct.

ADV MICHAEL MBIKIWA: Chair, we were just going to page 66. The - the internal memorandum continues there.

CHAIRPERSON: Yes. I am there.

ADV MICHAEL MBIKIWA: Okay. Can you tell us who that is from and - and who it is addressed to?

MR JACKSON: It is addressed from the General Manager from Group Corporate and Public Affairs Mr Sigonyela who is my - who I reported to the Group Chief Executive - Mr Brian Molefe.

20 **ADV MICHAEL MBIKIWA:** And there - there are one or two aspects of this proposal that I would - I would just like to pause on. The first is in paragraph 2 where it says:

“The New Age publication is one of the key publication that Transnet targets for positioning its brand and its image as part of its reputation

management strategy.”

Was that true?

MR JACKSON: No it was not true Mr Chairman, I am not aware of such a strategy or why a decision for the TNA would be part of that.

ADV MICHAEL MBIKIWA: Was the New Age one of the key publications that Transnet targeted?

MR JACKSON: Well in the sense that from an instruction point of view yes, but I mean from a campaign or a strategy there was never ever mention of the New Age Newspaper.

10 **ADV MICHAEL MBIKIWA:** And if we turn the page to 67 the bullet point at the top starting, this platform,

“This platform will afford Transnet the opportunity to send key messages to our stakeholders’,

How was it going to achieve that?

MR JACKSON: Like I said my thoughts would be, if you were given a stripper ad you could be given the opportunity to address or make a certain statement of importance relating to a stakeholder you would – that however, was not the case and again, Mr Chairman you didn’t know who these stakeholders where or who these – this newspaper would
20 reach. So you cannot verify or justify it as true.

ADV MICHAEL MBIKIWA: And then if we just turn over one more page to page 68 this is where the recommendation is concerned, it says,

“We recommend that the GCE approves the proposal for the sponsorship for the New Age, the big interview, that the sponsorship

will be reviewable every three months”,

It's compiled and recommended by Mr Sigonyela and it's signed by Mr Molefe. Can you tell us the date of the signatures of each of them?

MR JACKSON: The first compiled and recommended by Mr Modisa Sigonyela is on February 12, 2012 and its final approval date is by Mr Brian Molefe, Group Chief Executive on the 23rd of February 2012.

ADV MICHAEL MBIKIWA: Thank you.

CHAIRPERSON: I see that – I don't know if it's a lady or a man, Ms or
10 Mr Zolo Stiffen did not sign, do you know why he or she did not sign?

MR JACKSON: I would be speculating Mr Chairperson.

CHAIRPERSON: Oh okay that's fine, I thought there might be significance in the fact there's no signature there, okay.

MR JACKSON: Maybe let me add Mr Chairman in normal process there need to be all the signatories if they were included you cannot, not – because Miss Zola Stiffen would be Mr Sigonyela's direct boss.

CHAIRPERSON: Yes ordinarily if a document like this reaches the person whose signature appears last if there is somebody who has not signed who was supposed to have signed already then he's supposed
20 to find out why?

MR JACKSON: That is correct Mr Chair, he wouldn't sign it either ...[intervenes].

CHAIRPERSON: Yes because he would be signing on the recommendation of that person immediately before...[intervenes].

MR JACKSON: Correct, who was his direct report.

CHAIRPERSON: Ja because that person is the supervisor of the...[intervenes].

MR JACKSON: Correct Mr Chairman.

CHAIRPERSON: Okay.

ADV MICHAEL MBIKIWA: Thank you Chair. Mr Jackson I'd just like us to take note of the date of Mr Molefe's signature which is the 23rd of February, we'll return to that in a moment. Can I ask you to just go to page – back to page 66 which is the cover page of the memorandum and you see the subject is the sponsorship of the New Age, the big
10 interview.

MR JACKSON: 66 yes.

ADV MICHAEL MBIKIWA: The subject will you just read the subject line?

MR JACKSON: The sponsorship of the New Age (TNA) the big interview.

ADV MICHAEL MBIKIWA: Thank you and this was a proposal for a sponsorship?

MR JACKSON: That is correct.

ADV MICHAEL MBIKIWA: I'll return to that in a moment. If I could
20 then ask you to turn to page 72...[intervenes].

CHAIRPERSON: I'm sorry before you go there, if you go back to page 66, paragraph 4, bullet point 3,

“This sponsorship opportunity will afford Transnet the following benefits, naming rights on the page border”,

What did that mean, name rights on the page border?

MR JACKSON: Ja as explained the advertising on the front page, which included the logos Mr Chairman would then have the word, The Big Interview or the words The Big Interview so that it assumes the association with Transnet so it was a Transnet initiative and owned the rights to the Big Interview, I don't know if that makes sense. So that was what was placed on the front cover.

CHAIRPERSON: Naming rights would normally mean, I can say, this is going to be – the stadium will be called FNB Stadium, isn't it?

MR JACKSON: Yes.

10 **CHAIRPERSON:** This competition will be called Nedbank competition okay, now with that understanding does that understanding apply to this naming rights here?

MR JACKSON: That is the correct understanding Mr Chairman and in this sense it means that it was called The Transnet Big Interview so that was the naming rights associated to Transnet by virtue of this sponsorship.

CHAIRPERSON: But if it is going to be called the Transnet Interview why is it that Transnet is not the one who decides on who will be put there, who will be interviewed?

20 **MR JACKSON:** I agree Mr Chairman, it should.

CHAIRPERSON: Okay, alright.

ADV MICHAEL MBIKIWA: Chair we thought it might be helpful to see an example of the Big Interview...[intervenes].

CHAIRPERSON: Oh that will be helpful yes.

ADV MICHAEL MBIKIWA: The text of the actual article is illegible it's

too small but it gives you a sense of the layout.

CHAIRPERSON: Yes that will be helpful.

ADV MICHAEL MBIKIWA: We beg leave to hand that up.

CHAIRPERSON: Yes.

ADV MICHAEL MBIKIWA: Could we approach the witness to give him a copy?

CHAIRPERSON: Yes.

ADV MICHAEL MBIKIWA: And Chair we'll suggest that this is inserted –sorry I've left the second page behind. We'll suggest that
10 this is inserted into MM5 with paginated page number 181.

CHAIRPERSON: Okay,

ADV MICHAEL MBIKIWA: Mr Jackson certainly from this picture it doesn't appear that it's called the Transnet Big Interview?

MR JACKSON: Mr Chairman – you are correct but I just want to highlight this will be the future – the initial agreement which is the inside, you'll see it's page 20 so there would be another version which would include the front page where it would state, Transnet the Big Interview.

ADV MICHAEL MBIKIWA: I see.

20 **MR JACKSON:** And that would be the naming rights that came as additional but otherwise this is how it appeared.

CHAIRPERSON: Transnet was just being robbed, I mean really. You say they must pay over – close to R2million and – just because you are going to come up with an interview and you'll call it the Transnet Big Interview and it might have nothing to do with Transnet, I'm not missing

anything?

MR JACKSON: You are not Mr Chair yes.

CHAIRPERSON: Okay thank you.

ADV MICHAEL MBIKIWA: Mr Jackson can I ask you then to turn to page 72 and the email at the top of that page. It's an email from Hanlie van Eck it's to Jacques Roux who you say is from TNA,

“Hi there Jacques, long time no speak, hope the year has been a great one so far. I have had an instruction from Transnet to proceed with the sponsorship”,

10 So as I read that, Ms van Eck who works for Planit Media which is a sub-contractor to the agency has received an instruction from Transnet to proceed with the sponsorship. The date of this is the 15th of February 2012, who would have given that instruction?

MR JACKSON: The only delegated person who could give such an instruction, Mr Chairperson, is Mr Mboniso Sigonyela.

ADV MICHAEL MBIKIWA: And was there the necessary internal approval at this stage?

MR JACKSON: No I think if we recall the earlier memo that approval was only given on the 23rd of February, formally. So that was an
20 internal process that was done in order to participate in this sponsorship. So this, is in fact, earlier than what was formal.

ADV MICHAEL MBIKIWA: Right.

MR JACKSON: Yes.

ADV MICHAEL MBIKIWA: So Ms van Eck had been given an instruction to proceed before formal approval had been internally

obtained?

MR JACKSON: That is correct Mr Chairman.

ADV MICHAEL MBIKIWA: Can we then go to JJ13, that's on page 77, at the bottom of that page Ms Moremi from the agency says,

“Hi Joseph herewith the flow-plan for the New Age sponsorship for your approval”,

What's a flow-plan?

MR JACKSON: It would state, Mr Chairman how it would be inserted and on which dates into the newspaper.

10 **ADV MICHAEL MBIKIWA:** And it says the sponsorship is for six months starting on Wednesday 29 February 2012. The date of this is the 21st of February, this is still before Mr Molefe has signed?

MR JACKSON: That is correct Mr Chairman.

ADV MICHAEL MBIKIWA: Can you read your email immediately above?

MR JACKSON: Okay I say,

“Hi Martha, thanks for this. Just to confirm and for clarity the sponsorship will only continue if the formal requests for approval, internally – sorry the request is approved internally.

20 We are still awaiting the sign-off from our seniors. The flow-plan therefore, will only be considered when we have obtained approval and dates might have to change, regards Joseph”.

ADV MICHAEL MBIKIWA: So you're intervening to tell Ms Moremi that, actually you can't proceed with this until we obtain the necessary

approval?

MR JACKSON: That's correct Mr Chairman.

ADV MICHAEL MBIKIWA: Which is the signature from Mr Molefe?

MR JACKSON: Yes.

ADV MICHAEL MBIKIWA: Did Mr Sigonyela at all speak to you about this?

MR JACKSON: He spoke to me to the extent that I was hindering the process as he called it and it was far too slow according to him, except that I was of the opinion that process was being followed and until such
10 time we're doing what we're supposed to, Mr Chairman.

ADV MICHAEL MBIKIWA: In fact, in your affidavit, if we return there, at page 12, at paragraph 54 you talk about the pressure under which you were being put by Mr Sigonyela...[intervenes].

CHAIRPERSON: At what page?

ADV MICHAEL MBIKIWA: Page 12 Chair in the affidavit and its paragraph 54.

CHAIRPERSON: Yes.

ADV MICHAEL MBIKIWA: Just elaborate on the pressure he was putting on you and what he expected from you.

20 **MR JACKSON:** Ja I say that throughout the process I was under significant pressure from Mr Sigonyela, he was extremely eager to have this arrangement in place as soon as possible. As I've said Mr Chairman he said that I was hindering the process and in order to make sure that I'm doing my job as he had instructed I was to provide him with a formal report in establishing if I'm doing my work and in so doing

I provided him with a chronological sequence of events as to how the process is being handled and where it was at that point.

ADV MICHAEL MBIKIWA: Can we go to that chronological sequence of events, it's at page 87, it's JJ15, is this the document...[intervenes].

CHAIRPERSON: I'm sorry what page?

ADV MICHAEL MBIKIWA: Sorry Chair, it's 87...[intervenes].

CHAIRPERSON: I'm not doing very well in keeping up.

ADV MICHAEL MBIKIWA: No Chair, I'm going too quickly, I apologise.

10 **CHAIRPERSON:** Yes okay.

ADV MICHAEL MBIKIWA: It's page 87 JJ15, and Mr Jackson is the chronology you drew up in response to Mr Sigonyela's...[intervenes].

MR JACKSON: That is correct Mr Chairman, I believe that in order to provide the report as – I put it in a sequence of events detailing exactly what's happening on which day and this is what I had provided yes.

ADV MICHAEL MBIKIWA: Had you ever done this before or since?

MR JACKSON: No I have not.

20 **ADV MICHAEL MBIKIWA:** So the pressure that Mr Sigonyela was putting you under in respect of the Big Interview in the New Age was pressure that you hadn't experienced from him before?

MR JACKSON: No not to this extent, this was as if my job was determined by proof that I'm doing my work.

ADV MICHAEL MBIKIWA: Thank you. You also say that Mr Sigonyela, at some point tried to cut the agency out of the process.

MR JACKSON: That is correct Mr Chairman.

ADV MICHAEL MBIKIWA: How did he try to do that?

MR JACKSON: Well he raised the issue around their – obviously they, as far as he was concerned in also concluding this sponsorship and had raised the question as to what stops Transnet from approaching and dealing with the TNA directly and he made it clear that I share that with the agency. They needed to, basically, prove their value and the pressure to get this done.

ADV MICHAEL MBIKIWA: Then Mr Jackson if we can then turn to the various memoranda, internal memoranda that were compiled and
10 approved. You detail those at – from paragraph 59 of your affidavit on page 13, they run from March 2013 to May 2016.

MR JACKSON: Yes.

ADV MICHAEL MBIKIWA: I don't intend to take you to each one of them but there are just two that I'd like to draw particular attention to. Can we first go to JJ22 that's at page 115, Chair, are you there?

MR JACKSON: I'm there yes, yes I am.

ADV MICHAEL MBIKIWA: And if you turn the page to 116, who compiled this memorandum?

MR JACKSON: This was compiled by myself.

20 **ADV MICHAEL MBIKIWA:** And given the doubts that you had about all of this, that you've shared with us today, why did you compile it?

MR JACKSON: It seemed as if the deal was done based on what I was sent, in my head, it wasn't even a negotiation. More so my concerns was put aside by, it's not important but what is important to me, however, was that a formal process in the form of a sign-off of the

sponsorship be done, which at this stage was not, so I had hope that in making this formal, questions would be raised regarding value especially if the final signatory is our Chief Executive.

ADV MICHAEL MBIKIWA: And if you look at the – if you go back to 115.

MR JACKSON: Yes.

ADV MICHAEL MBIKIWA: Which is the cover page of that memorandum, you'll see that it says,

“The renewal of the New Age the Big Interview partnership”,

10 Previously I drew your attention to sponsorship.

MR JACKSON: Yes.

ADV MICHAEL MBIKIWA: Do you have any understanding of why it was changed from sponsorship to partnership?

MR JACKSON: I do not, I really do not recall but its no different to the original agreement, so indeed I believe its still a sponsorship.

ADV MICHAEL MBIKIWA: Thank you. Then if you can turn to page 121, this is a memorandum of the 9th of November 2015, you see that?

MR JACKSON: I do.

20 **ADV MICHAEL MBIKIWA:** Can you see who compiled that memorandum?

MR JACKSON: Yes this is a former colleague of mine, Mr Chairman, Belesa Ngoma to Mr Mboniso Sigonyela, the GM at Corporate and Public Affairs.

ADV MICHAEL MBIKIWA: Chair Ms Ngoma was sent a Rule 33 notice arising from Mr Jackson's affidavit, she has filed an affidavit and

there's a few aspects of that affidavit that I'd like to put to Mr Jackson.

CHAIRPERSON: Okay ja.

ADV MICHAEL MBIKIWA: Can I ask you to turn to page 174 that's where Ms Ngoma's affidavit is contained and 174 is, in fact, the cover letter to her affidavit, she says at paragraph 2,

"I have read Mr Joseph Jackson's affidavit, save to state that

I acted on the instruction of my superiors in the preparation of the memoranda referred to, I do not dispute that I compiled the memoranda"

10 If we then turn to the actual content of the affidavit, can I ask you first to go to paragraph 10, here Ms Ngoma is talking about business breakfasts. I appreciate, Mr Jackson, that business breakfasts were not within your terrain but I would like to ask whether this accords with your experience of being given instructions by Mr Sigonyela. She says that,

"It was during this period that I received instructions from the Head of Department, General Manager Corporate and Public Affairs Mr Mboniso Sigonyela either directly or through my line manager to compile memoranda for Transnet to partner
20 with SABC in the hosting of the New Age business breakfasts. The instructions for the memoranda would come with a brief outline or guidance of what the memoranda should state. Mr Sigonyela would then edit and revise the content before signing approval".

Was your experience of compiling a memorandum similar to

that?

MR JACKSON: It would be similar Mr Chairman.

ADV MICHAEL MBIKIWA: Would Mr Sigonyela give you an outline of what it was that needed to go into the memorandum?

MR JACKSON: He would, very specifically at some point but like Ms Ngoma states to revise and edit as he saw fit.

ADV MICHAEL MBIKIWA: And then if we can turn to paragraph 27, that's at page 179 she says there that,

10 “Prior to December 2014, Mr Joseph Jackson who was the
brand and publicity coordinator managed Transnet's
partnership in support of the Big Interview within the New Age
Newspaper”.

MR JACKSON: Yes.

ADV MICHAEL MBIKIWA: She says you left in December 2014 and then she says in paragraph 30,

 “Upon Mr Jackson's departure I was instructed, by the
General Manager Corporate and Public Affairs, Mr Sigonyela
to manage Transnet's continued support of the Big Interview
segment”.

20 Does that accord with your understanding of events?

MR JACKSON: It does Mr Chairman.

ADV MICHAEL MBIKIWA: Mr Jackson I only have one or two questions remaining, the – you say at paragraph 62 of your affidavit that Transnet ultimately spent a total of R24.8million on the Big Interview. Was there ever any assessment done of whether that gave

Transnet value for money?

MR JACKSON: There was no assessment or evaluation done Mr Chairman since the time I had been there and left, no.

CHAIRPERSON: Over what period was R24million spent?

MR JACKSON: From 2011, Mr Chairman to 2016.

CHAIRPERSON: So that's – is that five years.

ADV MICHAEL MBIKIWA: Five years.

CHAIRPERSON: So roughly, on average you may have been spending about what, R5million?

10 **MR JACKSON:** Yes correct Mr Chairman.

CHAIRPERSON: Or just under that.

MR JACKSON: Just under that.

CHAIRPERSON: Ja, okay.

ADV MICHAEL MBIKIWA: And Mr Jackson, in your own view, did Transnet get value for money?

20 **MR JACKSON:** In my own view, personal view, no Transnet did not receive any return on investment. It is – and this is an opinion, based on where the TNA eventually, from a reputation point of view had ended, the association most definitely did not do us any favours. If anything, it led to a negative reputation and outlook, the mere association. So no, my answer to that would be it did not receive any...[intervenes].

CHAIRPERSON: Initially the arrangement or agreements were for three months at a time is that right or six months?

MR JACKSON: Six months.

CHAIRPERSON: Six months?

MR JACKSON: Six months, yes Mr Chairman.

CHAIRPERSON: There had been a proposal of three months at some stage isn't it?

MR JACKSON: Yes I do believe in one of the emails they speak about...[intervenes].

CHAIRPERSON: Or maybe during the quotation stage.

MR JACKSON: Yes.

CHAIRPERSON: So – but it was six months at a time.

10 **MR JACKSON:** That's correct Mr Chair.

CHAIRPERSON: Starting from 2011.

MR JACKSON: 2011.

CHAIRPERSON: Do you know – do you remember whether that was starting from the beginning of 2011 or from mid-year?

MR JACKSON: I think it actually started in April.

CHAIRPERSON: In April, oh okay.

MR JACKSON: Because the approval was the 23rd so I think there was then a request for a flow-plan which then they needed to then look at space and how it would – and I'm under correction but that is ore or
20 less when I estimate.

CHAIRPERSON: Yes

ADV MICHAEL MBIKIWA: That was in 2012 Mr Jackson.

MR JACKSON: In 2012?

ADV MICHAEL MBIKIWA: In 2012 yes sorry in 2012.

CHAIRPERSON: So for this period of five years was this arrangement

renewed at the expiry of every six months from when it started in 2012 up to when it ended in 2016?

MR JACKSON: That is correct Mr Chairman.

CHAIRPERSON: And in terms of what Transnet was able to place on the newspaper did it, throughout remain – did the position remain as that Transnet would just have its logos or did that change at some stage.

MR JACKSON: It did not change Mr Chairman, it remained exactly the same throughout the duration of ...[intervenes].

10 **CHAIRPERSON:** Just to put their logos on.

MR JACKSON: That is correct sir.

CHAIRPERSON: No message at all?

MR JACKSON: No message Mr Chair, exactly as it was.

CHAIRPERSON: Yes and throughout the period was this space used for interviews with media personalities as you say?

MR JACKSON: That is correct.

CHAIRPERSON: And all the time the person that would be interviewed was not chosen by Transnet?

MR JACKSON: No Mr Chairperson.

20 **CHAIRPERSON:** Or were there times when Transnet chose?

MR JACKSON: No not that I'm aware, no.

CHAIRPERSON: Do you know whether they were consulted about the persons to be placed...[intervenes].

MR JACKSON: I don't...[intervenes].

CHAIRPERSON: You don't know.

MR JACKSON: I don't know, no sir.

CHAIRPERSON: Yes and did you – were there any people from Transnet who were interviewed over that period?

MR JACKSON: As far as I'm aware, none.

CHAIRPERSON: None?

MR JACKSON: None.

CHAIRPERSON: And did you keep an eye on this space, on this newspaper over that time to see what was coping up, not necessarily every day but generally?

10 **MR JACKSON:** Generally yes, Mr Chairman I made it my point – especially when it came to payment, remember you have to justify that you're paying for services rendered, so I would insist on what you call a [indistinct] which would be included as part of the invoice, so that gave me the assurance that indeed, it was placed for anything else which was the agreement but that was the extent yes.

CHAIRPERSON: And who made the decision to renew each time this arrangement was renewed, who's decision was it?

MR JACKSON: The decision or the signing, the delegated authority was Mr Brian Molefe, the Group Chief Executive.

20 **CHAIRPERSON:** So he was the one that made the decision?

MR JACKSON: That is correct Mr Chairman.

CHAIRPERSON: Yes with the recommendation of the same people who may have recommended the first one like Mr Sigonyela?

MR JACKSON: They all remain Mr Sigonyela...[intervenes].

CHAIRPERSON: All their names are there.

MR JACKSON: Ja it's compiled by, that changes but it's recommended and then approved.

CHAIRPERSON: But ultimately the person that could say stop this or continue would have been Mr Brian Molefe?

MR JACKSON: That is correct Mr Chairman.

CHAIRPERSON: Yes and he never said stop?

MR JACKSON: No.

CHAIRPERSON: Which year did he leave Transnet to go to Eskom do you remember or did this stop after he had left Transnet?

10 **MR JACKSON:** It still continued, it was – I believe it was 2014 or 2015 Mr Chairman, so I'm almost – no I think its 2015 that he had left for Eskom and then ran until 2016 and then ended, yes.

CHAIRPERSON: Well it's interesting maybe Mr Brian Molefe will come here and explain this and maybe he will make us see what we can't see now in terms of what value got from this when it was paying so much money but I can't say I don't remember evidence that's been given in this Commission that was given in this Commission by Mr Jonas. Mr Jonas gave evidence and part of the evidence he gave was the he had a meeting with one of the Gupta brothers at the Gupta residence in
20 Saxonwold on October 23, 2015 and one of the things he says, the Gupta brother that was there told him is that he gave hi certain names of people that he said are working with them, with the Guptas, and he said – Mr Jonas said the Gupta brother that was in that meeting told him that those people were safe, nobody could touch them because they were working with them and Mr Brian Molefe was one of the names

that was given there. I mention this for the legal team's recollection as well. Another person who was mentioned was Ms Lynne Brown, we heard evidence earlier on about Eskom and Mr Tsotsi having certain interactions with Ms Lynne Brown and with Mr Tony Gupta. So maybe Mr Molefe will come and will explain this and maybe we will all see what we can't see now but there is that evidence that has been placed before me by Mr Jonas to say, this is what he was told by one of the Gupta brothers on the 23rd of October, that, effectively they were looking after Mr Brian Molefe and that nobody would touch him and of course we do know that he went from Transnet he went to Eskom and ja okay.

ADV MICHAEL MBIKIWA: Thank you Chair.

CHAIRPERSON: Thank you.

ADV MICHAEL MBIKIWA: Chair I see that we are at six past one, I have no further questions for Mr Jackson I would just like to check whether there's any prospect of us sitting late today just because it will impact on our arrangements with other witnesses.

CHAIRPERSON: Ja I think it's good you raise it. No there isn't a chance of sitting late today but we can do one of two things, we can find a date next week or we can – I can't remember whether Ms Hofmeyr said she would be able to make use of Tuesday the 4th but if Tuesday the 4th is available we could use Tuesday the 4th or we could find a date immediately after or even during the [indistinct] two weeks that we have got, so – but if the other days are full we could try and use the next available business day.

ADV MICHAEL MBIKIWA: Thank you Chair, we will use the lunch break to speak to the witnesses and each other and revert after the lunch.

CHAIRPERSON: Okay, alright I think in the afternoon we may have to stop maybe at about quarter to four or 4 o'clock I'm not sure but that's fine. So we will adjourn for lunch and we'll resume at ten past two, we adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

- 10 **CHAIRPERSON:** I thought I had said we would resume at two o'clock but he tells me I said quarter past and one of my protectors is corroborating him. So I was hoping to get corroboration from you but I am told you were not sure?

ADV KATE HOFMEYR: We were not. We all I think thought like you it was two o'clock Chair but...

CHAIRPERSON: Ja well I thought I said ten past two.

ADV KATE HOFMEYR: Okay.

CHAIRPERSON: Okay because when we...

ADV KATE HOFMEYR: Yes.

- 20 **CHAIRPERSON:** Broke up it was after.

ADV KATE HOFMEYR: It was a bit beyond.

CHAIRPERSON: Ja.

ADV KATE HOFMEYR: Indeed.

CHAIRPERSON: Ja it was beyond.

ADV KATE HOFMEYR: Indeed.

CHAIRPERSON: But they denied they said I said quarter past.

ADV KATE HOFMEYR: Apologies Chair.

CHAIRPERSON: Okay are you ready?

ADV KATE HOFMEYR: We are indeed Chair.

CHAIRPERSON: Hm.

ADV KATE HOFMEYR: Chair if I may just deal with some housekeeping matters before we swear Mr Phatlane our next witness in because it just relates to the arrangements for the remainder of the afternoon.

10 **CHAIRPERSON:** Yes.

ADV KATE HOFMEYR: We used the lunch break to talk to Mr Mkhwanazi.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: Who is our second witness after Mr Phatlane.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: The fourth witness for today.

CHAIRPERSON: Yes.

20 **ADV KATE HOFMEYR:** The position is as follows. We think it is unlikely we will start Mr Mkhwanazi today because given the slightly earlier finish time.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: We will comfortably complete we hope Mr Phatlane's evidence but are unlikely to start Mr Mkhwanazi.

CHAIRPERSON: Okay. Okay.

ADV KATE HOFMEYR: So we would need to reschedule Mr

Mkhwanazi's evidence. We have had discussions. Our proposal at the moment is that date of the 4 February we did fill with actually the last TNA witness.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: Who comes from the aviation side, Mr Kona.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: So that has already been set up. But we think that it is very possible that in the course of the three weeks of aviation.

CHAIRPERSON: Hm.

10 **ADV KATE HOFMEYR:** There is an opening somewhere.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: And so we have engaged with Mr Mkhwanazi he has general availability over that period.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: He has given us a few dates which will not work for him.

CHAIRPERSON: Yes okay.

ADV KATE HOFMEYR: And so our proposal is with some warning.

CHAIRPERSON: Yes.

20 **ADV KATE HOFMEYR:** To him when we see an opening arising.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: We can be in touch and he has very kindly indicated that he should be able to return for that evidence.

CHAIRPERSON: To fit in.

ADV KATE HOFMEYR: Yes.

CHAIRPERSON: Okay no that is fine then. That is fine.

ADV KATE HOFMEYR: And in the light of that if we could ask that he be released.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: For the remainder of the afternoon.

CHAIRPERSON: Yes he is released. Thank you.

ADV KATE HOFMEYR: Thank you Chair.

CHAIRPERSON: Yes. Yes.

ADV KATE HOFMEYR: If I could then ask for Mr Phatlane to be sworn
10 in?

CHAIRPERSON: Yes thank you.

REGISTRAR: Please state your full names for the record?

MR PHATLANE: My name is Daniel Kagiso Phatlane.

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

MR PHATLANE: Yes. [indistinct] affirmation.

CHAIRPERSON: Yes make sure it is an affirmation if the witness wants an affirmation.

REGISTRAR: Please state your full names for the record?

MR PHATLANE: My name is Daniel Kagiso Phatlane.

20 **REGISTRAR:** Do you have any objection in making the prescribed affirmation?

MR PHATLANE: No.

CHAIRPERSON: Do you solemnly affirm that the evidence you will give shall be the truth, the whole truth and nothing but the truth, if so please raise your right hand and say, I truly affirm.

MR PHATLANE: I truly affirm.

CHAIRPERSON: Thank you. Yes you may proceed.

ADV KATE HOFMEYR: Thank you Chair. Mr Phatlane's statement and relevant annexures to it and other documents are contained in what we propose be marked Exhibit MM4. If we could have that entered into the record?

CHAIRPERSON: Mr Daniel Kagiso Phatlane's statement and annexures thereto will be admitted and marked Exhibit MM4 and the lever arch file in which they are contained will be marked accordingly as well.

10 **ADV KATE HOFMEYR:** Thank you Chair. Mr Phatlane in front of you you have that exhibit in a file. I do not actually envisage barring on one occasion moving to other files. So you can keep that in front of you. And I will make reference to it throughout and you will look at the top right hand corner for the page numbers that I refer to in the course of the evidence. If I could take you then to page 1 of that file. You will see I think you are at an index page. If you just over and look for page 1 at the top. Can you tell us what that document is?

MR PHATLANE: It is my statement.

ADV KATE HOFMEYR: Thank you. And was that provided to the
20 commission?

MR PHATLANE: Yes I did it.

ADV KATE HOFMEYR: And could you go over to page 7 of the same Exhibit MM4. Can you confirm whether that is your signature on the page?

MR PHATLANE: Yes it is my signature.

ADV KATE HOFMEYR: Thank you. Mr Phatlane I am next going to ask whether you confirm the contents of this statement as being true and correct but before I do that you did alert me this morning to the fact there is a particular correction you would like to make in respect of paragraph 6. But it is a correction that requires quite an explanation. So my suggestion Mr Phatlane is when you confirm the correctness we note that you are going to make a change to paragraph 6 and when we get to that in the evidence you will give your account of where the change occurs.

10 **CHAIRPERSON:** Okay.

ADV KATE HOFMEYR: Are you comfortable with that?

MR PHATLANE: Yes Chairperson.

ADV KATE HOFMEYR: Thank you. So if you will just indicate whether you confirm the contents but for paragraph 6 which we will deal with in due course?

MR PHATLANE: I do Chairperson I do confirm the statement as true with the changes that I will make on paragraph 6.

CHAIRPERSON: Okay thank you.

20 **ADV KATE HOFMEYR:** Thank you. Mr Phatlane let us start if we may with some background. Can you please tell the commission when you first joined Transnet and in what position and then take us through your progression in the organisation?

MR PHATLANE: Chairperson I joined Transnet in 2011 August 16 from there – for Department of Education. I was given the position of Senior Coordinator Stakeholder Relations. I have been in that position for

long until 2018 that is when I got promoted to be a senior manager Stakeholder Relations. And I am currently still on that position.

ADV KATE HOFMEYR: And who did you report to in that period 2011 until 2017?

MR PHATLANE: I reported to the General Manager Mboniso Sigonyela.

CHAIRPERSON: When we – I am sorry when we – when the witness who preceded you gave evidence I maybe have been mistaken but I thought Mr Sigonyela's first name was Mbonise.

MR PHATLANE: Mboniso.

10 **CHAIRPERSON:** It is Mboniso?

MR PHATLANE: Yes Chairperson.

CHAIRPERSON: So if I Mbonise either I saw something that was not there or somebody might have thought it is Mbonise.

MR PHATLANE: I think ...

CHAIRPERSON: The correct one is Mboniso.

MR PHATLANE: It might be only written.

CHAIRPERSON: And error.

MR PHATLANE: It is Mboniso.

20 **CHAIRPERSON:** Yes okay. I do not know if anybody had picked anything like that that there was an I at the end.

ADV KATE HOFMEYR: Chair we will certainly check it if I just go through the bundle in front of me certainly whenever he is signing off on...

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: The various memoranda it is Mboniso.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: Yes.

CHAIRPERSON: Ja it may be that it is – it was an email from somebody else.

ADV KATE HOFMEYR: It could have been. Yes.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: Indeed.

CHAIRPERSON: And not from him. Okay.

ADV KATE HOFMEYR: We will just have a look for it so we can locate
10 it.

CHAIRPERSON: Okay no that is fine.

ADV KATE HOFMEYR: Right so Mr Phatlane you were explaining between 2011 and 2017 you reported to Ms Sigonyela, is that right?

MR PHATLANE: Yes Chairperson and then in 2017 to current I am reporting under General Manager Mr Lekhethe, Molatwane Likhethé.

CHAIRPERSON: Yes that is L-i-k-h-e-t-h-e.

MR PHATLANE: Yes L-i

CHAIRPERSON: Likhethé. L-i

MR PHATLANE: Yes Chairperson.

20 **CHAIRPERSON:** Molatwane.

MR PHATLANE: Molatwane.

CHAIRPERSON: M-o-l-a-t-w-a-n-e. Okay thank you.

ADV KATE HOFMEYR: Thank you. And can you explain to the commission and the Chair what your role was holding that position in Stakeholder Relations?

MR PHATLANE: Well Chairperson as a coordinator my responsibility was to assist the – the GM in terms of making sure that we build relations – we helped Transnet to build it – it is stakeholder relations and also to drive thought leadership by engaging and informing our critical stakeholders. So ideally we will come up with platforms so we think we need to be able to invite certain stakeholders so that we can either be able to inform them or pursued them or just give them information about Transnet just so that we are building that relationship with them. And well there were other responsibilities so – such as the
10 language unit which came later and also assisting in other activities within the department.

ADV KATE HOFMEYR: And did sponsorships and donations fall within your area of responsibility?

MR PHATLANE: Yes Chairperson part of it it was making sure that we – I process the sponsorships on behalf of the GCE because that mandate was not directly within the GM. It was a mandate that was at the level of a GCE.

ADV KATE HOFMEYR: And is GCE – can you explain to us what that stands for?

20 **MR PHATLANE:** GCE will refer to Group Chief Executive. To say the budget regarding sponsorships they were sitting with the GCE's office.

ADV KATE HOFMEYR: Thank you. And what would the ordinary process be for approval of sponsorships?

MR PHATLANE: Chairperson ordinarily what will happen is that an interest – a party with an interest will send a proposal to Transnet to

say, we will wish Transnet to sponsor a course that the – a course that they are interested in. And we will look at it whether it is in line with the draft sponsorship and donation policy to say, is this course part of what we can support? And then we will then request – do what we call due diligence. Request to check if it is legitimate – do they have a bank account and all that and they will send those documents so that you see that here you are dealing with a company that is existing and that is legitimate and what they want it is – it makes sense and it will help Transnet because if it is a sponsorship it is different from if it is a

10 donation. If it is a donation we will put that money – there is not much attachment is that we believe in whatever objective you want to do you can go ahead, here is our support. But if it is a sponsorship we will want benefits. What is it that is in for Transnet? And then we will assess if these benefits are in line with what we want and what is it that we want to achieve with that particular sponsorship? So after that a memorandum then will be generated to – to the GM who was the one who will approve depending on the amount. If it is within his DOA it will be approved then and there and then we will execute and see to it that this – whatever that has been promised in the proposal or in the

20 memorandum we get as Transnet. And – but if it is beyond the – his DOA he will push that it goes to the next person who has a DOA. More often because the budget of the sponsorship...

CHAIRPERSON: The DOA being Delegation of Authority.

MR PHATLANE: Oh sorry Chairperson. Yes Chairperson it refers to Delegation of Authority. Sorry.

CHAIRPERSON: Okay alright. Yes continue.

MR PHATLANE: Yes. Then it gets approved. Once it is approved we will prepare a contract now so that the party that has requested this sponsorship will then sign off to say, this is what you are going to give Transnet and this is what Transnet is going to do. Then the processes of payment will follow.

ADV KATE HOFMEYR: Thank you Mr Phatlane. I would like to take you to the relevant Delegations of Authority that operated over the period of time that we are interested in in Transnet. Because there is
10 an important respect in which the Delegation of Authority changed at a point in time and I am going to link that back to the evidence as we go through it. So if we can just start with the 2011 Delegation of Authority and you will find that in your bundle Exhibit MM4 at page 113.

CHAIRPERSON: Maybe while we doing that I wanted earlier on to ask you to give me a few of Transnet's stakeholders that you are talking about when you talk about sponsorships at that time when you joined?

MR PHATLANE: When I joined for – already Transnet was sponsoring National Arts Festival. We – we will go during that festival and brand. There was a – there is an area called – it is a stadium like where you
20 will have this – the activity is happening there. We own the naming rights there. It was called a Transnet Village – Transnet Green Village.

CHAIRPERSON: Hm.

MR PHATLANE: So we will brand around there. We will have – we had a kiosk where we will give people the – whatever that – the branded materials that we have. Whether it is bags, whether it is whatever so

that as they buy around there these small items they will be walking – they will be moving around with a Transnet branded so you kind of put your company's brand out there so that people can remember that while there is Standard Bank also being a sponsor on this side but we – we were also on this side so that we kind of competing for the same space. Because the same environment they have got more places that they are sponsoring but we have got only the Village which we need to make sure that people do not remember Standard Bank but remember Transnet. So it is one of those. Then we will invite our stakeholders.

- 10 We will decide to say, since we have got a presence there this year who can we take around there to go and see the activation of – of a brand in a particular – or when you are supporting a particular cause. So we will take either our Board members to say okay this year let us take about five or six of our Board members that they be there and feel the experience. Or we could take customers and identify which customers do we think they need to be there and see – see the experience – or experience Transnet being there and the brand being out there. So it depended – it depended on the kind of the activity or cause that we were supporting. You will have Nedbank. Nedbank will
- 20 take our customers there the Nedbank Golf Challenge. We will take our customers there so that there is this interaction between certain senior managers or certain managers of Transnet with certain customers so that they can be – discuss critical issues that need to be – to – where they need to align or where they need to unlock challenges. So it will work kind of like that.

CHAIRPERSON: Well I can understand completely in the case of Standard Bank or Nedbank and so on them getting involved like that to promote themselves because they may be wanting that the people come to that event. They think about Standard Bank and Nedbank and maybe they could open an account with them and so on. I am not sure that I can understand why Transnet would do anything like that for any purpose other than if it is a donation, helping somebody' cause that is considered to be a worthy cause. But I am not sure that I understand all of that and I may be missing something and I would like you to
10 assist me.

MR PHATLANE: Chairperson the response – one responsibility of communication is to build the brand I think which was not necessarily directly linked to what I was doing but they kind of interlink. You building the brand. You want people to associate with the brand. While you are doing that branding exercise there are other benefits that comes with that sponsorship which ...

CHAIRPERSON: Such as?

MR PHATLANE: Such as you get a platform. Let me give you an example of – of Nedbank.

20 **CHAIRPERSON:** Nedbank I will understand.

MR PHATLANE: You will understand.

CHAIRPERSON: Ja it is Transnet and that ...

MR PHATLANE: Yes.

CHAIRPERSON: And Eskom that – I think I am struggling about.

MR PHATLANE: Let me say...

CHAIRPERSON: But let us talk about Transnet because that is where you coming from.

MR PHATLANE: Ja I am look – I just want to – Chair to clarify the linkage.

CHAIRPERSON: Oh okay.

MR PHATLANE: The linkage.

CHAIRPERSON: Alright.

MR PHATLANE: The linkage with a particular brand.

CHAIRPERSON: Start with – start with Nedbank or Standard Bank and
10 then we can take it from there.

MR PHATLANE: Yes.

CHAIRPERSON: That is okay.

MR PHATLANE: Nedbank will create a platform to say, here is a brand that everyone will come here. Now different companies, different brands will say, this is an opportunity for us to be – if we position ourselves in this because there is this kind of people that comes here who are associated to our brand. Now if we buy for instance a marque and be part of that it will – it will help us to be able to get those critical stakeholders because we will then invite them into our marque so that
20 there is discussions. If the brand is bigger it is Nedbank Golf Challenge but we also have still some small brands in there that are trying to utilise or to exploit the bigger opportunity. So – also with National Arts Festival. It will open up to companies to say, here is an opportunity we are giving you so many people coming to this place who is entrusted to be able to tap into these people coming there. Then as

an organisation like Transnet will sit down and say, look some of our customers they go there. Some of our – let me say stakeholders they go there. Why do we not increase our presence because we want to be associated with certain brands or with certain platforms that are being created from stakeholder point of view and also from brand activation? So we will choose those platforms or those events that we think they will – that we think they will add value to the organisation.

CHAIRPERSON: Ja you see when you talk about a private – well I say private company maybe even if it is not a private company if it is a
10 company that maybe needs to have customers, needs to have clients to make business to make profits or to sell something for me that branding idea fits in very nicely. I can understand it. So when it comes to Transnet I am saying to myself, so what is the actual tangible benefit for the money they would be spending on those kinds of events?

MR PHATLANE: I agree Chairperson to say Transnet deals with business to business you know it is not business to consumer.

CHAIRPERSON: Hm.

MR PHATLANE: Which you will find that those that are – they deal with consumers they will put money.

20 **CHAIRPERSON:** Hm.

MR PHATLANE: We – that is why we – during that time Transnet was not you know putting a lot of money in terms of branding. We will use those platforms because if you look at the spending then it was not as steep as those companies you are talking about that were paying. We were not for instance we were doing above the line advertising. We

were relying on below the line advertising which is this...e were relying on below the line advertising which is this...

CHAIRPERSON: What kind amount for example? I know Ms Hofmeyr I am taking you off.

ADV KATE HOFMEYR: No not at all Chair.

CHAIRPERSON: But I want to understand this.

MR PHATLANE: Chairperson I might not be a guru on advertising but I know that if we were to calculate for instance the amount that you put for billboards and TV it is way above R100 000.00 on a campaign so we
10 are not – we are not doing those. And when I joined Transnet I found that they were not doing those kind of campaigns. They were doing what we call PR. This small way you see an event and you – you partner with them and then try to get value out of that instead of going on TV and on billboards because it is expensive.

CHAIRPERSON: Well you see if we were do advertising for the commission – advertising I am putting it in quotes the purpose would be to make sure that we attract people who can come to the commission and give a lot of important information for purposes of our investigation. With – with Transnet that exposure that it was seeking
20 was going to help it get what?

MR PHATLANE: Chairperson it is multi-fold.

CHAIRPERSON: Hm.

MR PHATLANE: Remember Transnet as big as it is it has still to – has a responsibility to recruit the right people. Now the right minds, the right talent they – they want to go to organisations that they think are

top. Transnet also deals with communities where we need to support communities in terms of our citizenship responsibilities. Now you have got a responsibility also the build the brand that it is known so that the people that you also serving it is not only serving customers it has a responsibility within the communities. Now our responsibilities to build that brand to be seen as a brand either that is vibrant. A brand that is current. A brand that is topical. It is part of communications role also to do that. While I do understand that we might not be like companies that deal with customers, direct business to consumers directly. Our
10 approach would be different.

CHAIRPERSON: Okay alright.

ADV KATE HOFMEYR: Thank you Chair.

CHAIRPERSON: Thank you.

ADV KATE HOFMEYR: Chair we will actually in the course of Mr Mkhwanazi's evidence we will look at the actual budgets.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: Of marketing etcetera.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: But I just put a pin in that for the moment.

20 **CHAIRPERSON:** No that is fine.

ADV KATE HOFMEYR: When he returns we will be looking at that.

CHAIRPERSON: That is fine.

ADV KATE HOFMEYR: If we can then go to the first Delegation of Authority relevant for the time and that you will find at page 113 of Exhibit MM4 Mr Phatlane.

CHAIRPERSON: What page again?

ADV KATE HOFMEYR: 113 Chair.

CHAIRPERSON: 113.

ADV KATE HOFMEYR: And we were talking about the sponsorship provisions in the Delegation of Authority. You will just note at the bottom of page 113 what is the effective date of this Transnet Group Limits of Authority document?

MR PHATLANE: Oh 1 June 2011.

ADV KATE HOFMEYR: If you will just put on the – and Mr Phatlane
10 feel free to leave it on. It does not affect our microphones if you just keep yours on.

MR PHATLANE: Thank you.

ADV KATE HOFMEYR: So just for the record again what is the effective date of this Delegation of Authority document?

MR PHATLANE: Is the 1 June 2011.

ADV KATE HOFMEYR: And then I would like to take you to the provision governing sponsorships. That you will find at page 138. 138. You will see the top table on that page appears against the number 5.8.5 and that is headed Sponsorships and Donations, do you see that?

20 **MR PHATLANE:** Yes Chairperson.

ADV KATE HOFMEYR: What I am interested in is what was the Delegation of Authority to the GCE, the Group Chief Executive at the stage of the 2011 Delegation of Authority?

MR PHATLANE: It was up to nought exceeding R30 million.

ADV KATE HOFMEYR: Thank you. We are going to return to that and

where it is relevant I will remind you of these delegations. But we have got in 2011 at least from the 1 June 2011 we have got the Group Chief Executive having authority over sponsorships and donations up to but not exceeding R30 million, right? I am going to take you to the 2012 Delegation of Authority next so that we can see how that position changed under the 2012 delegation and you will find that commencing at page 141 – 141. When was this Delegation of Authority framework effective from?

MR PHATLANE: It says effective from 1 May 2012.

- 10 **ADV KATE HOFMEYR:** So how do we understand the two in relation to each other? When did the previous Delegation of Authority cease to operate?

MR PHATLANE: It says it – or it means it will have ceased at – on the 30 April 2012.

- ADV KATE HOFMEYR:** Thank you. So from the 1 May 2012 this is what operates and I will take you to the sponsorship provision. You will find that at page 167. And again there Mr Phatlane if you go to number 5.8.5 you will see a heading Sponsorships and Donations. What does it now provide in relation to the Group Chief Executives extent of
20 authority?

MR PHATLANE: It says he can sign sponsorship and donation up to but not exceeding R10 million.

ADV KATE HOFMEYR: And if it is above R10 million who decides on that?

CHAIRPERSON: I am sorry I think I am looking at a wrong...

ADV KATE HOFMEYR: Apologies.

CHAIRPERSON: I am looking at 5.8.1.

ADV KATE HOFMEYR: Apologies 5.8.5 Chair.

CHAIRPERSON: Oh.

ADV KATE HOFMEYR: Just further down on the page. You will see a heading Sponsorship and Donations there. Do you have that?

CHAIRPERSON: Okay. Okay.

ADV KATE HOFMEYR: Against 5.8.5 and then...

CHAIRPERSON: Yes I have got it.

10 **ADV KATE HOFMEYR:** And then if you track it across excellent.

CHAIRPERSON: Yes okay.

ADV KATE HOFMEYR: So Mr...

CHAIRPERSON: Up to R10 million?

ADV KATE HOFMEYR: Up to R10 million indeed.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: And I was asking Mr Phatlane if it exceeded R10 million who then would have authority?

MR PHATLANE: It will be what do you call the Ramsack. It is a Board Committee.

20 **ADV KATE HOFMEYR:** And the – at that time?

MR PHATLANE: If it exceed R20 million it will be the Board itself that needs to ratify.

ADV KATE HOFMEYR: So it would go up to R10 million to the Group Chief Executive. Correct me if my understanding is accurate. Between R10 million and R20 million it would be the Social and Ethics

Committee is that correct?

MR PHATLANE: It is correct Chairperson.

ADV KATE HOFMEYR: And above 20 million it would have to go to the Board?

MR PHATLANE: It is correct Chairperson.

ADV KATE HOFMEYR: Thank you. We have included the 2013 Delegation of Authority in the bundle as well, but it is not necessary to go there, because that position they had obtained in 2012 carries through into 2013, but Mr Phatlane what I am interested in is as we
10 have looked at these documents until 30 April 2012 the Group Chief Executive had authority up to 30 million. Is that correct?

MR PHATLANE: Yes. It is correct Chairperson.

ADV KATE HOFMEYR: Oh. The other point we should just make interestingly. If you go under the table at page 5.8.5. Can you tell me - read into the record what is written at the bottom of that table? You were at page 1-6-7. So at page 1-6-7 you will see the heading against 5.8.5 "Sponsorships and Donations".

There is a table and then there is some language and words beneath the table. Can you please read what that says into the record?

20 **MR PHATLANE:** "Approval limits are accumulative per annum. E.g. the OD - Operating Division - CE can approve a total amount of five million per annum for sponsorships and donations."

ADV KATE HOFMEYR: So what does that mean? Is it over the course of a year they can only approve up to five million?

MR PHATLANE: Well - well my - my understanding - I am - I am not an expert on this. Yes.

ADV KATE HOFMEYR: Sure.

MR PHATLANE: My understanding is that at per - a transaction it must be - it must be this - this amount and the whole amount for a particular ...

ADV KATE HOFMEYR: Year.

MR PHATLANE: Must be - must not exceed the five million.

ADV KATE HOFMEYR: Right.

10 **MR PHATLANE**: So he can sign one for a million.

ADV KATE HOFMEYR: Hm.

MR PHATLANE: One for two million, three for - you know - but the total must - must be not above the five million that is here.

ADV KATE HOFMEYR: Right or the - or the 10 million if we dealing with the ...

MR PHATLANE: Oh. Yes.

ADV KATE HOFMEYR: Group Chief Executive. Is that right?

MR PHATLANE: Yes Chairperson.

20 **CHAIRPERSON**: Well I do - I do not think that what you read means that, because if it - if it meant that there would be no need for the inclusion of the word "cumulative" in that sentence. I - I want you to think about - about that and may - and tell me whether you think it means the way you read it would - would still hold.

MR PHATLANE: That is why Chair - Chairperson I am saying because I was not necessarily responsible for this document I - I might not be

very accustomed ...

CHAIRPERSON: I accept ...

MR PHATLANE: Yes.

CHAIRPERSON: No, no. I accept that. I am - I am just - I am just testing your understanding of it. I accept that you did not write it. It seems to me that what it means is that in a year if your Delegation of Authority is five million the sponsorships that you approve over - over a year should not exceed in this case mentioned after the column five million - five million.

10 So you might approve two million in January. Another two million in June and you - but you must not then in November approve four million.

MR PHATLANE: I think we are in agreement Chairperson. Maybe I did not clarify myself very well. That is - that is what I was saying. My understanding ...

CHAIRPERSON: Oh. Is that what you are saying?

MR PHATLANE: That is what my understanding was.

CHAIRPERSON: Oh. No, no.

MR PHATLANE: To say the five million will be the curb.

20 **CHAIRPERSON:** Then I - then I misunderstood you. I thought you were saying per transaction.

MR PHATLANE: No, no. I was saying you will have 10 transactions

CHAIRPERSON: Oh 10 transaction.

MR PHATLANE: But all of them when you put them together they must give you this ...

CHAIRPERSON: Okay.

MR PHATLANE: This number ...

CHAIRPERSON: Okay. Okay.

MR PHATLANE: Or less.

CHAIRPERSON: No, no I think when you said 10 transactions ...

ADV KATE HOFMEYR: Hm.

CHAIRPERSON: I thought you said per transaction.

ADV KATE HOFMEYR: Each.

CHAIRPERSON: Okay. Alright.

- 10 **ADV KATE HOFMEYR:** Thank you for that clarification Mr Phatlane. So I was just summarising the position then and correct me if my understanding is deficient in any respect. The 2011 Delegation of Authority operated until 30 April 2012. Is that correct?

MR PHATLANE: That - that is my understanding Chairperson.

ADV KATE HOFMEYR: And sponsorships at that time gave a Delegation of Authority to the Group Chief Executive up to but not exceeding 30 million and that was cumulative over the course of a year. Is that correct?

MR PHATLANE: That is my understanding. Yes Chairperson.

- 20 **ADV KATE HOFMEYR:** And then from 2012 - from 1 May 2012 - that changed because the Group Chief Executive could only approve up to but not exceeding 10 million in the given year. Is that correct?

MR PHATLANE: Is correct. Ja Chairperson.

ADV KATE HOFMEYR: And if it went above that there were two successive entities it would go to. First it would be the Social and

Ethics Committee up to 20 million and after that any amount above 20 million would go to the Board. Is that right?

MR PHATLANE: It - it is correct. (Indistinct).

ADV KATE HOFMEYR: Thank you. That is going to be an important backdrop to when we go through the contracts as they develop over time and that is what I would like to take you to if I may. If we then go back to your statement Mr Phatlane. You can pick it up at page 1 of EXHIBIT MM4. Right.

10 There at paragraph - well the numbered paragraph 2 you talk about the initial stage of The New Age Breakfasts. Can you tell us how The New Age Breakfasts came to your attention at all at Transnet originally?

MR PHATLANE: In 2011 - I think I had joined - when - when this issue of TNA Breakfasts coming. Before I had done these - these small sponsorships and donations which were 100 000, 50 000 - you know - and they get approved. So the issue of DA was not much of an issue, because the GM had DOA as I was informed.

20 Then there was a gentleman Jacques. I think Mr Joseph spoke about him, but I forgot his surname. Jacques - Jacques ... (intervenes).

ADV KATE HOFMEYR: Would it be Roux? Jacques Roux.

MR PHATLANE: Yes. Jacques Le Roux ...

CHAIRPERSON: Ja.

MR PHATLANE: Or Roux. Yes.

CHAIRPERSON: Ja.

MR PHATLANE: He came - he came around our offices to see our GM. He has been coming for a number of days. We - we did not know what they were - what was the discussions about, but he was frequenting - let us say - our offices. Then later it appeared that there was an issue around a newspaper.

I - I am not sure whether it had started, but I remember it - it was around the - The New Age thing had started. So ...

CHYAIRPERSON: Your GM at that time was Sigonyela?

MR PHATLANE: Yes. It was Mr Sigonyela.

10 **CHAIRPERSON**: Yes Mr Sigonyela.

MR PHATLANE: Yes.

CHAIRPERSON: Okay.

MR PHATLANE: Around September - I think - around September the first propose - the first request actually - the first one was not even - it - it was a - a proposal from TNA that says we need to sponsor a - a breakfast. A TNA Breakfast.

ADV KATE HOFMEYR: Mr Phatlane, if I could take you to it. Just while you explaining in your evidence. You will find it at page 15 - 1-5 of MM4.

20 **MR PHATLANE**: These breakfasts they started as just *ad hoc*. One - one or - or two breakfasts. It is like you supporting any other breakfast that would be there, but this one was TNA where we - we were billed 735 000 for that session ... (intervenes).

ADV KATE HOFMEYR: Was that - was that a single ...

MR PHATLANE: That was ...

ADV KATE HOFMEYR: Business breakfast that they were making a proposal for?

MR PHATLANE: They - they were making a proposal for - for two.

ADV KATE HOFMEYR: Right. Each in the amount of R735 700,00. Is that correct?

MR PHATLANE: Yes Chairperson.

ADV KATE HOFMEYR: Can we just look at this page for a moment? What is the heading of - well first of all who - who addresses this letter and to whom is it addressed?

10 **MR PHATLANE:** It is Jacques Roux requesting Mr Mboniso Sigonyela.

CHAIRPERSON: Hm.

ADV KATE HOFMEYR: And what is the heading of the proposal?

MR PHATLANE: It is a proposal for sponsorship opportunity in - in The New Age Business briefing.

ADV KATE HOFMEYR: And if you will just read what is said in the proposal after Dear Mr Sigonyela.

MR PHATLANE: It says:

20 “We thank you for the ongoing commitment to this engagement and take pleasure in confirming our offer for an exciting sponsorship opportunity to our extremely popular business briefing for December and January as appended below.”

ADV KATE HOFMEYR: Thank you and then what appears below?

MR PHATLANE: Below it is - it is a - it is a proposal of how much it is worth if you participate in this.

ADV KATE HOFMEYR: And then if you go over the page to page 16 what then happened after Transnet received that proposal from TNA?

MR PHATLANE: What - what happens is we started now - I was - I was instructed that I need to put together a - a memorandum suggesting that we - we need to participate here in - in this breakfast.

ADV KATE HOFMEYR: I would then like to look at some of what is stated in this memorandum.

CHAIRPERSON: I am - I am - I think Ms Hofmeyr.

ADV KATE HOFMEYR: Yes.

10 **CHAIRPERSON:** Maybe let us - let us read that ...

ADV KATE HOFMEYR: Hm.

CHAIRPERSON: Proposal into the record ...

ADV KATE HOFMEYR: Indeed.

CHAIRPERSON: Because I think it - it is important.

ADV KATE HOFMEYR: Of course.

CHAIRPERSON: That was the first document or proposal.

ADV KATE HOFMEYR: Indeed.

CHAIRPERSON: Yes.

20 **ADV KATE HOFMEYR:** Chair, we have had Mr Phatlane read that first paragraph ...

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: Under the introduction.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: Should I summarise what is then contained in the table?

CHAIRPERSON: You can - you can summarise.

ADV KATE HOFMEYR: Indeed.

CHAIRPERSON: You can summarise.

ADV KATE HOFMEYR: So ...

CHAIRPERSON: I just wanted the person who is reading the transcript ...

ADV KATE HOFMEYR: Of course.

CHAIRPERSON: To get ...

ADV KATE HOFMEYR: Indeed.

10 **CHAIRPERSON:** The main features without going to the ...

ADV KATE HOFMEYR: Document.

CHAIRPERSON: Actual page.

ADV KATE HOFMEYR: Hm. Indeed Chair.

CHAIRPERSON: Hm.

ADV KATE HOFMEYR: So below what Mr Phatlane read into the record is as table. He did The New Age Business Briefing. It has a proposal date of 12 September 2011 and it indicates that the period is December and January and there is in small type a proposal overview.

20 “High profile business breakfast with suitably
 profiled guest speaker to promote readership of The
 New Age amongst business elite and create an
 excellent co-branding opportunity.”

 And then there are certain columns which detail items such
as the venue which is identified as a Ballroom at the Sandton
Convention Centre. It estimates the number of guests which is 500.

The guest - the suggested speaker under the column of December is Minister Malusi Gigaba and under the column for January there is a TBA which I take to mean To Be Announced and then you get venue hire costs set out.

Advertising coverage. It says 10 times 30 by six adverts. There is something under advertising costs of R538 200,00. Catering costs of R147 500,00 and then a total of the R735,700,00 and then it goes on to read:

10 “TNA Media is committed to ensuring the highest possible profile of speakers will be secured for these exclusive events and similarly the guest lists will be careful constructed to ensure the optimal target audience for both or organisations. We thank you once again for the opportunity of submitting this proposal and look forward to being of service at all times.”

And then it is signed off by Jacques Roux.

CHAIRPERSON: Thank you. Thank you.

ADV KATE HOFMEYR: Indeed. So ...

20 **CHAIRPERSON:** Yes.

ADV KATE HOFMEYR: So Mr Phatlane that is or that is dated 12 September 2011 and then we move over to page 16.

CHAIRPERSON: May - maybe Ms ...

ADV KATE HOFMEYR: Hm.

CHAIRPERSON: Hofmeyr. I note that in the heading this proposal

says The New Age Business Briefing.

ADV KATE HOFMEYR: Hm.

CHAIRPERSON: Not Breakfast.

ADV KATE HOFMEYR: Indeed.

CHAIRPERSON: So there may or may not be significance in that. So you ...

ADV KATE HOFMEYR: What was your understanding? Was there a difference between the business briefing and the business briefing breakfasts or the business breakfasts or are those all the same thing?

10 **MR PHATLANE:** Chair, Chairperson the - the - they will - they change the names. I remember sometimes it will write it will be briefing, but it - it was the same - same event.

CHAIRPERSON: But they sometimes said breakfast without briefing. Sometimes they said briefing without breakfast. Sometimes they said briefing breakfast.

MR PHATLANE: No. I think from Transnet when - when we were writing we will refer to them as - as breakfast.

CHAIRPERSON: Yes.

MR PHATLANE: Instead of - of briefing.

20 **CHAIRPERSON:** But do you recall what they - what TNA called them most of the time?

CHAIRPERSON:

MR PHATLANE: No. It was the same. It was briefing.

CHAIRPERSON: Briefing all the time?

MR PHATLANE: All the time.

CHAIRPERSON: Oh.

MR PHATLANE: That is why I say I remember Chairperson.

CHAIRPERSON: There was no reference to breakfast?

ADV KATE HOFMEYR: Well ...

MR PHATLANE: I cannot - I cannot - I do not want to ... (intervenes).

CHAIRPERSON: I may be confusing ... (intervenes).

ADV KATE HOFMEYR: No. Not at all, but if I may just be of assistance ...

CHAIRPERSON: Hm.

10 **ADV KATE HOFMEYR:** Because it is of course asking Mr Phatlane to go back ...

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: In some time. If we go for example to page 30 which was a later proposal.

CHAIRPERSON: 3-0?

ADV KATE HOFMEYR: 3-0 Chair.

MR PHATLANE: Hm.

CHAIRPERSON: Yes.

MR PHATLANE: Oh.

20 **ADV KATE HOFMEYR:** You will see there the heading of that proposal ...

CHAIRPERSON: Ja.

ADV KATE HOFMEYR: Is The New Age Business Breakfast ...

CHAIRPERSON: New Age Business Breakfast.

ADV KATE HOFMEYR: Sponsorship.

CHAIRPERSON: Yes. Yes.

ADV KATE HOFMEYR: So it does seem certainly as we have seen ...

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: These proposals.

CHAIRPERSON: Yes. Okay. No. That is fine.

ADV KATE HOFMEYR: The terms are moved interchangeably.

CHAIRPERSON: *Ja*. Okay.

ADV KATE HOFMEYR: Mr Phatlane, if we can then return to page 16, because this is the memorandum that you indicated in your evidence a
10 moment ago. You were then required or - or asked to prepare. Who asked you to prepare it?

MR PHATLANE: Mr Mboniso Sigonyela instructed that I - I prepare a memorandum ...

ADV KATE HOFMEYR: Hm.

MR PHATLANE: For participation in - in these sections.

ADV KATE HOFMEYR: And what due diligence did you do before preparing it, because you explained to us earlier the usual process was. You receive an input from a sponsor - a proposed sponsorship and then you do a due diligence to assess whether it makes sense for
20 Transnet to engage with this proposed sponsor. What due diligence did you?

MR PHATLANE: Let me say Chairperson. When it started because is where new activities that - that one did not get into before. The magnitude of the amounts and all that. What one will do is to go - we will go to the GM. He will give you ideas as to what you need to plug in

and then what you ...

CHAIRPERSON: In - in the memorandum or what?

MR PHATLANE: In the memorandum.

CHAIRPERSON: Ja.

MR PHATLANE: To say look at this, because ...

CHAIRPERSON: Ja.

MR PHATLANE: Because this - this if you read it. It also talks about branding and which - which branding was not my - my forte.

CHAIRPERSON: Hm.

- 10 **MR PHATLANE:** You know. It - it was other colleagues' responsibility. So it - it will talk about media which not also my forte. So you - you now and then will need guidance from also colleagues' with - within the department, because this was an all-encompassing. It was not just one - a - an only stakeholder activity - position for - for - it was not a platform for stakeholder engagement only. It had other elements.

- So you - you move around. Getting colleagues to - to assist, but the process that we will do which came later. Initially here it will be just take the sponsorship. Interpret it. Look at - at what Transnet can benefit from that, because sometimes they - they will write to say what
20 is it that we will get in there and put those elements to say this is what we are going to get from there and go to the Managers to advise in terms - in terms of the amount, because this like I said it was big.

I - I had not done this before. Whatever that we had were small amounts. So then the GM will advise us to whether it is correct or you will take - you will take it back and - and correct to check

whether the - the due processes which is just to check if the company is - is there. If there is a proposal and - and all that. That you will do and then it goes to him for ratification.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: So Mr Phatlane, if we go to paragraph 2 on page 16. You record there that:

“The New Age publication is one of the key publications that Transnet targets for positioning of its brand and to improve its image.

10 Where does that come from?

MR PHATLANE: Well this is what we instructed to write about, because he will question to say, but I - I look at this from sponsorship point of view. Where it is not - it is not - to me I am not looking at media site. The media site has somebody. Now if it is a sponsorship that we talk about the publication. How do we deal with that?

Then we are told to - to add - add this, because as - as you write you take it to him. He changes - he will take ...

CHAIRPERSON: That is now your ...

MR PHATLANE: The G - the G ...

20 **CHAIRPERSON:** The General ...

MR PHATLANE: Yes.

CHAIRPERSON: Mr Sigonyela.

MR PHATLANE: Mr Sigonyela, yes.

CHAIRPERSON: Well ...

MR PHATLANE: So ...

CHAIRPERSON: Huh-uh.

MR PHATLANE: It will - it will come to him to say he is not happy what - with what you have written.

CHAIRPERSON: Hm.

MR PHATLANE: You know.

CHAIRPERSON: Well - well maybe before Ms Hofmeyr follows up. When you got this pro - when you saw this proposal for the first time. Was it when it was sent to you or given to you by Mr Sigonyela?

MR PHATLANE: Yes Chairperson. He - he will call you into his office.

10 **CHAIRPERSON:** Yes.

MR PHATLANE: Yes and - and then ...

CHAIRPERSON: Yes.

MR PHATLANE: Talk about - show you this, but start talking about it. This ...

CHAIRPERSON: Yes.

MR PHATLANE: This is a new publication.

CHAIRPERSON: Oh. Okay. Okay.

MR PHATLANE: All of that.

CHAIRPERSON: Okay.

20 **MR PHATLANE:** Yes.

CHAIRPERSON: Yes Ms Hofmeyr.

ADV KATE HOFMEYR: Thank you Chair. So is your evidence that you were guided by him in including the content of paragraph 2 there?

MR PHATLANE: Yes Chairperson.

ADV KATE HOFMEYR: And then it goes on to talk about the two

breakfasts. It seems ...

CHAIRPERSON: May - maybe let us just make sure it is clear.

ADV KATE HOFMEYR: Hm.

CHAIRPERSON: So are you saying Mr Phatlane as far as paragraph 2 is concerned you cannot vouch for what is said there? It was not coming from you to say:

“The New Age is one of the key publications that
Transnet targets for positioning of its brand and to
improve its image.”

10 **MR PHATLANE:** Chairperson, during - during our era you will write it the way you - you write other small sponsorship proposals, but this one you will be guided - you will write.

CHAIRPERSON: Hm.

ADV KATE HOFMEYR:

MR PHATLANE: Then there will be - there will be correction, correction, correction, correction. It is as if you have not - you have not done anything and it will go to an extent where sometimes it becomes personal. Where you - you will find your memorandum. You will have to pick it up down there.

20 It is - it is - it look like either you are not following what I am saying or you do not.

CHAIRPERSON: Ja.

MR PHATLANE: So- so that - that was the - the era in which we were in. So ...

CHAIRPERSON: Yes.

MR PHATLANE: So you then end up taking whatever. Oh. There is correction as they are. You put them.

CHAIRPERSON: *Ja.*

MR PHATLANE: You take it back.

CHAIRPERSON: Yes.

MR PHATLANE: It is - it gets taken to the next level.

CHAIRPERSON: Can I take that answer to be ...

MR PHATLANE: Yes sir.

CHAIRPERSON: To the effect that it is a yes.

10 **MR PHATLANE:** Yes Chairperson.

CHAIRPERSON: *Ja.* You - you were writing what you were told to write.

MR PHATLANE: Yes.

CHAIRPERSON: As far as - at least paragraph 2.

MR PHATLANE: What has been reviewed Chair.

CHAIRPERSON: *Ja.*

MR PHATLANE: *Ja.* It will not necessarily be said directly. He will write there what - the way he wants it.

CHAIRPERSON: Yes. Yes.

20 **MR PHATLANE:** On the memorandum.

CHAIRPERSON: Yes. Okay. Alright.

ADV KATE HOFMEYR: Thank you and then over the page at page 17 there is an indication of the financial implications. What was going to be the total cost of this initiative if it was supported as a sponsorship?

MR PHATLANE: It was going to be worth 1.471 million. It is

1 471 000.

ADV KATE HOFMEYR: Yes and then what happened with that? Was it approved?

MR PHATLANE: Well during this - this time it was not approved. Mr Maboma by then. He was acting. He as a legal - a legal - he was a Legal Service Group Executive if I am not - but he was - he was ...

CHAIRPERSON: Was in the Legal Department?

MR PHATLANE: In - in the Legal Department at a higher position.

CHAIRPERSON: Hm.

10 **MR PHATLANE:** So he - he was Acting on behalf of Ms Zola - I have forgotten the surname, but Ms Zola were reporting - she was reporting to him directly.

CHAIRPERSON: Oh. I think it is the one I saw earlier.

ADV KATE HOFMEYR: Yes. Indeed.

CHAIRPERSON: Okay.

MR PHATLANE: Yes. So it was not - it was not approved. Mr Maboma did not agree with - with this sponsorship.

CHAIRPERSON: Oh. That is why he did not sign?

MR PHATLANE: Yes. He did - he did indicate that he will not sign.

20 **CHAIRPERSON:** Did he - Ms Hofmeyr.

ADV KATE HOFMEYR: Hm.

CHAIRPERSON: I - I was going to ask a question and I remembered ...

ADV KATE HOFMEYR: Yes.

CHAIRPERSON: That I must leave it to you.

ADV KATE HOFMEYR: No.

CHAIRPERSON: Maybe you were still going to ask him.

ADV KATE HOFMEYR: Not at all. Chair please and I will follow up afterwards if it is necessary.

CHAIRPERSON: Did he indicate why he - he was not prepared to approve this sponsorship?

MR PHATLANE: Well - well because I am not the one who will definitely - will take it to him. Normally it is the process. It will ...

CHAIRPERSON: Yes.

MR PHATLANE: Once - once I have done my job it will ...

10 **CHAIRPERSON:** *Ja*.

MR PHATLANE: In the office of the - of the GM.

CHAIRPERSON: Yes.

MR PHATLANE: And then the - the assistant in the ...

CHAIRPERSON: *Ja*.

MR PHATLANE: GM will - will take it there, but when it comes back definitely I will know this ...

CHAIRPERSON: *Ja*.

MR PHATLANE: It is not signed, because we need to ...

CHAIRPERSON: Yes.

20 **MR PHATLANE:** to take to - to the next level of ...

CHAIRPERSON: Yes.

MR PHATLANE: Having a contract and all that.

CHAIRPERSON: Yes.

MR PHATLANE: Yes.

CHAIRPERSON: But you - so you - you do not know what reasons ...

MR PHATLANE: I ...

CHAIRPERSON: He had? He might have articulated?

MR PHATLANE: Well by that I was still new.

CHAIRPERSON: In this case.

MR PHATLANE: I did not - I did not have a closer relationship to say even I could ask on the side. I - I cannot remember what was ...

CHAIRPERSON: *Ja.*

MR PHATLANE: His decision with Mr - with ...

CHAIRPERSON: *Ja.* No. What I am thinking is you escalate this to
10 the next person and you signed and then your General Manager
Mr Sigonyela signed. I thought maybe when it comes back and you are
told it was not approved. Maybe you might have been told why
Mr Maboma did not sign.

MR PHATLANE: No. What I was told was just leave it.

CHAIRPERSON: Oh.

MR PHATLANE: *Ja.* It was like we are parking it for now, because ...

CHAIRPERSON: Okay.

MR PHATLANE: We parked it on the side, but it is ...

CHAIRPERSON: Oh.

20 **MR PHATLANE:** We started the process again.

CHAIRPERSON: Okay. Alright.

ADV KATE HOFMEYR: Well if we go over to page 18. We will get the
next memorandum related to the proposed sponsorship of the New Age
Business Briefing sessions. It seems that we are back to the language
of business briefing there. What was ...?

CHAIRPERSON: May - maybe - maybe. I am sorry Ms ...

ADV KATE HOFMEYR: Hm.

CHAIRPERSON: Hofmeyr. Maybe you can assist me here Mr Phatlane. As - as the proposal - as you signed the proposal this one that we are talking about. Were you in support of Transnet's sponsoring these briefings or breakfasts?

MR PHATLANE: Initially Chair ...

CHAIRPERSON: This particular one.

MR PHATLANE: Initially Chair when they came - remember they are
10 new.

CHAIRPERSON: Ja.

MR PHATLANE: We have been hearing about New Age there. New Age what, what. There are breakfasts that - now - now when it comes remember that you do not have the contents. So there - there has to be discussions between myself and - and also the other Managers. There were - there were - there was also a - a level of other Managers.

You need to find out now how do you go - go about and if - if we are told the - the history of Transnet to say we have never been or TV whatever. We - we do not go above the line. This is an opportunity
20 - this is an opportunity for Transnet to be on TV and - and you - you buy into that narrative.

CHAIRPERSON: Hm. Hm.

MR PHATLANE: It says - it says this amount.

CHAIRPERSON: Hm.

MR PHATLANE: Now you - now the brand is going to get this

exposure.

CHAIRPERSON: Hm.

MR PHATLANE: More so you will - I am looking at it from this - from the stakeholder point of view to say I will - I will be able to have a - an opportunity to invite key stakeholders to - to be part of that. To go and - and either drive the - the thought leadership or listen to ...

CHAIRPERSON: Hm.

MR PHATLANE: Thought leadership.

CHAIRPERSON: Hm.

10 **MR PHATLANE:** You know. So I - when it started ...

CHAIRPERSON: You were in support?

MR PHATLANE: I - I support it. I support it.

CHAIRPERSON: Yes.

MR PHATLANE: I do not want to really lie. Yes.

CHAIRPERSON: And - and what you thought was the value for Transnet was the exposure on TV?

MR PHATLANE: Yes. The - the mileage of the brand.

CHAIRPERSON: Yes.

MR PHATLANE: Yes.

20 **CHAIRPERSON:** *Ja.*

MR PHATLANE: I also looked at - at that ...

CHAIRPERSON: Yes.

MR PHATLANE: And also this platform that is being created for us to be able to invite ...

CHAIRPERSON: Hm.

MR PHATLANE: Our stakeholder - our stakeholders and we will choice which ones for - for the benefits that we are getting off the two tables ...

CHAIRPERSON: Hm.

MR PHATLANE: And also the opportunity that we will be able to talk ...

CHAIRPERSON: Huh-uh.

MR PHATLANE: (Indistinct) that we should invite key Transnet leadership to

CHAIRPERSON: Hm.

10 **MR PHATLANE**: Leaders or managers to go and speak there.

CHAIRPERSON: Hm.

MR PHATLANE: So it looked cosy and it looked well ...

CHAIRPERSON: Hm.

MR PHATLANE: From my side.

CHAIRPERSON: Okay and - and the amount seemed justifiable?

MR PHATLANE: Well because it - it had ...

CHAIRPERSON: Hm.

MR PHATLANE: Certain elements that - that were not necessarily areas that I was familiar with.

20 **CHAIRPERSON**: Hm.

MR PHATLANE: Like advertising ...

CHAIRPERSON: Hm.

MR PHATLANE: Which - which was brought in there.

CHAIRPERSON: Hm.

MR PHATLANE: I looked at - additional - additional benefits. You

know.

CHAIRPERSON: Hm.

MR PHATLANE: So if they have charged this way, because with eventing I know roughly okay.

CHAIRPERSON: Hm. Hm.

MR PHATLANE: I do events. Okay.

CHAIRPERSON: Hm.

MR PHATLANE: There will be this, but now when they added this - the exposure on the newspaper and whatever which is media related.

10 **CHAIRPERSON:** Hm.

MR PHATLANE: I - I thought it was fair then.

CHAIRPERSON: Okay. Alright.

MR PHATLANE: Yes.

CHAIRPERSON: Thank you. Ms Hofmeyr.

ADV KATE HOFMEYR: Thank you Chair. I - I am indebted. I actually do have a follow up question if I may arising from yours. If we go back to page 15, because remember that is the first proposal that Mr Roux sends through. I am just interested in how they breakdown the costs that they are going to be charging Transnet of R735 700,00 per briefing
20 breakfast.

Did you interrogate that at all? Did you for example query why Transnet would be paying for catering at the business breakfast and whether that would derive money value for Transnet?

MR PHATLANE: No. I do not think we - I do not think one interrogated it that way.

ADV KATE HOFMEYR: Hm.

MR PHATLANE: There are certain things that you took it that they are part of eventing.

ADV KATE HOFMEYR: Hm.

MR PHATLANE: You know. Now this is a proposal. It is a package that either you as Transnet you decide and say no we do not think it is fair or we do not do it or whatever. So I - I looked at it from that angle to say this is - this is a package, but also with the discussions that we are having with other Managers and other colleagues that says. You
10 know. We have not - we have not being on above the line and it is an opportunity. So you get swayed in a way to say.

ADV KATE HOFMEYR: Hm.

MR PHATLANE: This looks like it is a fair price.

ADV KATE HOFMEYR: Had Transnet ever paid for catering before at breakfasts it had attended or sponsored?

MR PHATLANE: Yes. Yes.

ADV KATE HOFMEYR: Hm.

MR PHATLANE: Yes. We did.

ADV KATE HOFMEYR: And right if we can then go to the next
20 memorandum which is page 18 and that is a memorandum dated the 20th of March 2012, do you see that, we're at page 18?

MR PHATLANE: Yes Chairperson.

ADV KATE HOFMEYR: Were you involved in the preparation of this memorandum?

MR PHATLANE: Yes I was involved Chairperson.

ADV KATE HOFMEYR: And can you read for us what the subject of the memorandum was?

MR PHATLANE: It says,

“Sponsorship proposal for the New Age Business briefing sessions”.

ADV KATE HOFMEYR: Now what was this proposal for, how many business breakfasts and at what value?

MR PHATLANE: They wanted, now, a contract now, so that we don't do ad hoc because we had started with Adhoc, two adhoc sessions, now
10 they've brought a proposal that says they want a contract of 16 sessions worth R16million, now they've increased from 735 it went to a million per session.

CHAIRPERSON: And the ones you had already done before they talked about a contract now, the ad hoc ones, that you had done, I think you said two is that right?

MR PHATLANE: Yes Chairperson.

CHAIRPERSON: What are you able to tell me that was tangible that Transnet gained for paying the kinds of amounts that it paid?

MR PHATLANE: Chairperson with branding it's different...[intervenes].

20 **CHAIRPERSON**: There's no tangible thing.

MR PHATLANE: I just want to explain, sorry Chairperson I want to explain.

CHAIRPERSON: Yes.

MR PHATLANE: It's different one, like I've explained earlier, you try to build the top of mind, your brand to be top of mind, you also want the –

for the public to see that you are part of driving thought leadership. You necessarily have to have a Transnet speaker speaking there, when you're driving thought leadership, you're saying the public or the community must know the topical issues and you are going to bring that to their attention and now with this partnership with SABC I think that – to me that's what swayed me because you're getting airtime that is not worth for this money. You're getting two hours of play or with Transnet banners behind being seen beyond South Africa into other African countries...[intervenes].

- 10 **CHAIRPERSON**: And so what Mr Phatlane they see the banners they see the name Transnet, the logo and so what, it's not a private business, even if it's public you're not trying to get the public to buy anything, that's what I'm struggling to get, to understand when you spend so much and maybe you're not responsible because you're not at the level of making decisions but I'm asking you these questions, just as I was asking the earlier witness, because I'm trying to understand. I want to understand and put myself in the position of people who said, these kinds of amounts must be spent, tax payers' money must be spent on these kinds of things. If you explain, maybe I'll understand so
- 20 don't get frustrated maybe it's just because I'm trying to understand. I mean Transnet is a parastatal, is a SOE.

MR PHATLANE: Yes Chairperson.

CHAIRPERSON: It is there for various reasons if you ask a lot of people in the kinds of places where I grew up they will think, when you say Transnet, they'll think about trains, they'll think about trains you

know, they might not know a lot of other things. So maybe part of my difficulty is that I'm also – maybe I haven't moved too far from that so I'm – so when I think about Transnet I'm thinking okay now, what's important is that Transnet must service people properly, you know, people must get trains that run properly but of course Transnet does much more than that but that's where I'm coming from, do you want to give it a try again to make me understand?

MR PHATLANE: Chairperson I think...[intervenes].

CHAIRPERSON: I'm certainly not – my mind is not closed I'm just
10 trying to understand, maybe I should do some course in branding, branding 101.

MR PHATLANE: Chairperson I think while you are explaining you are even assisting me maybe to be able to explain some. It's not conclusive there could be more.

CHAIRPERSON: Yes.

MR PHATLANE: Let me give you one example from the branding exercise point of view. There's a confusion outside where people still regard Transnet as Spoornet, that exercise is not necessarily going to happen on it's own for people to forget or remember, or this. There's
20 confusion also o people thinking Transnet is PRASA so anything that happens at a station they'll send complaints or whatever to us. So as communication you also have that responsibility, while you have a responsibility to customers but you also have a responsibility to communities to educate and to inform them so that when they see, for instance what you do to communities to [indistinct] it's Transnet they

are able to associate the brand with good work. So the thinking that we had, especially from me when I talk about the exposure on TV, it's closely associated with that to say, you're putting this brand awareness just to be on top of people's minds so they know this company that transports goods, it – that transport goods which we thought was Spoornet is Transnet but also they're – they're not only dealing with the hard core faring of goods but they're also are encouraging dialogue in the country, they're supporting good community ship within. So as communication its just unfortunate that part of us is to sell that simple,
 10 that light kind of information to communities.

CHAIRPERSON: Okay thank you.

ADV KATE HOFMEYR: Mr Phatlane I'm going to come back to he value that you were able to get out of the business breakfasts because your affidavit indicates that towards the end of the period of these business breakfasts your approach changed when the management changed within your area and much move value, as I understand your affidavit was able to be taken from these events, but I'm just flagging for you, I haven't left this topic because I will want to return to it when we can contrast what Transnet was getting at this time and what it got
 20 ultimately because I think it will be a useful illustration in due course to conclude this aspect but if we could just return to the memo at page 18 that is a memorandum you indicated that you were involved in preparing and you indicated that it related to sponsorships and you were confirming for us that it was 16 sessions that would cost now a million rand per session and so the total was R16million. If you go to

page 20, could you tell us who, ultimately approved that this contract be entered into?

MR PHATLANE: It was approved by the Group Executive then Mr Brian Molefe.

ADV KATE HOFMEYR: And what was the date on which he approved it?

MR PHATLANE: 23rd of March 2012.

ADV KATE HOFMEYR: Now if we just go back to your evidence earlier, that is when the 2011 delegation of authority was still operative, is that
10 correct?

MR PHATLANE: Yes I think...[intervenes].

ADV KATE HOFMEYR: Because that was until the end of April 2012, is that right?

MR PHATLANE: Yes.

ADV KATE HOFMEYR: And if I recall, that delegation of authority, we don't need to go to it now, but it gave the Group Chief Executive authority over sponsorships up to R30million within a year, cumulatively, is that correct?

MR PHATLANE: It's correct Chairperson.

20 **ADV KATE HOFMEYR**: So did it raise any flags for you that Mr Molefe was approving this sponsorship at R16million within the course of that year?

MR PHATLANE: No like I said, my responsibility was just to put this together and then I give it to Managers then they look at it, it has to go to the next person for approval.

ADV KATE HOFMEYR: But give us a sense, if you may, what did R16million look like relative to the rest of the budget that your division had, do you have a sense of that?

MR PHATLANE: Well I can't remember how much the budget was but it was – this was a big chunk, like I said we were doing smaller sponsorship then who had recently joined but we were doing a hundred or what so when TNA came it was this big kind of a budget – amount that we had to pay or to sponsor.

ADV KATE HOFMEYR: If you then go over to page 21 you'll see the
10 agreement which I understand from your affidavit was then subsequently concluded, is that correct?

MR PHATLANE: Page 16?

ADV KATE HOFMEYR: Apologies if you start at 21 that's the first page of an agreement.

MR PHATLANE: Yes.

ADV KATE HOFMEYR: And if you go to page 27 it was signed on the 7th and the 14th of May, is that correct?

MR PHATLANE: Yes that's correct Chairperson.

ADV KATE HOFMEYR: Am I correct that your evidence previously was
20 in terms of process, the memorandum would be prepared, it would then go through the various levels up to your superior, Mr Sigonyela and then ultimately for approval by the Group Chief Executive, is that right?

MR PHATLANE: You're correct Chairperson.

ADV KATE HOFMEYR: And then thereafter a contract would be put together and signed is that correct?

MR PHATLANE: It's correct Chairperson.

ADV KATE HOFMEYR: Let's just look at page 21, what is the title of this agreement?

MR PHATLANE: It says, Sponsorship Agreement.

ADV KATE HOFMEYR: Thank you and then I'd like to...[intervenes].

CHAIRPERSON: Hang on one second, can we go back to page 27, I see that the person who signed for Transnet was Acting Group Chief Executive, do you know who was that?

MR PHATLANE: Yes I found out Mr Chairperson it's Ms Nongugolego
10 Shishi.

CHAIRPERSON: Okay thank you, and it was at a time, it seems when Mr Brian Molefe was already Chief Executive so he must have been away or something?

MR PHATLANE: Yes Chairperson correct.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: Yes, as I understand it the approval was given, that's page 20, back in March of 2012, is that right?

MR PHATLANE: Yes Chairperson.

ADV KATE HOFMEYR: And then the version of the content that's
20 ultimately signed occurs in May 2012 not on this occasion signed by Mr Molefe but by Ms Shishi, is that right?

MR PHATLANE: It's correct Chairperson.

ADV KATE HOFMEYR: Okay but did it depend on Mr Molefe's prior approval?

MR PHATLANE: For us to have a contract going out to the other party

there must be, already an approval because you need to have the memorandum done and then you are able to write a letter that informs the other party to say, we're approving your proposal and this agreement will follow, then we will send the agreement to the party first to sign, to come to us for signing also and then for archiving.

ADV KATE HOFMEYR: Thank you Mr Phatlane. There's one aspect of this agreement I'd like to draw your attention to because it's a theme that we are seeing emerge in the course of the evidence before this Commission in relation to these TNA contracts and you'll find the
10 relevant clause at page 25 within this agreement. Do you see there that there's a clause on this page that's been struck out?

MR PHATLANE: Yes Chairperson I see it.

ADV KATE HOFMEYR: What was that clause before it was deleted?

MR PHATLANE: It was a clause on early termination.

ADV KATE HOFMEYR: And what did it provide?

MR PHATLANE: It provided that Transnet reserves the right to terminate this agreement upon giving 30 days' notice to TNA media, further that Transnet will be entitled to terminate this agreement in writing for failure of TNA to perform its responsibilities.

20 **ADV KATE HOFMEYR**: Do you know why that was deleted?

MR PHATLANE: I don't know, I prepared this and it will go – it went with the memo so that you don't have the GC signing the memo and then later you take, again the contract for signing, we prepared together but the next time I saw it signed, it was when it was on my desk signed and with all this cancellation and all what I did was to

archive it.

ADV KATE HOFMEYR: Tell us about, ordinarily, in these types of contracts, would there ordinarily be an early termination clause included?

MR PHATLANE: This is a standard – it's a Transnet standard contract which I found there and it's important that it has a termination clause because it protects Transnet in case performance is not up to standard. So this one, I made sure that it has – it's a standard contract, it has all the elements but when it was signed – because normally it will come
10 back to me for me to send it out first to the parties, so that they sign and then I'll take it to the office of the GC but then I realised it was signed at the particular time and with this termination clause cancelled out.

CHAIRPERSON: The signature or initialling next to the – to clause 4.1 and 11 one of those signatures appear to my eye to be that of the Acting Group Executive is that right?

MR PHATLANE: No it's that of Ms Shisi who was acting.

CHAIRPERSON: Yes I'm saying...[intervenes].

MR PHATLANE: Yes Chairperson.

20 **CHAIRPERSON**: Ja so it is?

MR PHATLANE: Yes it is.

CHAIRPERSON: Okay.

MR PHATLANE: And the ...[intervenes].

CHAIRPERSON: And the other one?

MR PHATLANE: The other one is that of Mr Howe from TNA.

CHAIRPERSON: Oh okay. There seems to be – there are no witnesses who witnessed the signing of this agreement, it seems, am I right?

MR PHATLANE: It's true Chairperson, I don't see witnesses when it came like this because you'll see as we go on how my agreements will look like, they are standard there was a template where you have the main parties, you have the two witnesses so I don't know how it changed.

CHAIRPERSON: But when you prepared it and sent it upstairs as it were for signature, it had witnesses or you are not sure?

10 **MR PHATLANE**: Yes because I don't even see page 12 where I'll write who are the parties because I'll normally also write the names of the parties to say, from the TNA who's the COO, who's accountable from the side of...[intervenes].

CHAIRPERSON: Well there may be page 12 missing ja.

MR PHATLANE: Yes.

CHAIRPERSON: But the space for witnesses will not be on page 12 it would be on the last page which is 13, is that right because the witnesses don't come before the signatories.

MR PHATLANE: I hear you Chairperson I don't also see where the
20 witnesses signed.

CHAIRPERSON: But are you sure that the one you sent to them did have provision for witnesses on the last page, or you are not sure about that?

MR PHATLANE: Chairperson let me say I'm not sure but remember this is a template that Transnet had, it's not a template that I created.

CHAIRPERSON: It was there?

MR PHATLANE: Yes so for me I do not think that Transnet would have really – I'm not Chairperson...[intervenes].

CHAIRPERSON: Yes since the time that you have been at Transnet have you ever had a sponsorship agreement signed that didn't have witnesses, spaces for witnesses, is it something that does happen?

MR PHATLANE: No that's why I'm saying as we move forward, I have those templates that I remember, this is how the template...[intervenes].

10 **CHAIRPERSON**: Okay thank you.

ADV KATE HOFMEYR: Thank you Chair.

CHAIRPERSON: You'll try and get page 12 somewhere?

ADV KATE HOFMEYR: Indeed, there was a page 12 we picked up in a later agreement missing but we seemed to have missed that this one was omitted so I've just asked our investigator to assist us there.

CHAIRPERSON: Okay thank you.

ADV KATE HOFMEYR: If I can then take you, Mr Phatlane to page 30 and I'd just like to orientate ourselves in time because this is where the delegation of authority becomes quite important. You'll recall that
20 when Mr Molefe approved the last R16million sponsorship agreement, that was in March of 2012 and that was a month or so before we moved to the new delegation of authority provisions, is that correct Mr Phatlane?

MR PHATLANE: It's correct Chairperson.

ADV KATE HOFMEYR: Now at page 30 we have a document, what is

this document?

MR PHATLANE: It's another proposal from the TNA, New Age yes.

ADV KATE HOFMEYR: Right and what is its date?

MR PHATLANE: 7 March 2013.

ADV KATE HOFMEYR: So now we are in the time when the second delegation of authority, the 2012 delegation of authority applies, is that right?

MR PHATLANE: It's correct Chairperson.

ADV KATE HOFMEYR: And please remind us what was the Group Chief
10 Executive's limit under the 2012 delegation of authority for sponsorships.

MR PHATLANE: R10million.

ADV KATE HOFMEYR: R10million?

MR PHATLANE: Yes.

ADV KATE HOFMEYR: And what had it been previously?

MR PHATLANE: R30million.

ADV KATE HOFMEYR: Thank you, so this, you said was a proposal dated the 7th of March 2013 from TNA and please just read for us what the heading was?

20 **MR PHATLANE**: On page 31?

ADV KATE HOFMEYR: On 30, their proposal.

MR PHATLANE: "The New Age Business Breakfast Sponsorship".

ADV KATE HOFMEYR: Thank you and if you go to the last paragraph there, will you read that last paragraph into the record please?

CHAIRPERSON: I'm sorry Ms Hofmeyr I'm trying to catch up with you

as well, what was the page?

ADV KATE HOFMEYR: I'm sorry we are at page 30.

CHAIRPERSON: Okay, thank you.

ADV KATE HOFMEYR: And that, we've been told, is a proposal letter received from TNA.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: Dated the 7th of March 2013, so we're now in the delegation period where the limit of the Chief Executive Sponsorship authority is R10million, it's dropped from the previous
10 R30million and Mr Phatlane was indicating this was received from TNA it was a proposal for the New Age Business Breakfast sponsorships and Mr Phatlane I asked if you would read the last paragraph into the record.

MR PHATLANE: "We thank Transnet Stock Ltd for supporting these business briefings over the past two years and we look forward to an ongoing mutually beneficial relationship. It is with pleasure that we submit the following proposal for the period 1 April 2013 to 31 March 2014 for sponsorship of 20 business briefings for a total investment of R20million
20 excluding VAT and agency commission. The proposal provides a summary of key benefits to the sponsor and illustrates the strong return on investment, Kind regards".

ADV KATE HOFMEYR: Thank you and then if we go over the page is another memorandum it's the next one in the sequence of the big contracts for which a memorandum was prepared. Did you prepare this

memorandum?

MR PHATLANE: The one on page 31?

ADV KATE HOFMEYR: Yes.

MR PHATLANE: Yes I assisted yes, on this one.

ADV KATE HOFMEYR: Now can you just help us with the subject – well first of all the date of it, what is the date of this memorandum?

MR PHATLANE: The date is 11 March 2013.

ADV KATE HOFMEYR: And to whom is it addressed?

MR PHATLANE: It's addressed to Mr Brian Molefe, Group Chief
10 Executive.

ADV KATE HOFMEYR: And please read the subject for us.

MR PHATLANE: "Request to renew the SABC New Age Business Briefing Partnership".

ADV KATE HOFMEYR: Now what I'm interested in there, Mr Phatlane is in all the previous memoranda this transaction, this type of contracting with TNA has been described as a sponsorship but now it's being described as a partnership. Why did that language change?

MR PHATLANE: Well I had a discussion with the GM because I'm responsible for sponsorship management now why should we use this,
20 he said, no use partnership and now there was no clarity as to why and you see you'll ask you don't get the answer, either you're dismissed and then you need to go and write. So when I went I wrote as a sponsorship because I did not know any partnership or a document that guides on partnership so I went on default of making this a sponsorship like the proposal was saying.

ADV KATE HOFMEYR: And then why did it change to partnership then?

MR PHATLANE: I was told to say, I told you we don't use [indistinct] don't use sponsorship, use partnership and I had to change it to suit what my manager...[intervenes].

ADV KATE HOFMEYR: And what governs partnerships in Transnet?

MR PHATLANE: To me I don't know any document, let me say it's not there I will not see a document that governs partnerships. So to me sometimes I take it, it's a word that is used loosely to mean either sponsorship or whatever any other person wants to justify but I know
10 sponsorship because we had a draft sponsorship document – policy by then.

ADV KATE HOFMEYR: And what was the value of this contract?

MR PHATLANE: The value was – they wanted R20million and then he said, no we can't give them R20million make it R15million then you go and alter.

ADV KATE HOFMEYR: Who was he, in that?

MR PHATLANE: The GM, Mr Sigonyela.

ADV KATE HOFMEYR: And who approved the R15million at page 32?

MR PHATLANE: It was approved by Mr Molefe.

20 **ADV KATE HOFMEYR**: Now can I just be clear what date did he approve it?

MR PHATLANE: April 4, 2013.

ADV KATE HOFMEYR: In April 2013 did Mr Molefe have the delegated authority to approve a sponsorship for R15million?

MR PHATLANE: Well according to the DOA [indistinct] we went through

he did not have that...[intervenes].

ADV KATE HOFMEYR: What was the limit to his authority to conclude a partnership agreement for Transnet?

MR PHATLANE: It was R10million.

ADV KATE HOFMEYR: No sorry the limit on a partnership agreement what limit, if any applied to Mr Molefe's authority to conclude partnerships for Transnet?

MR PHATLANE: No I only know about sponsorships I don't know partnerships which was R10million by that time.

10 **ADV KATE HOFMEYR**: What was R10million by that time?

MR PHATLANE: I'm talking about the limit.

ADV KATE HOFMEYR: Yes.

MR PHATLANE: On the DOA.

ADV KATE HOFMEYR: Yes previous – but that dealt with sponsorships, correct?

MR PHATLANE: Yes.

ADV KATE HOFMEYR: I'm asking, was there any limit on the authority of the Group Chief Executive to conclude a partnership agreement?

20 **CHAIRPERSON**: He says he doesn't now.

ADV KATE HOFMEYR: Oh thank you, sorry.

CHAIRPERSON: He says he only knows about sponsorships.

ADV KATE HOFMEYR: Right super thank you, I thought – we kept going back to R10million limit so I was scared that, that was going to...[intervenes].

CHAIRPERSON: Did I understand you correctly?

MR PHATLANE: Yes Chairperson.

CHAIRPERSON: Ja okay, can I just ask you, do you have – did you ever get to know why, in regard to sponsorships the Group Chief Executive's delegation of authority was reduced so substantially from R30million to R10million?

MR PHATLANE: It's an exercise that company secretary will always do, I think sometimes if there's somebody from the office of the GCE to go and support that because they normally reduce because of either
10 moratorium or whatever or either the revenues are getting low. So somebody from the office of the GCE because it's can't be the GCE himself [indistinct] go and say whether does it make sense or not, if not, if there's no presentation made they conclude and take it to the Board for ratification.

CHAIRPERSON: Okay, alright.

ADV KATE HOFMEYR: And then if we can move to the agreement itself which was concluded, you'll find that at page 33 and just – the description of this agreement in capitals at the beginning of that document, what is this agreement now called?

20 **MR PHATLANE**: It's now called, Branding and Advertising Partnership Agreement.

ADV KATE HOFMEYR: And what had the previous one been called, do you recall?

MR PHATLANE: Sponsorship Agreement.

ADV KATE HOFMEYR: Thank you. There are two aspects of the terms

of this agreement I'd just like to highlight and have your evidence on Mr Phatlane, the first appears at page 37 in terms of Transnet's commitment under the agreement. So I would like, in the course of your evidence to see, how the obligations of Transnet became more onerous over time. You'll see at clause 7 on page 37, what does clause 7.2 provide?

MR PHATLANE: It provides Transnet's commitment.

ADV KATE HOFMEYR: Right and 7.2?

MR PHATLANE: That parties agree that the cost of the event shall be
10 kept at the sum of R12 000.00 – R12 million excluding VAT.

ADV KATE HOFMEYR: And at 7.3?

MR PHATLANE: Additional R3 million excluding VAT would be made available.

ADV KATE HOFMEYR: And carry on.

MR PHATLANE: And utilise as and when required based on mutual agreement by both parties and as approved by Transnet Group Chief Executive or his designate.

ADV KATE HOFMEYR: And then at 7.4.

MR PHATLANE: Yes.

20 **ADV KATE HOFMEYR:** We are told how payment is going to work under the agreement. What does it provide?

MR PHATLANE: That payment as in 7.2 above will be made by Transnet 7 days after this agreement has been signed.

ADV KATE HOFMEYR: So just help me with that. What is happening as I understand these agreements is Transnet is contracting for a year

of business breakfasts, is that correct?

MR PHATLANE: It is correct Chairperson.

ADV KATE HOFMEYR: And in this case it was contracting for 15 of them and it would be paid in two tranches R12 million initially and then R3 million dependent on a discretion it seems that the Group Chief Executive would exercise, is that correct?

MR PHATLANE: The contract says like that yes Chairperson.

ADV KATE HOFMEYR: Yes. And how about payment. When was payment of this R12 million going to be made to TNA?

10 **MR PHATLANE:** Well let me just also clarify. I prepared the memorandum but I see the contract as you see it says Branding and Advertising partnership. It is prepared by somebody else. Because it is moving away from sponsorship.

ADV KATE HOFMEYR: Hm.

MR PHATLANE: As you see it says Branding. I might – I will answer on what it meant – my understanding on 7 days.

ADV KATE HOFMEYR: Certainly.

MR PHATLANE: Because later we – I also – we paid them according to that.

20 **ADV KATE HOFMEYR:** Yes.

MR PHATLANE: But this contract it was prepared by somebody from our team. I cannot recall who that is.

ADV KATE HOFMEYR: I understand that.

MR PHATLANE: Yes because this is not my – the wording that I would normally use. But I can talk to the 7 days. Later we were advised by

the – by the GM Mr Sigonyela to say apparently he had a meeting either with them I do not know but it was kind of like there was an engagement. I do not know whether it was telephonically or what.

ADV KATE HOFMEYR: And sorry is them TNA?

MR PHATLANE: Oh TNA – ja.

ADV KATE HOFMEYR: Thank you.

MR PHATLANE: With these colleagues from TNA.

ADV KATE HOFMEYR: Yes.

MR PHATLANE: To say now they want us to pay within 7 days. I do
10 not know the rationale was either the issues of overheads or whatever but it was – he was making us aware to say that is going to be the way forward. We have to pay them within that period.

ADV KATE HOFMEYR: Would that not have a cash flow implication for Transnet? Maybe not given the size of its budget I realise probably not a cash flow issue but was that usual that you would pay for the full extent of a year's contract within 7 days of signing an agreement?

MR PHATLANE: I know of small suppliers that there was a push to pay them faster but I will not speak on authority on actual finance because I did not really deal with that even invoices when they come. We will
20 channel to him to sign off and – for payment so.

CHAIRPERSON: But before this change that Mr Sigonyela told you about that they will have to be paid within 7 days what was the timeframe within which Transnet used to pay the New Age or TNA?

MR PHATLANE: The – Chairperson the previous agreement was 30 days – 30 days after they have presented their invoice.

CHAIRPERSON: Yes. And those ones would Transnet pay the whole amount within that 30 days on – or only for that particular session?

MR PHATLANE: I am...

CHAIRPERSON: Would the payment be for like for a whole six months or a year or only within 30 days in respect of the particular session?

MR PHATLANE: The contract ones when they present they present let us say R60 million invoice.

CHAIRPERSON: Ja.

MR PHATLANE: It will be paid at once.

10 **CHAIRPERSON:** So if it said like 5 breakfast sessions or whatever it would be for the whole amount?

MR PHATLANE: For the whole amount Chairperson.

CHAIRPERSON: For the whole contract?

MR PHATLANE: Yes Chairperson.

CHAIRPERSON: So if they are still – the last breakfast will be in ten months' time you have already paid long before that?

MR PHATLANE: That is – yes Chairperson that is the understanding it was like that.

CHAIRPERSON: Yes. Okay alright.

20 **ADV KATE HOFMEYR:** Then I would like to move if we may to 2014. We are at page 46 now.

CHAIRPERSON: 46?

ADV KATE HOFMEYR: 46 Indeed Chair.

CHAIRPERSON: Ja.

ADV KATE HOFMEYR: Chair I am mindful that we very close to quarter

to.

CHAIRPERSON: Yes I guess we are not doing as well as ...

ADV KATE HOFMEYR: We are not.

CHAIRPERSON: We would like.

ADV KATE HOFMEYR: Unfortunately.

CHAIRPERSON: But it is important to clarify these things.

ADV KATE HOFMEYR: It is.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: Certainly Chair.

10 **CHAIRPERSON**: Otherwise we unnecessarily bring people back.

ADV KATE HOFMEYR: Hm.

CHAIRPERSON: Maybe we can – ja let us try maybe we will see – five to?

ADV KATE HOFMEYR: Certainly Chair.

CHAIRPERSON: Ja.

ADV KATE HOFMEYR: Thank you.

CHAIRPERSON: Okay. Okay.

ADV KATE HOFMEYR: This is a memorandum.

20 **CHAIRPERSON**: And if we do not finish then maybe – well I do not know we talked about dates earlier on.

ADV KATE HOFMEYR: Yes.

CHAIRPERSON: But if it suits all concerned I could sit in the afternoon on Monday. I have a commitment at the court in the morning. But I could sit in the afternoon on Monday.

ADV KATE HOFMEYR: Chair we will just have to check – oh no. We

unfortunately Mr Mbikiwa and I are...

CHAIRPERSON: Not available.

ADV KATE HOFMEYR: In endless meetings with witnesses preparing for the aviation sessions.

CHAIRPERSON: For the other two weeks.

ADV KATE HOFMEYR: The following week.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: So unfortunately Monday afternoon he is reminding me we do not actually have available at this point.

10 **CHAIRPERSON**: Oh okay. And for the rest of the week I guess?

ADV KATE HOFMEYR: The rest of the week is very full.

CHAIRPERSON: Ja.

ADV KATE HOFMEYR: That is a challenge.

CHAIRPERSON: It may be – I know that you said that the Tuesday the 4th is filled.

ADV KATE HOFMEYR: Hm.

CHAIRPERSON: But it may be that we could start with him.

ADV KATE HOFMEYR: Indeed.

CHAIRPERSON: And finish.

20 **ADV KATE HOFMEYR**: No that should not be a problem at all.

CHAIRPERSON: Ja.

ADV KATE HOFMEYR: Because it is short. We did not want to fit a whole new witness in on the 4th.

CHAIRPERSON: Yes. Ja.

ADV KATE HOFMEYR: But I do not have a difficulty at all given what

we know of that day's evidence.

CHAIRPERSON: Yes. Ja.

ADV KATE HOFMEYR: For us just to complete Mr Phatlane there.

CHAIRPERSON: Okay that is fine.

ADV KATE HOFMEYR: Thank you.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: But we will go a little further if we may? What I want to look at at the memorandum at page 46 Mr Phatlane is how the price of the business breakfasts are now increasing over time. So what
10 is the date of this memorandum?

MR PHATLANE: This one was written on the 24 January 2014.

ADV KATE HOFMEYR: And were you involved in its – in writing it?

MR PHATLANE: Yes I was involved Chairperson.

ADV KATE HOFMEYR: Now what – how many breakfasts was this for and what was going to be the cost of each breakfast?

MR PHATLANE: These breakfasts were two and then they charged us R3 million which it moves from there R1 million per session. Now they are charging us double. The question I asked my GM to say, but this – this is not fair because it is not long that we had a contract with them.
20 Why will it have increased so much?

CHAIRPERSON: By 100%?

MR PHATLANE: Yes.

CHAIRPERSON: Hm.

MR PHATLANE: And I tried calling the – my partner on the side of TNA at my level that was Vida Talliep why this and the justification. No it is

a President. A President will be speaking at SONA for President now we charge times two but it is not fair. Now because we are not moving we are at the same level now it had to – escalated to the CO Mr Howe to say I am rude I do not want to act and then there was discussion with my GM. I do not know that – how what happened but ultimately I ended up having to write this and it got approved.

CHAIRPERSON: Hm.

MR PHATLANE: But I did question this because it...

CHAIRPERSON: Yes.

- 10 **MR PHATLANE:** Actually from 735 it was as if every time you do a breakfast it is going up by 300 or 400 000 then you question to say, we at 735 when you started why now a million. You do not win on that ...

CHAIRPERSON: And it would be during the same twelve months or something?

MR PHATLANE: Yes even if it is after a year it cannot escalate that much.

CHAIRPERSON: Ja it cannot escalate like that ja.

MR PHATLANE: You see but then it ends up here because I talk only to my peer on the other side.

- 20 **CHAIRPERSON:** Yes.

MR PHATLANE: But if I am instructed to say, go ahead process you have tried your bit to save the company but you could do up to that level yes.

ADV KATE HOFMEYR: Thank you Mr Phatlane. Just to clarify in relation to your question Chair. For the record at page 37 the prior

agreement which was for the 15 sessions was going to conclude on the 30 March 2014 and at that stage they were charging R1 million a session.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: But this proposal which then gets approved is still within that period.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: The 24 January and it has gone up to R1.5 million.

10 **CHAIRPERSON:** Shoo.

ADV KATE HOFMEYR: And Mr Phatlane you said the explanation you were given was that the President was coming. Well that was certainly for one of the breakfasts. Was any explanation given to you for why the other breakfast should also be charged at R1.5 million?

MR PHATLANE: No, no they said they were charging SONA, State of Nation Address at R2 million so the other one will remain R1 million.

ADV KATE HOFMEYR: Oh my goodness. Okay.

20 **MR PHATLANE:** Technically it is the same. It is either is R1.5 – R1.5 but that is the rationale I got and I was questioning to say but we have – we have hosted the President before you did not double it. Why it gets doubled? But ja they tell you it is – it has to be like that it is like that and you know so you try and – ja but if you then get an instruction that says no process this as is – as per the proposal. You do so ultimately.

ADV KATE HOFMEYR: Chair that may be a convenient place at which

to – and given that we will not complete.

CHAIRPERSON: Yes. Yes.

ADV KATE HOFMEYR: And we will return on the 4th if that is convenient to all concerned.

CHAIRPERSON: Ja, no that is fine. Okay we will adjourn the proceedings for the day unless the public and the media are advised otherwise early next week there will be no hearings next week. The next hearing will be on the 4 February. There will be no hearing on the 3rd as well. We adjourn.

10 **REGISTRAR:** All rise.

INQUIRY ADJOURNS TO 4 FEBRUARY 2020