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20

PROCEEDINGS RESUME ON 4 FEBRUARY 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.

CHAIRPERSON: Yes. Let us have Mr Phatlane take an oath again because I think there has been quite some time.

ADV KATE HOFMEYR: Indeed.

CHAIRPERSON: Ja.

10 **REGISTRAR:** Please state your full names for the record?

MR PHATLANE: Daniel Kagiso Phatlane.

REGISTRAR: Do you have any objections in taking the prescribed affirmation?

MR PHATLANE: No.

REGISTRAR: 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.

20 **ADV KATE HOFMEYR:** Chair if I may make one request? Just before we commence with – well recommence with Mr Phatlane's evidence.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: There are a number of legal representatives here with us today and I suggest it might make sense to have them all place themselves on record at the commencement of the proceedings today.

CHAIRPERSON: Hm.

ADV KATE HOFMEYR: If that suits?

CHAIRPERSON: Well as I understand it they relate to either witnesses.

ADV KATE HOFMEYR: Indeed.

CHAIRPERSON: Or implicated persons who will be implicated by witnesses to come later.

ADV KATE HOFMEYR: Indeed.

CHAIRPERSON: Maybe at the...

10 **ADV KATE HOFMEYR:** At that time.

CHAIRPERSON: At that time yes.

ADV KATE HOFMEYR: Certainly.

CHAIRPERSON: Ja.

ADV KATE HOFMEYR: We will do that.

CHAIRPERSON: Yes okay.

ADV KATE HOFMEYR: Thank you Chair.

CHAIRPERSON: Thank you.

ADV KATE HOFMEYR: Mr Phatlane thank you for returning to complete your evidence today. You may recall where we ended off last time was
20 we had tracked that move in the agreements that were concluded between Transnet and TNA from them being described as sponsorship agreements to being described as partnership agreements. Do you recall that?

MR PHATLANE: Yes Chairperson.

ADV KATE HOFMEYR: And one of the first memoranda that includes

that change in language was in fact compiled by you, is that correct?

MR PHATLANE: Which – which one if you may refresh me?

ADV KATE HOFMEYR: Of course let me take you to it. It is the memorandum that you will find at – apologies –

CHAIRPERSON: Maybe just to – for the record to reconfirm that his statement appears in Exhibit MM4.

ADV KATE HOFMEYR: Thank you Chair.

CHAIRPERSON: And that is the exhibit you are referring to.

ADV KATE HOFMEYR: I am indeed indebted.

10 **CHAIRPERSON**: Yes.

ADV KATE HOFMEYR: Mr Phatlane let me take you to it. It is the one that you will find in Exhibit MM4 at page 31, 31. Now as I recall your evidence last time.

MR PHATLANE: Yes.

ADV KATE HOFMEYR: This – you will see the subject of this memorandum reads, Request to Renew the SABC New Age Business Briefing Partnership. Do you see that on page 31?

MR PHATLANE: Yes Chairperson.

20 **ADV KATE HOFMEYR**: And as I noted your evidence last time you indicated that when you drew this up you were instructed by Mr Sigonyela to refer to this arrangement as a partnership. Do you recall giving that evidence?

MR PHATLANE: I recall. Yes Chairperson.

ADV KATE HOFMEYR: Thank you. Did you probe with him why there was now to be this change from sponsorship to partnership?

MR PHATLANE: I did not probe. What I did was I just – it is not probing it is just a question as sponsorship, why partnership and I did not an answer. That is why last time I said I then reverted to what I understand because the – the proposal was sponsorship proposal. I took it we were still dealing with the same sponsorship proposal.

ADV KATE HOFMEYR: But despite that you changed the language?

MR PHATLANE: Oh yes the wording.

ADV KATE HOFMEYR: Hm.

MR PHATLANE: To say partnership on the memorandum, yes I did
10 change that Chairperson.

ADV KATE HOFMEYR: Did you have any knowledge at the time about the change in the delegation of authority of Transnet between sponsorships limits for the Chief Executive Officer and other types of arrangements like partnerships?

MR PHATLANE: No Chairperson. The issue of DOA or Delegation of Authority it was not a – it was not a document that we were privy to or like we have – or I have seen. It was something that managers will advise us whether somebody has a DOA or not. It was not a document that I even saw or knew about it by that time. But we just knew the –
20 the naming of somebody having a DOA and I only knew my GM right around that time they were talking about 5 or 7 million DOA.

ADV KATE HOFMEYR: Do you recall from the evidence last time we went through the Delegations of Authority in some detail. At the time that this memorandum, the one we are looking at at page 31 was prepared and the partnership was approved you will see over that page

at page 32 by the Group Chief Executive Mr Brian Molefe. Do you know what the limit of his sponsorship DOA was at the time?

MR PHATLANE: No I did not know.

ADV KATE HOFMEYR: You do not know. Do you recall from last time's evidence?

MR PHATLANE: It said 10 million.

ADV KATE HOFMEYR: 10 million.

MR PHATLANE: Chairperson.

ADV KATE HOFMEYR: And what was the value of this arrangement
10 that he was being asked to approve?

MR PHATLANE: This is worth 15 million Chairperson.

ADV KATE HOFMEYR: So that would have exceeded his R10 million
Delegation of Authority on sponsorships, correct?

MR PHATLANE: Definitely.

ADV KATE HOFMEYR: Thank you. Mr Phatlane I would then like to
move to the agreement that was concluded pursuant to that approval
from Mr Molefe and you will find that at page 33 of Exhibit MM4. Mr
Phatlane we dealt with this briefly last time. The point I wanted to pick
up on though is you were asked in your evidence last time how the
20 value of this agreement compared to the total budget for the Corporate
and Public Affairs Department. Do you remember that question?

MR PHATLANE: If you may refresh my mind regarding that?

ADV KATE HOFMEYR: Certainly.

MR PHATLANE: Yes.

ADV KATE HOFMEYR: I think in the course of your evidence we had

queried whether you knew the extent of the Corporate and Public Affairs budget that would have been directed to this partnership agreement when it was concluded and as I recall your evidence you said you were not aware of what the budget was at the time, is that correct?

MR PHATLANE: Not – not exact – I will not have known how much exactly we had as CPA – CPA means Communication Team but what we will do. If you compile a memorandum it will go to other managers who would be able to say where are we dipping into? Which budget are we
10 using? Whether we are using advertising budget and then that will say yes we do have funds and then you continue with that. Because when you write somewhere you need to be able to say where are you getting these funds?

ADV KATE HOFMEYR: Hm.

MR PHATLANE: And then you get advice as to which budget we need to be – we need to use.

ADV KATE HOFMEYR: Thank you Mr Phatlane. Since your evidence on the last occasion the commission's investigators did engage with Mr Makode. Who is Mr Makode at Transnet?

20 **MR PHATLANE:** Mr Makode is Executive Manager in Communications.

ADV KATE HOFMEYR: Thank you. You will find an affidavit that he provided to the commission last week at page 200, 200 of Exhibit MM4. Chair of course we introduce the affidavit provisionally. It is simply a recordal of the relevant budgets at the time by the person at Transnet who was able to source that information for us.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: It does not on its face appear to be likely to be contentious.

CHAIRPERSON: Ja.

ADV KATE HOFMEYR: But of course it is on a provisional basis.

CHAIRPERSON: Ja.

ADV KATE HOFMEYR: Mr Phatlane if you can go over the page to page 201 you will see a paragraph 4 there before the second table, do you see that?

10 **CHAIRPERSON:** I see Ms Hofmeyr that probably somebody did not put that affidavit into the file. It is not here but I remember that you handed it up.

ADV KATE HOFMEYR: Indeed.

CHAIRPERSON: I think they did not put it in at the time and then ...

ADV KATE HOFMEYR: Chair let me hand you an extra copy.

CHAIRPERSON: It must have been left loose. Yes thank you.

ADV KATE HOFMEYR: We always come prepared so...

CHAIRPERSON: Ja.

ADV KATE HOFMEYR: Just in case.

20 **CHAIRPERSON:** Ja. Thank you.

ADV KATE HOFMEYR: Thank you Chair. Mr Phatlane we were over to the second page of the affidavit of Mr Makode who you have explained is the Executive Manager for Corporate and Public Affairs at Transnet and if you see over the page at page 201 there is a paragraph 4 in the middle of the page. Do you see that?

MR PHATLANE: Yes Chairperson I do.

ADV KATE HOFMEYR: And please indicate what the table below paragraph 4 shows based on the affidavit?

MR PHATLANE: Well it shows that in that period we – we had 120.3 million for marketing and advertising purposes.

ADV KATE HOFMEYR: Mr Phatlane you may be working on the table just above paragraph 4 which actually deals with the 2012 budget. If we could focus on the table that appears after paragraph 4 because that relates as I read Mr Makode's affidavit to the 2013 marketing
10 budget. Do you see that?

MR PHATLANE: On page 200?

ADV KATE HOFMEYR: 201.

MR PHATLANE: I see – 201 I see the table. The two tables.

ADV KATE HOFMEYR: Yes

MR PHATLANE: And there is a paragraph 4.

ADV KATE HOFMEYR: Correct.

MR PHATLANE: Okay.

ADV KATE HOFMEYR: And what does paragraph 4 show us below it?

MR PHATLANE: It show us the marketing and advertising budget for
20 Transnet which amount – amounted to R138.6 million. R138 million which is a breakdown of Corporate Affairs budget in that particular year or financial year.

ADV KATE HOFMEYR: And what year was that?

MR PHATLANE: That is 2013/2014.

ADV KATE HOFMEYR: And what was the Corporate and Public Affairs part of that total budget? How much was it?

MR PHATLANE: It was R72 million.

ADV KATE HOFMEYR: Right. And the agreement that we were looking at at page 33.

CHAIRPERSON: I am sorry Ms Hofmeyr.

ADV KATE HOFMEYR: Apologies Chair.

MR PHATLANE: Mr Phatlane you rounded that total figure to 138 let us just make sure for the record we have got the correct amount?

10 **ADV KATE HOFMEYR:** Indeed Chair.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: If it is convenient I will just read it into the record.

CHAIRPERSON: Yes ja. Okay.

ADV KATE HOFMEYR: So the total 2013 Marketing and Advertising budget for Transnet according to Mr Makode's affidavit amounted to R138 648 799.20 and of that on the table it is reflected that the Transnet Group Corporate and Public Affairs Budget amounted to R72 857 070.00. And it is that budget Mr Phatlane that I would like us
20 to compare to the partnership agreement that was concluded in the 2013 year and for that purpose you can return to page 33 of Exhibit MM4.

CHAIRPERSON: Is that 53?

ADV KATE HOFMEYR: 33 Chair

CHAIRPERSON: 33.

ADV KATE HOFMEYR: Apologies.

CHAIRPERSON: Okay.

MR PHATLANE: Ja.

ADV KATE HOFMEYR: Mr Phatlane if the – that is the first page of the partnership agreement. But if you go within it to page 37, 37 you will see the total commitment that Transnet was embarking upon with TNA under Clause 7 there. And at Clause 7.1 please tell us how many sessions were going to be covered by this agreement?

MR PHATLANE: We were to partner with TNA for 15 sessions.

10 **ADV KATE HOFMEYR:** And what would the total cost be of those 15 sessions?

MR PHATLANE: It will be R15 million.

ADV KATE HOFMEYR: Thank you. Mr Phatlane I did a quick calculation overnight as to what proportion of the Corporate and Public Affairs budget of R72.8 million R15 million is. And you can tell me if you disagree. But my calculator indicated that it is 20% of the budget. Do you have any reason to disagree with that?

MR PHATLANE: No let me apply my mathematical skills firstly.

ADV KATE HOFMEYR: Indeed.

20 **MR PHATLANE:** Before I agree.

CHAIRPERSON: Will it make a difference if she is says about?

MR PHATLANE: Oh no just – just to be sure.

CHAIRPERSON: Oh okay.

ADV KATE HOFMEYR: Certainly. Well you can do the calculation in due course.

MR PHATLANE: Yes

ADV KATE HOFMEYR: But assuming that R15 million is 20% of R72.8 million or thereabouts what would – would you regard that as a significant portion of the budget?

MR PHATLANE: Well I would not say significant part of the budget. Like I said the nature of – of these – this transaction.

CHAIRPERSON: Mr Phatlane.

MR PHATLANE: Yes Chairperson.

CHAIRPERSON: If it is 20% it must be significant. 20% of anything
10 must be significant.

MR PHATLANE: I will – unless Chairperson.

CHAIRPERSON: It is not insignificant.

MR PHATLANE: Chairperson maybe I – if you could allow?

CHAIRPERSON: Okay.

MR PHATLANE: I respond first.

CHAIRPERSON: Okay ja. Okay.

MR PHATLANE: Yes. Yes it – Chairperson 20% is significant amount but I am talking in relation to this transaction that we are talking about. We – I had said earlier the – the interesting part about this transaction
20 is that it – it was loaded in the sense that it had an element of advertising. It had an element of media relations. It had an element of stakeholder relations. Which these are – are day to day activities of communications. So in essence you will have – even about 50% of the budget going towards these activities. That is why when Chair you ask if it was significant I am – I am able to say yes because this amount it

is an amount that it could have been used also even for other activities around promotion of the brand. But yes part if it goes maybe to one entity I can say it is significant in that sense.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: Mr Phatlane if we can then move to the year 2014 in the chronology at page 50, 50 of MM – Exhibit MM4. What is that document?

MR PHATLANE: It is a sponsorship proposal from TNA Media.

ADV KATE HOFMEYR: And what is its date?

10 **MR PHATLANE:** 31 March 2014.

ADV KATE HOFMEYR: And how do TNA entitle this letter to Transnet?

MR PHATLANE: It called it the New Age Business Breakfast Sponsorship.

ADV KATE HOFMEYR: So at this stage TNA was still using the language of sponsorship, is that correct?

MR PHATLANE: Yes Chairperson.

20 **ADV KATE HOFMEYR:** And if you go over the page it is quite a detailed proposal as we have read it. I would like to pick it up at page 52, 52. Because on that page there is a heading Proposal Summary, do you see that?

MR PHATLANE: Yes I do Chairperson.

ADV KATE HOFMEYR: And will you read into the record what the first line says under that proposal summary?

MR PHATLANE:

“Live television exposure to be...”

ADV KATE HOFMEYR: Apologies Mr Phatlane just above that there is an italicised sentence.

MR PHATLANE: Oh.

“The sponsor will receive the following marketing and branding benefits.”

ADV KATE HOFMEYR: And then go on please?

MR PHATLANE: Right.

10 “One live television exposure to millions of South Africans across the nation. The business breakfasts are broadcast live on SABC Morning Live Flexi Program between 7 to 9. While the audience reach fluctuates over the course of this broadcast as is the nature of television over three million viewers are reached at peak time across the two hour broadcast.”

ADV KATE HOFMEYR: Thank you. Could we stop there? Did you take any steps when you would receive these proposals from TNA to verify the facts that they were setting out in the proposals?

20 **MR PHATLANE:** We will do so Chairperson but let – we will call the SABC department – marketing departments and try to find – before we do a memorandum as to what – what is the average ratings of this show.

ADV KATE HOFMEYR: Hm.

MR PHATLANE: Who – we will do so sometimes yes.

ADV KATE HOFMEYR: Do you remember doing it in 2014 or prior to that?

MR PHATLANE: If I could look at – at the memorandum that I compiled it can be able to help me?

ADV KATE HOFMEYR: Yes indeed. The memorandum that you compile appears thereafter but that was in relation to an ad-hoc briefing session. The one that deals with actually this proposal you will find at page 52 – 53 apologies.

MR PHATLANE: Yes.

ADV KATE HOFMEYR: Apologies. That is the ad-hoc and then the one for the full agreement is at 55. Do you have that?

10 **MR PHATLANE**: I have that Chairperson.

ADV KATE HOFMEYR: And if you go to paragraph 3 there that is where you pick up the issue of viewership. Can you tell us what you wrote there?

MR PHATLANE: Maybe if I may start at 3 if you allow me Chairperson.

ADV KATE HOFMEYR: Indeed.

MR PHATLANE: Then and 4.

20 “Corporate and Public Affairs believes that the partnership will provide Transnet with an opportunity for media exposure through SABC’s coverage of these briefing session on Morning Live show with a viewership that varies between 2 to 3 million people. Over the past thirteen years the show has become the biggest and longest running morning show in the country.”

ADV KATE HOFMEYR: Thank you. Sorry that is the paragraph I was

interested in just to pick up on the point in the proposal.

MR PHATLANE: yes.

ADV KATE HOFMEYR: So had you independently verified those facts?

MR PHATLANE: Yes I called – I called the SABC marketing department. Yes Chairperson,

ADV KATE HOFMEYR: We have received evidence previously from Mr Pretorius from Eskom who had asked the media agent that was working for Eskom at the relevant time to give viewership information relating to the Morning Live show. I would like to just tell you what his evidence
10 was for your comment on it. But Chair I do understand it is going to be aspect that will also be dealt with more fully in the SABC evidence when it returns. But for present purposes we have before the commission evidence already in relation to those figures.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: And I would like to then just be able to put to Mr Phatlane what Mr Pretorius said? For the record Chair Mr Pretorius' evidence on this can be found in Exhibit MM1 at page 16 and it is from paragraph 57.2 in his affidavit. Now what he had asked was for an audience profile of the Morning Live show to be done and admittedly it
20 was in 2012. But let me tell you what the audience profile as his evidence indicated it was in 2012. It was that Morning Live had an average of 600 000 adults who viewed the program. Of that total viewership 28% were in LSM8 – 10 and the vast majority 72% were in the lower LSM's. Half of the audience were not active money earners and only 21% of the audience were working adults. Did you get that

level of detail about the audience to which these Morning Live programs were going to be viewed?

MR PHATLANE: I do not – Chairperson I do not remember it being broken down to this because I remember that my GM Mr Sigonyela insisting that we – we verify this number and we had to call the marketing department and just get an average and this is the number that we got by that time. I do not remember us breaking it down to that level of adult viewership no we did not get that document.

ADV KATE HOFMEYR: But are you – are you – Mr Phatlane is it your
10 evidence that your reference to 2 to 3 million was an average?

MR PHATLANE: That is the information that we got when we called the marketing department.

ADV KATE HOFMEYR: Right. Do you have records of that?

MR PHATLANE: I cannot – I cannot remember if we – I do not have it specifically on my file. I do not know whether we still have something like that in Transnet documents.

ADV KATE HOFMEYR: Thank you. I would then like to go if we may to the actual partnership agreement that was concluded in 2014. You will find that at page 57, 57 of Exhibit MM4. Mr Phatlane do you recall how
20 many sessions this agreement for and to assist you please feel free to go to page 61 at Clause 5?

MR PHATLANE: Yes Chairperson it was for 20 sessions.

ADV KATE HOFMEYR: And what was the total cost going to be for those 20 sessions of briefing breakfasts?

MR PHATLANE: R20 million excluding VAT Chairperson.

ADV KATE HOFMEYR: And at that time what was the limit to the sponsorship Delegation of Authority of the Chief Executive?

MR PHATLANE: The DOA Chairperson says R10 million for approval.

ADV KATE HOFMEYR: Thank you. And then I would like to look at the termination clause in this agreement if I may? You will find it at page 65, 65. Mr Phatlane before we go to the clause as it exists in the 2014 agreement you will recall from your previous evidence I am sure when we looked at the 2012 agreement there was actually a termination provision that had been scratched out. Do you recall that?

10 **MR PHATLANE:** Yes Chairperson.

ADV KATE HOFMEYR: And now we have a clause in the 2014 agreement headed Early Termination, do you see that?

MR PHATLANE: Yes Chairperson.

ADV KATE HOFMEYR: Did you draft this agreement with this clause in it?

20 **MR PHATLANE:** Chairperson I drafted the contract but the contract that I have drafted did not have this early termination as written. What had happened initially after I had seen the 2011 one which was signed – or which was cancelled out which I said it was – it was done not – not with me being part of it. Actually I only got it for archiving. Then I realised that the clause – clause on termination it has a problem. It is affecting some people. Now when I prepared this I made sure that this clause is as Transnet wants it. It protects Transnet in the sense that it will say that we must have the right to cancel this within – within 30 days if we feel that we do not get any joy with the contract. But

subsequent to the signing of this contract which I – which I remember that – on that – on Thursday a particular Thursday I have forgotten the date but I think the date of the contract would be able to tell us which Thursday it was. I was interacting with the – with the New Age regarding this. They were checking how far we are – how far we are in terms of signing. Then I will send them the contract, the copy of a contract to say, these are the contents whatever. They queried Clause 12 to say, no they want us – they want that Transnet should cancel out this – this Clause 12 of termination. I – I resisted you know when I was

10 – it was my counterpart in TNA and me and I was like, no we are not going to go ahead with this if this clause is not there because it protects us as an organisation. But because I could not get a – we could not agree with TNA on that. What happened next it was – that it was now escalated to my GM to say I am kind of difficult or I am making it difficult for conclusion of this contract. Now my GM Mr Mboniso Sigonyela called me in regarding this and said, hey Chief they are saying there is a problem regarding this. I said, no the – our counterparts in TNA they want me to scratch out Clause 12 and I will not be able to do that because that is – that is the clause that protects

20 us as Transnet to say in case we want to cancel this we have got to rely on this. Now because it was difficult also I think he also had pressure. He referred me back now to legal. Remember before we – before we even talk to other parties it will go to legal to say, do you agree to this contents, to the – or the benefits as us as Communication will say, yes we are happy with the benefits but the contents of this

agreement they will then ratify and say yes the clause are okay – what, what. Now it had – it had passed that stage. Now the party on the other side do not want to sign it because it has this. So I had to refer to my GM. Now he referred me back to legal services to say, talk to the Chief for Legal Services person or the head of Legal Services that was Mr Ndiphiwe – I will remember the surname. Now I went back to legal to say, I am trying to contract with TNA they want us to cancel out the – Mboniso says I need to check what is your view. And they – and Mr Ndiphiwe continued to say no. We cannot remove this. This protects
10 us. I came back – it was to and fro. I came back to my GM to say, he says no we should not be – we should not agree to this clause being removed. And now I left it at there. Later ...

CHAIRPERSON: What was his reaction when you said that if you are able to remember?

MR PHATLANE: No he did not say anything. I think it was just a person who was quiet.

CHAIRPERSON: Ja.

MR PHATLANE: And he did not know what to say.

CHAIRPERSON: Okay.

20 **MR PHATLANE:** I left it at that. Later I was – I was called again to say, go and call Mr Ndiphiwe Silinga.

CHAIRPERSON: You were called by your GM?

MR PHATLANE: Yes.

CHAIRPERSON: Ja.

MR PHATLANE: To say I need now to go and call Mr ...

CHAIRPERSON: Is that the same day or...?

MR PHATLANE: Same day.

CHAIRPERSON: Ja okay.

MR PHATLANE: Same day and then they had - they had a discussion. I do not know what the discussion was about. I was not in there. Later they went up to 49th floor that is where our GCE's offices were. They were called in there. Mr Molefe's office.

CHAIRPERSON: Mr Brian Molefe?

MR PHATLANE: Yes.

10 **CHAIRPERSON:** Okay.

MR PHATLANE: It was around three. They were in there until I knocked off on that day. So on that day this - this contract was not signed. The following day I was off.

CHAIRPERSON: Was it meant to be signed on that day?

MR PHATLANE: It was - it was - no. Once - once we agree ...

CHAIRPERSON: Ja.

MR PHATLANE: On that ...

CHAIRPERSON: Ja.

MR PHATLANE: On this - on this clause.

20 **CHAIRPERSON:** Yes. What I mean is ...

MR PHATLANE: We will go ahead. It will - it will ...

CHAIRPERSON: What - what I mean is whether accept for the disagreement on the clause. That day was the day on which it was supposed to be - to be signed?

MR PHATLANE: You - you are right Chairperson. We will then send it

to the ...

CHAIRPERSON: Okay.

MR PHATLANE: To other party to sign off ...

CHAIRPERSON: Okay. Okay.

MR PHATLANE: And then it will come to us. So I left them. They were still in - in 49th floor. I do not know whether the discussion - the whole - it - it was about this. Friday I was off.

CHAIRPERSON: So that was the following day?

MR PHATLANE: The following day.

10 **CHAIRPERSON:** Friday was the following day?

MR PHATLANE: Yes. I was off. I was on leave. When I came on Monday. This contract has been signed and concluded. It is - it is sitting there for my archiving and I thought - if - if you read my statement. I thought it was cancelled out. Actually by my - in my mind I was referring to 2011 and I realised later no.

It is not the 2011 that I am talking about. It is this one the 2014. Actually it was not signed out. It was reviewed and changed and if you look at - at it as - Chairperson you will see that it is not like the - the normal clause that you - you will have, but at least it is still there.

20 I thought it was cancelled out, because I - I was fighting for this clause.

ADV KATE HOFMEYR: Mr Phatlane, if you can just read into the record. What does the early termination clause now say in the 2014 agreement that was concluded?

MR PHATLANE: It now says:

“Save for termination as provided for in Clause 13

below. This agreement can be terminated on the following ground: by mutual agreement between parties.”

CHAIRPERSON: The one that you had insisted on. How does it read? Let us just get that.

ADV KATE HOFMEYR: Chair, let me take you to it. You will find it at page 25 - 2-5. Chair, we just have to read beneath the scratching out ...

CHAIRPERSON: Yes.

10 **ADV KATE HOFMEYR:** Because you recall from Mr Phatlane’s previous evidence. This was the standard early termination clause which in the 2012 agreement had been deleted, but Mr Phatlane could you read into the record what that would usually provide?

MR PHATLANE: Yes Chairperson. It - it reads:

“Transnet reserves the right to terminate this agreement upon giving 30 days’ notice to TNA Media. Transnet shall be entitled to terminate this agreement in writing for - for failure of TNA Media to perform its responsibilities.”

20 **CHAIRPERSON:** Yes. Okay.

ADV KATE HOFMEYR: And then we compare that to - at page 65 an early termination clause. Mr Phatlane, are you a lawyer?

MR PHATLANE: No. I am not - I am not a lawyer.

ADV KATE HOFMEYR: I - I once made an error in assuming a witness was not a lawyer. So I always ask that very carefully before I go any

further in relation to legal matters. Chair, we will certainly make submissions in due course that the clause at page 65 is by no stretch of the imagination an early termination clause.

It is simply a clause that allows parties by mutual agreement to bring an agreement to an end which gives no right to the one party ...

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: As the previous early termination clause did.

CHAIRPERSON: Yes.

10 **ADV KATE HOFMEYR**: To exit the agreement on 30 days' notice.

CHAIRPERSON: Yes and I see that - I mean it says - that is 12.

ADV KATE HOFMEYR: Hm.

CHAIRPERSON: "Save for termination ..."

ADV KATE HOFMEYR: Indeed.

CHAIRPERSON: "... as provided for in Clause 13 below ..."

But when I read 13 ...

ADV KATE HOFMEYR: Hm.

CHAIRPERSON: It is not about termination.

ADV KATE HOFMEYR: No. No.

20 **CHAIRPERSON**: It is about cession and assignment.

ADV KATE HOFMEYR: Indeed.

CHAIRPERSON: It says - there is nothing about - about termination.

ADV KATE HOFMEYR: Indeed Chair.

CHAIRPERSON: So in effect it was saying you can only terminate this agreement by agreement.

ADV KATE HOFMEYR: Indeed Chair.

CHAIRPERSON: So actually that even dropped the part which would be normal.

ADV KATE HOFMEYR: Hm. Hm.

CHAIRPERSON: Which in the previous or in the 20 - do you say the 2011?

ADV KATE HOFMEYR: 2012.

CHAIRPERSON: 2012.

ADV KATE HOFMEYR: Mr Phatlane, you were referring to it as the
10 2011 agreement in your testimony earlier, but as I have it that was the
2012 agreement. It is the one at page 25. Correct?

MR PHATLANE: Yes Chairperson. Yes. I - I mixed the two. I was referring to the - the one on 2014. Instead of the - the one on 2011 and 2012. Yes.

ADV KATE HOFMEYR: 2012 ...

MR PHATLANE: 20 - 20 ...

ADV KATE HOFMEYR: Because it was signed if you go to page 27 in May 2012. Correct?

MR PHATLANE: Yes. Yes Chairperson.

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

MR PHATLANE: This is the mix ...

CHAIRPERSON: Yes.

MR PHATLANE: The mix up I had. Yes. I was correcting that and just also to correct. The - that - you asked a question. During this part I had not been training in law. Now I am a - a lawyer in training. So it -

it wished to be different. Yes. I have just passed my legal studies.

CHAIRPERSON: No. That is good. Now did you appreciate when you read the clause that was put into this agreement while you were on leave on that Friday? That it differed from the 2012 agreement in terms of the termination. In the sense that one, it did not provide for an - any early termination.

Two, the only termination it provided for is - was if both parties agreed to terminate - agreed to terminate the agreement and three, it did not give - they had done away with the clause that said
10 Transnet could terminate the agreement if TNA Media did not perform. Did you appreciate the - all - all those distinctions - differences between the two or not really?

MR PHATLANE: Yes Chair.

CHAIRPERSON: Hm.

MR PHATLANE: May - maybe if I may just give a short ...

CHAIRPERSON: *Ja.*

MR PHATLANE: Understanding. When this - when we concluded these TNA transactions. Let me say throughout. To me there were three phases. There was one phase where it was the phase where the
20 emotions were of enthusiasm. You look at this transaction. It makes sense. It - it will put our brand out there.

It will - it will provide stake - stakeholder engagement platform. It will do the - the media relations. That is your 2011/2012/2013 where you - where you could even justify and I could even stand up and say I think it - it made sense, but there was a time -

the second phase.

You - around 2014/2015 when there was a lot - a lot of negative - negativity around the Guptas. That - it - it changed also the thinking and the appreciation. Where we felt as - as communication members. Some of us. We felt like now we should be scaling down or even cancelling this out, but we do not have power to do that.

You can only be able to - to engage and say, but really do we still have to go. Do we have to do? They want 25 now. Really do we go 25? Why do not we scale down, but we had to - it - it was signed at
10 that level. So the - the emotions were changing in us. It was no longer that euphoria where we thought this platform is good.

This association is good, because with time you have got to review. You have got to be able to say if Transnet associates itself with a particular brand. Whether it being Nedbank or whatever. If that brand gets to be or its reputation gets to be affected. We also have to re - to review and say but we are getting bad reputation out of this association.

Now we need to either scale down or - or just completely go out. So at this - at this level I was at phase 2 where I was. I thought
20 we - we should be scaling down or cancelling some of - of this. So when this happened. That is why I insisted on - on the termination clause, because I - I knew that it allowed us an opportunity to say.

If somewhere somebody can see that there is a need or even - even the leadership of Transnet can see that there is a need of us. Put of it out. We will have 30 days to - to terminate. Now as it has

changed. It made it difficult now, because if TNA says no. We - we have already utilised your money and we cannot be able to - to pay your back.

It becomes difficult. So you have got to continue. So I did have appreciation of that Chairperson.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: And they were entitled to be paid upfront for this 20 million. Were they not?

MR PHATLANE: Yes Chairperson. Most of them we - we paid upfront.

10 **ADV KATE HOFMEYR:** At the beginning of the year before the breakfasts had even taken place?

MR PHATLANE: Yes. Yes Chairperson.

CHAIRPERSON: What was the motivation as far as Transnet was concerned for agreeing to pay in advance?

MR PHATLANE: Chairperson, I cannot tell on that one.

CHAIRPERSON: Yes.

MR PHATLANE: It was just instruction of put this that we will pay ...

CHAIRPERSON: Yes.

20 **MR PHATLANE:** In advance. Ja. Maybe the - my GM, because some of the discussions they would be above my - my grade Chairperson.

CHAIRPERSON: Yes. Yes.

MR PHATLANE: Yes.

CHAIRPERSON: But you - you yourself did not understand also at the time or was it something you did not pay attention to?

MR PHATLANE: No. I - I knew, because it - it changes from the initial

one.

CHAIRPERSON: Hm.

MR PHATLANE: Now we have got to pay ...

CHAIRPERSON: Hm.

MR PHATLANE: In advance. Seven - seven days. I think.

CHAIRPERSON: Hm.

MR PHATLANE: So you - you appreciate it, but ...

CHAIRPERSON: Hm.

MR PHATLANE: You do not have an input on it.

10 **CHAIRPERSON:** Hm. Okay.

ADV KATE HOFMEYR: Did TNA ever disclose to you that their arrangement with Eskom required them to submit an invoice after each breakfast and then only be paid on invoice?

MR PHATLANE: No. I did not know about that Chairperson.

ADV KATE HOFMEYR: Let us go then - if we may - to the 2015 agreement. You will find that commencing at page 74 - 7-4 - of EXHIBIT MM4.

CHAIRPERSON: The one we were looking at - at page 65.

ADV KATE HOFMEYR: Yes.

20 **CHAIRPERSON:** Was that 2015?

ADV KATE HOFMEYR: That one was the 2014 agreement Chair.

CHAIRPERSON: Oh. Okay.

ADV KATE HOFMEYR: So now we are moving - yes.

CHAIRPERSON: To 2017?

ADV KATE HOFMEYR: To 2015.

CHAIRPERSON: 2015?

ADV KATE HOFMEYR: Yes.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: So the - the agreement that commences at page 74 is the 2015 agreement.

CHAIRPERSON: Hm.

ADV KATE HOFMEYR: Just for the record you will see at page 87.

CHAIRPERSON: Hm.

ADV KATE HOFMEYR: That it is signed at various points in March and
10 April 2015.

CHAIRPERSON: Hm.

ADV KATE HOFMEYR: By the two parties.

CHAIRPERSON: Hm.

ADV KATE HOFMEYR: Who at the time Mr Phatlane was the Group Chief Executive of Transnet who signed this agreement on behalf of Transnet? You will find it at page 87.

MR PHATLANE: It was Mr Brian Molefe.

ADV KATE HOFMEYR: And just two features of this agreement I would like us to pick out. The first is how many breakfasts and at what cost
20 and you will find that at page 79 under Clause 6. What was Transnet now contracting for?

MR PHATLANE: It was contracting for 21 200 000.

ADV KATE HOFMEYR: And for how many sessions?

MR PHATLANE: For 20 sessions Chairperson.

ADV KATE HOFMEYR: So it had gone up a bit from the previous year.

Had it not?

MR PHATLANE: Yes Chairperson.

ADV KATE HOFMEYR: How did they justify that increase of 1.2 million?

MR PHATLANE: The justification most of the time it will be - it is another year. Things increases - you know. That is - they - there was no formal justification. It will be me inquiring why this. Now no. It is - it is our proposal now. The value is at this level.

ADV KATE HOFMEYR: Did - did the Finance Department get involved
10 at all in this?

MR PHATLANE: No Chairperson. Not directly with me. I - I - maybe they might have with the GM, but not with me. I do not know of any engagement with the communications.

ADV KATE HOFMEYR: And if you go to page 82 you will see the now fairly infamous early termination clause there again. Can you read into the record what that termination clause provided for the year of 2015?

MR PHATLANE: It said:

20 "Save for termination as provided in Clause 13
below this agreement can be terminated on the
ground in Clause 11.2 by mutual agreement
between the parties."

ADV KATE HOFMEYR: Chair, I do note if you go over we do have a breach in termination Clause 13 over the page.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: So at least there is a cross reference there ...

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: But as I read this breach clause it relates to the entitlement to sue for specific performance, but that is again a - a point we can make in due course and should we have the benefit of Mr Sigonyela or Mr Molefe's evidence in due course. We can no ...

CHAIRPERSON: Hm.

ADV KATE HOFMEYR: No doubt question them about that.

CHAIRPERSON: Hm.

ADV KATE HOFMEYR: Mr Phatlane ...

10 **CHAIRPERSON:** Well I am looking at that ...

ADV KATE HOFMEYR: Yes.

CHAIRPERSON: Breach in termination clause. Clause 13.

ADV KATE HOFMEYR: Hm.

CHAIRPERSON: It seems that - well I am reading it - I was reading it quickly, but ...

ADV KATE HOFMEYR: Hm.

CHAIRPERSON: It seems that even when there is a breach.

ADV KATE HOFMEYR: Hm.

20 **CHAIRPERSON:** It is not termination that the aggrieved party has not the right to terminate. That the aggrieved acquires is the right to seek specific performance.

ADV KATE HOFMEYR: Chair, with respect that is similarly my reading of it.

CHAIRPERSON: Yes. Yes.

ADV KATE HOFMEYR: Hm.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: So termination it appears under this agreement could be done if the other party agreed with you. If they defaulted you could sue them to perform.

CHAIRPERSON: Ja.

ADV KATE HOFMEYR: Mr ...

CHAIRPERSON: It is quite an unusual ...

ADV KATE HOFMEYR: Indeed.

CHAIRPERSON: Ja.

- 10 **ADV KATE HOFMEYR:** Indeed. Mr Phatlane, did you have cause to consider this clause when you saw the agreement signed?

MR PHATLANE: No Chair - Chairperson. We are moving from the previous one to - to this one. I could not continue pushing for something that has been changed at a higher level. So I continued on the previous one to say. This is what the - the previous one looked like and it continued and got signed.

CHAIRPERSON: Do you know how the - this one that I have just referred to came about, because it is different from the Clause 13 of the 2012 one that we looked at or was it 2014 or both?

- 20 **ADV KATE HOFMEYR:** 2014.

CHAIRPERSON: The 2012 one had the right termination clause that would always appear in Transnet contracts as I understand your evidence, but it was then crossed out. So this one here - Clause 13 at page 83 seems to be a new provision that was not there in the previous one. Am I right?

MR PHATLANE: It looks like that Chairperson, but I ...

CHAIRPERSON: You cannot remember how it came ...

MR PHATLANE: I cannot remember as to ...

CHAIRPERSON: Came about.

MR PHATLANE: Yes, because the - the drafting of - of the - of the contract. It is - it is not necessarily something that I started afresh. You will get it a - a Transnet template - template and then you - you will put in the - whatever that needs to - to be drafted in and you take it to Legal Services. They will change there and there.

10 So I can - I cannot remember how we also added this breach termination, but it could have been informed by the up and in - out with - with Legal Services.

CHAIRPERSON: I was wondering. Ms Hofmeyr whether somebody picked up that they said that there is a termination clause in Clause 13, but there is no termination clause. So they had to come up with something ...

ADV KATE HOFMEYR: Chair.

CHAIRPERSON: But we still did not provide for termination.

ADV KATE HOFMEYR: No. Indeed. Indeed Chair, but can I - may I
20 just for the records purposes while you were asking Mr Phatlane the question. I did go back to the 2014 agreement and I would just like to draw your attention at page 65, because there does appear albeit differently numbered to be the same breach and termination clause that we saw in the 2015 agreement, but you will see it is actually Clause 14 on page 65.

CHAIRPERSON: Oh yes. Not ...

ADV KATE HOFMEYR: So ...

CHAIRPERSON: Not - so the ...

ADV KATE HOFMEYR: Indeed.

CHAIRPERSON: The paragraph numbers are different ...

ADV KATE HOFMEYR: Correct.

CHAIRPERSON: But ...

ADV KATE HOFMEYR: So ...

CHAIRPERSON: Yes. Okay. Yes.

10 **ADV KATE HOFMEYR**: As - as I understand this page. We have an early termination clause numbered 12. We are at page 65 of MM4.

CHAIRPERSON: Huh-uh.

ADV KATE HOFMEYR: That says:

“Save for termination as provided in Clause 13 ...”

But then Clause 13 is a session and assignment provision ...

CHAIRPERSON: Yes. Yes.

ADV KATE HOFMEYR: But if you go beyond that.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: You see a Clause 14.

20 **CHAIRPERSON**: Hm.

ADV KATE HOFMEYR: I have done a quick comparison. It does appear to be a replica ...

CHAIRPERSON: Hm.

ADV KATE HOFMEYR: Of the ...

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: Proper Clause 13 that you later find in the 2015 agreement ...

CHAIRPERSON: Hm.

ADV KATE HOFMEYR: But again with the same issue around specific performance as compared with cancellation.

CHAIRPERSON: Yes. No. Thank you.

ADV KATE HOFMEYR: Thank you. Mr Phatlane, if we can then move to the year 2016, because at this stage the documents at least indicate there is a new Chief Executive of Transnet and you will find the page at
10 page 9-0 - 90 of EXHIBIT ...

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

ADV KATE HOFMEYR: Apologies Chair.

CHAIRPERSON: I am interrupting you. Do not forget the ...

ADV KATE HOFMEYR: Certainly.

CHAIRPERSON: Question you wanted to put. Just looking at Clause 14 at page 65.

ADV KATE HOFMEYR: Yes.

CHAIRPERSON: The one to which you drew my attention just now.

ADV KATE HOFMEYR: Hm.

20 **CHAIRPERSON:** This clause says:

“Should any party commit a breach of any term, condition, undertaking, warrantee or representation contained in this agreement and should such breach be incapable of being remedied or should breach be capable of being remedied and the defaulting party

fail to remedy such breach within 30 days after receipt of a written notice from the other party requiring the breach to be remedied. The non-defaulting party shall be entitled without prejudice to any other rights which it may have in terms of this agreement or at law to claim specific performance without prejudice to any of its rights to claim damages.”

Well the part that says:

10 “...without prejudice to any other rights which it may
 have in terms of this agreement or at law ...”

Maybe that might leave room ...

ADV KATE HOFMEYR: Include.

CHAIRPERSON: For termination if there is a breach.

ADV KATE HOFMEYR: Material breach?

CHAIRPERSON: *Ja.* Yes.

ADV KATE HOFMEYR: Indeed.

CHAIRPERSON: *Ja. Ja.* Okay. Alright.

20 **ADV KATE HOFMEYR:** Yes. Indeed Chair, but not a termination at the
election of a party which was the intention of an early termination
clause. Right. If ...

CHAIRPERSON: Yes. Yes. That - that ...

ADV KATE HOFMEYR: If we are in Clause 14.

CHAIRPERSON: Yes. *Ja.*

ADV KATE HOFMEYR: And it is retaining the rights under ...

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: Law.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: I.e. common law ...

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: Rights ...

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: Or material breach termination. Chair, indeed the proper construction of Clause 14 might have retained that right.

10 **CHAIRPERSON:** Yes. Yes.

ADV KATE HOFMEYR: Indeed.

CHAIRPERSON: Of course the - the protection that Mr Phatlane was talking about that they were really concerned - he was very concerned about was the termination by the election of Transnet in - even in a case where there is no material breach.

ADV KATE HOFMEYR: Indeed Chair ...

CHAIRPERSON: *Ja. Ja.*

ADV KATE HOFMEYR: And - and similarly evidence from the Eskom witnesses have - before this Commission has indicated the role that
20 that termination clause was providing in their view ...

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: To protect Eskom and its precarious financial ...

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: Position ...

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: But - but similarities across the evidence ...

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: Because those clauses appear to have been removed from ...

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: From these agreements.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: Indeed. Mr Phatlane, if we could go then to page 90 - 9-0- of EXHIBIT MM4.

10 **CHAIRPERSON:** I am sorry. You - you are moving away to the agreement. Is that right?

ADV KATE HOFMEYR: I am leaving the agreement and moving to the year 2016 Chair.

CHAIRPERSON: Yes. I just want - I do not want to forget this.

ADV KATE HOFMEYR: Of course

CHAIRPERSON: Mr Phatlane, if you look at the clause containing TNA Media's undertaking. I think the problem would be the same in all of these agreements that they concluded with Transnet, but I am look at the moment at page 62. It appears to me - and I just want your
20 comment.

That TNA Media did not have any obligation that required it to pay any money or to incur any expenses themselves or contribute to the cost of these breakfasts. All that they - all that the - these agreements required them to do was:

"To consult with Transnet on selection of speakers."

I do not know if that was there right from the beginning, but at least in terms of this one. The next one is:

“To inform Transnet of the selected or confirmed speaker at least three weeks prior to the happening of the event. Three, provide Transnet with a three months rolling planned speaker list. Four, provide maximum media exposure of Transnet before, during and after the event.”

If I can stop there. Do - did you know what this meant at
10 practical level?

MR PHATLANE: Yes Chairperson.

CHAIRPERSON: I know we talked about Transnet's logo appearing in the - in the material of the - the breakfasts. What else did this mean at a practical level?

MR PHATLANE: At a practical level Chairperson. If I may simplify it. It meant that TNA will come as a service provider to Transnet to say I can help you to build your - your brand. I can help you to - to manage your reputation. Here is a package. I have a partnership with SABC. Normally if it is - Transnet goes to SABC.

20 That will be expensive if we were to just put an ad about Transnet's spread and what we are doing. Now they - they have got that - that proposal. They are saying we have already contracted. We have got a partner - a strong partner which is SABC. Here is our proposal. If you buy into - into us helping you to - to brand yourself. To build your image. To improve your ... (intervenes).

CHAIRPERSON: Let me interrupt you.

MR PHATLANE: Yes.

CHAIRPERSON: That is what they would have said at the beginning?

MR PHATLANE: Yes. To the proposal.

CHAIRPERSON: (Intervenes).

MR PHATLANE: Yes Chairperson.

CHAIRPERSON: I am talking now, because I think this relates to on the day of the breakfast. Before the day of the breakfast. On the day of the breakfast and after. That is what I am - I am talking about now.

10 You started in 2013, 2013 or 2011. You are now in 2015, 20 or so. At a practical level on the day what did you understand this obligation on the part of TNA Media to entail that they would provide Transnet with maximum media exposure before, during and after the event.

MR PHATLANE: Yes Chairperson. Let - let me just say in that week there were some of that discussed in that week.

CHAIRPERSON: Hm.

MR PHATLANE: Even if it could. They - they will share with us to say we have got the - the following list. Sometimes they will do.

Sometimes they will not. They will share with us to say we have got -

20 let me say - 10 Ministers who wants to speak for the next session. We - Minister for Tourism, Minister for - for Home Affairs whatever.

We will then look at those that we think might appeal to our brand or - or a topic or the topics that we think we want to drive the leadership around. So we might chose and say we thinking this Minister and this and this one. Then they will either start advertising

now and then the advert on the newspaper. They will have a Transnet logo there to say Transnet is sponsoring this particular ...

CHAIRPERSON: Okay. Let me put my question this - this way.

MR PHATLANE: Yes.

CHAIRPERSON: Did this at a practical level mean anything other than having Transnet's logo in material and so on relating to the breakfast?

MR PHATLANE: Yes Chairperson.

CHAIRPERSON: Ja. What is it?

MR PHATLANE: One, during that - before this - let me say around six.

10 Before the - the main breakfast begins. You - you will have sometimes an opportunity to allow Transnet leadership to be interviewed around a particular issue. It could be the Chairperson. It could be the - the GC. Depending on who senior we have brought in there.

They will do there - those interviews. Two, you - you will be allowed two tables to bring stakeholders that you want to be part of that from - from the side of Transnet. They - they will come there and then from there it is - it is the normal breakfast as - as you - you might know it Chairperson. The event taking place being flighted.

CHAIRPERSON: Ja. Anyway. Then the next one is:

20 "Advertise and promote the partnership using various mediums including but not limited to press, television, radio and Transnet."

ADV KATE HOFMEYR: And internet Chair.

CHAIRPERSON: Hm.

ADV KATE HOFMEYR: Sorry. I think you read Transnet. I think it is

internet.

CHAIRPERSON: Oh (laughing), *ja* Internet, you're right, provide highest profiles to identify Transnet and Transnet's logo shall appear on all 10A metre website pages, correspondence, announcements, posters, displays, support vehicle and ground support station and station signs, on selected promotional items such as videos, internet broadcasts and flash trailers etcetera. Acknowledge Transnet in each phase based on ...[indistinct] connecting them to this event.

You have got more of those things, did you – do you see any
10 that entailed TNA taking any of the cost implicate you know connected with this breakfast, have I missed something? I didn't seem to see anything where they were also going to pay?

MR PHATLANE: Chairperson by virtue of them being a service provider and Transnet buying into the package it means they would – definitely would have incorrect whatever cost, for the value for what it would necessarily be a partnership where we are saying, we are putting so much, R1, they put R1. It is us buying into the proposal, that was my understanding Chair.

CHAIRPERSON: But basically Transnet was giving TNA Media lots of
20 millions over these years to enable TNA to have these breakfast shows, from which they would benefit themselves, but Transnet paid effectively for the thing by paying the millions. As far as you know you don't know of anybody else who incurred expenses connected with this breakfast where Transnet was involved.

MR PHATLANE: Chairperson it is common cause that any service

provider, whether we had gone the route of having an agency who will have paid whatever amount they will do the same, they will make sure that there's a value and whatever, in all those processes, they will make sure that you get to appear on TV if that is part of the project so from where I was sitting yes we paid for that proposal Chairperson.

CHAIRPERSON: But the value to Transnet, I asked you last time, I continue to struggle with that, what – except for having its logo shown on material and when the breakfast happens having the Chairperson or CEO or somebody connected with the Chairperson being seen there you
10 talked about some interview that could happen but they were generally not speaking, Transnet wasn't speaking, at these if I understood your evidence clear, well previously, and there could be a Minister who may be connected with Transnet and other SoE's who could speak, is my understanding correct?

MR PHATLANE: Chairperson yes but I need to add on, just to provide me with a picture as to what is it that we were trying to achieve with this, whether they – the transaction was incorrectly but what we wanted to achieve.

Let me start maybe with the key risk areas that we are facing
20 as Transnet as a brand, poor reputation, also we have employees which are stakeholders that needs to be engaged and we have also a responsibility to say Transnet's assets are being damaged, infrastructure is being damaged out there.

Now we've got a broad Transnet stakeholder universe, which is your investors, your communities, which is your organised business,

which is your suppliers, your customers. Now let me give a value chain now why we go to the extent of wanting to put our brand out there. We have got a responsibility as communication to build the Transnet reputation, albeit that it is known that there is a Transnet. We have got a responsibility to improve the Transnet's equity, the value of the Transnet brand, it has to increase. We have got a responsibility to make sure that we make Transnet to be a trusted brand.

Now these – all these things they speak to our stakeholders in this way, one, with customers, with customers we want to retain them, 10 we want them to know the value of this organisation that is a trusted brand and it gets – it associates itself with trusted brands. That association in helps in building or increasing brand equity but also it remains in the minds of our customers, of stakeholders.

The investors, Transnet has a responsibility to continue getting investors who will invest in this brand. Now the only way internationally people might know Transnet a little bit but you need to be out there, so that they know there is this company called Transnet and what it does. By putting the logo out there you are selling the brand to people who might know it or who might know it a little bit or 20 who don't know about Transnet at all, so that exercise of having the logo behind or being exposed is part of building a brand.

We have got communities out there who destroy our infrastructure, and they don't know that some of the things that we do within those communities like when we bring our ESD Enterprise Supply Development within a particular community, or when we bring our CSI,

...[indistinct] trade, whatever developments that we will bring to a school or to a clinic they – some of the communities cannot associate that good acts with who we are, some they think Transnet it is Spoornet that is doing this, they don't know that Transnet is Spoornet but it has changed the image, it is now called Transnet.

Now when we do this, when we expose the brand out there you are saying to the communities we are part of what that is happening in the country. We bring information; we educate you through thought leadership. So when we go back to those communities because some
 10 of them they are ...[indistinct] protestor and they destroy our assets, we are able to show them to say look you might have noticed one, two, three, four, five, you might have seen Pela ...[indistinct] coming here it is us, it is that brand that you see there that helps to protect Transnet and to build the brand equity of this organisation.

CHAIRPERSON: Is it the kind of thing that maybe PRASA also does despite or not despite, does and still one sees lots of trains being burnt, would it be the kind of thing that every company would be wanting to do?

MR PHATLANE: Yes Chairperson advertising and promotion that is
 20 common, that is why I was saying it is common. It is companies they do that, even business to business like you alluded earlier to say you do not see why business to business will have to engage in this, this is common cause for communication to make sure that it puts the brand out there so that it is known to protect and also to be able to get investors seeing that we are part of the South African economy, we

promote the discourse and the discussions around what is happening in our country.

CHAIRPERSON: Okay, thank you. Ms Hofmeyr?

ADV KATE HOFMEYR: Thank you Chair. Mr Phatlane I want to be clear about the question I am about to asked, it is not related to the general use of branding for an organisation. What I want to ask is whether the choice of this particular vehicle for Transnet's branding objectives was a valuable one in your view?

MR PHATLANE: Chairperson I will go back to the three phases I
10 have spoken about. If you had to ask me in 2011/12, maybe 13 I think I will have put my neck and say this must happen, it makes sense, the way it was brought to my attention, because to say Transnet before did not advertise or go broad, big scale, on TV, on billboards, now this provided that opportunity for us, for the brand to be known, to be out there and also because it was multi-pronged it had also the media side where the person responsible for media could leverage on this transaction.

It also had the brand person also leveraging on this transaction, then I would have said to me it made sense, but as it
20 continued, because as it continued around 2014, 15, 16 I was worried because of the negativity around – not around TNA as well as around Guptas.

Now if the association, remember when we buy into any product it is this association that we want to make with, when you go to Nedbank, when you go ...[indistinct] it is that association that we were

buying into it to say this is a trusted brand we want to be associated with, we want to be seen in partnership with that to say we are in line with trusted brands, but once there is a shaky moment or the party side that's when we need to review, then I will say there I had my doubts if whether we need to continue with this.

Then the last phase which I will talk about when we reach an element of conclusions I will talk about this.

ADV KATE HOFMEYR: Thank you. Mr Phatlane are you aware that there were numerous parliamentary questions posed to the Minister of
10 Public Enterprises towards the end of 2012 querying the extent of the spend by State Owned Enterprises with TNA?

MR PHATLANE: Yes Chairperson I know about that.

ADV KATE HOFMEYR: Are you aware that in 2013 the Public Protector was investigating State Owned Enterprises contracting with TNA, because she was concerned that it constituted wasteful and fruitless expenditure?

MR PHATLANE: No, I don't think I remember about – or I have heard about that, maybe later I might have been exposed to that but during that time I don't remember.

20 **ADV KATE HOFMEYR:** Thank you. Chair if we may then, and Mr Phatlane go to page 90 of Exhibit MM4. Chair I note that we are just before the quarter past eleven tea break. I don't have a great deal more but not such that I would finish it in five or so minutes, I don't know if it's convenient to take the break now and return?

CHAIRPERSON: How much time do you think you would need?

ADV KATE HOFMEYR: I would think fifteen minutes.

CHAIRPERSON: Maybe we should take the break at half past eleven?

ADV KATE HOFMEYR: Indeed.

CHAIRPERSON: Ja, okay.

ADV KATE HOFMEYR: Mr Phatlane we are in 2016 in the documents now and I indicated that this document evidences a change in the Group Chief Executive at Transnet and its dated the 9th of March 2016. Who was the Group Chief Executive at this stage?

MR PHATLANE: It was Mr Siyabonga Kama Chairperson.

10 **ADV KATE HOFMEYR:** Thank you, and this memorandum at least as I look at it, is different to some of the previous ones, because you don't seem to have been the compiler of this memorandum if you go to page 92, do you see that?

MR PHATLANE: Yes Chairperson I see that.

ADV KATE HOFMEYR: Can you assist us there, what – why had your role changed by this time?

MR PHATLANE: Chairperson I think I was part of the compiling, I was not included to sign on this but I have a sense that I know about this.

20 **ADV KATE HOFMEYR:** Thank you. Well then you can probably assist us with the next document that I am interested in, which is at page 93, nine three. What is this document?

MR PHATLANE: It is a memorandum Chairperson.

ADV KATE HOFMEYR: And who is it addressed to?

MR PHATLANE: It is addressed to Group Chief Financial Officer.

ADV KATE HOFMEYR: And who was that at the time?

MR PHATLANE: It was Mr Gary Peter.

ADV KATE HOFMEYR: And who is it from?

MR PHATLANE: It is from GM Corporate and Public Affairs, Mr Mondisa Skonjela.

ADV KATE HOFMEYR: And the date of the memorandum?

MR PHATLANE: 19 April 2016.

ADV KATE HOFMEYR: Were you aware of this memorandum at the time it was prepared?

10 **MR PHATLANE:** Yes Chairperson I was aware.

ADV KATE HOFMEYR: So what is this memorandum informing the Group Financial officer of?

MR PHATLANE: It was informing the Group Chief Executive that he needs to – let me see – oh financial officer to note or it was requesting the Group Chief Financial Officer to know that Corporate Public Affairs will pay the New Age the entire cost of R24million in advance of the 2016/17 business breakfast session contract.

ADV KATE HOFMEYR: Now we haven't seen a memorandum like this in any of the preceding years, were there any like this?

20 **MR PHATLANE:** No chairperson except that I think there's one around 20 – if not 2011 or 2012, 2013, there was one where I was advised that it must also go the CFO should recommend also, I think there's one where Mr Anoj Singh did sign if my memory still serves me well.

ADV KATE HOFMEYR: We will look for that, I wasn't aware of it as I

asked the question now, but we will go back through, let's focus on this one at the moment, why was this notification being given to the Group Chief Financial Officer?

MR PHATLANE: I don't know Chairperson. I don't know.

CHAIRPERSON: I'm sorry Ms Hofmeyr I missed that question.

ADV KATE HOFMEYR: I was asking why this notification was being given to the Group Chief Financial Officer.

CHAIRPERSON: Okay, yes.

ADV KATE HOFMEYR: Based on my previous query as to it not having
10 been done before.

CHAIRPERSON: *Ja.*

ADV KATE HOFMEYR: And Mr Phatlane your answer was?

MR PHATLANE: My answer is I don't know because sponsorships, their sponsorships were not approved at the CFO's level, so I don't know.

ADV KATE HOFMEYR: It says at paragraph 3 on that page that CPA, that's Corporate and Public Affairs and the New Age agreed on the renewal of the contract for 20 breakfasts on the same terms as last year, so at a cost of R24 168 000, including VAT on condition that
20 Transnet pays the cost in advance, and then it goes on at paragraph 4 to say:

“The company had a savings of R2 416 800 inclusive of VAT that the company would have incurred from the annual customary inflation increase of up to 10%.”

What does that mean Mr Phatlane?

MR PHATLANE: No this is not coming from my mind, I think it was one of those where you write and then it gets changed to say at this, this is not a sentence that will come from me.

ADV KATE HOFMEYR: Did you interrogate it at all at the time?

MR PHATLANE: No the only time I interrogated something that goes to the CFO or to the Chief Procurement Officer yes there was once where I asked that because that was not the normal route of a proposal of a sponsorship, you know there was one I think where we did one of the *ad hoc* and we had to make sure that it goes to – I had to make
10 sure that it goes to the Chief Procurement Officer and I was like but why, and I was told no he has to look at it and ja, so it is not a normal course of doing sponsorship proposals.

ADV KATE HOFMEYR: You see it seems as though it's suggesting that there is a saving for Transnet in this whole deal of 24million, do you see that?

MR PHATLANE: I see that Chairperson.

ADV KATE HOFMEYR: Do you think there was a saving to Transnet in this deal?

MR PHATLANE: The only savings it could be, what would happen
20 most of the time they will request, they will keep on adding the numbers from 15 next year it will be 20 and the only thing that we will do ...[indistinct] it will, I will insist that maybe can we go down and then we will cut some, instead of 20 we will say 16 if we see the 2012 one was 16, then they will increase and say maybe 24, we will say 20, so in that sense it was I think he was referring to that kind of a saving, not

necessarily a saving from the amount they charged.

ADV KATE HOFMEYR: So it's – they could have got more but they are going to get a bit less.

MR PHATLANE: Yes, we will insist on that yes Chair.

CHAIRPERSON: Which is not really a saving.

MR PHATLANE: Chairperson?

CHAIRPERSON: Which is not really a saving?

MR PHATLANE: Technically it is not Chairperson because if you're buying 20 they wanted 24 but you are buying 20 now, you are still
10 paying the same price.

ADV KATE HOFMEYR: Mr Phatlane you indicated that you thought that on a previous occasion where there might have been a memo to the Chief Financial Officer, do you recall that and you mentioned Mr Singh, Anoj Singh having signed off a moment ago in your evidence?

MR PHATLANE: Ja, there has been one it is just that now I can't remember which ...[intervenes]

ADV KATE HOFMEYR: No I want to be able to assist you if I may.

MR PHATLANE: Yes there has been one.

ADV KATE HOFMEYR: If you go to page 73 I have been assisted by
20 our ever faithful investigators on this, you will see that page 73 is the last page of one of the memoranda that were prepared, it is the standard memoranda requesting renewal of the briefing sessions, partnership, and certainly Mr Anoj Singh appears to have been one of the recommenders on that page, is that what you are recollecting?

MR PHATLANE: Yes Chairperson.

ADV KATE HOFMEYR: But that is not the type of memorandum that we see at page 93, because this is a very specific memorandum, it is one going to the Chief Financial Officer, because he is being asked to note that it is a condition of the contract with the TNA that Transnet pays over R24million at the beginning of the contract, do you see that?

MR PHATLANE: Yes I see that, but how did that happen even before that's why I was saying earlier, that had happened, but we did not – this was the first time we write a letter like that directly to the CFO but paying up-front we had done even in other earlier contracts

10 Chairperson.

ADV KATE HOFMEYR: Thank you. And if we just go to the 2016 contract to complete the chronology you will find that at page 94 and at page 106 is the signature page. Can you please tell us who signed on behalf of Transnet as the Group Chief Executive, for the 2016 contract?

MR PHATLANE: It was signed by Mr Siyabonga Gama.

ADV KATE HOFMEYR: Thank you and Chair just for the record I don't suggest ...[intervenes]

MR PHATLANE: But somebody pp'd on his behalf, that was Boniso Skonjela.

20 **ADV KATE HOFMEYR:** And that was the General Manager of Corporate and Public Affairs at the time, is that correct?

MR PHATLANE: You are right Chairperson.

ADV KATE HOFMEYR: Thank you. Chair for the record I don't suggest Mr Phatlane needs to go there, just at page 102 you will find the same early termination provision has remained consistent, it is the

one that requires mutual agreement between the parties.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: Mr Phatlane if we may then just go over to page 107, Chair at page 107 is an affidavit of the Acting General Manager Group Governance Risk and Compliance and the Public Officer of Transnet Ms Helen Janet Walsh. Chair again it is provisionally introduced but it is similarly dealing with numbers, she has pulled together the total spend on these breakfasts over the period of 2012 to 2017 and Mr Pathlane if you would please go over to page
10 111, one hundred and eleven, you will see the calculation of her total there she includes the spreadsheet as well as the supporting invoices.

How much was paid according to Ms Walsh at paragraph 16 on that page, for the business breakfasts?

MR PHATLANE: Chairperson she articulates that we paid R122 809 526,70.

ADV KATE HOFMEYR: And how much were paid on the business briefings?

MR PHATLANE: In relation that is the amount in relation to business briefings.

20 **ADV KATE HOFMEYR:** Yes, and then – apologies, in relation to the big interview, I understand that was not your evidence, Chair that was the evidence of Mr Jackson, but just for the record so that we can get the total that was paid between 2012 and 2007 on the big interview?

MR PHATLANE: On the big interview we paid R24 872 200,16.

CHAIRPERSON: Is it R24 872 200,16?

MR PHATLANE: Yes.

CHAIRPERSON: Okay, 24 872 200,16, and then for the business briefings?

MR PHATLANE: R122 809 526,70.

CHAIRPERSON: Ja, okay, and both amounts including VAT according to the affidavit.

MR PHATLANE: Both amounts ...[indistinct]

CHAIRPERSON: Including, they include VAT according to the affidavit.

10 **MR PHATLANE:** I think they include the VAT here Chair.

CHAIRPERSON: Ja, that's what it says ja. Okay.

ADV KATE HOFMEYR: Thank you. Mr Phatlane I have two final aspects to traverse with you, and for that purpose I would like to go back into your statement if we may, at page 6 at Exhibit MM4, Mr Phatlane at page 6 of Exhibit MM4 you have a heading there entitled the pressure of executing the breakfast. Can you tell us about that pressure.

MR PHATLANE: Yo, that is a difficult one Chairperson.

CHAIRPERSON: (laughing) ja.

20 **MR PHATLANE:** Look when the breakfast started I think where we were deployed, if I may use the word deploy for lack of a better word, but we were sent to manage this being around four of us, that's how important we took it to be around 2011, I think that's where my emotions also was at a level of ...[indistinct] stage where I will really go and want to do ...[intervenes]

CHAIRPERSON: You were very supportive of these ...[intervenes]

MR PHATLANE: Very supportive of this and also if it tells you even the office itself there Corporate and Public Affairs they will send four of us you know to go and make sure that this transaction gets attention and I think I was very supportive.

CHAIRPERSON: That would be on the day of the breakfast?

MR PHATLANE: On the day of the breakfast, at four o'clock in the morning we will all be there or around five we are there because what will happen we need to make sure that when the leadership comes we
10 are able to direct them to where they need to be but also because we have invited some of our stakeholders, we have got two tables there, so we need to be able to direct them to where they need to sit and also to make sure that the branding around there we are able to position it strategically because we need to look at the cameras where they are from, because we want our brand to be out there.

CHAIRPERSON: I guess you had to when you were paying so much you have got to get the right spot.

MR PHATLANE: Definitely Chairperson, yes. Now we've been – now as it continued now in time I am alone, other people are no longer
20 allowed to be part of this, I am ...[intervenes]

CHAIRPERSON: On the day?

MR PHATLANE: On the day, you have got to run around, you wake up in the morning, remember the holding room would be far from where the event is happening, so you are just running around, people see a jacket moving this way, that way, because now you have got to go and check

the leadership if they have arrived, because I need to usher them in, and then all in the same breath I need to make sure that all those stakeholders that we invited are seated at the proper tables and interact with them because now is this – you know this running it's as if you don't know what you are doing so that in itself it did not show that the support because you raise thing because it is heavy on one person but ...[intervenes]

CHAIRPERSON: But the other people, there were four of you, you said, were they from your department?

10 **MR PHATLANE:** From our department Chairperson.

CHAIRPERSON: Were you the most senior of the four?

MR PHATLANE: No Chairperson I was at floor level.

CHAIRPERSON: Oh okay.

MR PHATLANE: Yes Chairperson.

CHAIRPERSON: Was Mr Skonjela one of the four?

MR PHATLANE: No Chair it will be give if he is around Chairperson.

CHAIRPERSON: Oh, okay, alright, continue.

MR PHATLANE: And it went on like that now where you are on your own where you felt now I don't think really if we believe in this
20 partnership if we believe in what we are paying for really it means one person, because I know communication deals with events, I know when an event we would take it seriously, we put more people to be there because we know how important – at registration we are there so that we are able to welcome these people, and also make sure that somebody is able to go and make sure that he ushers leadership, and

explain as to who has arrived and what because we need also to be able to direct them as to who is there, what the leadership needs to.

Now you would imagine if you're moving from this angle to the other, right into the venue to set up it does not necessarily show that in my own view it does not show appreciation to say the value that we are paying, we also value this event or this transaction that we – I felt that there was a little bit of abuse, I felt there was a little bit of disrespect because you raise this there will be no positive response to say it was as if you can do it, do it, we have done it before, you have done it
10 previously why not.

So it is in that instance where ja you feel that okay this we are just going into emotions, you know especially you know around you 2014, 2015, 2016 where it was 20million, 20 million you felt we are just going through this just to make sure it's done and dusted.

CHAIRPERSON: Is your complaint that you were not getting support from with Transnet or is your complaint that TNA was not giving the support that it should have given Transnet as the sponsor or the partner.

MR PHATLANE: Chairperson TNA played their role, their role is to
20 make sure that the event is there, they have people at registration, there is a place that they set up their own branding, they make sure that everything is there. There is holding room. But there is also a responsibility from Transnet that when you, you need to sent out adequate number of people that will mend the event, because this event we are paying a lot, it is not just one of the event whether we

have, we honour it we do not.

So from the side of Transnet I felt somewhere we lost the plot in terms of support.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: Mr Phatlane if you go over the page to page 7, you indicated earlier you want to talk about the last phase of the breakfast and that is picked up at paragraph 11 on page 7 of your statement in EXHIBIT MM(4). You mentioned there that you embarked on a change for these breakfasts around 2016. 2017. What was that
10 change?

MR PHATLANE: Chairperson you shall know that I am saying at some stage I went on a rollercoaster of emotions, from time to where you are despondent and like really, really do I have to this, and also with the support, the lack of support therefor you would feel like, this I wish they would they cancel. Not only this is my word, it was my feeling. It was a feeling of other colleagues because we would talk about this, this proposal. They would come, they will be a in meeting on a Tuesday, on our own with our Managers, we will talk about this. We say as a proposal again we are giving them 20 million again. They would have
20 requested 20 million and you will see that everyone would say, why are we on the Council but we do not be able to cancel it, or even to persuade somebody to cancel it. So, in 2016, 2017 we still had a contract for 20 million.

Unfortunately, now there was a change of leadership now, they brought in Mr de Gerte to be the GM for communications or corporate

and public affairs. He started whereby by cancelling the big interview, and now because this contract was still subsisting it was continuing. They were left, they were about six, about six or so sessions that we were supposed to do, and we sat down because he said, he asked me if we could do it, this differently and I then said no, we could do it differently because we can still use that maximum platform I have spoken of SABC slot. I said let us zoom into the organisation. Let us now focus directly on what we are doing, so the last six or so breakfast I started now crafting, what could to TNA to say, we want, here is the

10 script we want you to go in this way.

I zoomed into Tearfund which is our railway business freight, we interviewed colleagues, we showed what do on screen, you know pictures first. This is what we do on day to day and then we brought on panel, we brought people from Transnet also from people also people from the Industry. The rail industry outside so that it is not only Transnet. We still have that balanced view, because we were driving shortly that ship so do not want people to say only, your profile interests us. We wanted it to remain.

To have the character of it being a breakfast, but Transnet will

20 speak on their side, and others will speak about the Industry in general. We then zoomed also into the ocean site. We are in marine business, so we term that the ocean economy, because it is not only Transnet contributing in that. We brought those other Industry players to come and speak on that platform. Now who were changing it? We were changing it to suit us, so that for the last six or seven breakfasts

that were left, we were in-house.

We were directly propounding Transnet business as it normally do, so we would start from what marine business means. They will show that the ports and all that, then we get into the discussion around the ocean economy. We did one round pipelines. Petroleum. We invited a stakeholder from Petroleum to come and speak about that industry, but this time we were able to zoom in directly into what we do as Transnet.

10 What are our capabilities, so that whoever that is watching has a sense of what Transnet does and also the investors who might want to invest in us? We will have a sense of what we do, and how big we are.

ADV KATE HOFMEYR: Mr Phatlane why was that not done in the previous five years?

MR PHATLANE: Well there was never an opportunity given to say, let us restructure or it, or was more of a proposal to say from TNA they will give us speakers to choose from. So that, it limited one in terms of coming up with a proposal to say we can zoom into business and still have in the discussion around, whatever topic, but that did not come, 20 died not come to me you know so that I can add value on that.

ADV KATE HOFMEYR: Thank you Chair. Those are our questions.

CHAIRPERSON: Thank you. You look at the amounts we have just had regard to earlier on that affidavit that were paid by Transnet for the breakfast of the years and for the big interview. Sitting there now, and you look back, are you able to say Transnet was fully justified to spend

that kind of money on this breakfast and the big interviews?

MR PHATLANE: Chairperson, like I have said, I went a rollercoaster of emotions. I will say to a certain extent, yes I will justify certain breakfasts, but there are some that will, my mind and my heart does not allow me to say, yes there is some, they were of value especially when there was a negativity around our client or around our partner.

CHAIRPERSON: Is the difference between those that you feel were justified and those that you feel were not justified. Basically, the time, namely those that happened early in the relationship. Maybe 2011, 10 maybe 2012, 2013 you feel were justified, it is those that came that, 2014 up to 2014 that you feel were unjustified, or maybe 2015 to 2017 or even in 2016, 2015, 2017 there were some that you say were justified and there were some that you say were not justified.

MR PHATLANE: Chairperson ...[intervenes].

CHAIRPERSON: Or was that an exercise you have not done?

MR PHATLANE: Sorry Chair, thinking on top of my head Chairperson without using any scientific one. Around or the ones that I had started having a worry directly, let me say when I started thinking deeply into there. It was around 14, the 20 millions, 20 millions that was you know, 20 it was kind of, 20 million turn, as if you see, it is like, we are just dishing it out. 2014. 2015. 2016 partly we were able to salvage something in the last six or seven of 2016, 2017 because we are now able to zoom into Transnet operations, and then create thought leadership around that.

The earlier one, I think I was in another stage in maybe when

were trump fell, maybe not as objective as suppose as suppose but I think, I thought there was a bit of value. It is just that I cannot say what percentage, but I think there was value from where I am sitting.

CHAIRPERSON: Well earlier on you talked negativity that surrounded the Gupta's from a certain time. When you talk about the ones that I think you say you feel were justified, wasn't that time, a time when there was a lot negative publicity for the Guptas? 2015, 2016, 2017.

MR PHATLANE: That was the time Chairperson. 2014.

CHAIRPERSON: Yes.

10 **MR PHATLANE**: I think it was the time of the issue of the aeroplane landing somewhere ...[intervenes].

CHAIRPERSON: What type of landing was 2013?

MR PHATLANE: 2013 but going forward there was a lot negativity.

CHAIRPERSON: Yes, yes.

MR PHATLANE: First it was just the incident and then they are what-what. But 2014 that started getting moment, I mean there were issues that they were answering to, it is where I had a problem you know from Transnet to say, maybe we need to scale down if we are giving them benefit of doubt, but not increasing from the sixteen that we have done,
20 but instead we went up. Twenty.

We continue the same 2015 again. So, to me it is like either we were not really applying ourselves in terms of to say we are getting this negativity. It affects that the brand of the other associate. But we still give them the benefit of doubt and give them more.

CHAIRPERSON: Yes, that is my difficulty with what you are saying

comparing it to what you said earlier on. That in branding you don't want to associate yourself with a brand that, whose reputation is damaged.

Now 2014, 2015, 2016 I think you say so yourself that the, the back brand, anything to do with the Gupta's. There was a lot of negativity around it. But you say the breakfast which took place during those years are the ones you feel you can justify. So, you, unless I misunderstood you.

MR PHATLANE: No Chair. I said earlier, 2011 or 2012 or 2013
10 ...[intervenes].

CHAIRPERSON: Those are the ones that you can justify?

MR PHATLANE: Those are the ones I am saying I was at trump fell stage.

CHAIRPERSON: Okay.

MR PHATLANE: But 2014, 2015 ...[intervenes].

CHAIRPERSON: Yes.

MR PHATLANE: Partly of 2016 ...[intervenes].

CHAIRPERSON: You cannot justify.

MR PHATLANE: Ja, yes those ...[intervenes].

20 **CHAIRPERSON**: Okay. Then I ...[intervenes].

MR PHATLANE: And the last I can justify because we are now profiling Transnet.

CHAIRPERSON: Ja. Okay. Alright. Thank you very much Phatlane for coming through to give evidence. If we need you, we will ask you to come back and assist again. But for now, thank you very much and you

are excused.

MR PHATLANE: Thank you.

CHAIRPERSON: We will take the tea adjournment now. Would you like me to give you and additional five minutes to the normal times?

ADV KATE HOFMEYR: Chair that would ideal. We have got quite a bit of arrange for the session.

CHAIRPERSON: So, should we resume at twelve o'clock ...[intervenes].

ADV KATE HOFMEYR: That should be sufficient.

10 **CHAIRPERSON**: Okay. Alright we will adjourn at twelve. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Are we ready?

ADV KATE HOFMEYR: We are indeed Chair.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: Chair today we commence the second session of aviation evidence before the Commission, and as I have indicated earlier there are a number of legal representatives who I propose place themselves on record. And then I would deal with the opening.

20 **CHAIRPERSON**: Yes, okay. Thank you.

ADV KATE HOFMEYR: Thank you.

CHAIRPERSON: Let us have different Counsel placing themselves on record.

MR MARUMU MURANE: Chair I appear on behalf of one of the implicated parties together with my colleague Tsletlo instructed by

Ramsey Webber attorneys.

CHAIRPERSON: Yes, for the record you might just have to place your name of the record. You are known to be me but the reader of the transcript won't know.

MR MARUMU MURANE: Chair my name is Marumu Murane.

CHAIRPERSON: Thank you. Thank you. Is there another. Thank you.

ADV Y ALI: Good morning.

CHAIRPERSON: Good morning.

ADV Y ALI: My name is Y Ali. I am Counsel for JM Aviation and Mr
10 Viyo Inseko. The observer. Thank you.

CHAIRPERSON: Okay. Thank you.

MR MANDLA NJANKASE: Chair I am Mandla Njankase, representing Ms Sambo. Ms Sibongile Sambo on instruction of G T Mohlong Incorporated.

CHAIRPERSON: Thank you very much.

MR LEAGO MATABATE: Good day Chair. My name is Leago Matabate and I am here on instruction Mr Magudi Sejones.

CHAIRPERSON: Thank you. And I somehow forgotten what Mr Murane
20 next client is. The person he is representing is. Do you want to remind me?

ADV KATE HOFMEYR: Yes indeed. As I understand it is Ms Mudluwla one of the implicated people related to Ms Sambo's evidence.

CHAIRPERSON: So, he knows that.

ADV KATE HOFMEYR: Indeed.

CHAIRPERSON: Alright. Thank you.

ADV KATE HOFMEYR: Thank you Chair. We commenced the second session of the aviation evidence today. And over the course of the next three weeks five areas of investigation will be presented to the Commission. Chair it is my proposal at the commencement of the witnesses for each area of investigation, to give a short overview.

On the previous occasion I had given all four areas for the three weeks and by about week two I think everyone had forgotten where we were. So, it is my proposal to do it simply as and when a new area of investigation begins with the evidence.

10 **CHAIRPERSON**: No that is fine.

ADV KATE HOFMEYR: So today we are commencing with the first investigation area. And that involves a period of time when Mr Kona, our witness who is about to give evidence was the Chairperson and then the CEO of S.A.A.

And the evidence relates first to a meeting that he had at the Gupta residence shortly after he took up the possession of Chair at S.A.A, and then the second aspect is TNA Subscription Agreement which was entered into while he was in the possession of Chief Executive of S.A.A. Chair with the conclusion of Mr Kona's evidence,
20 certainly the TNA evidence in relation to S.A.A. will be completed and the TNA evidence in relation to all the other SOE's would also have been completed but for the evidence of Mr Mkwana who would be returning at a date to be scheduled to give that final piece of evidence.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: Chair just on procedural matters in relation to

Mr Kona's evidence. The 33 Notices to implicated persons arising from Mr Kona's evidence were sent out timeously, and we did follow up with Mr Kona about certain correspondence that he refers to in his affidavit and he was able to provide that to us yesterday.

It has been included in his bundle and I will ask him questions about that correspondence. Any further implications arising from the correspondence though, we have not had an opportunity, if it arises to alert persons to but the person with whom the correspondence is, is a person Mr Mahlangu who has previously received a Rule 33 notice in
10 relation to Mr Kona's evidence.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: And so, with your leave I propose to deal with all of it today.

CHAIRPERSON: Yes no that is fine.

ADV KATE HOFMEYR: And as matters currently stand we have received no responses from implicated persons to those notices.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: If I may then request that the witness be sworn in.

20 **CHAIRPERSON**: Yes, please administer of affirmation. Thank you. You may proceed.

VUYISILE KONA: (duly sworn, states)

ADV KATE HOFMEYR: Thank you Chair. As a matter of record keeping Mr Kona's affidavit we propose be entered into the record as EXHIBIT DD(17). It comprises an affidavit and then as I mentioned previously

some of the communications we received yesterday.

CHAIRPERSON: Mr Vuyisile Kona's affidavit and the annexures thereto will be marked DD(17).

ADV KATE HOFMEYR: Thank you chair. Mr Kona you should have a copy in front of you.

MR KONA: That is correct.

ADV KATE HOFMEYR: Of the affidavit. I will make reference to it. The page numbers that I will be referring to are the ones in red in top right-hand corner.

10 **MR KONA**: Okay.

ADV KATE HOFMEYR: So, you would be able to orientate yourself throughout the evidence. Mr Kona, we understand that you recently have had an operation and we are grateful to you nonetheless to be present today. Thank you for that. Please do let us know if in the cause of the evidence if there is any issue with discomfort and we can see what arrangements can be made.

MR KONA: Okay.

ADV KATE HOFMEYR: And also just for the record, if you would make sure to make sure that the microphone is as close to you as possible
20 and to speak as loudly as possible into it. It just helps with the transcribing.

MR KONA: We will do so.

ADV KATE HOFMEYR: Thank you so much.

MR KONA: Thank you.

ADV KATE HOFMEYR: Mr Kona you provided this affidavit to the

Commission in response to receiving Rule 33 notices. Is that correct?

MR KONA: Yes.

ADV KATE HOFMEYR: And in relation to whose evidence did you provide the affidavit?

MR KONA: In relation to Sisa Msimelo.

ADV KATE HOFMEYR: Correct. And there was also the further affidavit is Ms Coetzee. Is that right?

MR KONA: That is correct.

ADV KATE HOFMEYR: Chair in terms of the processes on Rule 33's
10 and implicated person's responses Mr Kona's response to Ms Mismelo
and Ms Coetzee's evidence has been a given to them as is ordinarily
the case, and they are still in the process of providing responses to the
Commission. Subject to Mr Kona's direction on this, it is my proposal
that we deal with those aspects that are not caught up in that
interchange between the parties at this point, because there are two
separate matter that do not involve Ms Msimelo or Ms Coetzee's
evidence before the Commission that are the focus of today's evidence
and once that process has complete itself of course it will come before
you Chair for final determination.

20 **CHAIRPERSON**: Okay.

ADV KATE HOFMEYR: But if Mr Kona has any aspects of those
responses that he wishes to deal with, we can of course afford him and
opportunity at the end.

CHAIRPERSON: Okay, okay. That is fine.

ADV KATE HOFMEYR: Thank you Chair. Mr Kona can you tell us when

you were appointed as Chairperson of S.A.A?

MR KONA: Round about the end of September 2012.

ADV KATE HOFMEYR: It is quite a few years back indeed.

MR KONA: That is correct.

ADV KATE HOFMEYR: And for how long did you occupy that position?

MR KONA: *Sjoe* it was briefly.

ADV KATE HOFMEYR: Hmmm. I think if you go to page 2 of your affidavit you would have the date there, at paragraph 3. Is that correct?

10 **MR KONA**: That is correct. Ja.

ADV KATE HOFMEYR: And what was the date ...[intervenes].

CHAIRPERSON: First find the dates for the transcript. Still specify the days.

MR KONA: Sorry Chair.

CHAIRPERSON: Ja for the transcript so that ...[intervenes].

MR KONA: Okay. Basically, I was appointed until 11 February where I was put in on, where I was suspended from Office.

ADV KATE HOFMEYR: And when did you take up the position of Chief Executive Officer of S.A.A.

20 **MR KONA**: Acting.

ADV KATE HOFMEYR: Acting. Indeed.

MR KONA: Yes, ja.

CHAIRPERSON: But let us finish with regard to your Chair main ship. You were appointed in September 2012 ...[intervenes].

MR KONA: Yes.

CHAIRPERSON: And then you say on 11 February you were suspended and when would you, did you cease to be Chairperson?

MR KONA: I ceased to be Chairperson round about the end of the of February, that is when, because the lawyer said ...[intervenes].

MR KONA: Sorry? There was an Acting Chairperson.

CHAIRPERSON: Oh okay.

MR KONA: Yes. Ja.

CHAIRPERSON: Oh, okay. Well now the mere fact that there, you were Chairperson, not Acting Chairperson?

10 **MR KONA**: I am not. I was Chairperson.

CHAIRPERSON: Yes.

MR KONA: There was Chairperson, I was appointed Acting CEO.

CHAIRPERSON: Yes.

MR KONA: And then they appointed an Acting Chairperson.

CHAIRPERSON: Yes.

MR KONA: Ja.

CHAIRPERSON: Yes, did your Chairmanship cease when you got appointed as CEO.

MR KONA: No, it did not.

20 **CHAIRPERSON**: So, when did it cease because if you were on suspension and somebody was appointed as Acting Chairperson, that would not bring about the termination of your Chairmanship.

MR KONA: What happened Chair, was then they suspended me. We wrote back. The lawyers wrote to the Ministry and said okay, seeing that you have terminated basically you have said I am not suitable to

serve as Acting CEO, then it is better than that we revert back, it is better than that I revert back to my position of CEO. Then Minister immediately said, he is going through the process of removing a Board Member and that is what he did.

CHAIRPERSON: Okay. So was there a time when the Minister was removing Board Members and you ...[intervenes].

MR KONA: I was just the only Board Member that was removed that time.

CHAIRPERSON: Oh.

10 **MR KONA**: That time.

CHAIRPERSON: So, you were removed by the Minister?

MR KONA: By the Minister. That is correct.

CHAIRPERSON: When was that?

MR KONA: Chair it was roundabout March.

CHAIRPERSON: About March.

MR KONA: Around March.

CHAIRPERSON: 2013.

MR KONA: 2013 yes.

CHAIRPERSON: Okay.

20 **ADV KATE HOFMEYR**: Mr Kona if I can just direct you to page one of your affidavit, because there you give a date of 26 February 2013 when you were from the Board. Is that correct?

MR KONA: That is correct. Yes, ja.

ADV KATE HOFMEYR: And you were appointed as Chairman on 28 September 2012. Is that correct?

MR KONA: That is correct. Yes.

ADV KATE HOFMEYR: Okay. Let us just get the chronology right if we may following on from the Chair's questions. If you go over the page, you say you were appointed as Chief Executive Officer.

MR KONA: Acting.

ADV KATE HOFMEYR: So, Acting is missing from paragraph 2.

MR KONA: Yes, yes.

ADV KATE HOFMEYR: Right. So, you were appointing as Acting Chief Executive Officer on 12 October 2012. Is that correct?

10 **MR KONA**: That is correct.

ADV KATE HOFMEYR: So that is a matter of two weeks after you were appointed as the Chairperson?

MR KONA: Indeed so.

ADV KATE HOFMEYR: Correct.

MR KONA: Yes.

ADV KATE HOFMEYR: And for how long did you retain the position of Acting Chief Executive of S.A.A.

MR KONA: Until I was suspended on 11 February.

ADV KATE HOFMEYR: On 11 February 2013.

20 **MR KONA**: Yes.

ADV KATE HOFMEYR: And then on 26 February 2013 when you were removed from the Board by Minister Gigaba. What happened to your status as Chief Executive?

MR KONA: Well we queried. The lawyers wrote back and queried and said the, I have no relationship now with the Company because my

acting position only, I was not a Company employee. My acting position as Acting CEO simply arose from the fact that I was the Chairman. I was a Board Member.

ADV KATE HOFMEYR: Hmmm.

MR KONA: But then the Company know that with their legal people they continued then, had a hearing. When they had already decided whom they wanted to appoint as a CEO, but what is the bearing of, what is the use of going through all these processes because you have already decided who is going to be the CEO. What is going on, but it
10 never made sense and the went ahead and fired me, and that is how, the process played itself out.

ADV KATE HOFMEYR: Did you say that it was strange that as a Chairperson of the Board of S.A.A. you would be in, in Acting Chief Executive role?

MR KONA: Not really.

ADV KATE HOFMEYR: Why not.

MR KONA: I mean happens, it happens all the time that when you are getting there and then a CEO is removed. It is just a temporary Acting until a replacement CEO is found and then you go back to your position
20 as Chairperson.

ADV KATE HOFMEYR: Well I understand people from the Management of an entity taking up and Acting role while a position needs to be filled. I guess what I am struggling with is, a non-executive member of a Board, of an SOE becoming an Acting Chief Executive. Did that not raise any concerns for you?

MR KONA: Personally, it did not. I think off late we have seen the same events playing themselves out at Eskom where the Chairman of Eskom went and acted as, basically became both, to both position became an Executive Chairperson, and setting the role of CEO until the CEO was appointed and then he vacated the position, so I did not see any conflict of interest *per se* in that.

ADV KATE HOFMEYR: And when you were removed who replaced you as Chairperson?

MR KONA: It, ja was Myeni.

10 **ADV KATE HOFMEYR:** Ms Myeni?

MR KONA: Yes.

ADV KATE HOFMEYR: Thank you. You go on in your affidavit at a later point to talk about your experience in the Aviation Sector. Could you tell the Commission a bit about that?

MR KONA: Okay Chair, my background with S.A.A. stems back, way back to the late 1999, and 1998 when I was working for Transnet during Coleman's days. That is when I started working. I was working yet down the road from this building. That is where the Transnet Head Office was, and I used to do some work for S.A.A via the internal audit
20 side, and then in 2000 I then moved and moved S.A.A. in Corporate Finance, and I worked for S.A.A until about 2005 when Kiya was appointed and then ...[intervenes].

CHAIRPERSON: Is that Kiya Ngula?

MR KONA: Kiya Ngula. That is correct.

CHAIRPERSON: Ja.

MR KONA: So, I left then because I was an executive then when Kiya was appointed. Then I quit. And then went and with Lufthansa, until roundabout 2011.

Then 2012 that is when I moved back there to S.A.A. That is really my background.

ADV KATE HOFMEYR: Thank you. And what qualification do you hold?

MR KONA: Currently Ma'am I have an Honours from Andrews University and then I have a master's in business administration from IMD in Switzerland. Ja.

10 **ADV KATE HOFMEYR**: Thank you. I would then like to move if we may to page eight of your affidavit.

MR KONA: Ja.

ADV KATE HOFMEYR: That is a page is that is headed the *Saxon World Meeting*. Mr Kona at paragraph 34 on that page, you talk about events that took place on 29 October 2012. Can you please tell the Commission what happened on that day?

MR KONA: Chair, going back to these events, it still haunts me today, because I found it strange that an Advisor of the Minister would call me an individual's house. If somebody wants to meet me in my official
20 capacity as an official of an institution, they need to come and see me at my workplace. Once people start saying no let's go to the house or lets go people office, then you will find yourself, it is just a problematic arrangement.

Why should I go and see them? I don't need to see them, and these are private citizens. What business am I doing there, and I really

found uncomfortable. But on the Minister's Advisors insistence, because he really pushed me because his view was that these are people that we need to see, I didn't know that we were going to see the Gupta's at the time.

Later on I did not even know about the Gupta family at the time, and his view was no, these are important people that we need to see these are important stakeholders that we need to see you know so that then at least we gain their support in terms of work, in terms of the work that we are going to do.

10 So ...[intervenes].

CHAIRPERSON: And when was this?

MR KONA: It is, the meeting, the meeting happened roundabout 29 October, late October.

CHAIRPERSON: Yes. Okay.

MR KONA: Ja so however before that is when he when he was pushing me, because he wanted us to go extremely early and I was reluctant to go, I just found uncomfortable. I was just not happy with the meeting.

CHAIRPERSON: Yes, yes. I would like you to tell the story as it happened. Tell me when he first approached about this visit, the
20 discussion up to the time you, you agreed to go.

MR KONA: Okay ...[intervenes].

ADV KATE HOFMEYR: And Chair if I may just interject. You have been referring to the Minister's advisor.

MR KONA: Yes.

ADV KATE HOFMEYR: Could you please also just for the record

indicate the name of the person.

MR KONA: The Minister Advisor is Siya Mahlangu.

CHAIRPERSON: So, indicate which Minister are you talking

MR KONA: Minister Malusi Gigaba.

CHAIRPERSON: Yes. Okay.

MR KONA: Ja.

CHAIRPERSON: Okay. So, tell me as, from the time the Advisor Mr Mahlangu approached you with regard to ...[intervenes].

MR KONA: Ja he ...[intervenes].

10 **CHAIRPERSON**: This visit, and tell me the exchange, the reasons he gave, what you said and so on.

MR KONA: Chair, because the events that were happening, during that time, there was a lot that happened that happened very quickly, because when I was appointed as the Chairman of the Board, there was a sudden resignation of the current Board.

CHAIRPERSON: Oh.

MR KONA: Yes-yes. The current Board, so apparently somebody from the Ministry relate to the Board that they were not going to be retained as Board Members.

20 **CHAIRPERSON**: Yes.

MR KONA: And then the Board Members resigned in mass. So ...[intervenes].

CHAIRPERSON: Yes.

MR KONA: So, the Ministry had to rush to engage with me, so that I could engage with other Board Members for us to urgently take, to

urgently assume our position.

Then during that process when, whilst I was then busy trying to grapple with the situation to say, what is really going on at S.A.A. The audit, the financial statements they were not signed, they were waiting for financial guarantees. Whilst that was happening the CEO that is Sisa Ntsamelo was coming to me, saying please assure my position. Is my position secure, because I have been having issues with the Department? I don't think I have got support.

I said Sisa, I just came in today. I can't come and say your
10 position is secure or it is not secure. Just do your job and I will do mine. I know Sisa way back. She used to report to me way back when I was head of Subsidiaries as well at S.A.A. So she is not somebody that I don't, I know her very well. So, I said to her just take it easy, and then within a couple of days, then she also resigned.

And then I had to grapple with all these issues. Whilst that was happening the Minister was away. He was in Italy. And then we are busy trying to say to the Minister. Then what do we do whilst this is happening and simultaneously we have got the media that we need to address to tell them that they don't need to worry the planes are not
20 going to fall from the sky.

We are there, we know what we are doing, we know what is going on, we have got many years of experience with the airline we have been, our extensive knowledge of what happens at S.A.A. we are very comfortable about that. So, during that who cocooning of events that was transpiring then Siya was the one then who became the

easiest link between myself and the Minister.

CHAIRPERSON: Who is that now?

MR KONA: Siyabonga Mahlangu, the Advisor.

CHAIRPERSON: Mr Mahlangu?

MR KONA: Mr Mahlangu. The Advisor.

CHAIRPERSON: Yes. Alright.

MR KONA: Ja. So, he would come and say to me, okay this is what the Minister says. For example, in terms of committees and what have you, because I have to communicate with the Department to say okay
10 these are the committees that we are putting up. Is the Department comfortable. Too we need the guarantees. When are we going to get the guarantees?

So he became my link between myself and the Minister, because I could get hold of the Advisor rather than the Minister, because the Minister would not as easily available as Mahlangu for things to get done.

So then was, those events were happening Chair, and he came to me and said, that is when he can approach the subject to me, there is a family that I would like you to, there are people, he did not say
20 this. He said there are people that I would like to meet. Certain stakeholders, and then he said, ja but you need to come Saxonwold to meet them.

And my view as that, but why can't they come to Airways Park to the office that is where I am working. Let them come to the office. I mean he looked at me in a cynical way as if you know *Pandele* you are

mad. Do you know you are dealing with?

CHAIRPERSON: Do you know who are translate to *Pandela*?

MR KONA: Sorry. You are mad. You don't know who these are that you are dealing with. So, but I was still puzzled by this and I tried to avoid the subject again, because I said I am busy at the moment there is a lot happening within the airline and I need to get all these at least, I need to feel that I am in control. At the moment I am not yet in control, and I don't then see the point of me going to meet people whilst there is a lot of stuff up in the air.

10 Then I think a week passed and then he came back again, he was saying, we need to go, we need to go, and I said but I am busy pushing a processes here, I have to urgently do a quick urgent turnaround plan and I explained to him that a turnaround, when you do an airline turnaround plan it is not just about counting, putting together numbers. You first have to do a network plan. You do a schedule plan and from there you do the financial plan and you do your aircraft planning to see how many aircraft that I need and then it all fits into your business plan.

20 So, it is highly involving its extremely complex kind of work. It is not stuff that you can just rush into and you do it. So, I said I am busy putting this thing together because you, the Department has said to us they urgently turnaround plan. So, to say what is the future size and chip of S.A.A. going to be? Going forward. And then it kind of like disappeared. He kind of allowed me to do, he gave me space.

 And then he came back again. Roundabout the end of October

saying now we to go. And I am saying let these people come here because now we are busy with this turnaround plan that the Department, he says no-no-no. Now it is urgent. We have to there. Now little did I know I was going to the Gupta's house Chair. I did not know where I was going to.

CHAIRPERSON: When earlier you referred to him having said you would have to go to Saxonwold is your re-collection correct that that is what he said ...[intervenes]

MR KONA: Yes-yes.

10 **CHAIRPERSON**: Is to go to Saxonwold.

MR KONA: Yes, yes.

CHAIRPERSON: But at that stage he did not tell you ...[intervenes].

MR KONA: I didn't know about the Gupta's ...[intervenes].

CHAIRPERSON: Yes- yes.

MR KONA: I did not know Chair. I tried to say who is it that we are meeting, and he kept it secret to me, he says they are just important stakeholders that we need to make.

And in my view that anybody who is important, who wants to see me ...[intervenes].

20 **CHAIRPERSON**: Yes.

MR KONA: If he is not a Government Official, then they must come to my office, because that is where I am applying my trade and that is where I am working.

So then roundabout the end of the month I said, I said, okay Siya let me come. Then he set up the appointment. It was just after

lunch, I left. And I just planned to say to him, I am going to make sure that when I done there, because of that traffic I don't want to go back to the office. I want to be able to drive back to my house in Pretoria.

So, we finished, I finished my work at the office. Drove back and then drove to Saxonwold.

CHAIRPERSON: To Saxonwold?

MR KONA: Yes. By myself and then I got there before.

CHAIRPERSON: Were you going to meet there?

MR KONA: Yes.

10 **CHAIRPERSON**: You did not travel together ...[intervenes].

MR KONA: No, we are going to meet. We are going to meet there. He was coming from Pretoria, so he said we met at Saxonwold.

So, we got in there. I waited for him outside and then he came and then he came and then we informed the security that no I am coming to the meeting.

And then immediately I arrived, and I drove through. And there was somebody who welcomed us, who welcomed me at the gate. He seemed to be familiar with the arrangement there. I was not. And then my cell phone was taken.

20 They put it where they store their phones and I was led to another room on the side where basically there was a, there was Tony Gupta, and Duduzani Zuma and Tshepiso Magushele and Siya was there. Ja.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: Thank you Chair. Why was your cell phone

taken?

MR KONA: They said they don't the meeting, it is common practice that everybody who comes here, they take their cell phones. So, when you are going in there, you leave you cell phone behind.

ADV KATE HOFMEYR: But what did you make of that?

MR KONA: I just found it strange. But who am I to be asking? I am being led by the minister's advisor so for me he knew what he was talking about. So, I said, okay, let me go and see. I did not even know who I was going with at the time.

10 **CHAIRPERSON:** Was his phone taken as well?

MR KONA: Yes.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: And if you could just sketch for us, I know you are going back a few years. But you indicated who was in the meeting with you.

MR KONA: Yes.

ADV KATE HOFMEYR: Can you try and tell us when you entered the room, were they already there? Did they join you at some point? Take us through the events if you can.

20 **MR KONA:** Okay. When I entered the room, I think Duduzane, Tony and Tshepiso were already there. Now so ... (intervenes)

CHAIRPERSON: Had you met the two before?

MR KONA: I know Tshepiso from Free State.

CHAIRPERSON: Oh okay.

MR KONA: Ja, Duduzane I have seen him on TV so it was the first

time to meet him.

CHAIRPERSON: Ja.

MR KONA: I have never met him.

CHAIRPERSON: Okay.

MR KONA: Ja, so and Tony, he introduced himself as Tony. So, I greeted and I was shown a place to sit. We just exchanged pleasantries and I was asked whether I wanted something to drink. If I wanted something to drink and I said- I was offered tea and Chai tea and what have you and I ordered- I asked for some Chai tea.

10 **ADV KATE HOFMEYR:** And then what happened in the discussion?

MR KONA: Then it was a very strange conversation because it was like I was being welcomed to the family. It was just guys exchanging pleasantries. No, you are a clever guy. SA is in trouble. Congratulations on your appointment. So, I found it strange. But when that happens it makes you- you have a good feeling so you kind of start to relax because when people are telling you that you are clever you can get excited. So, an you relax I mean I was the first time to meet the guy so for him to be telling me that I am clever. He started asking me where did I study and I told him where I have studied. So, the guy
20 says, oh you are well travelled. I said, absolutely I have well-travelled. You like the airline? So, I said, yes, I enjoy working for the airline. And so that is how the conversation went. And then Siya say, oh I see you know Tshepiso. So, I say yes, I know him, I know him well. And Duduzane? I say, no, do not know Duduzane. But they never said anything. The person was just doing the talking was Tony.

So then in the- as we are busy actually with pleasantries we started to move to basically to my job. What I was busy with, with they airline that the airline is facing some turbulences. There are some challenges that it is going through. And for me being led by the- Siya Mahlangu, the Minister's advisor, I was trying to get to, to say what is this meeting really about because I am not- I cannot really get it. Because they are not coming out to say what is this meting about and then ...
(intervenes)

CHAIRPERSON: So where there 4 of you in the room?

10 **MR KONA**: 5.

CHAIRPERSON: Yourself, Mr Mahlangu- oh 5.

MR KONA: 5 yes.

CHAIRPERSON: There were 5 of you.

MR KONA: Yes.

CHAIRPERSON: Yourself, Mr Mahlangu, Mr ... (intervenes)

MR KONA: Mr Zuma.

CHAIRPERSON: Tshepiso Magashule.

MR KONA: Yes.

CHAIRPERSON: Mr Duduzane Zuma and then Mr Tony Gupta.

20 **MR KONA**: Gupta, yes.

CHAIRPERSON: Okay.

MR KONA: Ja. So, we started to get to the challenges that the airline is going through and obviously with those challenges that the airline was going through we are busy negotiating for a guarantee with Treasury to issue us with the 5 billion rand guarantee. However, the

conditions for the guarantee was for us to have a business plan that the Treasury can rely on going forward, those were some of the conditions.

Now during the process if I might say that was happening apparently, we- I asked the supply chain guys to urgently issue a tender- a quick consulting tender. As part of my delegation of authority I was allowed to appoint any consultant chair up to 100 million without going through a process. Ja, I had that permission to do. But because I was aware that should one go through this process without having taken through
10 some form of process, eish, you are going to find yourself having some issues because of the importance of this consulting assignment to the future sustainability of the airline. So I basically then decided to let the supply chain guys go through the process but I told them that go through this urgent process and come up and give me- get your preferred suppliers and just ask them to urgently give us a quote for us to help us with that turnaround strategy.

By the time I was being called to this meeting, supply chain had already selected a supplier and we are busy now negotiating. We had informed the supplier and we are busy now negotiating the terms with the
20 supplier for them to urgently start coming to assist us.

CHAIRPERSON: And the supplier- do you say the supplier would be a consultant to you?

MR KONA: A consulting company, yes.

CHAIRPERSON: A consulting company.

MR KONA: A consulting company, yes.

CHAIRPERSON: Okay. In general, or with regard to specific issues?

MR KONA: Chair, it was for the specific for the business plan.

CHAIRPERSON: Oh, for to help with the preparation of the business plan.

MR KONA: Yes, with the business plan turnaround issues Chair.

CHAIRPERSON: Okay alright.

MR KONA: Now the supply chain guys, we do not get involved with the supply chain issues. Ja, it is purely from where we sit, immediately you see if I as an accounting officer then gets myself involved in supply chain issues then we are going to find ourselves having problems. Because then especially those key kinds of agreements because it is contestant's territory. People contest to say, what processes have you gone? Why have you chosen this one over that one? So, I was fairly aware of those kind of issues- those issues.

CHAIRPERSON: But I just want to also get clarification.

MR KONA: Yes.

CHAIRPERSON: At the time you sought this supplier.

MR KONA: Yes.

CHAIRPERSON: Did you seek that supplier in position of Chairperson of the board or were you already Acting CEO?

MR KONA: I was already Acting.

CHAIRPERSON: Oh, and you sought this ... (intervenes)

MR KONA: Yes.

CHAIRPERSON: In your capacity as Acting ... (intervenes)

MR KONA: Acting, yes Acting.

CHAIRPERSON: Proxy.

MR KONA: Yes.

CHAIRPERSON: Okay alright.

MR KONA: Ja. So, the supplier that was chosen Chair then was then as I elaborate on my conversation with the Gupta's, I am giving you this background so that when I then unpack the conversation with the Gupta's then it will make sense to you.

CHAIRPERSON: Yes.

MR KONA: Then in terms of the conversation then that transpired.

10 **CHAIRPERSON**: Yes, I understand yes.

MR KONA: At the time I was not aware however in hindsight then when I was started to look back then it became clear what was going on and why they had to urgently meet with me and what was going on.

CHAIRPERSON: Yes.

MR KONA: So we- the supply chain guys chose Lufthansa Consulting.

CHAIRPERSON: Just give the name again.

MR KONA: Lufthansa Consulting.

CHAIRPERSON: Yes okay.

20 **MR KONA**: Ja. Lufthansa Consulting, they came in at approximately 6 million rand, yes. There were three companies that they asked for quotations from. I forget the third one, however the second one was McKinsey Consulting. McKinsey came in at 40 million rand, ja. So, it was a no ... (intervenes)

CHAIRPERSON: The difference was just too big.

MR KONA: It was a no brainer Chair.

CHAIRPERSON: Ja.

MR KONA: It was a no brainer. Here you have a company that is busy losing money and then you have an entity that- its airline credentials are not as strong as Lufthansa Consulting and is charging us more than 6 times what Lufthansa Consulting was charging us. So, for the supply chain guys it was clear. They came in, told me the process they had and I was fine with them. I told them, go ahead and start engaging with this company. Tell the other guys that they have not made it, that sorry they have not made it.

10 So, whilst now I go to this meeting at the Gupta's there is this thing playing in the background.

CHAIRPERSON: But at that time, you could ... (intervenes)

MR KONA: I am not aware.

CHAIRPERSON: Could make no connection.

MR KONA: Yes, I am not aware Chair.

CHAIRPERSON: Okay.

MR KONA: Of what is happening. Now we go to- so we start talking about the challenges that the airline is facing. And we start talking about the turnaround plans that obviously I have to urgently have to
20 submit a turnaround plan and all this. And then it comes to this ...
(intervenes)

CHAIRPERSON: Issue of a business plan.

MR KONA: Yes, issue of the business plan. Then whilst we are busy engaging then Tony says to me, by the way, sorry before I continue, I have to welcome you into the family. You are now part of the family.

So ... (intervenes)

CHAIRPERSON: What did you think that meant at that time?

MR KONA: Chair, I am confused now because I need to know what family I am being welcomed into and I still do not know.

CHAIRPERSON: Mm.

MR KONA: That what family I- so then Tony say, by the way we know you have not been paid. And I had not been paid Chair, in September I was not paid.

CHAIRPERSON: Your salary?

10 **MR KONA**: Yes, I had not been paid.

CHAIRPERSON: Yes, as Acting CEO.

MR KONA: Both as Acting and as chairperson, I had not been paid.

CHAIRPERSON: Yes.

MR KONA: He says, we know you have not been paid. Here is a R100 000 but we are just welcoming you into the family. We look after each other. So, I come ... (intervenes)

CHAIRPERSON: So, it is like an introduction.

20 **MR KONA**: Yes. So Chair, I look at Tony and say, but okay, but you do not need to pay me this money. What are you paying me this money for? I do not need the money. I am okay so. Then he looks at me cynically and says, but what kind of a guy would- are you refusing this money? And he says to me, no here is R500 000. I can give you- here is R500 000 ... (intervenes)

CHAIRPERSON: I am sorry, did you say the way he looked at you made you think he was asking himself ... (intervenes)

MR KONA: Yes, his expression.

CHAIRPERSON: What kind of a guy, not that he said so ...
(intervenes)

MR KONA: No, he did not.

CHAIRPERSON: Ja, his expression.

MR KONA: Yes, his expression.

CHAIRPERSON: Gave you that message.

MR KONA: Yes, and hence that is why then he said, maybe let me take
it up because maybe this guy's price is much higher. So, I said, no
10 Tony, you do not need to give me money. I do not need your money. I
am fairly okay. I do not need- I am not a wealthy person but I am
surviving with my meagre means that I scratch here and there. You do
not need to pay me money for anything. Then the expression on his
face changed and then he was like, okay what is the story with the
consulting company?

CHAIRPERSON: I am sorry.

MR KONA: Yes.

CHAIRPERSON: Was that after he had increased the amount?

MR KONA: Yes.

20 **CHAIRPERSON:** Okay, just deal with that. I thought I missed that.

MR KONA: Yes.

CHAIRPERSON: He increased the amount to how much?

MR KONA: To R500 000.

CHAIRPERSON: Yes, that he was offering you.

MR KONA: He was offering me.

CHAIRPERSON: Immediately.

MR KONA: Yes, the money was there in cash ... (intervenes)

CHAIRPERSON: But he was just giving you the money, he was not ...
(intervenes)

MR KONA: Yes, he was just giving me.

CHAIRPERSON: He was not putting any condition?

MR KONA: Chair, I come from a rural family. My parents are old
school people and my father always taught me that there is no free
lunch in this world. Ja, so if somebody gives you money you will pay
10 the price and so I did not know what I was getting myself involved with
and I was just not going to take money from him. If ... (intervenes)

CHAIRPERSON: From a stranger so to speak.?

MR KONA: From a stranger. Ja, it is the first time I meet with him and
then he is giving me money, for what? What does he expect from me?
I just I squarely refused so the mood in the room and the expression in
his face changed. And then immediately ... (intervenes)

ADV KATE HOFMEYR: Mr Kona.

MR KONA: Yes.

ADV KATE HOFMEYR: If you do not mind just before you move to what
20 happened next, I would just like to probe a few aspects of that into
change if I may.

MR KONA: Yes.

ADV KATE HOFMEYR: You said that there was reference made to the
fact that you had not been paid.

MR KONA: Yes.

ADV KATE HOFMEYR: How did they know that information?

MR KONA: I assume that the advisor knows because our pay is approved by the Ministry.

ADV KATE HOFMEYR: And did you regard it as strange at the time that they knew the status payment of your salary?

MR KONA: Absolutely, no his knowledge was- I mean it just baffled me. But I was told by the Minister advisor that he is an important stakeholder. So, his level of knowledge seemed extraordinary when I got their thoughts of the events that are happening ... (intervenes)

10 **ADV KATE HOFMEYR:** But salary payments are private matters, are they not?

MR KONA: Absolutely, ja.

ADV KATE HOFMEYR: And then you moved on and you said he offered you, he handed you- I want to get clear. Was there cash in the room?

MR KONA: Yes.

ADV KATE HOFMEYR: How much?

MR KONA: Well, he said there is R100 000 and I said, no I am not- you do not need to pay me anything. Then he said, no then I will give you R500 000. I said, no do not worry, I do not need the money.

20 **ADV KATE HOFMEYR:** And Mr Kona, the transcript does not pick up your body language.

CHAIRPERSON: Your movements, ja.

ADV KATE HOFMEYR: So, we just need to be quite clear. You indicated that there was the first offer of a R100 000. There was actually a R100 000 in cash?

MR KONA: Yes.

ADV KATE HOFMEYR: That Mr Gupta offered over to you in his hand.

Is that correct?

MR KONA: Yes. He said it is 100 000. I did not count it, ja so ...
(intervenes)

ADV KATE HOFMEYR: Right.

CHAIRPERSON: Was it a lot of notes?

MR KONA: Yes, it was.

CHAIRPERSON: Ja.

10 **MR KONA:** Yes, it was.

ADV KATE HOFMEYR: And then when he increases it, is there more cash that is obtained or not?

MR KONA: No, he was saying I will give you R500 000 if you are not happy with this because you are now part of the family. I said, no, do not worry Tony. I am not interested. I am a civil servant. I am serving the state so you do not need to pay me and ... (intervenes)

ADV KATE HOFMEYR: And what did you make of that amount of cash being available?

20 **MR KONA:** Well it is- I mean for me I kind of like started to feel uncomfortable with the whole thing to know exactly what is going on. That then I mean nobody is going to give you so much money for nothing. Ja and moreover then if people are offering you those kinds of money then it is clear that they would want to compromise you in some way or the other. Then tomorrow even if I give you money today, tomorrow I will tell you that when I will need you to do something, then

you say no I cannot do it. Then you come and say, but I gave you half a million rand, I want you to do this and you cannot say no.

ADV KATE HOFMEYR: And then ... (intervenes)

CHAIRPERSON: Where- sorry. Where did he take this cash from in the room?

MR KONA: From the draw.

CHAIRPERSON: Was it from his pockets?

MR KONA: No, from his draws.

CHAIRPERSON: From his?

10 **MR KONA**: From his draws. It is a- Chair, that room it is a- Chair, these are traumatic events for me but ... (intervenes)

CHAIRPERSON: Yes, I am sorry. We need to hear. Feel free to ... (intervenes)

MR KONA: Ja, the room is arranged in such a way that you sit but there is some draws that he was opening, ja behind him where this money was.

CHAIRPERSON: Yes.

MR KONA: Yes, and so he took the money from those draws and say to me, here is R100 000.

20 **CHAIRPERSON**: Yes.

MR KONA: Ja so my assumption is that if I said I want the 500, he would have opened additional draws to grab the 500 000 because ... (intervenes)

CHAIRPERSON: Yes.

MR KONA: I think if I had said I want 500 000, the money was there.

CHAIRPERSON: Okay.

MR KONA: There was nothing that made me believe the money was not there.

CHAIRPERSON: Yes.

MR KONA: Ja.

CHAIRPERSON: But when he opened the draws, did you see more money than there ... (intervenes)

MR KONA: I could not see what he took ... (intervenes)

CHAIRPERSON: He took R100 000 from the draw.

10 **MR KONA**: He took the money from the draw, yes.

CHAIRPERSON: And you took it that there was more.

MR KONA: There was more money.

CHAIRPERSON: Where this R100 000 came from.

MR KONA: Yes.

CHAIRPERSON: Okay, yes.

ADV KATE HOFMEYR: And you ... (intervenes)

CHAIRPERSON: And- I am sorry. And after you had rejected it, did he put it back?

MR KONA: He put it back in the draw.

20 **CHAIRPERSON**: Okay.

MR KONA: Ja.

CHAIRPERSON: Okay alright.

ADV KATE HOFMEYR: We are at the point in your retelling of the story Mr Kona where you said that you had refused it and the mood changed in the meeting. What happened thereafter?

MR KONA: Ja, the mood changed then immediately moved into the turnaround contract to come and say, yes what is this- how far is that contract done? Has it been given already? And I said, ja no, the people have already been informed. We are done with the turnaround plan. And he was then, he was livid Chair because then it was like, who is going to be doing the turnaround plan? I said, no Lufthansa is going to be doing ... (intervenes)

CHAIRPERSON: Who is going to what?

MR KONA: Who is going to be doing the turnaround plan?

10 **CHAIRPERSON:** Oh, he wanted the name of the supplier.

MR KONA: Yes, the name of the- yes.

CHAIRPERSON: Yes. Just before the mood changed.

MR KONA: Yes.

CHAIRPERSON: Before that, was he friendly towards you?

MR KONA: Absolutely. Remember Chair, I was being praised for being a smart guy.

CHAIRPERSON: For being a smart guy, yes.

MR KONA: Ah you are clever. You are powerful.

CHAIRPERSON: Yes.

20 **MR KONA:** You are a young man. How can a young man sit and you are chairing this huge organisation? And so, I mean ... (intervenes)

CHAIRPERSON: So, then he changed.

MR KONA: Then he changed, yes and ... (intervenes)

CHAIRPERSON: And become just negative? Did he become hostile? How would you describe the mood?

MR KONA: Chair, his demeanour then stopped from being friendly to be more of a business like to say, okay what has been done with this? Is this common by the way ... (intervenes)

CHAIRPERSON: Ja, more serious.

MR KONA: Ja more serious. Has this been done? And then I told him, I said, no this is done. We are finished. It is awarded. This thing has been awarded. Now ... (intervenes)

CHAIRPERSON: Yes, you may continue.

MR KONA: That is what- then immediately after that Chair,
10 immediately after that, the meeting ceased.

CHAIRPERSON: Tell me how it ceased. Did he say, okay the meeting is ended you can leave. Or anything like that or there was just nothing further to discuss and then ... (intervenes)

MR KONA: Chair.

CHAIRPERSON: You started saying, let me go.

MR KONA: Chair, somebody was phoned and was asked to come there immediately Chair.

CHAIRPERSON: Yes.

MR KONA: So, I did not put this person's name on record so I do not
20 know whether it is adequate for me to mention the name of this person.

CHAIRPERSON: Yes.

MR KONA: Ja.

ADV KATE HOFMEYR: I think we do need to know who ... (intervenes)

MR KONA: Okay, they phoned the DG Chair.

CHAIRPERSON: The DG of the Department of ... (intervenes)

MR KONA: Of Public Enterprise.

CHAIRPERSON: Of Public Enterprise, ja.

MR KONA: Yes.

CHAIRPERSON: He was phoned?

MR KONA: He was phoned, yes.

CHAIRPERSON: And who was he at the time or she?

MR KONA: It was Tshediso Matona.

CHAIRPERSON: Yes okay.

MR KONA: Ja, they phoned him and said, hey, what is going on. Can
10 you quickly come and explain to us what is going on?

CHAIRPERSON: Mm.

MR KONA: Ja but Chair then for me the meeting was over. Then I
said, okay let me- I am going. Then as I was driving home. So, I got
my cell phone back. I walked out, they never walked me out. I walked
out. I left them there and I got my cell phone back and as I was driving
out then I get a call from the DG and he is like, oh chief, why did you
give this guys Lufthansa, the contract? But Tshediso ... (intervenes)

CHAIRPERSON: I am sorry, just repeat that. Why did you?

MR KONA: Why did I give Lufthansa the contract.

20 **CHAIRPERSON:** That is the DG saying that?

MR KONA: That is the DG yes.

CHAIRPERSON: On the phone?

MR KONA: On the phone, ja. And I am saying, but okay Tshediso, I
am not the one who gives a contract. It is supply chain who gives a
contract. Then he was like, okay, I will come back to you. And he

disappears Chair, he does not say anything. A couple of days pass and then the following week I get a letter from Public Enterprises saying that they want to investigate the award of my contract to Lufthansa. Then I say, okay come, this is what we have done. We are preparing for you. We will prepare the pack. I told the guys at supply chain.

I said, guys the Department wants to see what processes we went through in awarding this contract to Lufthansa Consulting. I do not think it is anything, just prepare the paperwork. They prepared a pack for the Public Enterprises and they prepared the people in the Bidder

10 Judication Committee because it is a small- it is not a big committee. It is a small committee with the member where and the minutes they prepared for the team. The team came Chair, investigated, found nothing they could not fault. But they would not allow me to start to appoint Lufthansa Consulting to start the work.

CHAIRPERSON: Who is they now?

MR KONA: The Department.

CHAIRPERSON: What were they saying?

CHAIRPERSON: They were saying, ja no, we will come back to you.

We still looking at things. And Chair, it became an absolutely- the
20 behaviour of people then suddenly changed from both the Department and my fellow board members in terms of their interactions with me. Because then I became it was as if now people- Chair, I felt like an animal that was in the zoo being hunted and but people are shooting but they do not know where to get you kind of thing. And it was like, let us just find something to get rid of him. Then roundabout the end of

November I get a call from the Advocate Lindi Nkosi Thomas, she was also a board member with us. And she says to me, I think let us just settle this matter, we are not going forward because the emotions now are too high here within the organisation. So, I say ... (intervenes)

CHAIRPERSON: And the reference to this matter is a reference to what matter?

MR KONA: It is a reference to what is going on now in the organisation because I am clearly not wanted by the Department now.

CHAIRPERSON: Okay.

- 10 **MR KONA:** And the Department has been having conversations with my colleagues in the board to try and make my working life as difficult as possible in terms of me working. So, but unfortunately for them they could not find anything that they could come and say this is what this person has done now. Let us get rid of him. Because all I was doing, I was simply working according to the book and according to the guidelines of the airline. That is what I did.

- So, I told Lindi, I said, look it is clear to me that the Department does not want me and obviously there has been a falling out. But I now was able to trace back the fall out to this contract that,
- 20 hey, it was this contract. Then the Minister came and said to the board members, he asked us for a meeting in Cape Town and he said to us, let the board because we are delaying to implement the turnaround strategy plan. Let the board just do its own turnaround plan. Now Chair, I could not be part of that because it is “hosposh” thing that you are submitting to say that you are putting together a turnaround plan.

Because there is a lot but they managed to put something there the other board members to say, we are submitting this. And I am said to them, I cannot be part of this because it is- we are just submitting documents for the sake of submitting documents and I am not going to be party to it.

But needless to say, Chair, in the interest of time, the settlement did not happen. A document was cooked by the board on my behaviour that the board was now getting involved in my oppressional duties and me trying to appoint temporary people to come and help me to fix the
 10 airline. Then the board was forging- one of the board members forged legal opinions for me to say that I have got an interest, this is what is going on. And I raised all those issues to the board to come and say but you do not have to forge legal opinions because I am not benefiting from this. I am not getting any money. All I want to do is to fix this business that is struggling. Nobody seemed to pay attention Chair and to cut a long story short, I asked- I phoned Malusi beginning 2013.

CHAIRPERSON: That is Minister Gigaba.

MR KONA: Yes, and say, Minister, I do not think this is healthy for you and it is not healthy for me. I can see that I am not wanted. Let us try
 20 and resolve this issue of ours as quickly as possible. The Minister says, okay, I am still in KZN. Once I get to Johannesburg, I will call you and the current Acting Chair, that is Dudu Menye, to come to my house and then we can sit and resolve this issue. Chair, I waited. That meeting never happened until I was basically suspended on the 11th of February for spurious reasons saying that I appointed people without

going through a process. These people are all being paid 1.3 million, 1.4 million and they were just there for 12 months to assist me to move over at the airline.

And but we showed all those things to the Minister when he was busy firing me from being chairperson and the Minister would have none of it. So, for me it was clear that because McKinsey did not get the consulting assignment and McKinsey was meant to have gotten the consulting assignment and so that is where the fall out went. I never went back to the Gupta's. I never had anything to do with the Gupta's

10 post that discussion Chair. Ja.

CHAIRPERSON: So, before Ms Hofmeyr ask you the next question. So, you said- did you say that during the meeting, Mr Duduzane Zuma, Mr Tshepiso Magashule, Mr Siyabonga Mahlangu. It is Siyabonga nê?

MR KONA: Siyabonga, that is right.

CHAIRPERSON: Siya Mahalangu who were in that meeting, never said anything really. It was Mr Tony Gupta and yourself who were talking.

MR KONA: Chair, for me it was a very strange meeting. Ja, Duduzane never uttered a single word in the meeting. Tshepiso never uttered a word. Ja, Siya was just confirming what I would answer and just add a
20 few words and there. But really the main people that were talking was myself and Tony, ja.

CHAIRPERSON: It is interesting you have nothing to say to comment on and I think Ms Hofmeyr would be aware of some of these things. In terms of evidence that I have heard over time Mr Jonas said in the meeting that he had at the Gupta residence when Mr Duduzane Zuma

was there, Mr Duduzane – he said that meeting involved one of the Gupta brothers talking to him and offering him money. He said Mr Duduzane Zuma was there and there was Mr Hlongwane as well and his version is they never said a thing. Duduzane Zuma and Mr Hlongwane they never said a thing. They have a different version but their version does not involve a Gupta brother being part of the meeting. Mr Dukwana said also he was taken by Mr Ace Magashule to the Gupta residence one time and he attended a meeting which Mr Duduzane Zuma also attended where Mr Tony Gupta offered him a briefcase full of
10 cash if he agreed to appoint a certain entity for some work for his department in the Provincial – Free State Provincial government. You are – he said too Mr Duduzane Zuma never said anything in that meeting. You are saying you also had a meeting at the Gupta residence where Mr Tony Gupta was there and Mr Duduzane Zuma was there and throughout Mr Duduzane Zuma never said anything. It was just Mr Tony Gupta talking and you were talking to him.

MR KONA: That is correct Chair.

CHAIRPERSON: Ja thank you.

ADV KATE HOFMEYR: Chair I do have some follow up questions but I
20 note that we are at one o'clock. I had indicated to Mr Kona earlier that I was obviously to optimistic that we might complete his evidence before the lunch break.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: I do know Mr Kona that there might be a need for you to get additional medication. Will you be alright to return at two

o'clock after our break?

CHAIRPERSON: Or would you – would it help in any way in terms of medication if we tried to finish first and take lunch later for your purposes.

MR KONA: I will prefer we finish Chair. Because once I take medication I fall asleep.

CHAIRPERSON: Yes. How much time do you think?

ADV KATE HOFMEYR: Chair I am hoping about half an hour but the challenge is that we have not got to the TNA aspects yet.

10 **CHAIRPERSON:** Yes.

ADV KATE HOFMEYR: And we – so we are effectively halfway through the evidence.

CHAIRPERSON: Oh okay.

ADV KATE HOFMEYR: Having taken an hour to this point.

CHAIRPERSON: Yes, yes. But I am grateful for one thing.

ADV KATE HOFMEYR: Hm.

CHAIRPERSON: That Mr Kona has given more information about the meeting at the Gupta residence. In his statement here he did not give much and I made a note so I am happy that he has been able to give
20 more information. So – so you would need about subject to even questions from the Chair and how much that takes about what – about an hour.

ADV KATE HOFMEYR: I would think not more than that Chair.

CHAIRPERSON: Not more than that. But you – your situation is difficult from what I hear. It would be better that we finish then you go.

But if it takes that long would you still be fine in terms of your medication?

MR KONA: Chair – Chair the only challenge my driver goes to school.

CHAIRPERSON: Oh is that so.

MR KONA: Ja, ja. My son is the one who chauffeured me here.

CHAIRPERSON: Oh. Oh.

MR KONA: And he has to attend after two. So...

CHAIRPERSON: After two o'clock?

MR KONA: Yes, yes he has got lectures to attend to.

10 **ADV KATE HOFMEYR**: Well we could certainly assist with...

CHAIRPERSON: I am happy to continue. The only problem – if we were to continue before taking lunch how much time – by when would you need to get out of here?

MR KONA: It is up to – it is up to her Chair.

ADV KATE HOFMEYR: Well the...

CHAIRPERSON: I am happy to sit and continue and take lunch after we have finished with you.

MR KONA: Okay if you indulge.

ADV KATE HOFMEYR: Certainly.

20 **CHAIRPERSON**: Is that fine?

MR KONA: Yes.

CHAIRPERSON: Okay alright. Let us do that.

ADV KATE HOFMEYR: Thank you Chair.

CHAIRPERSON: Let us continue.

ADV KATE HOFMEYR: We are indebted. I would just like to probe a

few aspects Mr Kona because even before you got to the call that you received from the then DG Mr Matona you indicated that you had not included in that affidavit. Why did you not include that in your affidavit originally?

MR KONA: I – you see Advocate there is a lot of – there is a lot of things that have been happening at the moment. I am busy paying my own legal costs at the moment for – for this – for all these state capture related events. So if I am being advised by the lawyers to say that this is what we are going to put in and we are managing expenses I
10 can only put so much with the expenses that – that we are managing. It is not that clear there is something untoward that is being – that is being hidden per se.

MR KONA: Hm.

MR KONA: Ja.

ADV KATE HOFMEYR: You were offered an opportunity to meet with the commissions and its investigators and legal team on the 2 October 2019 which you declined. Do you recall that?

MR KONA: No I do not.

ADV KATE HOFMEYR: You do not recall declining that.

20 **MR KONA:** Yes.

ADV KATE HOFMEYR: Invitation.

MR KONA: No I do not.

ADV KATE HOFMEYR: We will get the necessary document.

MR KONA: Okay.

ADV KATE HOFMEYR: There is quite a bit of further detail that you

have provided today about this meeting and as the Chair indicated previously the processes of the commission are only aided by that and the detail. The challenge Chair just so that we state it publicly is that this was not in the original affidavit.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: And so issues with implicated persons.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: Will now need to be followed up.

CHAIRPERSON: Yes.

- 10 **ADV KATE HOFMEYR:** And certainly the aspect of your suspension and the details around it we similarly would have liked an opportunity to probe with you but have not had an opportunity to do that.

MR KONA: You see Advocate some of the things that in terms of my presentation to the commission at the moment have been public knowledge. They are not hidden because I did go to court with the Minister. I submitted an affidavit so I have – I have not hidden anything.

ADV KATE HOFMEYR: Indeed.

- 20 **MR KONA:** In terms of what is going on. The papers are there in court at the moment and once I save enough money to continue slogging it out then we will continue to slog it out.

ADV KATE HOFMEYR: Understood. Is that case still pending?

MR KONA: Once I get enough money then I will continue with it because I personally feel that my name was dragged through the mud for – for rubbish you know. I was – it is – everybody knew what was

happening and they pretended to – to be holier than thou when they were doing what they were doing and hence that is why I was even prepared at the time to come and say, let me just pack my bags and go. It is – I cannot work under these circumstances. Neither do I want to continue in an environment like this.

CHAIRPERSON: The details that you gave with regard to the meeting.

MR KONA: Yes.

CHAIRPERSON: Are they contained in some or other affidavit that is...

MR KONA: There is – there is court papers that I have been.

10 **CHAIRPERSON**: Yes.

MR KONA: North Pretoria – Gauteng high court.

CHAIRPERSON: And they include...

MR KONA: They are there in the newspapers.

CHAIRPERSON: Yes.

MR KONA: The journalists have this meeting – have this information.

CHAIRPERSON: Ja, no, no, no I am more interested in what may be in affidavits in court.

CHAIRPERSON: Ja.

CHAIRPERSON: Those details that you have given.

20 **MR KONA**: I will think – I would think so Chair.

CHAIRPERSON: Are there. Okay alright.

MR KONA: Ja.

CHAIRPERSON: Okay.

MR KONA: But my attorneys are fully briefed with what – with what happened.

CHAIRPERSON: Yes okay.

MR KONA: Ja.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: The specific Saxonwold meeting Mr Kona.

MR KONA: Yes.

ADV KATE HOFMEYR: Is that traversed in previous affidavits before court?

MR KONA: Yes that is correct ja.

ADV KATE HOFMEYR: Thank you. You can draw that to our attention
10 we would be grateful.

MR KONA: Okay.

ADV KATE HOFMEYR: I would like to then move to page 9 because you talk about what happened after the meeting at page 9, paragraph 43. Let us start sorry at page 42. You talk about having confided in someone about the meeting. Can you tell us about that?

MR KONA: Yes. Obviously because I have been through this traumatising meeting that made me extremely uncomfortable. I went and told my then acting Chair Dudu Myeni.

CHAIRPERSON: Okay I am sorry just to make sure I understand. Now
20 at the time you went to the meeting at the Gupta residence.

MR KONA: Yes.

CHAIRPERSON: You were Chairperson of the board and acting Group CEO?

MR KONA: Yes.

CHAIRPERSON: Is that right?

MR KONA: Yes.

CHAIRPERSON: Okay. At the time of confiding as reflected in paragraph 42 were you still holding those positions?

MR KONA: Chair remember that even though I was appointed Chairperson of the Board.

CHAIRPERSON: Hm.

MR KONA: Yes I was now – there was now an acting Chairperson.

CHAIRPERSON: Were you on suspension already?

MR KONA: No, no, not yet.

10 **CHAIRPERSON:** Oh.

MR KONA: But a Chair – an acting Chairperson had been appointed because now I – even though my appointment was Chairperson.

CHAIRPERSON: Hm.

MR KONA: But because now I was acting CEO.

CHAIRPERSON: Ja.

MR KONA: The Minister appointed an acting Chairperson.

CHAIRPERSON: Oh so when you were Group CEO.

MR KONA: Yes.

20 **CHAIRPERSON:** You were not expected to perform the duties of Chairperson of the Board.

MR KONA: The Chair – the Chairperson – yes.

CHAIRPERSON: Although your appointment had not been terminated?

MR KONA: Had not been – was not terminated yes.

CHAIRPERSON: Yes.

MR KONA: Ja.

CHAIRPERSON: But there was somebody acting?

MR KONA: Acting yes ...

CHAIRPERSON: Performing those duties.

MR KONA: In a position – yes.

CHAIRPERSON: Oh okay thank you.

ADV KATE HOFMEYR: And so I understand your evidence to be you spoke to her about the meeting, is that right?

MR KONA: That is correct ja.

10 **ADV KATE HOFMEYR:** What did you say to her?

MR KONA: I told her about the meeting and then she was more interested on – did you drink anything not on the event. But did you drink anything and or did you eat anything? I was – and my view was oh my sister – and it was like – these people were a [African language]. Sorry these people will bewitch you.

CHAIRPERSON: Well trans – give a translation in English.

ADV KATE HOFMEYR: I am very indebted. Thank you Mr Kona.

CHAIRPERSON: Ja give a translation of that Mr Kona.

20 **MR KONA:** Yes, yes. That is what she was more interested on and – so...

CHAIRPERSON: Did she make remarks suggesting that you could have been bewitched if you ate or drank something?

MR KONA: Yes, yes.

CHAIRPERSON: Okay.

MR KONA: That is – that is – she was not interested on the events of

the meeting and what – I know – she was like I know [African language]. So Chair then I – it became a lonely place to be.

CHAIRPERSON: Okay so you are saying do not go around drinking and eating.

MR KONA: And eating.

CHAIRPERSON: And was she making some accusations against them or...?

MR KONA: She just said.

CHAIRPERSON: Or it was just lighted.

10 **MR KONA**: She was just light about the whole process.

CHAIRPERSON: Hm.

MR KONA: Ja and that was the end of – that was the end of conversation.

CHAIRPERSON: Okay.

MR KONA: Then in my assumption I assumed then that she picked up the phone and then started making phone calls to say to – to obviously passing the message to say, why did you guys take this guy, myself, to go and meet these people? And that is why then the Minister's advisors started sending messages that we [indistinct] kind of thing.

20 **ADV KATE HOFMEYR**: Okay so let us move to the message that you received from Mr Mahlangu.

MR KONA: Ja.

ADV KATE HOFMEYR: Can we first deal with what happened and then any assumptions you make around the events. Okay. Because you have just indicated you assumed that Ms Myeni had made calls. You do

not have any first-hand knowledge of that?

MR KONA: I do not have it ja.

ADV KATE HOFMEYR: So let us just talk about what happened? You confided in Ms Myeni. You had this conversation with her and then at paragraph 43 you talk about receiving a sms communication from Mr Mahlangu. What was that?

MR KONA: Well he was saying to me – he said to me [African language] I am compromised, I am compromising the mission. So – so the mission was for him to take me to – to Saxonwold and now the
10 other people were not supposed to have known that I went to the Saxonwold. And he was not happy that I told the Chairperson that I was taken to Saxonwold because for their own things that they were doing – with their own power dynamics they were all running Saxonwold and the Presidency, Ministers and all those games. I did not know those games what was going on behind – behind there. But I think when he took me there his assumption was that she should not know that I have been introduced to these – to these people. I should create my own I think power block if I may say to be able to carry out the job.

ADV KATE HOFMEYR: Let us go to the sms because we requested
20 that you provide us with actual screen shots of it.

MR KONA: Ja.

ADV KATE HOFMEYR: You will find it at page 16 of Exhibit DD17 which is in front of you. Mr Kona I am going to return to these sms's in a moment because part of the conversation relates to aspects of TNA. But just for present purposes can you tell us what pages 16, 17 and 18

contain?

MR KONA: SMS's?

ADV KATE HOFMEYR: Between who?

MR KONA: Between myself and the Minister's advisor.

ADV KATE HOFMEYR: That is Mr Mahlangu is that correct?

MR KONA: That is correct yes.

ADV KATE HOFMEYR: And when on page 16 you will see a date there 27 November 2016 I think it is at 14 minutes past 6 in the morning, is that correct?

10 **MR KONA:** Yes.

ADV KATE HOFMEYR: Just read that message that comes from Mr Mahlangu into the record?

CHAIRPERSON: I am sorry Ms Hofmeyr.

ADV KATE HOFMEYR: Apologies Chair.

CHAIRPERSON: Did you mention that a date is reflected on page 16?

ADV KATE HOFMEYR: Yes.

MR KONA: Yes.

ADV KATE HOFMEYR: It is sort of middle of the dark black text Chair.

CHAIRPERSON: Oh I see 2 ne.

20 **ADV KATE HOFMEYR:** Yes.

CHAIRPERSON: Oh okay.

ADV KATE HOFMEYR: It is not particularly clear we will see if we can enhance it.

CHAIRPERSON: No that is fine.

ADV KATE HOFMEYR: But just beneath that I think it is the sms you

have been referring to in your evidence, is that right?

MR KONA: Yes that is correct.

ADV KATE HOFMEYR: Could you read the full sms into the record?

MR KONA:

“[African language] why did you let her know that you knew where she was going you will compromise the mission.”

ADV KATE HOFMEYR: Okay can we just...

CHAIRPERSON: I am sorry. [African language] why did you let her know that you knew where she was going. You will compromise the mission.

10

MR KONA: Yes.

CHAIRPERSON: That is the sms from ...

MR KONA: Yes.

CHAIRPERSON: Mr Mahlangu to you.

MR KONA: Yes

CHAIRPERSON: On the 27 November 2012?

MR KONA: Yes.

CHAIRPERSON: Is that the date for that sms?

MR KONA: Yes.

20 **CHAIRPERSON:** Okay. And you said [African language] is why you compromising me or something like that?

MR KONA: Yes.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: And as I understand your evidence this is after you have confided in Ms Myeni about the meeting at the Saxonwold

residence.

MR KONA: That is correct.

ADV KATE HOFMEYR: Is that correct?

MR KONA: That is correct yes.

ADV KATE HOFMEYR: Can we just break down the message a little bit further? Mr Mahlangu records in the second sentence,

“why did you let her know that you knew where she was going.”

What does that mean Mr Kona?

MR KONA: You see – you see Advocate there were – what we were
10 dealing with and that is why I said earlier on you are dealing in an
environment that you were told that you are being taken to power
brokers. And if you are going – being taken to power brokers these are
the same power brokers that she was using to move her own – her own
agenda of what she – of what she wanted – of what she wanted to do.
However she did not want those – anybody else to be taken to those
same power – to those power – power brokers for her own agenda
within whatever she was doing or whatever she wanted to do. She
wanted to make sure that these people are – they are all aligned in
terms of what they want to do. So when I had – when I had a
20 conversation I made it clear to her that I know who these power brokers
are and I have been taken to a house and I am extremely uncomfortable
with the meeting. And this is – this is what happened. And that is
when she started calling around and later on when the Minister’s
advisor found out about this that is when he sent the message. Ja.

ADV KATE HOFMEYR: I just want to get clear about how much you

have personal knowledge of and how much you are assuming from putting things together over time etcetera. Did Ms Myeni ever have a conversation with you in which she spoke about this power broking that you describe?

MR KONA: Absolutely. When we had this conversation. That is when I spoke to her. She was the acting Chairperson and I had to talk to her.

ADV KATE HOFMEYR: But did she specifically talk about the power broking that was going on and her dissatisfaction about the role you had played in it?

10 **MR KONA:** No. I mean I knew what those – those people now – what was going on. I mean it will not take a rocket science Advocate to know what is going on. By then my eyes were open in terms of what the role of these people was and I knew – I started – I started to know that they were – this family that was doing things behind – making things doable behind the scenes. And that is why she would have wanted me to be kept as far away as possible from those – from those people.

ADV KATE HOFMEYR: What I am just interested in is how you acquired that knowledge in this period of time because your evidence
20 earlier was that in October when you were approached for the meeting.

MR KONA: Ja.

ADV KATE HOFMEYR: You did not know who the Gupta's were or what their role was and we are now in the end of November 2012.

MR KONA: Ja.

ADV KATE HOFMEYR: And you do have a sense. How did you acquire

that information?

MR KONA: Advocate you talk to people. Ja you talk to people. And through engagement with people, through having your eyes opening up and trying to find out what is going on. You then get to see what is really – what is really going on? Remember that at this juncture I had been battling to get my consulting – my consultancy to – to start moving. I had been made a lame duck CEO kind of thing because I was not being able to do my work within the organisation. So you – when people start to behave in a strange manner then you start – you start to
10 ask around you know. You start to be more intuitive on what is happening within your environment and the outside environment. Now I think – I mean what I can say Advocate is that sometimes you get into these things and you getting with a certain sense of naivety and when I say naivety it is in terms of what is – what is really going on. You know and then you wake up and by the time you wake up to see what is going on then it is a bit – it is a bit too late to kind of like understand what is going on.

ADV KATE HOFMEYR: Thank you for that.

MR KONA: Ja.

20 **ADV KATE HOFMEYR:** I would now like to move to the TNA aspect if we may?

MR KONA: Sure.

ADV KATE HOFMEYR: And we commence with that at page 13 of DD17. Do you have that?

MR KONA: Yes.

ADV KATE HOFMEYR: Thank you. So we are in Exhibit DD17 page 13 and that is a document entitled BAC submission for the confinement or scope extension and others. Do you recall this document?

MR KONA: Yes.

ADV KATE HOFMEYR: And what was this document?

MR KONA: It what the bid adjudication committee gives for approval once they have gone through the approval come and say, can you then give – as the final authority can you then authorise us to implement this thing. This process thing.

10 **ADV KATE HOFMEYR:** And what did it relate to?

MR KONA: The New Age newspapers.

ADV KATE HOFMEYR: And what in particular in relation to the New Age newspapers?

MR KONA: Okay. Advocate when I – when I got in there the New Age was already in process. It was already in – being supplied by the – to the airline. However what the guys from New Age were not happy with – they were not happy with their quantities. They were not happy with what – what the allocation, the numbers that they were presenting the airline. So then they came to me and said, can we then – when – be
20 able to increase the volumes that we currently supplying to the airlines so that we are treated equally like the other newspapers.

ADV KATE HOFMEYR: And just tell us when did – when did that approach take place? I know we are going back many years but I guess what I am interested in is this BAC submission is dated the 6 November 2012. Did the interaction happen before that date?

MR KONA: It happened before that.

ADV KATE HOFMEYR: But sometime after you were appointed as CEO.

MR KONA: Yes.

ADV KATE HOFMEYR: Is that correct?

MR KONA: Yes. Yes.

ADV KATE HOFMEYR: And that occurred in October 2012?

MR KONA: In October – somewhere in October yes.

ADV KATE HOFMEYR: 12 October if I recall.

10 **MR KONA:** Ja.

ADV KATE HOFMEYR: So somewhere between 12 October 2012 and 6 November 2012.

MR KONA: Yes.

ADV KATE HOFMEYR: There is this approach from TNA?

MR KONA: Yes.

ADV KATE HOFMEYR: Who from TNA?

20 **MR KONA:** The advisor of the Minister – Siyabonga Mahlangu came to me and said, TNA would like to supply newspapers. There is this company. I also was not aware who the owners of TNA was. It was just a newspaper as far as I was concerned and so I said okay what do they want to do? Then he said they want to supply newspapers, they want to be treated equally like other newspapers suppliers like the Business Day and the Star. So I said, okay if they want to do that the people then that they need to engage with are the Supply Chain people because they are the ones that know and the marketing people. They

are the ones that work out the demand of the certain papers. They are the ones that decide on the volumes. I do not decide on the volumes.

ADV KATE HOFMEYR: Right.

MR KONA: Ja and so that is when I – they went to them. They went and spoke to the people from the marketing people and the Supply Chain people. Ja.

ADV KATE HOFMEYR: Can you help me again?

MR KONA: Ja.

ADV KATE HOFMEYR: Just with correspondence.

10 **MR KONA**: Yes

ADV KATE HOFMEYR: Chronology. You moved to the CEO position on the 12 October 2012.

MR KONA: Yes.

ADV KATE HOFMEYR: The BAC submission is the 6 November 2012.

MR KONA: Yes.

ADV KATE HOFMEYR: So Mr Mahlangu had this conversation with you somewhere between that?

MR KONA: That is correct.

ADV KATE HOFMEYR: We know another event that happened in that
20 period and that is the event when you went to the Saxonwold house.

MR KONA: That is correct.

ADV KATE HOFMEYR: Because that was at the end of October 2012?

MR KONA: That is correct ja.

ADV KATE HOFMEYR: Do you recall whether he approached you about TNA before or after that meeting?

MR KONA: Before.

ADV KATE HOFMEYR: Before?

MR KONA: Yes.

ADV KATE HOFMEYR: And at that meeting was there any discussion about TNA because after all it was the Gupta's media house?

MR KONA: At the Gupta meeting no there was no mention of TNA.

ADV KATE HOFMEYR: Not at all?

MR KONA: No there was no – nothing no.

ADV KATE HOFMEYR: So when you met at the Gupta residence had
10 you made no association between TNA and the Gupta's?

MR KONA: Absolutely – absolutely not. Ja I mean I knew the CEO of TNA Naziem Howa I studied with him so I never associated that he would be there. I never associated TNA with the Gupta's it was just another newspaper and for me the guys wanted to – to get some more access and I said, okay talk to the Supply Chain people and if they are happy we will – we will go through the processes and give the volumes like what we always do.

ADV KATE HOFMEYR: Right.

MR KONA: Ja.

20 **ADV KATE HOFMEYR:** Now if we go back to the submission that came to you.

MR KONA: Ja.

ADV KATE HOFMEYR: It was dated the 6 November 2012 and you will find it at page 13. You will see in the section that says Background. It is recorded there:

“In the meeting of 22 February 2011 the BAC supported and recommended for approval through the DOA subject to negotiation of a 10% discount. The business unit engaged in negotiations with the New Age Media and a discount of 30% was achieved.”

Did you see that?

MR KONA: Yes.

ADV KATE HOFMEYR: Did you ever go back and enquire about that
10 prior BAC meeting or the terms on which the approval had been made?

MR KONA: What was happening Advocate TNA was already supplying papers when I got there? So the only issue that Naziem was complaining about he way saying to me, he is already supplying papers however he is not – his contract is not finalised with SAA and it is not done. And for me my issue was that but guys why are we supplying without an agreement? Let us make sure that we are compliant and there is an agreement in place. That is when – so by the time I started working there they were already supplying newspapers in there ja.

ADV KATE HOFMEYR: Yes. And when...

20 **CHAIRPERSON:** One second Ms Hofmeyr. That first sentence under background is incomplete. It does not say what it is that was recommended for approval but you obviously understood it in a certain way. What did you understand had been recommended for approval?

MR KONA: The supply – the supply of newspapers.

CHAIRPERSON: Yes.

MR KONA: Of adding TNA newspapers.

CHAIRPERSON: Yes and that is what it was about?

MR KONA: That is what it was about yes.

CHAIRPERSON: Okay alright.

ADV KATE HOFMEYR: And did you make enquiries as to what terms the current newspaper supply was being given on?

MR KONA: I – that is the – that is why I said the Supply Chain people and the people on Supply Chain they must look into it and make sure that we do not need to enter as long as it does not cost me more and
10 they are given the same – at the same – what do you call it? At the same rate as other newspaper suppliers then it becomes a fair transaction. And that is the conversation. And that is what I told them.

ADV KATE HOFMEYR: So what I would like to take you to next is the letter that was sent to TNA by South African Airways the day after that BAC meeting that is referred to in the submission to you. And you will find that at a page back at page 12. Do you see that letter?

MR KONA: Yup.

ADV KATE HOFMEYR: Are you aware of seeing this letter at the time that you were considering the BAC submission?

20 **MR KONA:** No.

ADV KATE HOFMEYR: When did you first see it?

MR KONA: When you sent it to me.

ADV KATE HOFMEYR: Okay. Thank you. It is dated the 23 February 2011 and you will see that in the second paragraph the second sentence it says:

“The bid adjudication committee sat on 22 February 2011 and considered your proposal and I am pleased to advise that it accepted the request to distribute the New Age publication on board our aircraft on similar conditions and pricing currently enjoyed by SAA on the publications and newspapers distributed on board our aircraft.”

And then it goes on to indicate the following proposal:

10 “Given the above I wish to put forward the following
SAA offer to TNA Media.”

And it records:

“SAA intends to purchase no more than 24 000 copies per month at R2,30 per copy. VAT inclusive. These copies are to be made available on board only on SAA flights.”

And then the next paragraph reads:

20 “The quality - the quantity and prices offered above have been calculated based on our current monthly average intake of similar publications. It is also based on the fact that The New Age Newspaper does not yet have an established readership and that passenger interest in this publication has not yet been determined. Finally please note that SAA is not in a position to take anything more than the quantity mentioned above. Should TNA Media wish

for SAA to distribute more than this quantity additional copies would have to be provided free of charge by TNA Media.”

Mr Kona, when you considered the BAC submission did you know that the BAC previously had taken these views ...

MR KONA: No.

ADV KATE HOFMEYR: In relation to contracting?

MR KONA: And - and hence that is why when - when they came to me to ask. I said they must deal with the - with the BAC people and the
10 users, because I was not in a position to come and say what is adequate and what is not adequate.

ADV KATE HOFMEYR: Hm.

MR KONA: I could - I could not make that - that judgment. I was not in a place ... (intervenes).

ADV KATE HOFMEYR: And when you say when they came to you. Who is they?

MR KONA: The - the Minister's advisor and the TA - the TNA people.

ADV KATE HOFMEYR: So you had conversations both with Mr Mahlangu and with the TNA people?

20 **MR KONA:** No. Mr Mahlangu asked me to say can you meet with - with the TNA people to - to see how you can - how you can assist them. They want to increase their volumes that they put on the airline. *Ja*.

ADV KATE HOFMEYR: Because if you go to the BAC submission at page 13. None of those facts are recorded in the submission. Are they?

MR KONA: But remember advocate, this happens in 2011.

ADV KATE HOFMEYR: Hm.

MR KONA: Ja. So I - I come in - in 2012 and the engagement in 2012 is purely for additional volumes that these - that these guys - that these guys wanted. Two, they wanted - Nazeem was saying he has got an agreement, but his agreement is not finalised with SAA. So I say to - so my - my issue with him was that.

Please let us make sure that you are compliant, but if it does not work then we are not going to take the (indistinct). So I had
10 absolutely no authority in either making the decision to come and say this would work or it will not work. That decision was purely putting on the BAC and - and the stuff at the bottom.

ADV KATE HOFMEYR: Well Mr Kona you ...

MR KONA: Ja.

ADV KATE HOFMEYR: Were the CEO who had to approve this ...

MR KONA: Acting.

ADV KATE HOFMEYR: Transaction.

MR KONA: Acting.

ADV KATE HOFMEYR: Apologies. Acting CEO.

20 **MR KONA:** Ja.

ADV KATE HOFMEYR: You had to approve it. Is that correct?

MR KONA: That is correct.

ADV KATE HOFMEYR: So you are the final responsible authority within SAA ...

MR KONA: Yes.

ADV KATE HOFMEYR: To enter into this contract?

MR KONA: Yes.

ADV KATE HOFMEYR: Right. You say that it had to deal with additional volumes?

MR KONA: Yes.

ADV KATE HOFMEYR: Do you not think it was relevant for the BAC to include in the submission that when they had offered in February 2011 to take 24 000 copies a month. That was the maximum that they were willing to contract for?

10 **MR KONA:** Well at the time there was absolutely no need - no need for me. I did not see a need to do that according to my better judgment at the time and hence that is why I say to - I say to them. The instruction for them was that we should not go beyond the terms that we have agreed to neither should we pay more than what we are prepared - what we can afford.

ADV KATE HOFMEYR: If we go to motivation on page 13.

MR KONA: Ja.

ADV KATE HOFMEYR: That is where ordinarily in these submissions the person being asked to approve is told why they should commit the
20 company to the money that is being requested. Will you read into the record what the motivation says? It is a big heading in the middle of page in capitals - motivation - on page 13. Do you have it?

MR KONA: Yes.

ADV KATE HOFMEYR: Would you read that into the record please?

MR KONA: "SAA will be implementing the additional copies

for a period of 12 months. Whilst SAA is evaluating the current usage and scope in supplying our customers with publication.”

ADV KATE HOFMEYR: Did that tell you why further copies should be procured by SAA?

MR KONA: You know - you know advocate. We buy - we buy papers aboard all the time.

ADV KATE HOFMEYR: Hm.

MR KONA: By - by the airlines for - for whatever reason and if I am - if
10 I am sitting there as - as a person who is - who is really sitting in an -
being an (indistinct). These are handout - these are handout papers
and the submission has gone through the process and they have put in
the - the volume ...

CHAIRPERSON: Hang on. Hang on Mr Kona. I am sorry.

MR KONA: Yes.

CHAIRPERSON: I think you want to give your perspective or
motivation as you saw it, but the question is whether what is written
there under motivation gave you the reasons. So do you want to start
by saying, yes it did provide the reasons or no, it did not provide the
20 reasons and then you can elaborate if you want to.

MR KONA: Chair - Chair we - we are sitting there and these issues if I
take reliance on the bid adjudication on the work that the bid
adjudication committed does and I rely on - on their work. If they have
done their work to come and say, because they are the ones that see
the need of a project. So the question I ask ...

CHAIRPERSON: No, no, no. I hear what you say.

MR KONA: *Ja.*

CHAIRPERSON: You have just read what is written under motivation.

MR KONA: Yes.

CHAIRPERSON: The question is does that give - did that give reasons. So you can say yes, it did give reasons. I understand the reasons or no, it did not and then you can put whatever context you think should be put forward. Such as I think what you are trying to do. I - I just want us to ...

10 **MR KONA:** *Ja.*

CHAIRPERSON: You to answer the question first.

MR KONA: *Ja*, Chair. I think I am more comfortable with my - with the reasons that - with the motivation that ...

CHAIRPERSON: No, no, no.

MR KONA: That I am giving.

CHAIRPERSON: Does - does ...?

MR KONA: *Ja.*

20 **CHAIRPERSON:** Does what is written here provide a reason or a motivation or not? As you sit there are you able to say this gave me a reason or reasons to justify the increase on the copies of paper of the paper?

MR KONA: Chair, yes it did.

CHAIRPERSON: It did?

MR KONA: Yes. It did. Yes. It did.

CHAIRPERSON: Okay. Then you - then you can elaborate.

MR KONA: Yes.

CHAIRPERSON: If you want to elaborate.

MR KONA: Ja.

CHAIRPERSON: Ja.

MR KONA: Ja.

CHAIRPERSON: I just want us to make progress in terms of where you stand on what it says and then you can give what you wish to add.

MR KONA: Ja. Chair, I did - I did not see anything untoward with - I mean. We get - when - when we are sitting there. We get approached
10 by all kinds of business people every day that are business applying with products in - into the airline and if there is a need for them to be used. We try - we - we sample the (indistinct) and we try them and if there is no need.

There is - there is no need to do that, but when I come and say "we". I am talking about really the airline. Not - not me. We - the people go through their - their processes - the supply chain processes. So for me when - when they came to me and said we want to be treated equally as other - as the other papers.

My view was that I am not - i cannot make that - that
20 decision. Deal with the supply chain people and the supply chain people came and told me the (indistinct). That this is what they are prepared to do for these people and they will see whether it will work - whether it works for them and even the advisor of the Minister - Siya Mahlangu - I told him.

I said this is what I can only do for these people and his view

was that take it or leave it. They know that you are going through a cost cutting exercise. If it does not work then that is it. It does not work. We are not going to do it and so that is - that is the stance that - that we took.

ADV KATE HOFMEYR: Mr Kona ...

MR KONA: Yes ma'am.

ADV KATE HOFMEYR: This point about being treated equally. That is not the motivation given for this approval. Is it?

MR KONA: I am talking about my engagement with it.

10 **ADV KATE HOFMEYR:** Yes, but your answer was that ...

MR KONA: *Ja*.

ADV KATE HOFMEYR: This motivation gave you the reason to ...

MR KONA: *Ja*.

ADV KATE HOFMEYR: Commit a further R2.4 million for TNA Newspapers over the year. I pick that up at the bottom of page 13.

MR KONA: *Ja*.

ADV KATE HOFMEYR: So I am just indicate - what in that section on motivation told you that what was motivating the BAC was that TNA wanted to be treated equally to other newspapers?

20 **MR KONA:** Okay. Remember - remember advocate they came - they came to me.

ADV KATE HOFMEYR: Hm.

MR KONA: *Ja* and said to me we are not happy with how we are being treated. We have not even concluded the agreement that we had with SA - that we had with SAA. So whilst they started giving papers in

2011. The agreement was not signed.

ADV KATE HOFMEYR: Hm.

MR KONA: *Ja.* So I said - I said to Nazeem. Go back and talk to the supply chain guys. So that you make sure that they are happy and I told the supply chain guys. I said, guys you have not - these people are - are busy paying for - for the newspapers. We do not have a signed agreement at the moment.

Just engage these people and see whether there is a need. If there is no need. Then you tell them and then we sign - we sign an agreement of what - of what is there. *Ja.*

ADV KATE HOFMEYR: Where did the BAC submission tell you that there was a need?

MR KONA: Sorry.

ADV KATE HOFMEYR: Where did the BAC submission tell you there was a need?

MR KONA: No, no. That was - that was I said - that is what I said to them. I say if - if there is a need you take it. If there is no need then you do not take it. That - *ja.*

ADV KATE HOFMEYR: So did - did you assume that there was a need?

20 **MR KONA:** No. I did not. That is why I said I never said to them - I said this is what these people are saying. If there is a need you take it. If there is no need then you do not take it. *Ja.*

ADV KATE HOFMEYR: Mr Kona, you are going to need to help if you do not mind.

MR KONA: Okay.

ADV KATE HOFMEYR: You - as I understand your evidence - have an interaction with Mr Howa in which he says to you he is dissatisfied about the fact that he is not being treated the same as other newspapers.

MR KONA: Yes.

ADV KATE HOFMEYR: Is that correct?

MR KONA: Yes.

ADV KATE HOFMEYR: Were - did you make any inquiries as at the time about the terms on which TNA was being treated relative to other
10 media houses?

MR KONA: There was no agreement that was signed.

ADV KATE HOFMEYR: That is not the question Mr Kona.

MR KONA: *Ja*.

ADV KATE HOFMEYR: Did you make any inquiries at the time about TNA was being treated relative to the other media houses?

MR KONA: Yes. I did.

ADV KATE HOFMEYR: And what did that establish?

MR KONA: That they did not have a signed agreement and also they were a new newspaper coming - coming onto - coming onto the market.

20 *Ja*.

ADV KATE HOFMEYR: Had they been paid previously for the subscriptions pursuant to the February 2012 BAC decision?

MR KONA: I would - I would assume so, because they were supplying newspapers.

ADV KATE HOFMEYR: See because what ...

MR KONA: *Ja.*

ADV KATE HOFMEYR: TNA was told in February ...

MR KONA: *Ja.*

ADV KATE HOFMEYR: 2011 when that agreement ...

MR KONA: *Ja.*

ADV KATE HOFMEYR: Was concluded for two months. Was that it was being treated the same way as the other newspapers.

MR KONA: *Ja.* I was ...

ADV KATE HOFMEYR: Do you recall reading that?

10 **MR KONA:** I was - I was not aware. That is - that is the letter that I said I was not aware when - when I got these documents.

ADV KATE HOFMEYR: But you received other information that is suggested to you that they were not being treated the same and they wanted greater circulation. Is that right?

MR KONA: No. The only information - the only information that I had I only had engagement with Nazeem - Nazeem Howa and he is the one then who passed on this - this - this information to me. Then I went to the Bid Adjudication Committee and said have you guys - does he not - because that is when he told me that his contract has not been signed
20 to.

ADV KATE HOFMEYR: Hm.

MR KONA: Then my conversation with this - with the BAC guys was that guys can we make sure that this process is completed. So that then we finalise this - this issue ...

ADV KATE HOFMEYR: Hm.

MR KONA: At the - at the moment and then that is - that is when then they - they engaged and came up - came up with this.

ADV KATE HOFMEYR: Mr Kona ...

MR KONA: *Ja.*

ADV KATE HOFMEYR: This submission is not to regularise the existing arrangement. It is a motivation to increase over a period of 12 months the daily copies from 3 000 a day to 7 000 a day.

MR KONA: Advocate you are not getting me correctly.

ADV KATE HOFMEYR: Hm.

10 **MR KONA:** I am saying that - with respect I am saying they were already supplying papers ...

ADV KATE HOFMEYR: Hm.

MR KONA: But they did not have a signed agreement with the airline and I - I accept that it was an addition.

ADV KATE HOFMEYR: Hm.

MR KONA: So they already had a tender that - that they were supplying ...

ADV KATE HOFMEYR: Hm.

MR KONA: But this was in addition ...

20 **ADV KATE HOFMEYR:** Exactly.

MR KONA: To what - to what they were - they were supplying. So that addition for me. I said if - if we can afford it and it works then you can - then - then and they come and say. It can be done. Sure you can go ahead and - and do it, but if it cannot be done. Then it cannot be done. *Ja.*

ADV KATE HOFMEYR: How did you establish that SAA could afford it?

MR KONA: It is - it is not me that does the establishment. *Ja.*

ADV KATE HOFMEYR: Well where does it say here in this motivation that SAA can afford it?

MR KONA: Sorry.

ADV KATE HOFMEYR: Where does say in the motivation that SAA can afford it?

MR KONA: No. In my - in my communication with the - with the team. They told me that we - we could afford it.

10 **ADV KATE HOFMEYR:** Did you take note of what the General Manager of Operations wrote on this submission before it came to you for approval?

MR KONA: Who is that?

ADV KATE HOFMEYR: Mr Ramasia at page 15. Could you read into the record what is written there in handwriting next to Mr Ramasia's name?

MR KONA: "There is currently no - no budget on operations for this."

ADV KATE HOFMEYR: So how despite that did you content yourself
20 that there was a budget available for this?

MR KONA: We are not charging extra. That is - that is - that was my - that was my conversation to the people. *Ja.*

ADV KATE HOFMEYR: But Mr Kona, I think you and I - you ...

MR KONA: *Ja.*

ADV KATE HOFMEYR: You indicated earlier that we might be at cross

purposes.

MR KONA: *Ja.*

ADV KATE HOFMEYR: I do not think we are at cross purposes.

MR KONA: *Ja.*

ADV KATE HOFMEYR: This was a motivation to go from the current 3 000 daily copies of TNA Newspaper that SAA was paying for and increase that to more than double. To 7 000 daily newspapers and that was going to cost a company which your previous evidence described as a company busy losing money.

10 It was going to cost the airline another R2 402 400,00. Before you approved this what did you do to content yourself that that money was available for 4 000 more copies of the TNA Newspaper?

MR KONA: Okay. Okay. Let me just - let me just explain to you advocate what happens if - as - as we are - as we are sorting out the network you increase the flights. When you increase the flights there is budgetary issues that is affected as well. There is an increase in - in budget, but now as I told you earlier on that as - as I was busy working all - everything that was I trying to put in place.

20 I had the proverbial carpet being pulled under feet when I was trying to work - when I was trying to work. So I do not see this - I would not have seen this as a problem - as a problem to me *per se*. It would have not been a problem to me *per se*, because we start doing - once - once you redo the network - once we redo the network.

Then - then - and you increase the network then the budget becomes - then the budget - then the budgets are already done and

they become available. The issue was that my communication to the people was that can we afford to do this and if we can afford to do this. Then let us do it. *Ja*.

ADV KATE HOFMEYR: And what did you make of no budget being available for it?

MR KONA: Sorry.

ADV KATE HOFMEYR: What did you make of the comment that there was no budget ...

MR KONA: Hm.

10 **ADV KATE HOFMEYR:** Available for it?

MR KONA: You know with respect advocate for me it - it becomes an issue of my own - my own personal judgment. *Ja*.

ADV KATE HOFMEYR: And Mr Kona, just help me at page 15.

CHAIRPERSON: I am - I am ...

ADV KATE HOFMEYR: Apologies Chair.

CHAIRPERSON: I am sorry Ms Hofmeyr. You must just tell me if the question I want to put ...

ADV KATE HOFMEYR: Of course.

20 **CHAIRPERSON:** Is connected with the question you want to put. I am not sure that I followed your explanation of how you would have approved that the number of copies of this newspaper be increased in the manner that was proposed. In circumstances where the GM Operations made a note that there was no budget for Operations.

I am not sure that I followed it. I would like you to just give it again.

MR KONA: Okay. Chair, the - the business is being reorganised. So when a business is being reorganised everything changes. So if I know that I am going to cut costs - where I am going to cut costs operationally and I am dealing with a - a R30 billion organisation and I know that I am going to cut so much costs with my interventions that - that I am - that I am putting in place and I am going to increase the - the networks that I am going to do.

Then when I come and say that I am using my - my better - my better judgment. It - it becomes an issue of saying I know that we
10 are going to have a surplus of cash once we implement these - these initiatives that - that we are going to implement and that is then going to free up a lot of free cash flow within the - within the organisation and that is when I come and say that in - in my own - in my own better judgment, but I knew that there was money with the initiatives that we were putting in place.

CHAIRPERSON: Would this issue have fallen under Operations - under - is it Ms or Mr Ramasia.

MR KONA: It is Ms.

CHAIRPERSON: Ms?

20 **MR KONA:** Yes.

CHAIRPERSON: Did it fall under her budget? This issue of the newspaper?

MR KONA: Yes. Yes. Yes.

CHAIRPERSON: Yes.

MR KONA: Ja.

CHAIRPERSON: So is your answer therefore that you approved this even though she said there was no budget for it in her department where this ...

MR KONA: Yes.

CHAIRPERSON: Belonged?

MR KONA: Yes. Yes, because - because ...

CHAIRPERSON: You approved it because you knew ...

MR KONA: All the initiatives. Yes. All the initiatives.

CHAIRPERSON: That you would make - get money from somewhere
10 else?

MR KONA: Yes. Yes. *Ja*.

CHAIRPERSON: Okay.

MR KONA: *Ja*.

CHAIRPERSON: Ms Hofmeyr.

ADV KATE HOFMEYR: Thank you Chair. Do you think it was relevant to know what the readership of TNA was like at the time that you committed that other budget to 2.4 million spend with them?

MR KONA: You see - you see advocate. We looked - we looked at - at this - at - at what - at what was going on and when - when we are
20 saying what was going on. We looked at what the other papers were being taken at and that is the explanation that my people were saying. That once they get on - once they get the latest figures.

Then they would be able to - to see whether this - this paper is working or it is not working. *Ja*.

ADV KATE HOFMEYR: So - so can I just be clear?

MR KONA: *Ja.*

ADV KATE HOFMEYR: You - you commit the 2.4 million before you know what the readership is. Is that correct?

MR KONA: Yes.

ADV KATE HOFMEYR: Are you aware that at no point did TNA ever have accredited readership of circulation figures?

MR KONA: No. I am not aware of that.

ADV KATE HOFMEYR: And were you aware of the take up by customers on flights of the TNA Newspaper or at the checkout - check
10 in counters?

MR KONA: No. I was not aware of that. *Ja.*

ADV KATE HOFMEYR: Do you think it would have been relevant to know whether they were being picked up or just being left?

MR KONA: No.

ADV KATE HOFMEYR: It would not be relevant?

MR KONA: *Ja.*

ADV KATE HOFMEYR: Okay. Mr Kona, I then want to just go to those SMS communications if I may ...

MR KONA: Yes.

20 **ADV KATE HOFMEYR:** To close off this aspect, because there are parts there that you deal with Mr Mahlangu on and we start at page 16 of EXHIBIT DD17.

MR KONA: Right.

ADV KATE HOFMEYR: It starts with a - a message - I take it Mr Mahlangu's messages are on the left and yours are on the right. Is

that correct?

MR KONA: Yes.

ADV KATE HOFMEYR: So Mr Mahlangu in that first message on page 16 says:

“Okay. Let me know. Let us see what we can do. I
will try and buy you as much space as possible.”

Is that related to TNA at all?

MR KONA: No.

ADV KATE HOFMEYR: No.

10 **MR KONA:** *Ja.*

ADV KATE HOFMEYR: If you go over the page to page 17. I think that this is where you start to engage on the TNA matter. Is that correct?

MR KONA: Yes.

ADV KATE HOFMEYR: And what were you communicating to Mr Mahlangu in this SMS?

MR KONA: I was sending him the feedback from the people from - from basically supply chain. That were saying this is what is going on.

ADV KATE HOFMEYR: You say there that Nazeem - this is in the first line.

20 “Nazeem is not budging on the cost issue. He states that a George Motemo (?) or Motema who apparently left SAA emailed him and agreed on us paying the cover price of R3,50 plus distribution charge of 50 percent per copy. The email was from a Gmail account. I do not know George. With this

latest proposal we are increasing the quantity by
4 900 copies. Surely they can consider the current
price we are paying with press support of R2,31 and
take the tab for delivery. Try to get hold of him
yesterday with no success. Martin is back today.
Buliswa (?) - Bulisa (?)."

Just tell me why are you engaging with Mr Mahlangu - the advisor to
the Minister about the details of TNA subscriptions?

MR KONA: He is the one who brought these people. *Ja.* He is the one
10 who brought these people and I was just telling him to say this is - this
is the story. We cannot - we cannot do this thing.

ADV KATE HOFMEYR: Hm.

MR KONA: *Ja.*

ADV KATE HOFMEYR: You were saying you cannot do it?

MR KONA: *Ja.*

ADV KATE HOFMEYR: Is that right?

MR KONA: Yes.

ADV KATE HOFMEYR: And then you say:

"You need to intervene if we do it at the higher cost.

20 Then the process is much longer."

What does that mean?

MR KONA: Then - then we need to get - then basically they - they
have - they have to - to put together a much more support to what - to
what we have and I do not know if they will - they will even get it. *Ja.*

ADV KATE HOFMEYR: It was not a reference to the internal process in

SAA?

MR KONA: No. No. No.

ADV KATE HOFMEYR: No.

MR KONA: No.

ADV KATE HOFMEYR: It was that they would need to justify more. Is that correct?

MR KONA: *Ja.*

ADV KATE HOFMEYR: Right and then if you go over the page. There will be - there is a response as I have it from Mr Mahlangu to you.

10 What does he say in response?

MR KONA: Which one?

“Tell them that ...”

ADV KATE HOFMEYR: Yes.

MR KONA: “...all you can offer tell him you are constrained by your cost cutting.”

ADV KATE HOFMEYR: And then you conclude:

“Will do my chief. Thanks for guidance. Have a great day.”

20 Did you communicate that you were constrained by your cost cutting to TNA when you concluded this?

MR KONA: Yes. The people did - the people said that.

ADV KATE HOFMEYR: So ...

MR KONA: I never - I never spoke to them now. *Ja.* It is the - the BAC Team that was now working - that was now working with the - with the TNA people.

ADV KATE HOFMEYR: Was that before you got the submission from the BAC that ...

MR KONA: Yes.

ADV KATE HOFMEYR: They communicate that? Did you check with them whether they had communicated that you had a limit given your cost cuttings?

MR KONA: Communicate with who?

ADV KATE HOFMEYR: TNA.

MR KONA: *Ja*. I think the people communicated with them. *Ja*.

10 **ADV KATE HOFMEYR:** Did you inquire whether they had?

MR KONA: I - I stopped talking to TNA and they - they started to deal - they started to deal with the people and I just said. Guys let us - let us remember that we are on a cost - we are on a cost cutting exercise. *Ja*.

ADV KATE HOFMEYR: Could we then just finally go to the signature that you appended to the submission? You will find it at page 15.

CHAIRPERSON: Just before that ...

ADV KATE HOFMEYR: Apologies Chair.

20 **CHAIRPERSON:** Ms Hofmeyr. Go back to page 17 Mr Kona. That message that you sent to Mr Mahlangu. You say in it.

“Good morning (African word).”

(African word) is sir.

MR KONA: The message was sent to me.

CHAIRPERSON: Oh. That was sent to you?

MR KONA: Yes. That was sent to me by ...

CHAIRPERSON: Oh.

MR KONA: Yes. So I simply forwarded it to Mahlangu.

CHAIRPERSON: Oh.

MR KONA: Yes.

CHAIRPERSON: You see I looked at ...

MR KONA: Yes.

CHAIRPERSON: Page 16.

MR KONA: Yes.

CHAIRPERSON: You see there one set of messages is green another
10 one is white and the one - the one that says (African word) which you
said came from him is white.

MR KONA: Yes.

CHAIRPERSON: So I thought that the green ones would be coming
from here ...

MR KONA: Yes. I ...

CHAIRPERSON: From you to him.

MR KONA: No. What - what I am - what I am saying Chair. It was a
message that was sent to me ...

CHAIRPERSON: *Ja.*

20 **MR KONA:** And by my guy saying that this is all that we can do. We
cannot do more.

CHAIRPERSON: Oh. That message ...

MR KONA: Yes.

CHAIRPERSON: Was not - it was not a communication between you
and him.

MR KONA: I ...

CHAIRPERSON: It was yourself and your ...

MR KONA: It was - that - what was sent to me and then I simply forwarded it. That message to ... (intervenes).

CHAIRPERSON: You forwarded it to him?

MR KONA: Yes. Yes.

CHAIRPERSON: Oh.

MR KONA: Yes. Yes.

CHAIRPERSON: Oh. Well - one of the questions was

10 **MR KONA:** Yes.

CHAIRPERSON: Bulisa. Was that somebody's name ...

MR KONA: Yes.

CHAIRPERSON: At the end of that message?

MR KONA: Yes. That is correct.

CHAIRPERSON: Oh.

MR KONA: *Ja.*

CHAIRPERSON: Okay. Okay. No. That - that is alright. Yes.

20 **ADV KATE HOFMEYR:** Thank you Chair. Just to clarify for my purposes then. The second message on page 17 is that you then typing thereafter? The first one which says good morning (African word). You said was sent to you by somebody names Buliswa - Bulisa and forwarded to Mr Mahlangu. Is that right?

MR KONA: Yes. Yes.

ADV KATE HOFMEYR: The one that appears after that is that you now communicating?

MR KONA: Yes. Yes.

ADV KATE HOFMEYR: So you are saying to him:

“You need to intervene if we do it at the higher cost.

Then the process is much longer.”

Is that right?

MR KONA: Yes. Yes.

ADV KATE HOFMEYR: Thank you and then I am ...

CHAIRPERSON: And then I am sorry. Then the next one is (African word).

10 **ADV KATE HOFMEYR:** Yes.

MR KONA: Yes.

CHAIRPERSON: Which is why are you quiet?

MR KONA: Yes.

CHAIRPERSON: Is that right?

MR KONA: Yes.

CHAIRPERSON: You are sending that message ...

MR KONA: Yes.

CHAIRPERSON: To Mr Mahlangu.

MR KONA: Yes.

20 **CHAIRPERSON:** Okay.

ADV KATE HOFMEYR: And then his response - just so that we get this clear, because they are cut and ...

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: It is a bit difficult to follow.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: His response is over the page 18 in full. That is where he says:

“Tell him that is all you can offer.”

Is that right?

MR KONA: Yes.

CHAIRPERSON: Hm.

ADV KATE HOFMEYR: To which you responded:

“Will do my chief. Thanks for guidance. Have a great day.”

10 **MR KONA**: Yes.

ADV KATE HOFMEYR: Is that right?

MR KONA: Yes.

ADV KATE HOFMEYR: Thank you.

CHAIRPERSON: Hm. Okay.

ADV KATE HOFMEYR: And if we can then just go to page 15 of DD17, because above your signature there Mr Kona is written:

“Requested and approved by.”

Do you see that?

MR KONA: Yes.

20 **ADV KATE HOFMEYR**: Were you the requestor for this submission?

MR KONA: Remember advocate I said to you earlier on they came to me.

ADV KATE HOFMEYR: Yes.

MR KONA: Yes and I said to them then I forwarded them to the BAC people.

ADV KATE HOFMEYR: Hm.

MR KONA: To say go and talk to these - go and talk to this team. So I cannot come in and - and basically do all - all the work that needs to be done. Mind you in my delegation authority my delegation of authority goes up to 100 million. That is my delegation of authority. I can go and buy - I could have as well had gone to - to spend up to 100 million on either procuring these things or - or procuring consultancy stuff.

Up to 100 million. That is the level of my delegate - delegation of authority. However, I said, go to the users because these are people
10 that use the papers, these are people that put them on the floor and make sure that you agree with them, that was my communication with them yes.

ADV KATE HOFMEYR: So is it accurate to reflect you as both the requester and the approver?

MR KONA: I would – I mean, when people come to you yes and then you say go and do it, I don't know whether I'm the one who's requesting because they are the ones who are actually requesting themselves but because I'm the face now of the organisation they come to me. Ordinarily, maybe they would have gone directly to anybody who was
20 there prior to me or to anybody else who was there.

ADV KATE HOFMEYR: Chair just before we close there was an issue in Mr Kona's previous evidence where I asked him about an interaction with the Commission where there had been an offer for him to meet with the Commission and he indicated that he didn't have a recollection of it. We do have the correspondence, I don't propose to take the

matter further but it is correspondence on the 2nd of October 2019 where his then attorneys, I have it Mr Kukula is that correct?

MR KONA: That's correct.

ADV KATE HOFMEYR: Responds to decline the offer of the meeting but I will make it available to Mr Kona if he'd like to take a moment on...[intervenes].

CHAIRPERSON: Let's jog your memory.

MR KONA: Well I know Mr Kukula is...[intervenes].

CHAIRPERSON: Yes but you – does that remind you of something you
10 know or not?

MR KONA: Chair you see, I'm sitting here today and the issue with the Commission became an issue of legal costs because I'm coming here today without any legal representation okay or no legal advice okay, because I have someone...[intervenes].

CHAIRPERSON: We are too expensive, let's tell the truth [laughter].

MR KONA: Chair so my issue was that okay, if the Commission wants to see me, I've got nothing to hide and it's for me to talk, it's up to the Commission to determine what they determine, for me, I'm just giving a fact of events you know, what transpired during that age –during my
20 days when I was working as the accounting officer. However, at the time Kukula was still my attorney and we enquired from the Commission to say, can the Commission pay the legal costs and the commission, I think at the time wrote back and said they're not in a position to pay for the legal costs I must go to my old employer to pay and when we went to SAA they – it was up and down, we were going up and down and I

think when I had to submit then there was an issue of having to submit my affidavit then I say to the lawyers okay, in the meantime you go in and submit and deal with these other matters that are still there then whilst – then I will cover the costs whilst we are still waiting for the airline to come. Obviously we know where SAA's financial situation is now, they said they are not going to be able to cover my costs.

CHAIRPERSON: Yes but what we are trying to establish is a simple point, do you have knowledge of the letter or communication that said you are declining the invitation from the Commission's legal team or
10 investigators that you...[intervenes].

MR KONA: Chair I don't know how I would have declined because I submitted an affidavit and we apologised for not submitting the affidavit. We submitted the affidavit and we responded to other issues that the Commission raised that were being asked of us.... [intervenes].

CHAIRPERSON: So you did not decline?

MR KONA: No, we did not decline Chair, the only issue that I can clearly remember was the issue of financing the legal costs.

CHAIRPERSON: Yes because I think the position would have been that the Commission would have been saying, we have lawyers who can
20 take a statement from you, consult with you and help prepare an affidavit from you, you won't be charged if we do it, we are inviting you to take advantage of that, I think that's what the letter was declining.

MR KONA: Okay.

ADV KATE HOFMEYR: Chair if I may just be permitted to make it available to Mr Kona.

CHAIRPERSON: Yes, yes, ja please do that ja.

ADV KATE HOFMEYR: And then if I may just beg leave to hand up a copy to you, Chair I just suggest that we put it, for record purposes, possibly paginated at the last page of Exhibit DD17.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: That would make it paginated page 19, I note that in a cost saving exercise it's been printed on both sides of the page.

CHAIRPERSON: Yes.

10 **ADV KATE HOFMEYR**: Which is not our usual...[intervenes].

CHAIRPERSON: Which I don't like very much.

ADV KATE HOFMEYR: Indeed, we'll ensure that your copy has the two sides separately Chair.

CHAIRPERSON: No it's fine.

ADV KATE HOFMEYR: Chair just to locate it in time, Mr Kona is absolutely correct, he submitted his affidavit in response to Ms Mzimela and Ms Coetzee's evidence in July of 2019 and he had not engaged with the Commission until that point. It was thereafter that there were matters that needed to be followed up, the sorts of matters that have
20 been explored today in the evidence with Mr Kona but it's the approach of the Commission's legal team and investigators on receipt of affidavits to investigate further. So what happens in this correspondence is that on the 25th of September there is an email from one of the Commission's investigators to Mr Kona's attorney and it says,

“Dear Mr Kukula, our telecom earlier today serves as reference. The Commission would like to have a meeting with Mr Kona to follow up on some aspects he deals with in his affidavit provided to the Commission. Please arrange with him and provide us with proposed suitable dates”.

So the engagements were after receipt of a first affidavit but an indication that the Commission had further matters to engage Mr Kona on. The response to that came the same day, just above it from Kukula,

10 “Dear Sir, we confirm receipt of your email and confirm that we will revert once our client has provided us with instructions therein”,

And then the final word on this appears above that, it’s an email of the 2nd of October 2019, I’m at page 19 of Exhibit DD17, it’s an email from Mr Kukula to the Commission’s investigator, Mr Madlala and it says,

20 “Dear Sir, following enquiries were instructed that neither the Commission or SAA are prepared to pay for Mr Kona’s legal fees in respect of representations before the Commission. In the circumstances our client is not willing to incur further legal costs in his engagements with the Commission and must decline the proposed meeting”,

Mr Kona in your answer previously you said you weren’t aware of a declining of a meeting, does this refresh your memory?

MR KONA: No on the issue – the only issue that we’re dealing – that I

dealt with was the issue of money ja to come and say then, how do I deal then with my legal costs at the moment because I'm still paying for those other legal costs that one incurred and I said, okay that is – it is what it is, you know. If I don't have legal advice, then how do I proceed – how do I then proceed going forward.

ADV KATE HOFMEYR: Thank you, Chair those are our questions.

CHAIRPERSON: Thank you, Mr Kona just two issues, how was TNA being treated differently from other newspapers as you understood the position? Was it that there was no agreement as yet between itself and
10 SAA or how were these other newspapers treated, how was TNA treated, what were they talking about when they said they were not being treated in the same way as the other newspapers?

MR KONA: Chair my humble understanding at the time was more an issue of volumes that the other newspapers were getting more volumes than them but it was more than an issue of readership and customer preference and hence that's why I said, let these people run and if they can come back and justify and say, the customers prefer this, then why should they not be treated as equal as everybody else.

CHAIRPERSON: Would that be what they told you, namely Mr Nazeem
20 Howa or...[intervenes].

MR KONA: Yes.

CHAIRPERSON: That's what he told you?

MR KONA: Yes.

CHAIRPERSON: Yes so they wanted to – they were saying that the numbers, when it comes to the copies of the newspaper that you buy

are much – are lower than the number...[intervenes].

MR KONA: Than the numbers yes.

CHAIRPERSON: And do you know whether that was actually correct?

MR KONA: Chair when I tried to enquire with the operational staff the view was that, but it's not – it's an audit issue and a customer preference then I said but sort out what is the market saying because when we're doing these things we don't do it for ourselves, we do it for the market. If there's a market interest then we move because we satisfy a need that is out there and that was my take and I'm not in a
10 position to sit and even have a discussion of what the market needs or what the market wants and however, sit with these guys and if it's there if you guys can find each other then we will do it if not then we don't do it because I don't know what the market – the sector in the specific area what goes on, I'm not qualified enough to talk as an expert.

CHAIRPERSON: Would I be correct then to say that at the time that Mr Howa told you about this alleged different treatment you didn't know whether that was – that claim was correct, was true, you didn't know?

MR KONA: Hence Chair, that's why I say let them engage with the people otherwise, ordinarily what I would have done with my delegation
20 of authority I would have just gone to buy the papers and say order some more papers but I'm not in a position to sit and adjudicate those issues ja.

CHAIRPERSON: And the memo that we looked at earlier on, you remember the memo that Ms Hofmeyr...[intervenes].

ADV KATE HOFMEYR: That's page 13 Chair.

CHAIRPERSON: 30?

ADV KATE HOFMEYR: 13 yes.

CHAIRPERSON: Yes, that memo page 13, was that the – was that memo sent to you by the relevant team pursuant to your sending Mr Howa to that team to say, go and talk to them?

MR KONA: Yes they had a document where they were already getting papers Chair but it was not signed so I said, let's make sure that all our documents are compliant.

CHAIRPERSON: Yes, yes.

10 **MR KONA**: So then when this paper came then that's when I assumed they had found each other and I did not see anything untoward, at the time I didn't even know who the shareholders for TNA were Chair I just said, please just ordinary newspaper suppliers ja.

CHAIRPERSON: Well what I find interesting is that Mr Howa comes to you and seeks to justify his requests for quite a drastic increase in the number of copies that SAA must buy from them on the basis of some alleged different treatment but the memo that comes to you after you have sent him to this unit, says nothing about any ill treatment as I read it, I may have missed something, is that your understanding too?

20 **MR KONA**: That's correct Chair remember that, that's what he said to me but I told him to go to the adjudication people and deal with them.

CHAIRPERSON: Yes.

MR KONA: They are the one that deal with these issues ja.

CHAIRPERSON: So, but we agree that the memo doesn't refer to that claim anymore?

MR KONA: Yes.

CHAIRPERSON: And then you said that this motivation, you thought that it did give a reason, I must confess, I don't see any reason here. Let's read it, remember we're looking for a reason that would justify why the volumes, the number of copies of the newspaper you – SAA was going to buy was going to be doubled okay, more than doubled maybe, the motivation is,

“SAA will be implementing the additional copies for a period of 12 months while SAA is evaluating the current usage and scope in
10 supplying our customers with publications”,

I don't see anything there in that sentence that says, while, at this stage it's fine to get 2000 here is a reason why we should double. Is there anything wrong with my reading of this?

MR KONA: Remember, Chair, there was no, what is the word, audited view of how the market – of how the market is working, when we are reading – these market people – when these newspaper people release their publication figures, they tell you that we're using, so many people are taking the papers and so you know what the readership is of a specific newspapers and that's how you measure out how popular or
20 how acceptable in the market a specific newspaper is. So with these guys they were still a new newspaper and that was not there at the time, so...[intervenes].

CHAIRPERSON: No I accept that, I want you to leave out whatever reason outside of the memo that you may have thought exists to justify, I'm just asking about this one. Are we not agreed that this doesn't give

a reason for doubling the number of copies, maybe there is a reason somewhere which was not stated but are we not agreed that this doesn't give the reason?

MR KONA: Chair everyone, when we start looking in hindsight and that's the good thing about hindsight when you start looking in hindsight then you might take a different view, ja but I mean, at the time when I made the decision I was comfortable that this was a good reason for me.

CHAIRPERSON: Yes but I just want you to appreciate the distinction
10 that I'm making.

MR KONA: Sure I hear you.

CHAIRPERSON: Namely you might have had a reason which was operating in your mind why you thought increasing the number of copies was justified.

MR KONA: I hear you Chair.

CHAIRPERSON: But all I'm simply saying is, the memo doesn't seem to contain any such reason, you accept that?

MR KONA: Yes sir.

CHAIRPERSON: Secondly when Mr Howa came to you and complained
20 that they were not being treated like the other newspapers, my understanding of what your evidence is, is that you had no issue with staying with the same number of copies that you were buying from them as SAA but if you were given – if the team to whom you referred him came back and said, yes there is a need then you would look at that. Is my understanding of your evidence correct?

MR KONA: Yes Chair.

CHAIRPERSON: It is?

MR KONA: Yes.

CHAIRPERSON: Yes, but now the team comes back one, they don't give a reason that justifies the doubling the number, two, the GM operations says, actually there's no budget in operations for this and this thing falls under operations but nevertheless you seem to go out of your way, and you must feel free to say you were not going out of your way, I'll give you a chance, you to say look, we will do A, B, C, D in – I
10 don't know whether in other departments and therefore there will be some money so we will – I will approve this but I want to be fair to you, I see you want to comment, comment on this. It seems to me like you are going out of your way, may you're not, I want you to be able to say, no I'm not and this was the position.

MR KONA: Chair I think with respect to this whole thing I'm just putting it as plainly as it is, ja from – the numbers that are involved I would – it's not something that I would go out of my way to deal with this, I think it is clear from my communication with Mahlangu, that's why I say you can have the sms's that I really did not care about this
20 thing, whether this thing was done or it was not done, I was not forcing everybody to do it and my view was that if it can be done let it be done if it can't be done, then we're not going to do it. Two, it was an issue of saying, if the budget – I knew where the budget was going to sit and I knew all the initiatives that we were going to embark. So if the people – if the people came and say this thing can work then we work

it, if they come and say it cannot work then it won't work. Now obviously I know from where I sit today that because unfortunately this is a Gupta newspaper then it becomes a bit of an anomaly to do it to come and say why would you have given a Gupta newspaper. At the time when I was even doing this thing I was not even aware, Chair, that this is a Gupta newspaper, I didn't even – there was not even a personal benefit if ever even if I wanted a personal benefit from getting – from doing this thing, I did not know. All I knew was there's a newspaper and these guys just want an additional – to put additional

10 supply on the plane. So for me to have made an additional R2million additional expense on something, which the monies, we were releasing billions in terms of spending it's not something that would have affected my decision making process in terms of the numbers that are there. As long as the people in supply chain come and say, no we can put the additional – we can put the additional newspaper. Now in hindsight and hence that's why I said earlier on Chair, that in hindsight everybody sits, had I known this is a Gupta newspaper, I would have acted differently, I would have even told them not to even come and talk to me because I wanted nothing to do with these people. In their own

20 time, when this document is being signed at the time they would have already made a decision that my [indistinct] I'm on within the organisation. So it's – at the time when I'm making this decision it's got nothing to do with Gupta's for me this is just a newspaper that is there and that's my own humble opinion Chair on this matter....[intervenes].

CHAIRPERSON: The only other question for me is, what benefit was seen for SAA in adding newspapers?

MR KONA: Chair in – when you are having a – when you have an airline it is always the best thing to have multiple readerships for your passengers, you don't want to limit your passengers in terms of what they read. In fact when I look at what we spend and what the other international airlines spend if you are flown on Emirates you'll see that Emirates has a much broader set of newspapers and magazines for you to go through and hence that's why one was just looking at giving –
10 give the customers much broader thing to read because at the time we could not even – our market spend had been reduced drastically. So what we were trying to do, we were trying to look at adding any additional initiatives that you can at least give the customer a little choice that you can give the customer a little choice that the customer can have when he's flying out there instead of him having, either a Business Day, and that's it or the Star and that's it. Let him choose the Star, let him choose this, let me choose another one...[intervenes].

CHAIRPERSON: And customer here you are referring to the passengers?

20 **MR KONA**: To the passengers, that's correct.

CHAIRPERSON: Not to TNA?

MR KONA: Not to TNA no.

CHAIRPERSON: Thank you.

ADV KATE HOFMEYR: Thank you Chair.

CHAIRPERSON: Nothing arising?

ADV KATE HOFMEYR: Nothing arising.

CHAIRPERSON: Thank you very much Mr Kona for coming to give evidence, if we need you we'll ask you to come back but thank you very much and I hope that we haven't prejudiced you much in terms of your medication and your son, thank you very much, you are excused, we appreciate the fact that you made yourself available for longer.

MR KONA: Thank you Chair.

CHAIRPERSON: Thank you. Ms Hofmeyr we're at twenty one minutes past two, it looks like we may have to sit beyond 4 o'clock is that right?

10 **ADV KATE HOFMEYR:** Chair if we return sort of twenty past three, we may want to get at least a bit of the evidence of the next witness underway so maybe till half past four, we can check arrangement and whether that's feasible.

CHAIRPERSON: Yes and the next witness will be quite long, is that right?

ADV KATE HOFMEYR: Indeed she will certainly go over to tomorrow, it's quite a detailed testimony.

CHAIRPERSON: Okay, alright, let's adjourn for lunch now and then we will resume at half past three so we might take an hour, I will be a little
20 flexible if it suits everybody so that we go some way in regard to her evidence before we adjourn.

ADV KATE HOFMEYR: Thank you Chair.

CHAIRPERSON: We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay, let us continue.

ADV KATE HOFMEYR: Thank you Chair. Chair, we are about to commence the second investigation area that will be presented in this ascension of aviation evidence. What I propose to do is sketch just by way of background what this area will focus on. And then with your leave Chair to deal with a number of procedural aspects. So that we can in a sense get those out of the way and then let the evidence flow. If procedural issues arise day to day, we will of course draw them to your attention. But my proposal is that we endeavour to deal both with
10 the background and the procedural aspects this afternoon.

Chair, the second area of investigation involves South African Airways Technical. South African Airways Technical is a wholly owned subsidiary of SAA and you will hear witnesses and probably I would do it as well, referring to it as SAAT because that is the name by which it is commonly known. And what the investigation has focused on is two transactions that SAAT entered into in 2016. The first of those relates to component support services that SAAT requires in order to repair and maintain aircraft parts.

Starting in 2014 to 2016 SAAT embarked in no less than 5
20 various tenders in order to award these services to a successful bidder. It was eventually awarded in mid-2016 to a joint venture of a local company called JM Aviation and a United States company called AAR Supply Chain Inc. The value of the contract is over more than 1.2 billion rand and in terms of the agreement between the JV partners JM Aviation earns 10%- 5%, I beg your pardon, on all invoices raised under

the contract. And the contract is for 5 years.

The investigation appears to indicate that the joint venture of AAR and JM Aviation ought to have been disqualified from the tender process. And this is so because they were communicating with the head of SAAT procurement, asking for input on their bid submission prior to it being submitted as well as on their draft JV agreement. The investigation also appears to indicate that despite the fact that it ought to have been disqualified, it was not, it went on to be awarded the contract. And then to conclude an agreement that substantially reduce
10 the obligations it had undertaken when it submitted its bid. All of these were to the detriment ultimately of SAAT the contracting party.

The Commission will hear evidence from a witness who says that she used to be the partner of this AAR US based company but was later discarded for JM Aviation, the local company. And she will testify that when she started to be squeezed out of the partnership, she was privy to various corrupt plans on the part of SAAT officials. The evidence that you will hear over the next few days will also relate to various money flows and identify where SAAT officials appear to have received personal benefits during the process of decision making and
20 contracting afterwards.

Chair the second transaction relates to a contract that was entered into between SAA now and Swissport South Africa. That was a contract to provide ground handling services of to SAA for 5 years. And it was approved by the board of SAA in March 2016. There was no tender process that proceeded that award of the 5-year contract from

2016 to 2021 at least not in the lead up to that particular decision. There was a prior process that we have actually heard evidence on from Dr Darwa but nothing that preceded the March 2016 decision.

Chair tact on to the contract that was concluded between SAA and Swissport was a clause of the agreement that provided as follows; Swissport was to procure or arrange the procurement of all recently acquired surplus SAAT GPUs. Now I must just pause for a moment. GPUs is also an acronym that you will hear quite a bit about that relates to ground handling units and you will hear in the evidence what
10 they do. But what the clause provided is that Swissport would acquire all recently acquired SAAT GPUs at their currently book value, fair market value or such other valuation as may be mutually agreed. And once the agreement between SAA and Swissport was concluded, SAAT was then charged with entering into negotiations to sell those GPUs which the provision of the contract between SAA and Swissport had indicated would be sold to Swissport.

But what ended up happening was that SAAT did not sell the GPUs to Swissport. Instead it sold them to JM Aviation and it was the same JM Aviation who was then later to be awarded the component
20 support tender in its joint venture with AAR Corporation. SAAT sold the GPUs to JM Aviation for just over 3 million rand and the next day JM Aviation sold them to Swissport at a profit of more than 6 million rand. A year after SAAT sold the GPUs to JM Aviation who sold them on to Swissport, SAAT had to lease those same GPUs back from Swissport at a cost to date of more than 8 million rand. Precisely how JM Aviation

entered the picture and why it was entitled to make a 6 million rand profit in a day will be part of what is explored in the evidence.

Chair there have been numerous forensic investigations conducted for SAAT in relation to these two contracts. They have formed a basis for the investigation of the Commission. But the Commission's investigation has gone well beyond them. And it is for that reason that we do not present them to you as though they would be the basis for fact finding. It is our submission that the fact finding should be based on the evidence that you will hear over the course of
10 the next week and that will be based on the independent and further investigations that the Commission has conducted.

Chair with that background in place I would like to move to some of the procedural aspects. Chair there will be 4 witnesses who will testify over the next week in relation to this area of investigation. All of the witnesses have been summonsed. Some of them have provided affidavits and statements to the Commission in advance of their evidence, other of the witnesses have not. And those witnesses who have declined to provide an affidavit or statement to the Commission have been informed that they will simply be questioned
20 when they arrive for their testimony on the matters that are being investigated.

Chair in so far as witnesses generally are concerned, we believe it is important to indicate to you today what the process of engagements has been because they will have a bearing on an aspect how to address in a moment. Chair during the course of the

Commission's investigations into these two contracts, numerous events have been made to meet with all the pertinent witnesses who could shed light on these aspects of the investigation. And these attempts have been met with varied success. On some occasions no response is received to the endeavours that the Commission has made to engage with persons. In other instances, witnesses have refused to meet with the Commission unless they are provided with a list of questions that will be asked of them in advance of the meeting. The legal team and the investigators have refused to provide such a list in stead every
10 person who have been requested to meet with us has been given a list of the focus areas of the investigation that would be covered in the course of the meeting in order for them to be able to prepare for that meeting. Some times that has been enough and then witnesses have met with us on other occasions it has not and meetings has still been refused. Where despite a witness's refusal to meet with the Commission's legal team and investigators, their evidence has nonetheless been deemed critical to the work of this Commission. Those witnesses have been summoned to give evidence and will do so over the next many days.

20 Chair there is one exception to that general approach and I need to highlight it at the outset. You will recall from the background that I sketched of the component support services contract that it was awarded to a joint venture comprising a local company JM Aviation and an American company AAR Supply Chain Inc. Since late September 2019 the Commission has endeavoured to engage with AAR

representatives and there is a full pack of correspondence that we have prepared setting out those interactions. Chair if I may beg leave to hand it up, I do not propose that we go through it in detail but if there is a point at which a reference should be made, it would be useful for you to have it available to you. You will see in the correspondence that AAR is represented by a Mr John Bell of Baker & McKenzie. He is in attendance today and I have provided him with a copy of this bundle in so far as I may make reference to it now.

Chair the interactions with AAR commenced on the 27th of
10 September last year. When the Commission sent a letter to Mr Bell who we could gather from previous correspondence and in fact litigation involving this tender had represented AAR at the time. And we indicated in that correspondence that the Commission's investigations had indicated that there may have been corruption involved in the award of this tender to the joint venture and it requested a meeting with AAR representatives to explore three things. The role that AAR played in the bid submission of the joint venture JM Aviation and AAR. Its role in the conclusion of the contract for SAAT and performance under the contract.

20 Chair that was met with a response from the attorneys acting for AAR- well apologies. The attorneys who had previously acted for AAR. And the response at that stage was and I quote, "they did not hold instructions in relation to responding to the correspondence at the stage." The Commission therefore followed up for clarity. We enquired, did that mean that the attorneys were not acting for AAR or

that they were acting but had been instructed not to respond to the Commission? And if they were not acting, could they please provide direct contact details. The response came on the 21st of October. That response indicated that AAR would like clarity on the nature and extend of the discussion that the Commission wanted to have with AAR. And in that regard, they said and in light of the history of the matter we would appreciate understanding any areas for focus for specific enquiries from the Commission.

That was responded to on the basis that the areas of focus were the
10 three that has previously been identified on 27th of September. There was then a further follow up, were we willing to provide more information and we responded to say, no the areas of focus will be those as set out on the 27th of September. And in response to that communication we received a detailed response on the 18th of November from AAR's attorneys. Chair you will find that at page 17 there is one part that I will read into the record and if it is convenient, you may wish to look at it but I do not suggest it is directly necessary.

Chair what AAR's attorneys said on that date, the 18th of November 2019, is in essence the following. They said that they were
20 not prepared to meet with the Commission because of the lack of transparency and fair process. They highlighted that because of the "uncertain nature of the Commission's points of inquiry, it is difficult to understand which representatives would have meaningful first hand personal knowledge sufficient to answer truthfully and accurately the questions put to them." They also said at paragraph 6 of the letter the

following; in addition the public nature of the Commissions inquiry is at the methods of interrogation and media reporting in relation to previous testimony before the Commission has created a situation where the public perception is that entities called before the Commission or being subject of its mandate are automatically deemed to have associated itself with or committed misconduct, bribery and or corruption. AAR as a US multi national company committed to compliance denies any such association and is not willing to subject itself to an unsubstantiated and inequitable trial by media.

- 10 The letter then goes on and states that AAR is based in the United States of America with “no local presence in South Africa”. And it went on to say that it would therefore have to incur significant cost and time to make its representatives available in South Africa. It stated that the contract was lawfully awarded to AAR and that its obligations under it were being fulfilled. And it concludes at paragraph 9 to say, we trust that the above explains AAR’s position and we reiterate that AAR will be willing to consider written questions presented to it by the Commission.

- Chair the Commission responded to that letter on the 10th of
20 December and its essence the response was as follows; we noted that it was regrettable that a company who had contracted to a state owned enterprise for a value of more than 1 billion rand was not willing to meet with the Commission. We responded to the alleged uncertain nature of the topics to be addressed and explained that they were in fact entirely clear. We were interested in the three aspects identified in

the 27 September letter. What role they played in the bid submission. The conclusion of the contract and the performance thereafter. Chair we even responded to the allegation that it was not easy to identify who the relevant people at AAR would likely be. We indicated it was fairly clear, it was anyone involved in the bid submission, the conclusion of the contract or performance under it. But we did not stop there. We went so far as to provide them with the names of the 6 employees of AAR that our investigation had revealed had been involved in those various stages of the process. We also queried what it meant for AAR

10 to state that it did not have “local presence in South Africa” because we pointed out that it had been awarded a contract since mid-2016. It had been performing under that contract since that time and to a state owned entity. And in respect of which at the 10th of December 2019, it had been paid 954 million rand. We then offered a further opportunity to meet on the 13th of January 2020.

The response came on the 10th of January, AAR’s attorneys indicated that it was still not willing to meet because the Commissions response had not sufficiently addressed their concerns. And it did clarify the question about local presence. It said that although it

20 provides services to a state owned entity, it had no “physical local presence in South Africa” and none of its employees are based here.

Chair the Commission responded again on the 14th of January 2020 to that communication. Again, emphasising that it is regrettable that there would be no opportunity to meet. But it then explain the Rule 3.3 process to AAR because by that stage the Commission had

received the affidavit of Ms Sambo who will be the first witness today, and it was explained that there is a process that is followed and they would in due course receive notice as an implicated person. That notice was duly served- it was sent to AAR's attorneys and on the 19th of January we received a letter from the lawyers of AAR Corporation and some of its employees who had received the Rule 3.3 notice. Chair that is the last letter in the correspondence bundle and you will find it commencing at page 27.

CHAIRPERSON: The date there is 29 January.

10 **ADV KATE HOFMEYR:** Apologies Chair, I made an error. Indeed, it was 29 January that we received that response.

CHAIRPERSON: I am still trying to look for 19 January.

ADV KATE HOFMEYR: Yes no, that is my error.

CHAIRPERSON: Ja.

ADV KATE HOFMEYR: As I have it the Rule 3.3 notices was send out around the 15th of January and then the response came on the 29th of January. That is the letter at page 27 of the bundle. The letter begins by indicating what it is not. AAR's attorneys make it clear that it is not a response to Ms Sambo's evidence in terms of rule 3.9 of the

20 Commission's rules

CHAIRPERSON: I am sorry, is it the letter of 29 January that you are talking about now?

ADV KATE HOFMEYR: Yes, it is. And if you go to paragraph 3 you will see it is indicated there what the letter is not. It is not a submission under rule 3.9 and the Commission should not misconstrue it as such.

Our purpose is not to address each and every allegation containing the Rule 3.3 notice and Ms Sambo's affidavit. Our not doing so should not be construed as an acceptance thereof or a waiver of any of our client's rights.

They go on in the letter to state that the Commission's objective of gathering evidence from witnesses competent to testify about matters in Ms Sambo's affidavit would not be advanced through AAR's testimony before the Commission. And the reason for that is given that no current AAR employee or officer has personal knowledge of all or
10 substantially all of the operative facts alleged by Ms Sambo in her affidavit. And AAR is therefore not in a position accurately to answer questions relating to Ms Sambo's allegations.

Chair despite that the letter goes on to indicate why Ms Sambo's version should not be believed and is to be discredited. I pause at this point ... (intervenes)

CHAIRPERSON: How does that happen?

ADV KATE HOFMEYR: Well Chair, that was going to be my point. It is not entirely clear to us how you can in the same breath say that the version should be rejected and say that there is no person currently in
20 the employ of AAR who can accurately answer questions relating to Ms Sambo's allegations.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: Chair it is our ... (intervenes)

CHAIRPERSON: So, nobody has personal knowledge?

ADV KATE HOFMEYR: No person has personal knowledge but

carefully of all will substantially all of the operative facts. And as a consequence, AAR is not in a position “to accurately answer questions relating to Sambo’s allegations”.

CHAIRPERSON: I wonder whether that is meant to say, no one has got personal knowledge of all the facts. And no one has got personal knowledge of what is substantially all or whatever. So, whoever has personal knowledge has very limited.

ADV KATE HOFMEYR: Yes. Some personal knowledge just not all or substantially all of it.

10 **CHAIRPERSON:** Okay yes.

ADV KATE HOFMEYR: I think the point for present purposes is it is not a denial that there are people who do have some knowledge.

CHAIRPERSON: Mm.

ADV KATE HOFMEYR: Chair it is our submission that this is not an appropriate manner in which to deal with the Commission. The Commission has a set of rules. They set out precisely what implicated people are required to do when they dispute the evidence of a witness. Chair we are aware of the rules. They must provide a statement or an affidavit.

20 **CHAIRPERSON:** Ja.

ADV KATE HOFMEYR: They must clearly identify what is disputed and the grounds of dispute.

CHAIRPERSON: Ja.

ADV KATE HOFMEYR: And Chair pursuant to a ruling ... (intervenes)

CHAIRPERSON: And if they do not do that, they cannot be taking

issue with the evidence.

ADV KATE HOFMEYR: Indeed. And chair, that leads me to the procedural point that flows from this. I will go through in a moment what other responses have been received to Rule 3.3 notices in respect of Ms Sambo's evidence. Subject to your direction Chair it is not our intention to put this letter of the 29th of January and its contents to Ms Sambo.

CHAIRPERSON: Ja.

ADV KATE HOFMEYR: It is our submission that if implicated persons
10 would like their version to be taken into account by this Commission, they must do so in accordance with its rules

CHAIRPERSON: Ja.

ADV KATE HOFMEYR: Chair the upshot of this is that at a procedural level we will not put the "version" that appears in this letter to Ms Sambo during her evidence. But Chair, it also leaves the Commission in a somewhat unsatisfactory position. Because over the next week the Commission will hear evidence from witnesses who were integrally involved in this. The director of JM Aviation has been summons to give evidence. But what is not possible is for this Commission to exercise
20 summoning powers beyond its borders

CHAIRPERSON: Of course.

ADV KATE HOFMEYR: And so, no summons can be issued in fact in relation to AAR or its employees.

CHAIRPERSON: Mm.

ADV KATE HOFMEYR: Chair in due course at the conclusion of the

evidence we will make submissions about what further steps if any we recommend should be taken in relation to AAR.

CHAIRPERSON: Ja.

ADV KATE HOFMEYR: Chair I indicated that I would deal with the other responses to the 3.3 notices. Ms Sambo's affidavit was received timeously and enabled us to ensure that the Rule 3.3 notices were sent out in more than the 14 days. I think it was about 16 to 18 days. We have received responses from 3 implicated persons. The first of those is Mr Mcebisi Jonas, he has not put in an application to cross-examine.

10 He has put in a statement supported by two confirmatory affidavits. We have received it late over night and there was an indication that a fully commissioned version would be available to us in due course. It is our intention to put that version to Ms Sambo in the course of her evidence as we have done previously. When the processes runs efficiently enough it means you get the version before the witness gives evidence and it can be probed thereafter.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: Chair, the second response was from Ms Yakhe Kwinana, a former member of the board of both SAAT and SAA. She

20 similarly does not apply to cross-examine Ms Sambo but has put out a statement with her version of facts. And that similarly with your leave will be put to Ms Sambo during her evidence.

The third response to the Rule 3.3 notices comes from Ms Nontsasa Memela. She is the witness who is being summoned was the Head of Procurement at SAAT at the time of these two contracts. She

is scheduled to give evidence on Friday. Her version will similarly be put to Ms Sambo by Mr Mbikiwe who will be presenting her evidence so that Ms Sambo can deal with them. Issues that arise out of that evidence will be put to Ms Memela when she comes on Friday. I will be presenting her evidence. And as we did in the previous aviation session it will be our recommendation to your thereafter that once there has been that full interrogation of the facts, we would then go back to Ms Memela and ask her whether she persist with the cross-examination application.

10 Chair the second witness in the order after Ms Sambo is Mr Human. Now Mr Human is the Acting Head of Department for Supply Chain Management at SAAT. He effectively occupies the position that Ms Memela used to occupy at the time that these contracts were concluded. Chair on procedural aspects in relation to Mr Human, the Commission received his affidavit deposed to only on Thursday last week, that was the 30th of January. We moved swiftly and the following day we issued 26 notices to implicated persons but those went out on Friday of last week. Mr Human is scheduled to give evidence from Thursday. So that notice will not be as much as the 14 days but it will

20 be just short of a week. And we have made great efforts through the secretariat to ensure that implicated persons have received both the statement plus its annexures. It is an extremely lengthy bundle. I think it ranges to about 7 files. But they are in constant communication with implicated persons to ensure that they have received them. To date we have not had responses but we will update you on that in the

lead up to Thursday's evidence.

Chair I have just been reminded that there is also, I had neglected this, a statement from Mr Zwane in respect of Ms Sambo's statement and that similarly will be put to Ms Sambo in the course of her evidences. Mr Zwane ... (intervenes)

CHAIRPERSON: Mr Mosebenzi Zwane or another Zwane?

ADV KATE HOFMEYR: No another Zwane. This is Mr Zwane who occupied the position ... (intervenes)

CHAIRPERSON: Oh, the one who was Acting CEO at some stage at
10 SAA.

ADV KATE HOFMEYR: Yes, indeed Chair that is precisely right. Yes.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: Chair, so that is the evidence for Thursday. The evidence for Friday is Ms Memela who has been summonsed to appear. She has provided two statements to the Commission and it is clear in those statements that she does not implicate anyone and so no Rule 3.3 process has been followed. She will come and be questioned on it and related matters. And Mr Ndzeku to whom I referred earlier who is the director of JM Aviation, he has been summons to give
20 evidence on Tuesday. He has not provided any statement to the Commission in advance of that evidence and so he will be simply questioned when he attends.

Chair there is one more matter of process that I must deal with and it relates to developments that occurred yesterday in the course of the investigation. Chair in the course of yesterday we were contacted

by Ms Sambo to indicated that she has found a flash disk which is a flash disk that she refers to in her evidence and ... (intervenes)

CHAIRPERSON: Oh, the one that she says in the statement she could not find or did not know where it was.

ADV KATE HOFMEYR: Indeed, precisely that one.

CHAIRPERSON: Oh, she found it.

ADV KATE HOFMEYR: She did. Her evidence- we will go into some detail about how she found it, from whom she got it etcetera.

CHAIRPERSON: Yes okay.

10 **ADV KATE HOFMEYR:** But it is important that I just relay some procedural processes that were followed after she made this known to the Commission yesterday. Chair Ms Sambo brought it to the offices of the Commission.

CHAIRPERSON: I just wanted to say that I noticed that the sentence in her statement that talks about that missing part.

ADV KATE HOFMEYR: Yes.

CHAIRPERSON: Was very carefully worded.

ADV KATE HOFMEYR: Well I am sure that that will be explored in her evidence.

20 **CHAIRPERSON:** Yes.

ADV KATE HOFMEYR: Chair Ms Sambo indicated it was found. She brought it to the Commissions offices yesterday evening. She was met by a member of the investigation team and what we call the DFT team, the Data Forensics Team of the Commission. She handed over the flash disk. Chair before I continue, there will be an affidavit from the

respective members of the Commissions investigation team to this effect. It is in the process of being prepared. I have not been able to provide it yet to you but it is important just for chain of custody reasons that I give you this background today.

She handed it over. They took steps to image the flash disk which is effectively make a copy of it using the software of the Commission which I understand and this will be evidence in the affidavit, also provides a certificate of authentication in so far as the copy is an accurate copy. After that took place the various process in
 10 relation to preserving the evidence were followed. It was placed into an evidence bag. It was sealed and it was- this was done in the presence of all concerned and signed by the necessary witnesses. And all of that will be now taken to the secure facility of the Data Forensic Team so that if at any point in future proceedings it is necessary for that original hard- flash disk to form a basis in the evidence, there will be a full chain of custody at least in so far as it came to the attention of the Commission and its investigators.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: Chair those are the procedural aspects. Unless
 20 my learned friend tells me, I have forgotten anything but I think that takes care of it. If I may then just hand over to Mr Mbikiwa who will be presenting the evidence of Ms Sambo.

CHAIRPERSON: Yes, thank you. That is fine. So, Ms Hofmeyr, I see that now we get the real Advocate Mbikiwa.

ADV KATE HOFMEYR: Yes indeed.

CHAIRPERSON: The name there while you were talking was saying you were Advocate Mbikiwa.

ADV KATE HOFMEYR: It was probably a step up for me.

CHAIRPERSON: Yes.

ADV MICHAEL MBIKIWA: Good afternoon Chair.

CHAIRPERSON: Good afternoon Mr Mbikiwa.

ADV MICHAEL MBIKIWA: Chair I intend to proceed directly into Ms Sambo's evidence. So, if she could be sworn in.

CHAIRPERSON: Yes. Please administer the oath or affirmation.

10 **REGISTRAR:** Please state your full names for the record.

MS SAMBO: Sibongile Rejoyce Sambo.

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

MS SAMBO: No.

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

MS SAMBO: Yes.

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

20 **MS SAMBO:** So help me God.

CHAIRPERSON: Thank you. You may proceed.

ADV MICHAEL MBIKIWA: Thank you Chair. Chair the file containing Ms Sambo's affidavit, I would ask if it could be please admitted as Exhibit DD18.

CHAIRPERSON: The file containing Ms Sibongile Rejoyce Sambo's

affidavit and Annexures will be admitted and marked Exhibit DD18.

ADV MICHAEL MBIKIWA: Ms Sambo, in front of you, you will have a file on the spine of which is marked DD18. If you look on the top right-hand corner of each page you will see those red numbers. Those are the page numbers that I will be referring you to during the course of your evidence.

MS SAMBO: Oaky.

ADV MICHAEL MBIKIWA: Can I ask you to turn to- well firstly can I ask you to identify the document that is on page 1 in front of you.

10 **MS SAMBO:** It is the affidavit.

ADV MICHAEL MBIKIWA: Is that the affidavit that you provided to the Commission?

MS SAMBO: Yes, this is the affidavit that I have provided to the Commission.

ADV MICHAEL MBIKIWA: And can I ask you to turn to page 42?

MS SAMBO: Yes.

ADV MICHAEL MBIKIWA: Is that your signature?

MS SAMBO: Yes, that is my signature.

20 **ADV MICHAEL MBIKIWA:** Thank you. Ms Sambo, before I get into the detail of your affidavit. You speak at various points throughout it about the difficulties that you have remembering many of the events ... (intervenes)

CHAIRPERSON: I am sorry Mr Mbikiwa, I may have missed it. Did you ask her to confirm that its contents are true and correct to cover in case we leave out anything?

ADV MICHAEL MBIKIWA: Indeed Chair. Do you confirm that the contents of the affidavit are true and correct?

MS SAMBO: Confirmed.

ADV MICHAEL MBIKIWA: And are there any corrections that you would wish to make to it at this stage?

MS SAMBO: On the affidavit? Yes, the one correction is about the affidavit- I mean sorry, it is about the flash disk that we found. My legal can assist me on other things but it is mainly the flash disk.

ADV MICHAEL MBIKIWA: Thank you, if there are any others, we can
10 address them in due course as we get to them.

MS SAMBO: Yes.

CHAIRPERSON: And maybe that one maybe you do not need to correct anything because at the time you deposed to the affidavit, you did not know where it was.

MS SAMBO: Yes.

ADV MICHAEL MBIKIWA: Indeed.

CHAIRPERSON: It is only subsequently that you got- you found it.

MS SAMBO: Yes.

CHAIRPERSON: Is that what you thought you should correct?

20 **MS SAMBO:** Yes.

CHAIRPERSON: Okay, then no, you do not need to correct that.

MS SAMBO: Okay.

CHAIRPERSON: Okay.

ADV MICHAEL MBIKIWA: Thank you Chair. Ms Sambo at various points in your affidavit you speak about the difficulties that you have

remembering the exact sequence of some of the events that you speak about. Various implicated parties who have submitted statements and made applications to cross-examine have picked up on this and on the basis of that they say that you should not be believed. So, I would like to begin your evidence by asking you just first to describe for the Commission what the memory issues are that you suffer from.

MS SAMBO: Okay. Thank you very much. Through you Chair I would like to deal with all the personal comments because I received the comments on Friday.

- 10 I just want to state that I have made myself completely vulnerable by being honest about the condition affecting my mental health which is depression. And depression is not an easy subject to talk about and it is not depression that I have always suffered from. But this particular case with AAR and SAAT has driven me to this condition. I have made the disclosure so that the Zondo Commission and parties reading my statement would understand my struggle to come to terms with it. I do not expect to be ridiculed by the medical condition. The depression stated when I was dealing with these things that were beyond my control with people more powerful and influential than myself being the
- 20 people mentioned in my statement.

I was the young entrepreneur wanting to succeed as a black female owned business. I was overwhelmed by people I met who sat in positions of power. The betrayal by women in those positions of power went to the core of my being. That betrayal sent me to the- this dark hole of depression that has seen me in different hospitals in and out for

the last 4 years. The allegations made that my loss of memory is selective and convenient shows a lack of understanding and compassion for people suffering with depression.

When this case was happening, I realised that I am a small player. I am a black owned start-up company wanting to break into the industry, a very difficult industry of aviation. I looked up to people of power for real empowerment and not corruption. I was enthusiastic. I was a naïve business woman. I trusted the verbal agreement that it would materialise. When I went to SAAT I would completely trust the people
 10 that I have met at SAAT. I wanted to be their friend because I believed that they would guide me and assist me in what I wanted to achieve as an entrepreneur.

And my information has been very consistent with other investigations such as the Ernst and Young and Open Waters. I was struggling to enforce the contract with AAR and the details thereof will be discussed later. And that is what I am putting forward to the Commission. Thank you.

CHAIRPERSON: Thank you.

ADV MICHAEL MBIKIWA: Ms Sambo, can you clarify for me what the
 20 memory issues are that you do suffer from? Do you forget events or is it the detail or is it the sequence?

MS SAMBO: It is the sequence of events that some I do not remember because there is no documentation that would remind me. This has happened over a few years ago and with the passage of time my memory had diminished. So, it is the sequence of events but a whole

lot of things I remember and I will talk to that.

CHAIRPERSON: Am I correct to understand your evidence to be that you will remember all the events. What you might not remember is the sequence of how they happened. Which one happened first, which one came after?

MS SAMBO: That is correct Chair.

CHAIRPERSON: But you will remember the events that they did take place?

MS SAMBO: Most of the events I remember.

10 **CHAIRPERSON**: Most of the events.

MS SAMBO: Where I do not remember I will indicate that I do not remember.

CHAIRPERSON: Yes.

MS SAMBO: Yes.

CHAIRPERSON: But are you saying you are able to say even with regard to the sequence, are you able to say that is because of the depression or and it is not simply because it has been few years since these things happened?

MS SAMBO: The passage of time and the depression.

20 **CHAIRPERSON**: A combination of both.

MS SAMBO: A combination.

CHAIRPERSON: Okay.

ADV MICHAEL MBIKIWA: Thank you Chair. Ms Sambo can we pick it up then in your affidavit from paragraph 2 where you begin to talk about your qualifications. Can you take us through what qualifications you

have?

MS SAMBO: I hold a Bachelor of Administration from the University of Zululand, a Bachelor of Administration Honours from UNISA, an Advanced Program in Organisational Development from UNISA, a Marketing Certificate from Institute of Marketing Management, a Mining Executive Preparation Program from Wits. I also completed an International Executive Development Program with GIBBS and Rollins College in the United States of America. I am currently registered for my Master's Degree with GIBBS.

- 10 **ADV MICHAEL MBIKIWA:** Thank you. And Ms Sambo how did you get into aviation?

MS SAMBO: I started SRS Aviation in 2004. I am a Human Resources practitioner by profession however I have always loved aeroplanes. The love for aeroplanes has never left my mind. I come from Bushbuckridge in Mpumalanga and my mother took me to boarding school in KwaZulu Natal, Inanda Seminary. And I remember back then I used to force my parent to book me a flight from Durban to Nelspruit once in while threatening that I will fail if they do not. And that is how much I really loved aviation.

- 20 So later on, I applied to become an airhostess now called cabin crew, I was never successful because I have always been below the height that they required. And in- then I joined Human Resources department because of the qualification I have already indicated, worked for various companies. But post 1994 when we were encouraged to start businesses, for me it was a no brainer but to go for what lies within my

soul which is the love for aviation.

And in 2004 that is when I registered SRS Aviation, SRS being my initials Sibongile Rejoyce Sambo. I tendered for various businesses in the industry and my first contract was working with the military to- in peace keeping mission operations using those large IL76 aeroplanes. That is how I began my company.

CHAIRPERSON: Just out of curiosity, did you threat to your parents' work?

MS SAMBO: My mom is here. She can attest to that. Yes, I ...
10 (intervenes)

CHAIRPERSON: When you say they did not book you a flight you would fail.

MS SAMBO: They did, I did fly once in a while to Nelspruit.

CHAIRPERSON: Oh okay.

MS SAMBO: Yes.

ADV MICHAEL MBIKIWA: And so, tell us a little about what SRS Aviation does.

MS SAMBO: Okay. SRS Aviation is the first 100% black female owned aviation company in South Africa that provides private jets and
20 helicopters fully licensed by the South African Civilisation Authority. We have got a license on part 135, those are medium sized to large aeroplanes. Part 127 which is helicopter operations, single operations and we are licensed to fly both locally and abroad. So, we have got domestic and international licenses. And recently we have added the drones on our licenses.

ADV MICHAEL MBIKIWA: And how did SRS, how did its relationship with the South African Airways begin?

MS SAMBO: In 2009 when there was an economic meltdown as SRS Aviation, we decided that we wanted to explore other business opportunities within the aviation industry. Most companies were not flying enough with the private jets, they had gone back to flying through airlines. So, we decided to diversify and our diversification strategy was to supply fuel and also to supply aircraft parts and components.

So, we went to South African Airways to go and request for an
10 enterprise development so that we can see if we can do business with them. The agreement was at a very arm's length because they said they could only offer us offices at SAA Airways park. So, our offices were based there but in terms of business we needed to follow all procurement processes. So, going from SAA to SAA Technical it was the interest now of supplying these aircraft parts and components. And we introduced SRS Aviation on the database where on a daily basis we received quotations to supply aircraft parts and components. Then I will talk later about the other parts of the components.

ADV MICHAEL MBIKIWA: You mention an enterprise development
20 agreement. What did that provide for?

MS SAMBO: The enterprise development contract that we signed then with SAA provided only the office space. I brought in my own furniture. We could not have access to their telephone so we used our own mobile phones. We used our own internet. So, the only thing that they provided was office space and they will claim their BEE enterprise

development points on their BEE score card.

ADV MICHAEL MBIKIWA: And I think your evidence is that the- included with the office space was access to boardroom facilities.

MS SAMBO: Yes. We had access to boardroom facilities.

ADV MICHAEL MBIKIWA: Ms Sambo can you tell us about this delegation that you went on? You went on a delegation to the United States.

MS SAMBO: On the 24th to the 28th of October 2011 I was part of the South African delegation. The invitation came from Ms Nomvume
10 Magaqa who was the South African Ambassador who inaugurated the US South Africa Women Business Forum that was to be held in Chicago- that was held in Chicago in the United States of America. SRS Aviation was invited as one of the companies that accompanied then honourable Ms Lulu Xingwana and other honourable Deputy Ministers to Chicago for this trip.

Part of the invitation when the DTI invite you into a mission, they give you where the mission is going and what they expect to achieve from the mission. And they give us time to indicate which companies are we interested to be introduced to where the mission is going to. And for
20 me one of the companies was AAR Corporation in Chicago.

ADV MICHAEL MBIKIWA: I want to get to that in a moment but just tell me how you came to be involved in the delegation. How were you selected or did you apply?

MS SAMBO: No, at that time the DTI already had SRS Aviation on their database as an entrepreneur in the aerospace sector and we normally

just received invitations. And sometimes they sent an invitation but you must still fill in an application form to participate on that mission. Because the Department of Trade and Industry had or still have an EMIA scheme which will take care of all the cost involved. The flights, the accommodation, the stipend whilst we are away. So, we were invited and we followed all the necessary processes to participate on the missions.

ADV MICHAEL MBIKIWA: And do you say that you identified AAR as a potential partner. What did you know about AAR at that stage?

10 **MS SAMBO:** What I read on the internet from their website, what they provide. That they are a very big company. They are not only in Chicago. And because I wanted to diversify into that space it made sense for me that whilst we are in Chicago where their headquarters are, it will make sense for me to be introduced and see if we can forge a working relationship.

ADV MICHAEL MBIKIWA: And ... (intervenes)

CHAIRPERSON: I am sorry, did you come across their name after you knew about the delegation or the trip that was going to happen? Or you had done some research and just came across them much earlier than
20 that?

MS SAMBO: No, it was around that same time.

CHAIRPERSON: It was connected with knowing that.

MS SAMBO: Yes, because I was looking for a company that supply aircraft parts in Chicago then their name popped.

CHAIRPERSON: Okay.

ADV MICHAEL MBIKIWA: And what sort of strategic partnership were you interested in?

MS SAMBO: I wanted to become their partner, a full partner in this environment. When I say this environment, in South Africa with an aim to expand to the rest of the African continent. So, when I went to them, I wanted to invite them to explore business opportunities in Africa with SRS Aviation as their partner.

ADV MICHAEL MBIKIWA: And as part of this delegation did you have the opportunity to meet with people at AAR?

10 **MS SAMBO:** Yes, on the second day of the activities we were transported to the different companies that we wanted to see and I went straight to AAR with some members from the Department of Trade and Industry in Chicago the Trade Division. So yes, I was introduced to Ms Cheryle Jackson and some of her managers at AAR.

ADV MICHAEL MBIKIWA: And you say in your affidavit that you shared a strategy with them about potentially collaborating to secure business with SAA Technical. Can you just first just tell us a bit about SAA Technical. What does it do?

20 **MS SAMBO:** South African Airways Technical they provide technical services to SAA and other third parties, other airlines like Angolan Airline it used to be their clients. Zimbabwe Airlines and a whole lot of international airlines. So, SAA Technical would provide what you call C checks and B checks that is very technical. I think it is, I do not know ... (intervenes)

CHAIRPERSON: Give us an idea what it is.

MS SAMBO: It is like when you take your car to service whether it is a major service or a minor service. So, SAA Technical would provide ... (intervenes)

CHAIRPERSON: Provide that kind of service.

MS SAMBO: That kind of service.

CHAIRPERSON: In regard to an aeroplane.

MS SAMBO: Yes. And what was profound about SAA Technical is that at that time they had a lot of third-party clients. So, with my strategy to enter this market using SAA Technical, it would be easier to get
10 access to the airlines that they have already signed up to service their aeroplanes.

ADV MICHAEL MBIKIWA: And what role did you see AAR playing in that partnership?

MS SAMBO: I am not a technical person. SRS Aviation at that time did not have any experience on the technical services and I expected AAR to come with technical expertise.

ADV MICHAEL MBIKIWA: You mentioned Ms Jackson as a person that you met, what was her position? I think you say it in paragraph 9 of your affidavit.

20 **MS SAMBO:** She was the Vice President, Government Affairs and Corporate Development.

ADV MICHAEL MBIKIWA: Can we then go to the paragraph 11 where you say AAR was not interested in an agency agreement?

CHAIRPERSON: Well before she does that, I think earlier on you interrupted her before she could say what story she presented to Ms

Jackson.

ADV MICHAEL MBIKIWA: I apologise.

CHAIRPERSON: Yes. So, tell us what happened when you met Ms Jackson? What did you say to her and what was her response to your proposal or request or suggestion?

MS SAMBO: I introduced SRS Aviation as an air charter company in South Africa that is currently or that wants to diversify and one of the diversification areas is to provide technical services to the industry. And given the facts that we did not have technical expertise and have
10 never provided such a service, we wanted to partner with them as AAR Corporation. And we proposed various ways in which we could partner and one of them is that they sign an agency agreement with SRS Aviation.

CHAIRPERSON: If they signed such an agency agreement, what would that have entailed in terms of the relationship or the partnership?

MS SAMBO: It would have given us ... (intervenes)

CHAIRPERSON: At a practical level.

MS SAMBO: It would have given us a solid, what do I call it? I could be able to go and market AAR confidently that they are my partner.

20 **CHAIRPERSON:** So, would it have enabled SRS to go to SAA and any other aeroplane company and say we are able to provide technical services, technical expertise for aeroplanes because we are in partnership with AAR. And then if there was work to be done ... (intervenes)

MS SAMBO: Ms Jackson indicated that as AAR they do not sign any

agency agreements with foreign companies but they would suggest that I go back and get to understand what the contractor was talking about at SAA Technical and give them the details what does it entail. How big is the contract? And also introduce them to SAA Technical. So, but when I returned to South Africa the communication was not flowing easy between AAR and SRS as I would have loved to have a solid relationship and communication channel. Then I had to go back ... (intervenes)

CHAIRPERSON: Well before you go back, let us finish the meeting.

- 10 **CHAIRPERSON:** The first meeting you have with Ms Jackson. So, you put your proposal and your proposal was one of a partnership.

MS SAMBO: Yes.

CHAIRPERSON: And then when she did not like that, you then suggested an agency. Is that correct or do I misunderstand something?

MS SAMBO: Yes, an agency.

CHAIRPERSON: Is that how it went?

MS SAMBO: Yes, I proposed to become their agent in Africa.

CHAIRPERSON: Yes.

MS SAMBO: Yes.

- 20 **CHAIRPERSON:** And in response to that did she say we can look into that but you must go back and give us more details?

MS SAMBO: She did not say they would look at that but she indicated that it is- there is a policy that they have in the United States that governs the agency agreements with foreign companies. And so, they do not sign agency agreement before the deal is on the table. So ...

(intervenes)

CHAIRPERSON: So, did she say, we want to know more about the deal that we might get through you? And then if we like it, we might consider signing.

MS SAMBO: They wanted yes to know more about the contracts at SAA Technical and they wanted to be introduced.

CHAIRPERSON: Ja.

MS SAMBO: Yes.

CHAIRPERSON: Before they could consider signing anything.

10 **MS SAMBO**: They were very clear from the beginning that they would pay up to 8% of the value of the contract the day they get the contract. So, there was no- they did not promise me that in between they will sign an agency agreement.

CHAIRPERSON: Yes.

MS SAMBO: So it was a verbal agreement and it was up to me to say then I stop I do not do anything or as an entrepreneur I go and run around and get information and go back to them so that they can trust and believe what I am saying.

CHAIRPERSON: Would it be correct to say that you parted with Ms
20 Jackson on the basis that her attitude was that in principle there was a possibility that they could sign an agreement with you but they needed more information and something more would need to be done before they could consider that. Would that be a fair summary of her attitude or not really?

MS SAMBO: At the meeting they did indicate that as a company they

also took a strategy to explore the African continent. So, I came at the right time to talk to them. However, they were very clear that they would not sign an agency agreement with SRS Aviation but only when the day we get that contract, they will pay up to 8% of the value of that contract to SRS as a commission for the work done and also partner with us as their BEE partner. Because then we had- I had to explain that they need Black Economic Empowerment and yes.

CHAIRPERSON: So is the position therefore that they said one, we cannot sign a partnership agreement with you.

10 **MS SAMBO:** Yes.

CHAIRPERSON: Two, we cannot sign an agency agreement with you but three, if you go back home and get more details and introduce us to SAA Technical and we sign an agreement with SAA Technical. One, we can pay you 8%. Two, we can have you as a BEE partner. Would that be a fair summary of what they said?

MS SAMBO: Correct.

CHAIRPERSON: Okay alright.

ADV MICHAEL MBIKIWA: Thank you Chair, I am grateful for that.

Chair, I see we have gone past 16:30. This would be an appropriate
20 time within the evidence to adjourn.

CHAIRPERSON: To adjourn. Okay alright. We are going to adjourn then and then tomorrow should we start at 10:00? How long are we likely to be with her and should we start early?

ADV MICHAEL MBIKIWA: Chair I anticipate we will take most of the day with Ms Sambo.

CHAIRPERSON: We do not need to start early?

ADV MICHAEL MBIKIWA: I do not anticipate that we need to start early.

CHAIRPERSON: Okay.

ADV MICHAEL MBIKIWA: We do not have another witness scheduled for tomorrow.

CHAIRPERSON: Oh okay.

ADV MICHAEL MBIKIWA: It is only Ms Sambo and I am confident we will finish her within that time.

10 **CHAIRPERSON:** Okay, no that is fine. We will adjourn Ms Sambo and resume tomorrow at 10 o'clock.

MS SAMBO: Yes.

CHAIRPERSON: So, you will come back tomorrow at 10:00. We then adjourn.

INQUIRY ADJOURNS TO 5 FEBRUARY 2020