

COMMISSION OF INQUIRY INTO STATE CAPTURE

HELD AT

PARKTOWN, JOHANNESBURG

10

10 FEBRUARY 2020

DAY 210

FINAL

20

PROCEEDINGS RESUME ON 10 FEBRUARY 2020

CHAIRPERSON: Good morning Ms Hofmeyr, good morning everybody.

ADV KATE HOFMEYR: Good morning Chair.

CHAIRPERSON: We are starting 10 minutes late because of meetings to try and sort out some procedural issues. Are you ready?

ADV KATE HOFMEYR: We are indeed.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: Chair if I may just ask for an opportunity for Ms Memela's legal representative to introduce herself and place herself on
10 record?

CHAIRPERSON: Yes thank you. Ms Mbanjwa come to the podium here. Come there.

ADV LINDELWA MBANJWA: Thank you. Thank you Chair.

CHAIRPERSON: Yes.

ADV LINDELWA MBANJWA: My surname is Mbanjwa, spelling it for the Commission. M-b-a-n-j-w-a.

CHAIRPERSON: Yes.

ADV LINDELWA MBANJWA: The initial is L, full names Lindelwa, L-i-
n-d-e-l-w-a.

20 **CHAIRPERSON:** Yes.

ADV LINDELWA MBANJWA: I am on record for Ms Memela.

CHAIRPERSON: Thank you very much.

ADV LINDELWA MBANJWA: Thank you.

CHAIRPERSON: Thank you. Ms Memela good morning.

MS MEMELA: Good morning Chair.

CHAIRPERSON: You are still under oath in terms of the oath that you had taken last week. You are happy to give evidence on the basis that that oath still applies, is that right?

MS MEMELA: Yes Chair.

CHAIRPERSON: Yes thank you.

ADV KATE HOFMEYR: Thank you Chair.

CHAIRPERSON: H'mm.

ADV KATE HOFMEYR: Ms Memela where we concluded matters on Friday was we had begun to look at the agreement between Swissport
10 and SAA out of which the sale of the GPU's ...(intervenes).

CHAIRPERSON: Oh sorry.

ADV LINDELWA MBANJWA: Chair I just want to point that a procedural issue. I noticed that Mr Hofmeyr has some files.

CHAIRPERSON: Yes.

ADV LINDELWA MBANJWA: I just wanted to point out that if she is going to refer Ms Memela to documentary evidence.

CHAIRPERSON: Yes.

ADV LINDELWA MBANJWA: May I please also be furnished with those documents if there is a file provided for me. As it pleases Mr Chair.

20 **CHAIRPERSON:** Yes. Ms Hofmeyr.

ADV KATE HOFMEYR: Yes Chair we do have an extra copy we will make them available to Ms Mbanjwa immediately.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: I only saw Ms Mbanjwa here at a few minutes to 10.

CHAIRPERSON: *Ja. Ja.*

ADV KATE HOFMEYR: So that is why all of these processes have not been managed to be done yet.

CHAIRPERSON: *Ja.*

ADV KATE HOFMEYR: But she has just been handed copies.

CHAIRPERSON: Yes. Okay. Alright. Thank you. Then you can switch off your microphone Ms Mbanjwa. Thank you. Yes okay.

ADV KATE HOFMEYR: Thank you. We had concluded matters on Friday with the beginning of the role that you played in relation to the
10 sale of the GPU's.

CHAIRPERSON: Ms Hofmeyr I just wanted to say to Ms Memela. I am sure you feel much more comfortable today with your lawyer here.

MS MEMELA: I do Chair. I know that it was stated that I am a lawyer.

CHAIRPERSON: *Ja.*

MS MEMELA: But of course as much as I am a lawyer I am a human being.

CHAIRPERSON: *Ja.*

MS MEMELA: Certain things like touch your emotions and you end up maybe reacting irrationally.

20 **CHAIRPERSON:** Yes.

MS MEMELA: So I am happy that my lawyer is here.

CHAIRPERSON: *Ja.* No that is fine. Thank you. Yes. Oh please come this side if you want to say something Ms Memela.

ADV LINDELWA MBANJWA: Chair I just need to be guided as to procedure.

CHAIRPERSON: H'mm.

ADV LINDELWA MBANJWA: Because in a normal court.

CHAIRPERSON: H'mm.

ADV LINDELWA MBANJWA: If a statement is put to the witness.

CHAIRPERSON: H'mm.

ADV LINDELWA MBANJWA: Which a legal representative is of the view that it is not factually correct.

CHAIRPERSON: H'mm.

ADV LINDELWA MBANJWA: There would be an objection. But I do not
10 want to keep interjecting.

CHAIRPERSON: H'mm.

ADV LINDELWA MBANJWA: So I propose the following.

CHAIRPERSON: H'mm.

ADV LINDELWA MBANJWA: A statement will be put to the witness.

CHAIRPERSON: H'mm.

ADV LINDELWA MBANJWA: Which I believe is factually incorrect.

CHAIRPERSON: H'mm.

ADV LINDELWA MBANJWA: By then I will wait my turn. Like for instance now the statement that has been put to say.

20 **CHAIRPERSON:** H'mm.

ADV LINDELWA MBANJWA: The conclusion was about the role Ms Memela played in the GPU's.

CHAIRPERSON: H'mm.

ADV LINDELWA MBANJWA: There will be an objection to that but I am proposing that when I keep quiet it is not that we accept those

statements but we will just at the end of the proceedings of Mr Hofmeyr interject.

CHAIRPERSON: Yes. No, no you do not object necessarily because what is being put to the witness is not factually correct because the witness will point that out, that it is not true. Of course there could be something if for example there is a factual assumption on which the question is based there where you could point that out. But most of the time it is matters that really can be clarified during re-examination. So if you do not say anything I will not assume that you agree.

10 **ADV LINDELWA MBANJWA:** I am guided by you, thank you Chair.

CHAIRPERSON: Okay alright.

ADV KATE HOFMEYR: Ms Memela if we could pick up your evidence at page 5 of Exhibit DD25A. It contains your statement.

CHAIRPERSON: Well Ms Mbanjwa I just want to say for what it is worthwhile you must feel free to protect your client's rights as much as possible and where necessary object I can assure you that over the past one and a half years or so since this Commission started hearing – having hearings and hearing evidence there have been a lot of lawyers who have represented witnesses and implicated persons and it is
20 difficult to remember people who have objected a lot. I think there is only one that I can remember who objected quite a lot. I think a lot of people find that there is an attempt to be as fair as possible. But that is not to say when you think there is reason to object you must not. But I am just saying that mostly I think most lawyers you know seem to feel that questions that are being asked are fair and so on.

ADV LINDELWA MBANJWA: No Chairperson – I do not know about the questions because I ...(indistinct, not speaking into the microphone).

CHAIRPERSON: Yes. Yes.

ADV LINDELWA MBANJWA: I can only say we have full confidence.

CHAIRPERSON: Yes.

ADV LINDELWA MBANJWA: In the Chairperson ...(indistinct).

CHAIRPERSON: Yes.

ADV LINDELWA MBANJWA: But sometimes.

CHAIRPERSON: Yes.

10 **ADV LINDELWA MBANJWA:** It can be.

CHAIRPERSON: *Ja* no that is fine. No when you feel that there is something and you feel it is something serious feel free to object. Okay. Thank you.

ADV KATE HOFMEYR: Thank you Chair. Ms Memela I wanted to pick it up at paragraph 15 on page 5 because there you start to talk about the role that JM Aviation played in relation to the sale of the GPU's. And if I can pick it up in the middle of that paragraph 15 you say there in your statement:

20 "From SAAT side JM Aviation never mentioned that they would be reselling the GPU's to Swissport."

What we understood during the discussion was that they were buying them from SAAT as the Swissport BEE Company to cover the 30% set aside mandate by SAA to all suppliers. Do you see that?

MS MEMELA: I see that.

ADV KATE HOFMEYR: Does that remain consistent with your account

of the events?

MS MEMELA: Okay remember on this paragraph I was talking about Open Water how they have investigated this whole transaction Chairperson in terms of like them coming out or maybe reaching the conclusion that the GPU's were sold below market value. So what I was trying to highlight was the fact that as much as I was not involved in the decision making and all they did not test the market nor have they shown anything that showed that it was supposed to be this much. You know instead they relied on the agreement or maybe the
10 arrangement between JM and Swissport in terms of like reselling each other the GPU's which is not to our possession or maybe SAAT's possession they only know that. So I was coming from that angle.

ADV KATE HOFMEYR: H'mm.

MS MEMELA: Of course I do not remember during the discussion Ms Hofmeyr where a JM representative said they were going to resell to Swissport. When we discussed they were talking about okay they have learnt that the Swissport and SAA contract has been signed. And they have made a proposal to the acting CEO at that time and then from that they wanted to negotiate and see a way forward. So whatever that they
20 had agreed upon with Swissport it did not really include SAAT because like now it was already out of SAAT's hands. Yes.

ADV KATE HOFMEYR: Thank you Ms Memela.

CHAIRPERSON: Okay Ms Hofmeyr I did not want to disturb you but when you indicated what page I was trying to get a pen.

ADV KATE HOFMEYR: Apologies Chair.

CHAIRPERSON: So what page are we ...(intervenes).

ADV KATE HOFMEYR: We are at page 5.

CHAIRPERSON: Okay no that is fine.

ADV KATE HOFMEYR: And paragraph 15.

CHAIRPERSON: Okay alright.

ADV KATE HOFMEYR: Ms Memela the part that I was actually interested in your statement is when you said what you understood in the last sentence. You said:

“What we understood during the discussion”

10 This is the discussion with JM Aviation. Was that they were buying the GPU's from SAAT as the Swissport BEE Company and I place emphasis now on the part that I am interested in “to cover the 30% set aside mandate by SAA to all suppliers.”

MS MEMELA: Yes.

ADV KATE HOFMEYR: Was that your understanding at the time?

MS MEMELA: At the time that was the understanding and remember I did mention on Friday Chair that the 30% set aside it was something that was put on the table by the then Chairperson of SAA and I think the Board because maybe she was not acting alone. And I have in my
20 capacity never ever applied that in terms of like I mean for SAAT contracts you know. So that is why I am saying maybe in the Swissport contract which you have seen and you have directed me to on Friday that maybe they were – the reason why maybe the amount from what we like SAAT had sold the GPU's for it went up when these guys sold it to Swissport because of maybe a certain arrangement with regard to

30%. That was our assumption.

ADV KATE HOFMEYR: Right. And your evidence on Friday was that you, yourself regarded the 30% set aside as unlawful, is that right?

MS MEMELA: Yes. That is why it was not applied at SAAT. Remember I am talking on behalf of SAAT not SAA.

ADV KATE HOFMEYR: Indeed. So when you started engaging with JM Aviation with the understanding that they were playing a role because of the 30% set aside mandate did you raise with anyone that you should not be dealing with them because the 30% set aside mandate was
10 unlawful?

MS MEMELA: Okay can I understand the question again like ... (intervenes)?

ADV KATE HOFMEYR: Certainly. Your evidence on Friday was that your view was that the 30% set aside mandate of the SAA Board was unlawful, correct?

MS MEMELA: H'mm.

ADV KATE HOFMEYR: And then you indicated that your understanding at the time of your interactions with JM Aviation was that they were playing the role of the Swissport BEE Company pursuant to the 30%
20 mandate, is that correct?

MS MEMELA: That is correct.

ADV KATE HOFMEYR: And then my question was, well if you regarded the 30% mandate as unlawful did you at any point in your interactions with JM Aviation about the sale of the SAAT GPU's raise with anyone that you should not be dealing with them because the 30% mandate

was unlawful?

MS MEMELA: Chair the role that SAAT played there was absolute nothing that could maybe nullify the decision that had already been made by SAA Board or maybe SAA Procurement. Because remember the decision had already been made there. So the only role that SAAT played was the selling of the disposal of these DPU's as to the Board's mandate. Now just to give clarity in terms of why I said like the understanding may have been they relied on the 30% set aside. I told you Chair that on Friday Open Water had never given me or anybody
10 else who was involved in this transaction a chance to state their side of the story because I promise now like I would not be sitting here if it was – like they had given me that opportunity because I would have explained to them that – in fact we found out in 2017 that JM has sent – has sold the GPU's to Swissport and then now Open Water is relying on the amount that this – the GPU's were sold for. And how I find out Chair because I thought I will get this opportunity to state that. How I find out I found out through the media. I had not even seen the report that time and that is why if you heard Friday as much as I was not directing that point to Ms Hofmeyr because I know she is not acting
20 person – like I mean personal towards me on this thing she is on a mission – a fact finding mission. At that time I felt that this whole GPU thing was a way of getting to me in terms of the – because of the person that I am. Because of what I was fighting for at that time which of course had nothing to do with the GPU's. So I learnt about the GPU's being sold to Swissport only in 2017. Remember the Board

awarded this in 2016 and then I was instructed with my other colleagues to negotiate in 2016. But I found out that they were sold to Swissport in 2017 when I read the Sunday Independent. The article was written by Steve Motale and specifically crafted to paint to the public that Advocate Memela has been involved in the sale of GPU's. And of course Chair when the public reads they think I have ran with the whole process from the beginning like as I said this thing started from SAA and I was not part of SAA negotiations. And it went to the Board of SAAT. I was not part of – I was not a Member of the Board of

10 SAAT I only joined – I only joined the meeting through an invite. So the way it was – the article was written it was written to paint a picture to the public that SAAT had lost these assets and then money on each – based on Advocate Memela's involvement. And then when I had to now explain to – during the disciplinary hearing to Advocate Cassiem and also to CCMA that is when it all started getting clear to everybody that actually Advocate Memela only started getting involved at the end of it all. You understand. Like I mean Chair I am just a small fish. I am not above the Board. I am not above the CEO. The Board is the accounting authority of SAAT. CEO is accounting officer of SAAT. But

20 if you notice from 2017 like from the media everything has been talking about Advocate Memela's involvement and stuff as if I was the one who was initiating this whole thing. And when I sat with the Team, the Commission's Team, I remember Andrew – Mr Kurland kept on saying it was in the media. You know and I became worried again that okay it looks like we are going to go back again to Mr Steven Motale's version

of – I mean painting the picture to the public that this is the person who is responsible, who was involved in the decision making of this whole thing. Nobody is interested in the Board Resolution. Nobody is interested Chair in the discussion from SAA from the time when they discussed about offering five-year period contract that was mentioned by Ms Hofmeyr on Friday to Swissport. And then like included the provision there that talked about the GPU's and the BEE Company no one is looking at the fact that there was a list of people there. Top – top people and then from the Board of SAA they had decided on the

10 issue of Swissport and GPU's and then it went to the Board of SAAT. They decided on the issue of GPU's and in fact on the issue of dissolving disposal of the GPU's. But the focus is on Nontsasa Memela because of the – the painted version that okay Nontsasa Memela knows JM this way because of that and that. So I am glad that this question is raised this morning so that we will be able to give that clarity and stuff. But like for me I thought Chair of course as much as I am – it is relevant to bring me here so that I give my own version. But I thought from 2017 this thing has been following the person who has never taken a decision about it. It has followed a person where I was not even

20 involved in the discussion about Swissport you know. But – because there is this link between JM and Nontsasa and Nontsasa being the HOD SEM of SAAT. So like the link is continuously it is being created. Ja. So I am saying Chair then when I got to know about the reselling by JM to Swissport I got to know about it through the media. So like my statement made here it does not mean that okay we knew at that

time that they were going to resell. Yes.

CHAIRPERSON: Well that answer may have been important for you to give a full picture but you need to go back to Ms Hofmeyr's question. It may be that that answer seeks indirectly to give the answer to the question. The question was whether you ever raised the issue of saying you ever said to the people who were involved here but – or to JM whether you ever said but 30% set aside is unlawful. You know it should not be done.

MS MEMELA: Okay Chair.

10 **CHAIRPERSON**: That was the question *ja*.

MS MEMELA: Okay Chair I tend to talk a lot giving the background.

CHAIRPERSON: *Ja*.

MS MEMELA: I apologise for that. But I think the point that I was trying to make Ms Hofmeyr is that at that remember as I have said in my statement we did not know there was going to be resale like from buying from SAAT.

CHAIRPERSON: H'mm.

MS MEMELA: To the sale – to Swissport.

CHAIRPERSON: H'mm.

20 **MS MEMELA**: So of course the 30% set aside issue was not raised at that time. *Ja* and we thought maybe them going to – remember Supply Development Ms Hofmeyr it does apply to BEE Companies given the sub-contracting kind of work from this multinational or maybe these giant companies.

CHAIRPERSON: H'mm.

MS MEMELA: So it could have been maybe when they buy the GPU's from SAAT they were going to maybe operate them like for what SAAT purpose they were bought for.

CHAIRPERSON: Yes.

MS MEMELA: Like only half of Swissport. So that was the understanding at that time.

CHAIRPERSON: Yes.

MS MEMELA: So it was the 30% set aside issue was never raised.

CHAIRPERSON: Okay alright.

10 **MS MEMELA:** Yes.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: Thank you.

CHAIRPERSON: There may be times when I will restrict you.

MS MEMELA: Okay.

CHAIRPERSON: Your lawyer will know what areas we might clarification at re-examination stage.

MS MEMELA: Okay Chair.

CHAIRPERSON: But let us continue.

20 **ADV KATE HOFMEYR:** So with your understanding that JM Aviation was acting as the agent for Swissport in the procuring of the GPU's?

MS MEMELA: Ms Hofmeyr we do not – Chair we do not call BEE suppliers agents. The correct wording is SMME's or Small Black Owned Companies. Agent is something else.

ADV KATE HOFMEYR: Right.

MS MEMELA: Ja so that our understanding was that then because Mr

Ndzeku at that time was the Director of Swissport and it appeared that they had – he had joint ventures with Mr Jules Aires who has been the supplier of SAAT since 199. And I want to mention again Chair before you restrict me I am not going to take long. My understanding just like from Ms Hofmeyr's questions on the Swissport contract on Friday that it appeared to me in fact as much as I complained that I – why should I answer something about Swissport but it gave me light on something. But Mr Vuyo Ndzeku did not start operating or maybe having a business with – between himself and SAA. He has been on business between
10 SAA and – like I mean through Swissport for as far as back in 2012 before I joined SAAT. I may have known him during the Road Show but he has known SAA long time, long before me. *Ja*.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: So just for a point of clarification. When you were dealing with JM Aviation about the sale of the SAAT GPU's did you know that Mr Ndzeku was a Director of Swissport South Africa at the time?

MS MEMELA: He had mentioned I think during our discussions I mean you know I did mention to you that after that Road Show.

20 **ADV KATE HOFMEYR:** Yes.

MS MEMELA: Like we had talked a lot. Like I mean to an extent where we talked about other things that had nothing to do with SAAT.

ADV KATE HOFMEYR: Yes.

MS MEMELA: So he did.

ADV KATE HOFMEYR: Right.

MS MEMELA: *Ja.*

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

MS MEMELA: But like on Friday when you were talking about that I had forgotten.

ADV KATE HOFMEYR: No that it is fine.

MS MEMELA: *Ja.*

ADV KATE HOFMEYR: That is helpful for us to know.

MS MEMELA: *Ja.*

ADV KATE HOFMEYR: That you were aware of that.

10 **MS MEMELA:** Yes

ADV KATE HOFMEYR: The reason why I asked about the role of JM Aviation as an agent is because the actual clause of the Swissport SAA agreement that you were implementing as SAAT in the sale of the GPU's does not refer to any entities other than SAA and Swissport.

MS MEMELA: H'mm.

ADV KATE HOFMEYR: You will recall I will just read it to you. If you want to go to it I can give you the reference.

MS MEMELA: No I understand.

ADV KATE HOFMEYR: I just want to read it into the record.

20 **MS MEMELA:** Okay.

ADV KATE HOFMEYR: It says:

“The Handling Company that is Swissport as defined in the agreement agrees to purchase and or arrange the purchase ...(intervenes).”

ADV LINDELWA MBANJWA: Just to remind Ms Hofmeyr that

...(intervenes).

ADV KATE HOFMEYR: Oh sorry Chair. I understand from the transcribers that when Ms Mbanjwa makes an objection she needs to come to the podium.

CHAIRPERSON: Yes, yes.

ADV KATE HOFMEYR: Because otherwise it will not be caught.

CHAIRPERSON: *Ja, ja.* What you can do for the future Ms Mbanjwa to raise your hand then I will know that you wish to say something then you can come to the podium.

10 **ADV LINDELWA MBANJWA:** Thank you that will be helpful Chair. It is not an objection Chair I just wanted to remind Ms Hofmeyr that if she can please give the page references.

CHAIRPERSON: Yes.

ADV LINDELWA MBANJWA: When she reads.

CHAIRPERSON: For your assistance.

ADV LINDELWA MBANJWA: Thank you.

CHAIRPERSON: I think she probably – she was going to give I am sure.

ADV KATE HOFMEYR: Indeed. Of course I was just indicating
20 whether Ms Memela wanted to find the page.

CHAIRPERSON: Yes

ADV KATE HOFMEYR: And then I was going to indicate for the record.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: Where we were.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: I am reading from Exhibit DD25A at page 316. That is the page that contains clause 8.2 of the SAA/Swissport Agreement.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: And we had looked on Friday at the provisions of clause 8.2. It reads as follows:

“The Handling Company”

And I pause there just to assist that is Swissport under the agreement.

10 “Agrees to purchase and or arrange purchase of all recently acquired surplus SAAT GPU’s at current book value, fair market value or other such valuation as mutually agreed.”

Do you see that Ms Memela?

MS MEMELA: Yes. Can I ask Chair for Ms Hofmeyr to read from 8.1 as well?

ADV KATE HOFMEYR: Certainly 8.1 says:

20 “As part of the continuous improvement of its B-BBEE and promoting the government’s development agenda the handling company that is Swissport will sub-contract some of its services or enter into agreements with 51% Black Owned Companies that have the representation of all or either of women, youth, disabled persons and military veterans for the purchase of equipment required as part of its

investments to this agreement.”

MS MEMELA: *Ja.*

ADV KATE HOFMEYR: And then it goes on at 8.2.

MS MEMELA: Good.

ADV KATE HOFMEYR: And my question was, when you were dealing with JM Aviation you indicated you did not regard them as Swissport’s agent, correct?

MS MEMELA: Yes.

ADV KATE HOFMEYR: So in a provision like 8.2 that says the sale is
10 going to happen between SAAT and Swissport how does JM Aviation enter the terrain then at all?

MS MEMELA: Okay I understand that you have the e-mail from Ms Jules Aires to Mr Malola-Phiri, do you have that?

ADV KATE HOFMEYR: Yes we do indeed.

MS MEMELA: Can you direct – yes – can you direct me to that because I want to read it for the court.

ADV KATE HOFMEYR: Certainly just before we go there what I am interested in is your understanding of the provision?

MS MEMELA: I need ...(intervenes).

20 **ADV KATE HOFMEYR:** So if you would like to go to the e-mail for that purpose I am happy to direct you?

MS MEMELA: I am going there for that purpose. Thanks Chair.

ADV KATE HOFMEYR: Thank you.

CHAIRPERSON: If it might take time to find your junior could look for it.

ADV KATE HOFMEYR: Indeed.

CHAIRPERSON: And you deal with other questions.

ADV KATE HOFMEYR: I think we will need to do that.

CHAIRPERSON: And come back to it later.

ADV KATE HOFMEYR: Oh no. It is alright I have it in front of me.

CHAIRPERSON: Oh okay.

ADV KATE HOFMEYR: I just sometimes have to remind myself which of the two bundles we are in.

CHAIRPERSON: Yes.

10 **ADV KATE HOFMEYR:** You will find it in Exhibit DD25B at 607.

MS MEMELA: 607. Oh the additional file? Is it the additional?

ADV KATE HOFMEYR: Yes it is in the B file. Indeed. DD25B at page 607.

MS MEMELA: I got it Chair.

ADV KATE HOFMEYR: Thank you. So just to remind you the question was, in what role did you understand or in what capacity did you understand JM Aviation was interacting with SAAT insofar as the sale of the GPU's was concerned when the only agreement was between Swissport and SAA for the purchase of the GPU's?

20 **MS MEMELA:** Is it just me or your question has just changed? Or maybe the wording has changed.

ADV KATE HOFMEYR: I do not always – I do not have the ability to repeat exactly the words I used 10 minutes ago.

MS MEMELA: Okay.

ADV KATE HOFMEYR: So I am trying to just convey the essence of

the question.

MS MEMELA: Okay.

ADV KATE HOFMEYR: So that when you draw us to the e-mail at page 607 you understand the background from which I have asked the question.

MS MEMELA: Okay Chair.

ADV KATE HOFMEYR: Would you like me to repeat it or are you comfortable?

MS MEMELA: Okay Chair I would like to state on record how I
10 understood her question to be.

CHAIRPERSON: Yes, yes that is fine.

MS MEMELA: Which led me to come to this e-mail.

CHAIRPERSON: Yes. Okay. Well if you like you can indicate this is how you understood the question earlier.

MS MEMELA: Yes.

CHAIRPERSON: And this is your answer.

MS MEMELA: Ja.

CHAIRPERSON: And that may or may not coincide with the question as formulated after.

20 **MS MEMELA:** Okay. How I understood her question Chair was that she wanted to find out from the provision that she read, Provision 8.2 of the contract, because it does not talk about a specific BEE Company. It talks about between SAAT or SAA and Swissport contract. How did I find out or maybe conclude that JM was one of the agent or BEE Company right? I think that is the – that was my understanding.

Because they were not mentioned in this provision.

ADV KATE HOFMEYR: Yes.

MS MEMELA: Okay. So that is the reason then Chair that I thought this e-mail ...(intervenes).

CHAIRPERSON: You wanted the e-mail *ja*.

MS MEMELA: Is relevant.

CHAIRPERSON: H'mm.

MS MEMELA: The e-mail Chair was written in April 2016.

CHAIRPERSON: It is April 26th.

10 **MS MEMELA:** *Ja* we go back then to.

CHAIRPERSON: *Ja*.

MS MEMELA: To page 608 Chair before we get to 207.

CHAIRPERSON: H'mm.

MS MEMELA: It – my understanding it was written at the same day. So it was written by Mr Jules ...(intervenes).

CHAIRPERSON: Huh-uh.

MS MEMELA: To the then Acting CEO of SAAT, Mr Arson Malola-Phiri, and copied Mr Musa Zwane who was the CEO of SAAT, but was acting at SAA at that time and then copied Ms Sokhulu – Ms Khosi Sokhulu

20 and the subject Chair says re:

“Formal purchase offer of his – he is saying that Diesel Ground Power Units Model MDE18KVA.”

Now Jules says:

“Dear Arson Malola-Phiri, in accordance with the Swissport Contract recently signed with SAAT.”

Here I think Chair he meant SAA, because the Swissport. Contract was between SAA and Swissport.

“We are offering to purchase the quantity 12 of the Ground Power Units. We will accept the units in as is where is condition and SAAT will not incur any further costs. Purchase price 225 000 each. Total purchase price will be 2 700 000. Please can you arrange for me to inspect the units at SAAT? We look forward to your acceptance of our formal offer.

10 Can you please confirm receipt of our formal offer?”

Now this e-mail Chair is coming from the CEO of JM. This is before Mr Malola-Phiri goes to the Board with the submission requesting to sell the GPU's. Mr Arson Malola-Phiri responds.

20 “Dear Jules, I am in receipt of your e-mail below re formal purchase offer in respect of SAAT GPU's. Whilst I understand the provision made in the Swissport SAA Contract in respect of sale of GPU's. It is incumbent on SAAT to follow due asset disposal process which will include SAAT Exco and Board approvals. If there are compelling merits to say as opposed to leasing out. SAAT will submit a business case motivation to dispose of the GPU's at the Board Meeting scheduled for the third week of May 2016. Shall it be approved I will engage with JM Aviation Ltd for conclusion of the transaction.

Hope you find this in order.”

This is the response from the Acting – the then Acting CEO of SAAT. So Chair the reason why then we understand that JM is the BEE company of Swissport. It was through this e-mail, because remember I said on Friday. We got an instruction for the – from the Acting CEO after the Board approval of the sale of GPU’s to sit with JM Aviation and negotiate the offer.

Which the offer was sent to Mr Arson Malola-Phiri April, the 26th before the Board Meeting and then she – he referred to it that
10 these the processes that are going to be followed and then once the Board approved and Exco approved we will then come back to JM. Which is going back to JM he did that through myself and the colleagues when he said we should what – negotiate the deal.

CHAIRPERSON: Okay.

MS MEMELA: So I hope I have answered. If you – if I have left something out you can actually add here.

ADV KATE HOFMEYR: Certainly. I will follow up there.

MS MEMELA: H’mmm.

ADV KATE HOFMEYR: Thank you so much. I understood your
20 evidence to be you did not know until 2017 that JM Aviation then on sell – sold the GPU’s to Swissport. Is that correct?

MS MEMELA: We – I had found out then that they were sold to Swissport.

ADV KATE HOFMEYR: Thank you.

MS MEMELA: Through the report that was coming from Open Water

Report, but I found that out from the media, Sunday Independent written by Steven Motale.

ADV KATE HOFMEYR: So the answer is yes?

MS MEMELA: Yes.

ADV KATE HOFMEYR: At the time that you were dealing with JM Aviation in 2016 then.

MS MEMELA: Yes.

ADV KATE HOFMEYR: What did you think they were going to do with the GPU's after they bought them from SAAT?

10 **MS MEMELA:** As I have said on my statement Chair or maybe earlier this morning. I said our understanding and I did mention on Friday that in the – within – during the meeting there was the owner of the GPU's Mr Chaile Makaleng. He Heads the Department that owns the GPU's and then there was Mr Stan Vosloo and both these guys are technical – technicians – former technicians and they know the technical split part of things.

For me I was sitting there to ensure that okay maybe SAAT gets value for money although I would not do it to the best of my ability if we do not go out on a tender since the Board had already decided.

20 *Ja.* Okay. I forgot. You see now this thing of talking too much. I forgot the question.

ADV KATE HOFMEYR: Yes. Let me give you the question again.

MS MEMELA: Yes.

ADV KATE HOFMEYR: What did you understand JM Aviation was going to do with the GPU's ...(intervenes).

MS MEMELA: Oh.

ADV KATE HOFMEYR: After it bought them from SAAT?

MS MEMELA: Okay. My understanding at that time Chair was that they were going to maybe operate them ...(intervenes).

CHAIRPERSON: H'mm.

MS MEMELA: For the people they were bought for ...(intervenes).

CHAIRPERSON: H'mm.

MS MEMELA: Because remember the reason SAAT bought these GPU's were that they were going to provide those services
10 ...(intervenes).

CHAIRPERSON: H'mm.

MS MEMELA: To Swissport ...(intervenes).

CHAIRPERSON: H'mm.

MS MEMELA: But later on when the contract was never signed as mentioned by Ms Hofmeyr.

CHAIRPERSON: H'mm.

MS MEMELA: From 2012. They were used for another people. Not the people that they were bought for.

CHAIRPERSON: H'mm. Okay.

20 **MS MEMELA:** Yes.

ADV KATE HOFMEYR: So you had no understanding that they were in fact acting on behalf of Swissport when they purchased the GPU's?

MS MEMELA: Huh-uh. Okay. Come with simple English.

CHAIRPERSON: It was not your understanding ...(intervenes).

MS MEMELA: Ja.

CHAIRPERSON: That they were acting on behalf of Swissport ... (intervenes).

MS MEMELA: Okay.

CHAIRPERSON: When they got involved with the purchase.

MS MEMELA: Chair, my understanding was that they were buying them as the BEE company of Swissport and then maybe they will operate on the subcontracted part of things. Where they will then be operating the GPU's for what SAAT was going to use them for when they were initially bought in 2012.

10 **CHAIRPERSON:** H'mm.

MS MEMELA: So that was my understanding.

CHAIRPERSON: H'mm.

ADV KATE HOFMEYR: Thank you. Let us then move to the Board Resolution Ms Memela, because I do understand from your evidence and you emphasised this on Friday and you have emphasised it again today.

MS MEMELA: Yes.

ADV KATE HOFMEYR: You did not take the decision to sell these GPU's for SAAT ... (intervenes).

20 **MS MEMELA:** Yes.

ADV KATE HOFMEYR: And in fairness to you I want to take you to the Board – the Minutes of the Board Meeting at which the Board not you made that decision.

MS MEMELA: Okay.

ADV KATE HOFMEYR: Let us go to it if we may, because part of your

concern earlier as I understand it is that people have drawn links between yourself and this arrangement that are unfair ...(intervenes).

MS MEMELA: Yes.

ADV KATE HOFMEYR: And I want to say to you we are going to remain faithful not to media reporting, but to documents and your evidence in the course of today's proceedings.

MS MEMELA: I hope so.

ADV KATE HOFMEYR: So let us do that. Let us go to DD25B. It is the smaller bundle in front of you and if you just go over the page to
10 page 609. You will see the Minutes of the Meeting of the SAAT Board. Do you have that?

MS MEMELA: This is – Chair the extract of the meeting – of the Minutes – of the main minutes.

CHAIRPERSON: Yes.

MS MEMELA: So just for the Chair's understanding Ms Hofmeyr I do not know if you remember I sent you the full Minutes of that Board.

ADV KATE HOFMEYR: Yes.

MS MEMELA: Because now if we read this on record ...(intervenes).

CHAIRPERSON: Well wait for her question.

20 **MS MEMELA:** Oh. Okay.

CHAIRPERSON: Wait for her question ...(intervenes).

MS MEMELA: Alright.

CHAIRPERSON: Because it does say at the top there extract ...(intervenes).

MS MEMELA: Of the Minutes.

CHAIRPERSON: From the Minutes.

MS MEMELA: Yes.

CHAIRPERSON: So we know that it is not the whole Minutes.

MS MEMELA: Okay.

CHAIRPERSON: *Ja.*

ADV KATE HOFMEYR: Let us do it this way. This is the extract dealing with the item on the agenda for that meeting which is the disposal of the Ground Power Units.

MS MEMELA: Yes.

- 10 **ADV KATE HOFMEYR:** If you regard any other provision of the Minutes as relevant you will direct us to them in due course. I am interested in the decision that was taken at that meeting by the Board of SAAT.

MS MEMELA: Huh-uh.

ADV KATE HOFMEYR: Related to item 4.4 which is the disposal of Ground Power Units. The matter that we are concerned with the Commission today.

MS MEMELA: Alright.

ADV KATE HOFMEYR: It records there in the first paragraph:

- 20 “The Board was requested to consider and approve
the disposal of 12 Ground Power Units as the
services they were purchased to offer had been
outsourced to an external service provider,
Swissport, by SAA.”

Before I continue can I just confirm? You were not in attendance for the whole of this Board Meeting on the 15th

of June 2016. Were you?

MS MEMELA: I was not Chair. That is why I think I wanted to go to those minutes because they are very detailed ...(intervenes).

CHAIRPERSON: I ...(intervenes).

MS MEMELA: But it fine. We will go ...(intervenes).

CHAIRPERSON: Our notice is enough as an answer.

MS MEMELA: Okay.

ADV KATE HOFMEYR: Indeed.

CHAIRPERSON: *Ja.*

10 **MS MEMELA:** Alright.

ADV KATE HOFMEYR: But you were invited to attend and were you there for the conversation and debate around the disposal of the Ground Power Units?

MS MEMELA: I – as much as I do not remember correctly, but like I know that I was only invited for I think the logistics discussion.

CHAIRPERSON: Another item?

MS MEMELA: *Ja.* Logistics ...(intervenes).

CHAIRPERSON: On the agenda?

MS MEMELA: Item, yes.

20 **CHAIRPERSON:** So you are not sure whether you were there when the Board discussed this item?

MS MEMELA: Yes. Yes, but I do know that it was tabled before I think I walked in.

CHAIRPERSON: Yes.

MS MEMELA: Yes.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: And did you familiarise yourself after the meeting with a decision that the Board had taken in relation to the Ground Power Units before you got involved in negotiating their sale price?

MS MEMELA: Okay. Mr Malola-Phiri sent us the Board Resolution and not this extract of the Minutes. The Board Resolution.

CHAIRPERSON: He gave you the Minutes?

MS MEMELA: Yes. No. He gave us the Board Resolution.

10 **CHAIRPERSON:** Okay. Alright.

MS MEMELA: Yes. Not these extracts.

CHAIRPERSON: Okay.

MS MEMELA: Yes.

CHAIRPERSON: H'mm.

ADV KATE HOFMEYR: So is today the first time that you are seeing this extract?

MS MEMELA: No. Today is not the first time. The first time I got to get these. It is when I was actually going to defend myself during the disciplinary hearing and at the CCMA.

20 **ADV KATE HOFMEYR:** Right.

MS MEMELA: So I dug all the information that I could use.

ADV KATE HOFMEYR: H'mm.

MS MEMELA: Ja.

ADV KATE HOFMEYR: The next paragraph reflected in these Minutes of the Meeting of the SAAT Board on Wednesday, 15 June 2016 is as

follows and I quote:

“It was reported that the GPU’s would be sold to Swissport at their current asset value. The Board was informed that SAA’s Contract with Swissport provided for Swissport to purchase the GPU’s from SAAT.”

It then goes on and records:

10 “The submission proposed that SAAT should consider whether to recover the difference between the purchase value of the GPU’s and the current asset value from SAA. The ICFO and GMLRC indicated that SAAT had been utilising the GPU’s whilst SAA was resolving its contractual issues with its ground handling service provider. Therefore the reduction in value of the GPU’s was due to depreciation and was not a loss.”

And then the Resolution is recorded.

20 “It was resolved that the disposal of SAAT’s 12 diesel operated Ground Power Units, GPU’s, as a result of SAA awarding the ground handling services to an external service provider b, and is hereby approved.”

MS MEMELA: Chair, can I ask Ms Hofmeyr to go back to the third paragraph. Where it starts from the ICFO. I know people who are listening. They do not know what those abbreviations are for.

CHAIRPERSON: Yes, but ...(intervenes).

MS MEMELA: So I – *ja*.

CHAIRPERSON: Hang on. She asked you a question.

MS MEMELA: Oh.

CHAIRPERSON: I think wait until she asks you a question, because everything we do must relate to the questions. If after she has asked questions in your answer you think it is important to draw attention to that. Then we can go there.

MS MEMELA: Okay.

10 **CHAIRPERSON:** *Ja*.

ADV KATE HOFMEYR: Thank you Chair. So that was a recordal of both what had been conducted in the course of the meeting as well as the Resolution that the Board took and as I understood your evidence earlier. You were then provided with the Resolution itself. Is that correct?

MS MEMELA: Yes. Yes Chair.

ADV KATE HOFMEYR: And after that point Ms Memela I understand your evidence to be you were then tasked with negotiating the sale price for the GPU's. Is that correct?

20 **MS MEMELA:** Myself, the HOD for the Department that owns the GPU's ...(intervenes).

ADV KATE HOFMEYR: That is Mr Makaleng.

MS MEMELA: And – Mr Makaleng and Stan Vosloo.

ADV KATE HOFMEYR: And Mr Vosloo.

MS MEMELA: The only person who could not make it to that meeting

was Mr Leon Roberts.

ADV KATE HOFMEYR: Thank you. So you will come back to it. That is the meeting of the 21st of June 2016. Is that correct? That you are talking about.

MS MEMELA: I do not remember, because we do not have the Minutes for that. So I would agree it will be that.

ADV KATE HOFMEYR: Thank you. There is an e-mail that is sent to you after the meeting by Ms Sokhulu.

MS MEMELA: Yes.

10 **ADV KATE HOFMEYR:** Which talks about the meeting that day. That is what I am basing my suggestion that it is the 21st of June meeting.

MS MEMELA: Okay.

ADV KATE HOFMEYR: Okay. So let us go through what you did after this Board Resolution was taken to now negotiate the price.

CHAIRPERSON: We now go back to her affidavit?

ADV KATE HOFMEYR: Well it is going to be a few documents I will take you to Chair.

CHAIRPERSON: Oh. Okay. Alright.

ADV KATE HOFMEYR: I want to know first of all whether you went and
20 found out what SAAT had purchased the GPU's for the year before.

MS MEMELA: You want to know if I had to go and found out if SAAT had – like I mean how much they have purchased the GPU's for.

ADV KATE HOFMEYR: Slightly different. I did not ask whether you had to. I asked you first whether you did.

MS MEMELA: Did I? Okay.

ADV KATE HOFMEYR: Did you go and find out what SAAT had paid when it bought the GPU's the year before?

MS MEMELA: Okay. Chairperson remember the Board Resolution talks about the book value. Myself together with the owner of the GPU's and Mr Stan Vosloo. We did not go back to the time when the GPU's were bought and the reason for that is that for that moment as well there was no tender that was like I mean SAAT went out to buy the GPU's.

They negotiated with this specific company and no one is sure that for whatever amount that they bought them for – SAAT bought
10 them for – was the correct amount, because there is absolute no proof that they had negotiated the amount or they just bought the GPU's for what the Board had approved for, because my understanding is that sometimes the Board will approve R500 and then from the procurement point of view it is your duty to go and negotiate and try and save as much as you can.

So I think the reason at that time that we did not want to go back to that is because the Board had approved for the specific amount and then the people who bought these in that that time bought them exactly for the amount that was approved by the Board. It did not
20 really sit well with us, because like relying on that at the end of the day does not determine the price or the amount that they should be sold for.

That is the reason why I was – I wanted to go back to where the Interim CFO at that time and the GM Legal made that statement, but Chair we did not go – like I mean the response is that we did not go

back to that. We relied on the – what was there in the book value at the time and I did mention – I do not know. Maybe it is not in the documents here.

I did mention that the system that SAAT was using was outdated long time ago with a software that is outdated. So the book value whatever that was put there was not like really stick. So like I mean we had to rely on other, *ja*.

ADV KATE HOFMEYR: Okay. So can I just make sure I understand? You did not look at the purchase price from a year earlier, because you
10 were concerned that that did not represent fair market value. Is that correct?

MS MEMELA: Yes. It did not really represent the fair market value.

ADV KATE HOFMEYR: Thank you.

MS MEMELA: Yes.

ADV KATE HOFMEYR: And then you started talking about the book value.

MS MEMELA: Yes.

ADV KATE HOFMEYR: Do I understand your evidence to be. You did consider the book value.

20 **MS MEMELA:** The book value was considered looking at the MEMIS record and I think maybe it will be from Mr Chaile Makaleng and also checking with finance. Remember Chair during the Board Meeting. That is the reason why I wanted like to go to the full minutes. There was a CEO – CFO ...(intervenes).

CHAIRPERSON: Yes.

MS MEMELA: Of SAAT sitting there.

CHAIRPERSON: Yes.

MS MEMELA: Remember the Asset Register is ...(intervenes).

CHAIRPERSON: H'mm.

MS MEMELA: Is maintained and managed by finance.

CHAIRPERSON: Yes.

MS MEMELA: So my understanding him sitting there with the Acting CEO submitting to the Board what he was submitting being the book value or whatever.

10 **CHAIRPERSON:** H'mm.

MS MEMELA: Versus I mean what is actually in the Asset Register ...(intervenes).

CHAIRPERSON: H'mm.

MS MEMELA: And ...(intervenes).

CHAIRPERSON: H'mm.

MS MEMELA: Book value.

CHAIRPERSON: H'mm.

MS MEMELA: Ja. So ...(intervenes).

20 **CHAIRPERSON:** Well we can go to those minutes if they are here. If that will assist you to give ...(intervenes).

MS MEMELA: The response.

CHAIRPERSON: An answer ...(intervenes).

MS MEMELA: Yes Chair.

CHAIRPERSON: That you want to give.

MS MEMELA: I request we go to that ...(intervenes).

CHAIRPERSON: H'mm.

ADV KATE HOFMEYR: Yes.

MS MEMELA: Because I think it will give a clear clarity of what I want.

ADV KATE HOFMEYR: Ja. You will have to find them Ms Memela. They were – I understand you say they were amongst the annexures that you provided to the Commission, but I explained at the outset of your evidence that they had never been identified with cross reference to your statement.

So they have just been assembled for your benefit after your
10 statement, but I am not on top of those documents. So we will need to find them. I asked my junior to assist me.

CHAIRPERSON: To – ja.

ADV KATE HOFMEYR: H'mm.

CHAIRPERSON: Okay. So what we will do Ms Memela.

MS MEMELA: Yes Chair.

CHAIRPERSON: Ms Dimbikiwa will try and look for them – your own lawyer will try and look for them while we continue with other questions.

MS MEMELA: Yes, sir.

20 **CHAIRPERSON:** And then at a later stage we will come back to the question once somebody has found them.

MS MEMELA: Okay.

ADV KATE HOFMEYR: Ms Memela, can I just get clarity though. I understood your evidence earlier to be you had not seen the Minutes of those – of that meeting at the time that you were negotiating the sale

price. I understood your evidence earlier to be you only saw them much later when you were preparing for your CCMA case. Is that correct?

MS MEMELA: That is correct. Yes Chair.

ADV KATE HOFMEYR: That is very helpful, because then anything that is contained in the Minutes is not going to assist in understanding what was in your mind and what you were doing at the time that you were negotiating. Is that right?

MS MEMELA: No. That is not right. That is not my understanding.

10 **ADV KATE HOFMEYR:** Okay.

CHAIRPERSON: Okay. Let us try and get that out of the way. Ms Memela ...(intervenes).

MS MEMELA: Yes Chair.

CHAIRPERSON: I think you are looking for the Minutes. Let us stop looking for the Minutes for now.

MS MEMELA: Yes Chair.

CHAIRPERSON: So that we can continue with other questions, but your lawyer and junior counsel to Ms Hofmeyr will be looking will be looking for those minutes in the meantime. You must just remember
20 that at some stage we go back to them if it is necessary ...(intervenes).

MS MEMELA: Okay.

CHAIRPERSON: But I do not understand your answer to Ms Hofmeyr when she says if at the time you were not aware of the Minutes. Whatever is in the Minutes could not have been a factor in terms of your understanding and you say no. That is not right.

MS MEMELA: H'mm.

CHAIRPERSON: Do I misunderstanding something?

MS MEMELA: The reason I put it like that Chair was that what is written in the Minutes is supporting our understanding at that time. As much as we did not see the Minutes, but like that was our understanding. Myself and the colleagues that were sitting during the negotiations.

CHAIRPERSON: No. That is fine. So it is not that you were aware of the Minutes at the time.

10 **MS MEMELA:** Huh-uh.

CHAIRPERSON: It is just that you had a certain understanding ...(intervenes).

MS MEMELA: Okay.

CHAIRPERSON: And subsequently you saw something in the Minutes that supports your understanding.

MS MEMELA: Yes Chair.

CHAIRPERSON: That is what you say?

MS MEMELA: That is what I am saying.

CHAIRPERSON: Okay. Alright. Ms Hofmeyr.

20 **ADV KATE HOFMEYR:** Thank you Chair. Ms Memela, do you accept that the Acting SAAT CEO thought that the book value of the GPU's was relevant to the price at which they should be sold given what he included in his submission to the Board?

MS MEMELA: Yes. The book value that was put by Mr Malola-Phiri was in the submission ...(intervenes).

ADV KATE HOFMEYR: Correct.

MS MEMELA: Before the Board. I agree.

ADV KATE HOFMEYR: Yes.

MS MEMELA: H'mm.

ADV KATE HOFMEYR: And let us just look at what the book value was at the time. You will find it in your DD25B bundle and it is at page 611.

MS MEMELA: 611?

ADV KATE HOFMEYR: Yes.

CHAIRPERSON: What I have at 611 does not appear to look like what
10 you have.

ADV KATE HOFMEYR: Yes. I am also worried.

CHAIRPERSON: Oh. Oh. No, no. I think what you have in your hand is what is different from what I have, but what you have on the next page there seems to be ...(intervenes).

ADV KATE HOFMEYR: Yes. It is your 611. Oh, goodness. It is ...(intervenes).

CHAIRPERSON: Ja. It is my 611.

ADV KATE HOFMEYR: Very worrying. Well I think there is another location for this in Mr Human's affidavit, because he was taken to that.

20 **MS MEMELA:** H'mm.

ADV KATE HOFMEYR: Maybe what I do for now is just read it into the record. I am concerned that there is a difference in the pagination ...(intervenes).

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: But it was an aspect that he confirmed in his

evidence before the Commission.

CHAIRPERSON: H'mm. H'mm.

ADV KATE HOFMEYR: Ms Memela if you ...(intervenes).

MS MEMELA: H'mm.

ADV KATE HOFMEYR: Would like to ...(intervenes).

CHAIRPERSON: Yes. I think Ms Mbanjwa wants to say something.

MS LINDELWA MBANJWA: Thank you Chair. I just wanted to put on record ...(intervenes).

10 **CHAIRPERSON:** Come closer to the mic. Otherwise you will not be recorded.

MS LINDELWA MBANJWA: Thank you Chair. I was also looking at the reference. I do not see the book value. So I wanted to point out that what I have been referred to in the record ...(intervenes).

CHAIRPERSON: *Ja.*

MS LINDELWA MBANJWA: Is not what Ms Hofmeyr ...(intervenes).

CHAIRPERSON: Yes. Okay.

MS LINDELWA MBANJWA: Is talking about.

CHAIRPERSON: Okay. If it is possible it might be helpful if you sat much closer to Ms Hofmeyr.

20 **MS LINDELWA MBANJWA:** *Ja.*

CHAIRPERSON: Subject to her own stuff there, because sometimes you can just whisper to her something or make a note and give to her ...(intervenes).

ADV KATE HOFMEYR: Chair, can I ...(intervenes).

CHAIRPERSON: *Ja.*

ADV KATE HOFMEYR: Be problematic?

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: I am just about to direct Ms Mbanjwa to the Human bundle ...(intervenes).

CHAIRPERSON: Oh.

ADV KATE HOFMEYR: Which I see is in front of her and it is very difficult to move.

CHAIRPERSON: Okay. Okay.

ADV KATE HOFMEYR: So it is just for now ...(intervenes).

10 **CHAIRPERSON:** Alright. *Ja*.

ADV KATE HOFMEYR: Because I want everyone to have the document

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: In front of them. Certainly.

CHAIRPERSON: Yes. Okay.

ADV KATE HOFMEYR: There seems to be – have been some error between my copy of Ms Memela's bundle ...(intervenes).

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: But it is not a problem, because we have the very same page in the Human bundle ...(intervenes).

20 **CHAIRPERSON:** Yes.

ADV KATE HOFMEYR: Because as I indicated he had testified about it earlier in the week ...(intervenes).

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: And Mr Human's affidavit and annexures have previously been provided to Ms Memela.

CHAIRPERSON: Yes, but before we do that ...(intervenes).

ADV KATE HOFMEYR: So where we need to go ...(intervenes).

CHAIRPERSON: That box – the second box between you and Ms Mbanjwa ...(intervenes).

ADV KATE HOFMEYR: Yes.

CHAIRPERSON: Does it have to be there, because if it can be removed. She could come closer.

ADV KATE HOFMEYR: That is preferable. Let us do that.

CHAIRPERSON: Because some of the issues – she could make a note
10 for you. Bring something to your attention without ...(intervenes).

ADV KATE HOFMEYR: Indeed.

CHAIRPERSON: Us stopping the proceedings.

ADV KATE HOFMEYR: Indeed.

CHAIRPERSON: Maybe let us try and to that and even – although it can still be brought closer. It is just going to help with the smooth ...(intervenes).

ADV KATE HOFMEYR: Of course.

CHAIRPERSON: Running of the proceedings. Of course you - you do need to have your stuff there ...(intervenes).

20 **ADV KATE HOFMEYR:** Indeed.

CHAIRPERSON: But I think that will help.

ADV KATE HOFMEYR: I am certain it will.

CHAIRPERSON: *Ja.*

MS MEMELA: Chair, if I can request Ms Hofmeyr? Can you direct which file that ...(intervenes)?

ADV KATE HOFMEYR: I was about to.

MS MEMELA: Okay.

ADV KATE HOFMEYR: Indeed. So Ms Memela at ...(intervenes).

CHAIRPERSON: So – yes, so. I am sorry Ms Hofmeyr. So sometimes you can just make a note and bring it to her attention and she can take that into account. If there is a problem she will say okay let us stop and then we can – you can articulate, but sometimes she will be able to address what you are saying without us stopping the proceedings.

MS LINDELWA MBANJWA: Very good Chair.

10 **CHAIRPERSON:** Okay. Alright.

ADV KATE HOFMEYR: Thank you Chair. We are indebted. The second copy of the same document is in Exhibit DD22B. That is the second file of Mr Human's bundle and you will find it there at page 694.

CHAIRPERSON: Just repeat the bundle.

ADV KATE HOFMEYR: DD22B at page ...(intervenes).

CHAIRPERSON: Can you see it Ms Memela?

ADV KATE HOFMEYR: 694.

CHAIRPERSON: Ja. Okay.

MS MEMELA: At page?

20 **ADV KATE HOFMEYR:** 694. This is an extract from the Asset Register as it was in June 2016. Do you see that Ms Memela?

MS MEMELA: As it was in June 2016?

ADV KATE HOFMEYR: Correct.

MS MEMELA: Chair, not to be problematic or anything. I see a document that was done in an Excel spreadsheet and then with

something written June 2016 with somebody's hand and then it has got some signatures in the corner which does not really say who signed. Was it the person who is responsible for Asset Register or not, but that is what I see and my understanding in Asset Register should be as formal as possible as much information as possible and this to me – this is exactly what I had disputed at the CCMA and during the disciplinary to Advocate Cassim and which he accepted that this cannot be accepted as a formal Asset Register, because anybody could have put whatever that they want to put and it was only the representative of
10 the employer who had that at the time.

ADV KATE HOFMEYR: Ms Memela ...(intervenes).

MS MEMELA: So I am not sure then if mister – who signed this. Who was managing it at that time and whatever?

CHAIRPERSON: So you say that you see a document here, but you cannot accept that it reflects what was in the Asset Register. Is that what you are saying?

MS MEMELA: Yes. I am saying also Chair remember the book value should rely on the system which was MEMIS at that time.

CHAIRPERSON: H'mm.

20 **MS MEMELA:** So there is no attachment. Maybe that is coming from MEMIS.

CHAIRPERSON: H'mm.

MS MEMELA: That states how much did MEMIS say at that time ...(intervenes).

ADV KATE HOFMEYR: So ...(intervenes).

MS MEMELA: In the book value, *ja*.

ADV KATE HOFMEYR: Ms Memela you never saw this document when you were negotiating the sale price. Is that correct?

MS MEMELA: No. Definitely not Chair.

CHAIRPERSON: Okay. Hang on. Ms Mbanjwa.

MS LINDELWA MBANJWA: Thank you Chair. I also have an objection.

CHAIRPERSON: Huh-uh.

MS LINDELWA MBANJWA: To the document that has been presented, because there is an e-mail that was produced. I just want the page of
10 the e-mail and in the e-mail these Ground Power Units were given a name. They were called HISH-something. I just want to get that e-mail.

CHAIRPERSON: Well I think what you may wish to do is make a note. Let us see what Ms Hofmeyr's response or reaction is to the answer given by the witness and bear in mind that clarification could be given later.

MS LINDELWA MBANJWA: I think Chair I may have to be guided ... (intervenes).

CHAIRPERSON: H'mm.

20 **MS LINDELWA MBANJWA:** Because Chair has said.

CHAIRPERSON: H'mm.

MS LINDELWA MBANJWA: This Commission has been sitting for one and a half years.

CHAIRPERSON: H'mm.

MS LINDELWA MBANJWA: Apart from the very lofty position that Chair

has ...(intervenes).

CHAIRPERSON: H'mm. H'mm.

MS LINDELWA MBANJWA: In the judiciary. What Ms Hofmeyr is doing – the way I see it. She is making Ms Memela answer questions on a document. The correctness thereof is not acceptable to us or to put it in another manner. All I want Ms Hofmeyr to do is to say at least that these assets that are described here are the GP Units that we are referring to. That is basically our objection.

CHAIRPERSON: Yes. No, no. I am saying the witness had just given
10 her answer and I do not know if she had finished and Ms Memela had not – Ms Hofmeyr had not had a chance to respond – to react to the answer. The reaction to the answer could be yes I understand what you say, but there is another document.

I will take you to that document at some stage. The reaction could be no. I – maybe you are mistaken Ms Memela about this document. So let us go on and let us see ...(intervenes).

MS LINDELWA MBANJWA: I am premature. As it pleases.

CHAIRPERSON: Yes. Yes you are premature. Okay. Thank you.

MS MEMELA: Chair, I was just about finished then and then
20 ...(intervenes).

CHAIRPERSON: Oh. You had not finished your answer?

MS MEMELA: I had not finished.

CHAIRPERSON: Ja. That is the point I am making, ja.

MS MEMELA: Ja, but I am not going to take long.

CHAIRPERSON: Ja. Just finish your answer.

MS MEMELA: Just for the Commission's understanding and for record. I just needed to – I know – am I allowed to ask an Evidence Leader, because I want to understand this document in front of us.

CHAIRPERSON: Ask for clarification.

MS MEMELA: Clarification.

CHAIRPERSON: You can ask for clarification.

MS MEMELA: Yes. I would like to ask Ms Hofmeyr there are dates here that are under "capitalised on". I just want clarify on that if you understand what those dates were for.

10 **ADV KATE HOFMEYR:** No. I was not employed at SAAT at any point.

MS MEMELA: Oh. Okay.

CHAIRPERSON: H'mm.

MS MEMELA: You see now.

CHAIRPERSON: Well let us go back to the question. Okay. I think just stop there.

MS MEMELA: Okay.

CHAIRPERSON: Too much has happened since the question was asked.

MS MEMELA: Yes.

20 **CHAIRPERSON:** Just go back to the question Ms Hofmeyr. I just want to ...(intervenes).

MS MEMELA: Ja.

ADV KATE HOFMEYR: Right.

MS MEMELA: Because I just need clarity Chair on the June 2016 one.

CHAIRPERSON: To make sure. Hang on. Hang on.

MS MEMELA: Oh. Okay.

CHAIRPERSON: Let us go back to the question. You listen to it and you give a crisp answer to it.

ADV KATE HOFMEYR: Ms Memela you confirmed you had not seen this document before you engaged in the negotiations of the GPU sale price. Correct?

MS MEMELA: Yes. I confirmed.

ADV KATE HOFMEYR: Thank you. I do not need to deal with the document any further then, if you did not see it at the time.

10 **MS MEMELA:** Oh. So there is this ...(intervenes).

ADV KATE HOFMEYR: What I would then like to go to is ...(intervenes).

MS MEMELA: Okay.

ADV KATE HOFMEYR: The submission that Mr Phiri who was the Acting CEO prepared for the Board before he took the decision to sell the GPU's, because Mr Phiri spent some time looking at the book value of the GPU's and made submissions to the Board about what the book value was.

MS MEMELA: Okay.

20 **ADV KATE HOFMEYR:** So if we could go there. Your ...(intervenes).

MS MEMELA: Chair ...(intervenes).

CHAIRPERSON: Ja.

MS MEMELA: I feel that it is too easy.

CHAIRPERSON: Huh-uh.

MS MEMELA: Or maybe it will not give clarity to the public or our – I

mean people who had read about this whole thing in the media
...(intervenes).

CHAIRPERSON: H'mm.

MS MEMELA: And I am glad I see NUMSA is here. They have been quite interested in this GPU issue.

CHAIRPERSON: Huh-uh.

MS MEMELA: If Ms Hofmeyr decides not to deal with that document, because I have had a relevant question asked about the dates.

CHAIRPERSON: Yes.

10 **MS MEMELA:** Remember when Open Water ...(intervenes).

CHAIRPERSON: H'mm.

MS MEMELA: Reached a wrong conclusion ...(intervenes).

CHAIRPERSON: H'mm.

MS MEMELA: On this matter.

CHAIRPERSON: H'mm.

MS MEMELA: I am still going to add that like they actually even used the wrong provision of the SCM to reach their conclusion.

CHAIRPERSON: Yes.

MS MEMELA: So their conclusion was based on this documentation.

20 That is why I said I actually only started like I am seeing this during my disciplinary hearing ...(intervenes).

CHAIRPERSON: Ja.

MS MEMELA: And then at the CCMA where I had to actually defend myself ...(intervenes).

CHAIRPERSON: Yes.

MS MEMELA: And clear myself from this whole thing ...(intervenes).

CHAIRPERSON: Yes.

MS MEMELA: But now if when I ask a question.

CHAIRPERSON: H'mm.

MS MEMELA: Maybe – and then because there are no answers. Like -
as Ms Hofmeyr said I was not an employee of SAAT.

CHAIRPERSON: H'mm.

ADV KATE HOFMEYR:

MS MEMELA: Remember like she was going to use this as evidence
10 and ...(intervenes).

CHAIRPERSON: But she ...(intervenes).

MS MEMELA: And now ...(intervenes).

CHAIRPERSON: Hang on. Hang on.

MS MEMELA: Ja.

CHAIRPERSON: Hang on Ms Memela

MS MEMELA: Yes.

CHAIRPERSON: I understand your concern about maybe certain
aspects not being asked or not been dealt with to your satisfaction at a
particular point in time, but she is there to lead evidence in regard to
20 what is relevant and important to the Commission.

MS MEMELA: Okay Chair.

CHAIRPERSON: It may be that some things that she regards as
relevant and is important to the Commission are not the same that you
regard as important and relevant to be dealt with, but where she asks
you a question and to answer it you need to look at a document I will

allow you to do that.

MS MEMELA: Okay.

CHAIRPERSON: Subject to the ambit of the question ...(intervenes).

MS MEMELA: Fair enough Chair.

CHAIRPERSON: But your lawyer is there to keep an eye on some of the things that she knows having consulted with you may be important for you and that at a later stage when she gets an opportunity to re-examine she could then look at some of the answers you had given and give her a chance to clarify.

10 **MS MEMELA:** Okay Chair.

CHAIRPERSON: So ...(intervenes).

MS MEMELA: It if fair enough.

CHAIRPERSON: Okay. Alright.

MS MEMELA: Yes.

CHAIRPERSON: Okay. Thank you.

ADV KATE HOFMEYR: Chair and just in explanation before I move to the next question. The part of the evidence that we are interested in at the moment is Ms Memela's role in negotiating the sale price.

CHAIRPERSON: Yes. Yes.

20 **ADV KATE HOFMEYR:** It is for that purpose that I am seeking to establish through the questions of Ms Memela what she knew at the time. When Ms Memela indicates to me she did not see a document at the time I must leave it ...(intervenes).

CHAIRPERSON: Yes. Yes.

ADV KATE HOFMEYR: Because it was then not something that was

weighing ...(intervenes).

CHAIRPERSON: *Ja.*

ADV KATE HOFMEYR: On her mind.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: I have now moved to the next place.

MS MEMELA: Okay.

CHAIRPERSON: H'mm.

ADV KATE HOFMEYR: Where there was an indication of what the asset value was ...(intervenes).

10 **CHAIRPERSON:** H'mm.

ADV KATE HOFMEYR: Because I am then going to ask Ms Memela whether she had that knowledge ...(intervenes).

CHAIRPERSON: H'mm. H'mm.

ADV KATE HOFMEYR: At the time.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: There is no intended unfairness.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: I cannot persist in a line of questioning ...(intervenes).

20 **CHAIRPERSON:** H'mm.

ADV KATE HOFMEYR: With the witness.

CHAIRPERSON: H'mm.

ADV KATE HOFMEYR: Where I am trying to establish her state of knowledge ...(intervenes).

CHAIRPERSON: H'mm.

ADV KATE HOFMEYR: At the time.

CHAIRPERSON: H'mm.

ADV KATE HOFMEYR: When I present her with a document and she says she did not see it ...(intervenes).

CHAIRPERSON: *Ja.*

ADV KATE HOFMEYR: At the time.

CHAIRPERSON: H'mm.

ADV KATE HOFMEYR: I must then move on with ...(intervenes).

CHAIRPERSON: Yes.

10 **ADV KATE HOFMEYR:** Your leave Chair.

CHAIRPERSON: Yes. Yes. No. That is ...(intervenes).

ADV KATE HOFMEYR: And so I move on

CHAIRPERSON: H'mm.

ADV KATE HOFMEYR: To Exhibit DD22B and that is the Human exhibit and if you pick it up at page 811.

CHAIRPERSON: H'mm. I see we are at the time that – when we normally take the tea break.

ADV KATE HOFMEYR: Indeed Chair.

20 **CHAIRPERSON:** I propose not to take the tea break unless either the witness or you, Ms Hofmeyr, needs some break, because I am going to – we are going to have an extended lunch today, because I need to attend to another commitment in my other capacity that is urgent. So our lunch will be longer than normal. Maybe two hours.

So I am – I want us to use this tea break if we can, but if either the witness or Ms Hofmeyr, because they are the only ones who

cannot sneak out while they were talking. If they are fine to continue without a break we will, but if one of them wishes to have some break. Then we will have a break. Ms Memela, you would like to have a break.

MS MEMELA: Yes Chair.

CHAIRPERSON: H'mm.

MS MEMELA: The reason why I am raising this without my lawyer is that remember on Friday I had mentioned that I was supposed to drive down to Eastern Cape and I ...(intervenes).

CHAIRPERSON: Yes.

10 **MS MEMELA:** You had asked for Monday maybe to use two to three hours ...(intervenes).

CHAIRPERSON: Yes.

MS MEMELA: But I want to give – to inform you that we are okay with the whole day.

CHAIRPERSON: Whole day. Okay.

MS MEMELA: So you do not have to be under pressure as long as everything when we leave here is as clear as possible.

CHAIRPERSON: Is finalised?

MS MEMELA: Yes.

20 **CHAIRPERSON:** No. Thank you. Thank you very much. Thank you very, very much for that.

ADV KATE HOFMEYR: And Ms Memela you are happy to proceed?

CHAIRPERSON: But as for the break you do not have a problem?

MS MEMELA: A break we do need it Chair.

CHAIRPERSON: You need some break?

MS MEMELA: Yes.

CHAIRPERSON: Okay.

MS MEMELA: Ja.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: Chair, if I may make the request then?

CHAIRPERSON: H'mm.

ADV KATE HOFMEYR: Just in the break if Ms Memela could find the Minutes she was looking for. We have not been able to find them in the annexures that she provided, but she can obviously use the break just
10 to go through them and assist us with where they are in the bundle
...(intervenes).

MS MEMELA: Okay.

CHAIRPERSON: Oh. Okay.

ADV KATE HOFMEYR: And then when we return we will deal with the SAAT CEO submission.

MS MEMELA: Okay.

CHAIRPERSON: Oh. Okay. Then we will take the tea break. It is 11:20 now. We will resume at 11:35.

MS MEMELA: Okay Chair.

20 **CHAIRPERSON:** We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: I would like us as far as possible to try and have a smooth-running session. Now that does not mean, Ms Mbanjwa, that if

there is something you feel strongly about you should not raise it, but I would like all of us to try.

Ms Memela this is also directed at you. I would like us to try and run as smoothly as possible. In the process, I would like you to try to give crisp answers, short answers to short questions and Ms Mbanjwa is there to, she knows your story, she has taken instructions from you, she will be alive to somethings that you might wish to have clarified later on.

MS MEMELA: Okay.

- 10 **CHAIRPERSON:** But apart from that, when you are done, when Ms Hofmeyr is done, either before Ms Mbanjwa re-examines you I will give you a chance to deal with other matters that are relevant to some of the questions which you think might be part of putting your case properly to the Commission. Okay.

MS MEMELA: Thanks Chair.

CHAIRPERSON: But I would like us to go quickly and smoothly with regard to questions and answers. So, and the shorter the answers, the better.

MS MEMELA: Okay..

- 20 **CHAIRPERSON:** Okay, thank you, Ms Hofmeyr.

ADV KATE HOFMEYR: Thank you Chair. Before we broke for the tea adjournment we were going to be looking at Exhibit DD22B at page 811.

CHAIRPERSON: I think I am looking at the wrong one.

ADV KATE HOFMEYR: I think Claire is assisting. Page 811 of Exhibit DD22B. Ms Memela what is this document?

MS MEMELA: Chair this is the Site Board submission.

ADV KATE HOFMEYR: And who was it compiled by?

MS MEMELA: Based on the signature and based on who is it from. It Acting CEO SAAT, Mr Arson Malola-Phiri.

ADV KATE HOFMEYR: And the date of the document?

MS MEMELA: The date was 15 June 2016.

ADV KATE HOFMEYR: We saw previously, the extract from the Minutes indicated that the Board Meeting was also on the 15th of June 2016. Does that accord with your memory?

10 **MS MEMELA:** Yes Chair.

ADV KATE HOFMEYR: Let us go if we may to the bottom of page 812. You will see there at the bottom 812 there is a heading under 6 “financial implication”, do you see that?

MS MEMELA: Financial implications? Yes.

ADV KATE HOFMEYR: Could you read into record what Mr Phiri the acting CEO of SAAT recorded under financial implication?

MS MEMELA: Okay.

20 “Financial implication: Each unit was purchased at a cost of R766 165.10. Each with a total cost of nine million hundred and ninety-three, nine five or nine six one, is it nine eight one, twenty, excluding shipping costs. The current value of each unit per SAA Asset Register is at six eighty-two eight ninety sixty-two. Selling the units at current asset value should realize an income of 4.7 million.

CHAIRPERSON: Four million, seven hundred and eighty ... (intervenes).

MS MEMELA: Four million seven hundred and eighty, two thirty-one forty.

CHAIRPERSON: Ja.

ADV KATE HOFMEYR: Thank you. Ms Memela it appears from this document that Mr Arson Phiri the then acting CEO did have cause to look at the Asset Register and reflect the amount in the Asset Register do you agree with that?

10 **MS MEMELA:** I would think so because this amount that he has written here is the same as what was written there on the Asset Register that we rejected, that was written by hand 2016 although it had ... (intervenes).

ADV KATE HOFMEYR: No, it is actually different. But we do not need to go back to that document ... (intervenes).

MS MEMELA: That amount yeah?

ADV KATE HOFMEYR: Yes, so his amount here, having looked at the Asset Register is R862 890.62 per unit. Correct? Now, did you have reason to discuss with Mr Phiri what he had said in his submission to
20 the Board? Oh, sorry Chair, I see there is an objection.

CHAIRPERSON: Oh okay+

.

MS MBANJWA: Thank you Chair. The basis of the objection is the fact that what we asked when we objected for this first time Chair is to say, let us have a proper Asset Register, so that the questions then can

pertain to the proper Asset Register.

This is still not a proper Asset Register. And Ms Memela has been asked to authenticate this document as if it is her document. She is not the author of this document; therefore, she cannot confirm the correctness of the contents of this document. Otherwise that is prejudicial.

CHAIRPERSON: No, no, my understanding of the question was that she was supposed to just give her own understanding. I do not think there was really a problem, but make a note when you re-examine, you
10 can clarify all of those things.

MS MBANJWA: Thank you Chair.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: Ms Memela were you aware that the acting CEO had indicated to the Board through this submission on the 15th of June 2016 that according to the then Asset Register of SAAT, each unit's value was R683 380.62.

MS MEMELA: No Chair, I was not aware. When the acting CEO gave us the instruction to sit and negotiate the proposal. What he gave us was the proposal, that one page that talks to the GPU equipment, like
20 from the SAA Swissport contract, plus the Board Resolution. Yes Chair.

CHAIRPERSON: Thank you.

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

CHAIRPERSON: Thank you. Well I must say Ms Memela your answers are very crisp now.

MS MEMELA: Ja, I am trying Chair.

CHAIRPERSON: Yes, you are doing well.

MS MEMELA: Thanks Chair.

CHAIRPERSON: Thank you.

ADV KATE HOFMEYR: And then let us move to the meeting you had on the 21st of June 2016. I understood your evidence previously to be the Mr Makaleng and Mr Vosloo attended that meeting with you, is that correct?

MS MEMELA: That is correct Chair.

ADV KATE HOFMEYR: Ms Memela both Mr Makaleng and Mr Vosloo
10 have given affidavits to the Commission in which they deny having attended those meetings. Mr Makaleng's I will take you to in a moment, is already in your bundle.

Mr Vosloo's affidavit came through this morning Chair, so it was added to the bundle this morning, but he has subsequently just in the course of the hearing identified two typographical errors in his affidavit and so he has provided a further supplementary affidavit I would like to beg leave just to hand those in if I may.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: They have already been paginated they will
20 come at the end of Exhibit DD25B and they are paginated from page 742. They have been paginated already.

CHAIRPERSON: The affidavits of Mr Standton Leonard Vosloo and that of mister – oh both of these are Vosloo.

ADV KATE HOFMEYR: Yes, they are indeed.

CHAIRPERSON: Oh, okay. I admit and they will be added to Exhibit

25B and they will run from page 742 to page 750. Is that correct?

ADV KATE HOFMEYR: Indeed Chair.

CHAIRPERSON: Okay, alright.

ADV KATE HOFMEYR: We are indebted.

CHAIRPERSON: Thank you.

ADV KATE HOFMEYR: Apologies, 751 I understand Chair goes right to 751.

CHAIRPERSON: Oh yes, up to 751.

ADV KATE HOFMEYR: Thank you.

10 **CHAIRPERSON:** Thank you.

ADV KATE HOFMEYR: Ms Memela do you maintain in your testimony to the Commission that despite the fact that both Mr Makaleng and Mr Vosloo say that they were not at the meeting on the 21st of June, that they were at the meeting.

MS MEMELA: I maintain Chair.

ADV KATE HOFMEYR: Right. Let us look at the proof that Mr Makaleng provides for having not attended the meeting. And you will find that in DD25B at page 630.

CHAIRPERSON: One second. 25B.

20 **ADV KATE HOFMEYR:** 630 Chair.

CHAIRPERSON: 25B. 630, yes. Sorry let me put this in the right place. 630, yes.

ADV KATE HOFMEYR: Chair that is the first page of Mr Makaleng's affidavit and I would like to draw Ms Memela's attention to one or two aspects of the affidavit ...(intervenes).

MS MEMELA: Sorry Chair, I am not there. Is it the file of Mr Human or my file?

ADV KATE HOFMEYR: No it is your file, so DD25B ...(intervenes).

CHAIRPERSON: Well Ms Memela I think we were on the same, I was having Human's bundle as well, I just rid of it.

ADV KATE HOFMEYR: Apologies, there are far too many A's, B's, C's, *etcetera*. We are in Ms Memela's bundle that is for the record Exhibit 25 and we are in the "B" volume and we are looking at page 630.

MS MEMELA: Ja, I am there Chair.

10 **ADV KATE HOFMEYR:** Thank you. So, the affidavit commences at page 630, and what Mr Makaleng goes on to deal with at page 631, is his involvement in the sale of the Ground Power Units. There are just a few paragraphs I would like to highlight and then ask for Ms Memela's comment. We can pick it up at paragraph 7 on page 631. What Mr Makaleng says at paragraph 7 is:

20 "I was requested in early 2016 by Mr Arson Malola-Phiri who was the acting Chief Executive Officer for SAAT. He e-mailed me and instructed to me prepare a submission for the sale of the GPU's. This was not something I was in favour of as can be seen in the example correspondence in Annexure CM1, but I prepared a draft submission as instructed."

Mr Makaleng goes on to explain how he had first drafted the submission to suggest selling only seven of the 12 units and retaining five. But the relevant next paragraph I would like us to look at in its

own words is over the page at 632, Mr Makaleng in his affidavit says:

“The GPU value I included in the submission was R682 890.62 each, which came out at the Asset Register at the time subject to depreciation.”

Chair I just pause there to indicate for the record that is the same amount that was included in the submission that the acting CEO then gave to SAAT that we have just looked at. And then he goes on at paragraph 13 to say the following, he is talking about the meeting scheduled for 21 June, he says, and I quote:

10 “I did not attend this meeting which was scheduled for 21 June 2016 from 11:00 to 12:00. I did not accept the invite that I would attend the meeting because the invite to this meeting was sent to me at 09:09 on the 21st of June 2016 at which time I was attending our daily operations meeting (delay meeting), which starts at 09:00 to 10:30, and would not have been able to see the meeting invite in time. I was also not in favour of the transaction and would not have attended the meeting to

20 dispose of the 12 GPU's. I have not attended any meeting with JM Aviation representatives to discuss the sale of the GPU's nor pricing at any stage. I have also not attended any SAAT internal meeting to discuss the pricing of the GPU's to be sold.”

There is a reference in that paragraph to an Annexure CM4

which I would like to take us to because that is the meeting invite which Mr Makaleng attaches to his affidavit. You will find that the same volume DD25B at page 647.

MS MEMELA: Page?

ADV KATE HOFMEYR: 647. That – Mr Makaleng explains is the meeting invite that he received. Ms Memela can you indicate the date reflected on that page from the calendar of Mr Makaleng?

MS MEMELA: The date?

ADV KATE HOFMEYR: Yes.

10 **MS MEMELA:** Is 21/06/2016.

ADV KATE HOFMEYR: Thank you and then if you look at the bottom right hand corner there is a box there that says GPU discussion. Do you see that?

MS MEMELA: Ja.

ADV KATE HOFMEYR: Do you see that it gives a start time? What is the start time of that discussion?

MS MEMELA: The start time 11:00.

ADV KATE HOFMEYR: What is the end time?

MS MEMELA: 12:00.

20 **ADV KATE HOFMEYR:** Who was indicated as the Organiser of that discussion?

MS MEMELA: It was Nontsasa Memela.

ADV KATE HOFMEYR: And what does it say at the bottom of that block?

MS MEMELA: This meeting has not been accepted.

ADV KATE HOFMEYR: Do you have a comment on Mr Makaleng's evidence in – on affidavit that he did not attend the meeting and the proof that he provides for that?

MS MEMELA: I have the comments Chair and I still stand by my statement. I did say that he did attend the meeting and I did not refer to the acceptance because I know that he had at first rejected the meeting then he popped up before the meeting, I think it was 10 minutes before the meeting.

We went to the meeting, we attended it and we discussed
10 everything in that meeting with them him, and Stan Vosloo. Like I said on Friday that in fact just to go back Chair so that I finish early, I see that he says he was attending the delay meeting ...(intervenes).

CHAIRPERSON: Another meeting *Ja*.

MS MEMELA: Yes, that was starting from 09:00 to 10:30. So, I remember that he came in just 10 minutes before the meeting started at 11:00. Meaning like I mean he was early enough to attend that meeting, so he came he rejected it, but he was there, and I said Friday Chair and I understand my former colleagues maybe trying to distance themselves from this because there has been so much that was said about this
20 transaction and of course him saying that he was against the transaction, of course he was.

He did say that he wanted to have seven GPU's sold but the acting CEO, not Nontsasa, changed his submission to 12:00, you understand so and as the owner of the what the Department that owns the GPU's. I mean it should not end at being in favour or not agreeing to the

sale of GPU's. We are all HOD's.

I mean my understanding is that at an executive level you have a fiduciary level to act in the best interest of the company. So at least if we had that kind of an evidence that says, you see actually after I have shown my unhappiness about this say that the Board had already approved.

This is what I did, I reported to the relevant authority. Chair we work for the State Owned Companies and there are certain procedures that have to be followed like for a person who is not happy about a
10 certain transaction such as this one to show that you know what, they did this thing without me and I was not happy and I showed it, here is proof.

CHAIRPERSON: So, you are saying two or three things?

MS MEMELA: Yes, Chair.

CHAIRPERSON: One is, you say; what he says in his affidavit that he did not attend that meeting is not true.

MS MEMELA: Is not true Chair.

CHAIRPERSON: You stand by your evidence that he did come.

MS MEMELA: I stand by my evidence.

CHAIRPERSON: You even remember that he arrived about 10 minutes
20 before the meeting could start.

MS MEMELA: Yes, Chair.

CHAIRPERSON: And you accept that he had declined? Is that right?

MS MEMELA: I accept that he had rejected the meeting request.

CHAIRPERSON: Rejected the invitation, Yes.

MS MEMELA: Yes, which is I do think he thought he will take longer in

the delay meeting.

CHAIRPERSON: Yes.

MS MEMELA: The delay meeting Chair is not a for instance an executive meeting, remember like this one involved the asset that was under his department. So, the delay meeting he could have sent his senior manager.

CHAIRPERSON: Somebody else.

MS MEMELA: *Ja*, so when he attended there and decided to come and join us I thought okay, he thought like I mean he is in a what presence
10 will be important and he was there.

CHAIRPERSON: Okay, now that he declined is that something you came to know afterwards or is that something you knew before he arrived 10 minutes that he had declined the request.

MS MEMELA: I think – I knew because at first, he accepted it and during the disciplinary hearing Chair and the same day I had this evidence.

CHAIRPERSON: Yes.

MS MEMELA: Just that when I was sending it to the Commission, I could not find it but I can look for it and send it.

20 **CHAIRPERSON:** Yes.

MS MEMELA: He had accepted first and then later on rejected.

CHAIRPERSON: Rejected.

MS MEMELA: Then as colleagues.

CHAIRPERSON: And then he came.

MS MEMELA: Exactly, as colleagues I pick up the phone and then I said

Ow, Chille, I mean why are you rejecting. You accepted first and he said I do not know what, I do not remember he said but what I know is that he joined us for that meeting.

CHAIRPERSON: And you agree with him that he was against the transaction? But you say that he was there at the meeting?

MS MEMELA: I agree with him that he was against the sale of the 12 GPU's. Yes, he was proposing he even did the submission that like seven should be sold.

CHAIRPERSON: Yes, okay.

10 **MS MEMELA:** And then showed that to Mr. Arson Malola-Phiri acting CEO. Acting CEO showed him apparently the what you call the copy of the Swissport SAA contract that look my hands are tied as the acting CEO. This thing says that we should sell all 12 of them. Yes.

CHAIRPERSON: Okay. Thank you

ADV KATE HOFMEYR: Ms Memela are you aware that the award of the arbitrator of your CCMA proceedings does not refer to this aspect of your evidence? That he first accepted and then rejected it?

MS MEMELA: Okay I did not quote my award when I was responding I was not quoting the award from the CCMA.

20 **ADV KATE HOFMEYR:** No, indeed, so I am asking you are you aware that the arbitrator did not reflect that in his award?

MS MEMELA: Is it saying something opposite to what I am saying?

ADV KATE HOFMEYR: The arbitrator's award resolved this issue on the basis that the Mr Makaleng's rejection of attending the meeting had not been made available in the course of the CCMA proceedings?

MS MEMELA: Yes, and the fact that Chair, Open Water did not approve – could not prove that indeed he changed his mind and go and attended the meeting. So, it was like his word against mine.

CHAIRPERSON: But I must just I think you if you say what you have just said is part of what you testified about this at the CCMA, you can say, that is what I said at the CCMA.

MS MEMELA: Yes, Chair.

CHAIRPERSON: If the award does not reflect that it might not reflect but certainly if anybody goes to check the recordings, they will find that
10 I said it. If that is your evidence.

MS MEMELA: That is my evidence, Chair.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: Let us move to Mr Vosloo is he also giving false evidence before this Commission when he says that he did not attend the meeting?

MS MEMELA: Okay, can we go to his affidavit and then.

ADV KATE HOFMEYR: Yes, I am just asking for your, whether you maintain your version that he did not attend the meeting?

MS MEMELA: I maintain my evidence, Chair, because as I said the
20 only person who did not attend who I know for sure that he was not there was Leon Roberts being the Senior Manager of Inventory in Logistics.

ADV KATE HOFMEYR: And Ms Memela you have emphasised Mr Makaleng's responsibility as the owner of these assets, is that correct?

MS MEMELA: That is correct.

ADV KATE HOFMEYR: So, did he lead the discussions at that meeting to arrive at a sale price?

MS MEMELA: Chair, it was not about who is leading the discussions, who is Chairing the meeting because remember I am the one who actually called the meeting.

CHAIRPERSON: Yes, hang on.

MS MEMELA: Yes.

CHAIRPERSON: You see you were doing very well I think when I asked you questions I put you back to you can say yes, he lead the
10 discussion or no, he did not lead the discussion.

MS MEMELA: No, he did not lead the discussion, Chair.

CHAIRPERSON: Yes, and then will you wait for the next question?

ADV KATE HOFMEYR: Was it you who lead them?

MS MEMELA: I did not lead the discussions because I mean we let the representatives of JM to put their story on the table based on the proposal. No, I did not lead.

ADV KATE HOFMEYR: So, who lead?

MS MEMELA: Okay.

CHAIRPERSON: You might not be able to say who lead because
20 everybody was talking, I do not know ...(intervenes).

MS MEMELA: Exactly.

CHAIRPERSON: But just give the best answer that you can give if it is clear who that somebody was leading the discussion you can say so and so was leading if you are not sure who was leading because everybody was talking.

MS MEMELA: Okay, Chair. Maybe the problem now is that maybe the question how it is formulated in terms of leading the meeting, because like I called the meeting ...(intervenes).

CHAIRPERSON: Maybe what you can do is, you can say who Chaired the meeting, and then you can say whether there was somebody who introduced this subject to the meeting and tell us who those are, and then in terms of discussion whether you are able to say there was somebody leading the discussion.

If you are able to say, you say so, so and so was leading as far I am concerned. If you are not able, you say; I cannot say who was leading.

MS MEMELA: Okay, because I called the meeting Chair, then I think I may have been the one who opened the meeting discussions. I am not running away from leading, because I have mostly Chaired meetings and lead but this one I am saying, opening discussions and I was the most I think active in asking questions because ...(intervenes).

CHAIRPERSON: You spoke because ...(intervenes).

MS MEMELA: I even asked the one that, how did they reach the amount that like the made the proposal to the acting CEO in April. That is when they responded via e-mail saying thank you for the meeting and then responded.

ADV KATE HOFMEYR: Let us then go to Mr Vosloo's affidavit if we may. You will find that in the same bundle DD25B at page 742.

MS MEMELA: Is it not the one that was just ...(intervenes).

CHAIRPERSON: Ja, it is the one that has just been handed out.

ADV KATE HOFMEYR: Now I am going to ask us to look at Mr Standton Leonard Vosloo for the record that is V-o-s-l-o-o. if we go over the page to page 743, you will see a paragraph 6 he deals with this meeting, he says there:

“I have been interviewed during the forensic investigations into this matter. I am also aware through these investigations and through interviews with the investigators at the State Capture Commission that Advocate Nontsasa Memela then
10 HOD procurement at SAAT alleged that I attended a meeting on 2 June 2016 at SAAT.”

Chair that is where the error has been identified. The supplementary affidavit at page 750 makes it clear that he meant to refer to the meeting we are talking about which is the 21 June meeting ...(intervenes).

CHAIRPERSON: 21? Okay.

ADV KATE HOFMEYR: Indeed, but just for reference purposes that correction appears in Exhibit DD25B at page 750. He says – he goes and I quote from his affidavit:

20 “The meeting was apparently for discussions on the sale of the GPU’s. Reference to the meeting is attached as per Annexure SV1. The meeting was allegedly with members of JM Aviation.”

At paragraph 7 he says:

“I deny that I was ever involved with or in any

meeting whatsoever with the sale of the GPU's were discussed, any pricing was discussed or any agreed price was reached."

Ms Memela if I just stop there, is his evidence before the Commission false?

MS MEMELA: The part Chair that he did not attend the meeting is false. The part where he said the price was not – the final price was not reached in terms of negotiations is correct, because that is when we had asked them to go home and then give us a background of how
10 did they reach the amount that they had proposed to the Acting CEO at that time.

ADV KATE HOFMEYR: And then at 8 – paragraph 8, he says:

"My only involvement was where I received an e-mail from Mr Jules Heirs indicating the offer to purchase and price offered. I then forwarded this e-mail on 11 July 2016 to Advocate Memela asking if this was correct and that my department need to issue the invoice."

A copy of this e-mail trail is attached as Annexure SV2.
20 Advocate Memela's response was and there is another correction here. He indicates that:

"The response was yessed, and this was the price we agreed on. This was on this e-mail that I proceeded to draft an invoice."

But he has corrected that again at page 750 because what Ms

Memela's e-mail reflects was:

"Yes Stan, that was the reviewed price."

But let us go to the actual e-mail so that we can follow it, and you will pick that up at page 747 in the same bundle DD25B. Ms Memela you may need to just go back a page to 746 so that we can see the start of the e-mail.

The content of which appears at 747. If you go right to the bottom of 746 can you tell us what e-mail that is?

MS MEMELA: So, 747 will be in Mr Human's thing?

10 **ADV KATE HOFMEYR:** No, we are still in the same document that was handed in of Mr Vosloo. It is an attachment to his e-mail so if you just go on further in the pack that you have in front of you, and you go to page 746.

MS MEMELA: Oh okay.

ADV KATE HOFMEYR: Let us start at the bottom of that page. There is an e-mail there right at the bottom from Khosi Sokhulu, do you see that?

MS MEMELA: At the 746 or 747?

ADV KATE HOFMEYR: Yes, 746 right at the bottom is the start of the
20 e-mail. Do you see that?

MS MEMELA: I see that.

ADV KATE HOFMEYR: And who does Ms Sokhulu send the e-mail to?

MS MEMELA: Ms Sokhulu Sir, is sending the message to Advocate Memela.

ADV KATE HOFMEYR: And who else?

MS MEMELA: It is just Advocate Memela.

ADV KATE HOFMEYR: I think also after that it says “Jules” does it not?

MS MEMELA: After that it is Jules.

ADV KATE HOFMEYR: Yes, so she sent to both you and Jules. Who is Jules?

MS MEMELA: Jules is the CEO as per the proposal from JM – is the CEO of JM. I do not know JM Aviation South Africa or JM International but ...(intervenes).

10 **ADV KATE HOFMEYR:** And what was the date of the e-mail?

MS MEMELA: It was the 7th – no, no, it was the 21st of June 2016.

ADV KATE HOFMEYR: That was the day you had the meeting, is that right?

MS MEMELA: That is day of the meeting *ja*.

ADV KATE HOFMEYR: And what time was it sent?

MS MEMELA: At 14:39.

ADV KATE HOFMEYR: Thank you.

MS MEMELA: *Ja*.

20 **ADV KATE HOFMEYR:** If you go over the page to 747, what does Ms Sokhulu say to you in her e-mail?

MS MEMELA: Okay.

“Dear Advocate Memela, thank you for meeting with us today with regards to the Ground Power Units. We would like to give a brief explanation as to how we reached our offer, price of 225 000 per GPU. At present

the are newer generation models under a year old available in the market that can be purchased at very competitive pricing. In addition, the worldwide second-hand market for GPU's is soft currently due to the negative economic environment. In consideration of our discussion we are able to amend our offer price to 248 000 per GPU. Best regards Khosi Sokhulu."

ADV KATE HOFMEYR: She sends that e-mail only to you as a representative of SAAT? Is that correct?

10 **MS MEMELA:** She send it to me, yes.

ADV KATE HOFMEYR: Yes.

MS MEMELA: Ja.

ADV KATE HOFMEYR: And then you will see above that there is another e-mail they sent on the 7th of July 2016. Who is that from and to?

MS MEMELA: 7th of July.

ADV KATE HOFMEYR: Yes.

MS MEMELA: It was coming from Jules.

ADV KATE HOFMEYR: That is Mr Aires, A-i-r-e-s, for the record.

20 **MS MEMELA:** Yes.

ADV KATE HOFMEYR: He is the JM Aviation ...(intervenes).

MS MEMELA: JM Aviation.

ADV KATE HOFMEYR: Representative and who does he sent it to?

MS MEMELA: He is sending it to Stan.

ADV KATE HOFMEYR: That is Mr Vosloo.

MS MEMELA: Vosloo.

ADV KATE HOFMEYR: Yes.

MS MEMELA: H'mm.-hmm.

ADV KATE HOFMEYR: And who else?

MS MEMELA: And Vuyiso Mbonani being the Senior Manager SCM.

ADV KATE HOFMEYR: Thank you and what does he say in that e-mail?

MS MEMELA: He says:

“Hi Stan, below is our offer to purchase letter.”

ADV KATE HOFMEYR: And then above that there is a communication
10 between Mr Vosloo and yourself.

MS MEMELA: Yes.

ADV KATE HOFMEYR: Do you see that?

MS MEMELA: Yes.

ADV KATE HOFMEYR: When what date was that?

MS MEMELA: The date is 11 July 2016.

ADV KATE HOFMEYR: And what does Mr Vosloo say to you in that e-
mail which is a forward of Mr Aires e-mail below?

MS MEMELA: He is saying;

20 “Hi Nontsasa, this is the only information I received on
the sale of the GPU's to Swissport.”

Do you agree with this and that we issue an invoice as per
below?

ADV KATE HOFMEYR: And then your response as I have it is above
that. What did you say in response to Mr Vosloo?

MS MEMELA: I say;

“Yes Stan, that was the reviewed price.”

ADV KATE HOFMEYR: Yes. Now if Mr Vosloo was at this meeting with you, why did you not just say to him, Stan you were at the meeting you know what was discussed.

MS MEMELA: Uh-huh man. Chair, that would not cover the fact that he was there or not. Ms Hofmeyr wants me – he wants an e-mail that would have said, Stan, you were in the meeting. That is the price. I cannot say that because remember I had said as much as I do not agree with Mr Stan saying he did not attend the meeting, I agree with
10 him that the final price was not finalised because we had sent the guys to go and check how did they reach the conclusion. So, me saying, yes Stan, that is the reviewed price and ...(intervenes).

CHAIRPERSON: Was that a reference to ...(intervenes).

MS MEMELA: To the reviewed ...(intervenes).

MS MEMELA: To the fact that the price had been reviewed after the meeting?

MS MEMELA: After the meeting yes.

CHAIRPERSON: So, which anyone who had attended might not have known.

20 **MS MEMELA:** Would understand, exactly.

CHAIRPERSON: Ja.

MS MEMELA: Because remember during the meeting Chair on the proposal that was received from Mr Malola-Phiri, the amount was lesser. And when Khosi Sokhulu writes to us – writes to me, the amount is now more by 20 000 after we had questioned that. So, Stan

says, okay on that this is the only information I have. Is this the price? And I said, yes Stan that was the reviewed price. Because I knew that he understood exactly what the background was. Yes.

ADV KATE HOFMEYR: H'mm.

MS MEMELA: Yes.

CHAIRPERSON: Yes.

MS MEMELA: Yes, because I mean if he did not understand the background Chair he would have said, what do you mean the reviewed price? *Ja*, I mean what was it before? Yes.

10 **CHAIRPERSON:** Okay.

ADV KATE HOFMEYR: So, can I just clarify, your evidence is then in that meeting the price was not finally agreed. Is that right?

MS MEMELA: That is what I said Ms Hofmeyr.

ADV KATE HOFMEYR: Thank you.

MS MEMELA: Initially, I said to you, I disagree with Stan Vosloo that he was not part of the meeting but I agree with him that he was – the price was not finalised because we had asked JM people to go back and check how did they reach the price.

ADV KATE HOFMEYR: So, who finally agreed on the price then if it did
20 not take place at that meeting?

MS MEMELA: Who finally agree?

ADV KATE HOFMEYR: Yes.

CHAIRPERSON: Or who determined it?

ADV KATE HOFMEYR: Yes.

CHAIRPERSON: Who determined it ...(intervenes).

ADV KATE HOFMEYR: From SAAT side?

CHAIRPERSON: *Ja.*

MS MEMELA: Okay. From SAAT side Chair that will be quite – because remember the question now I understand it is, who made the final decision of the price?

ADV KATE HOFMEYR: H'mm.

MS MEMELA: Remember the only time that you can say I have made ...(intervenes).

CHAIRPERSON: Or maybe let us start a little earlier.

10 **MS MEMELA:** Okay.

CHAIRPERSON: Because your e-mail said, yes that is the reviewed price.

MS MEMELA: Yes. Yes Chair.

CHAIRPERSON: Who did the reviewing of the price?

MS MEMELA: Okay, the review after they had gone back Chair ...(intervenes).

ADV KATE HOFMEYR: Apologies.

CHAIRPERSON: Okay alright.

ADV KATE HOFMEYR: I think that might have been me.

20 **CHAIRPERSON:** It might have been me. Okay, who did the reviewing that you talk about in the e-mail.

MS MEMELA: Okay, the review was done by JM Aviation after they went and check and they came back with the reason why they have put that proposal.

CHAIRPERSON: They came back with a revised price.

MS MEMELA: Yes, and then they came back with a revised price.

CHAIRPERSON: Offer.

MS MEMELA: Yes.

CHAIRPERSON: Okay.

MS MEMELA: Yes Chair.

CHAIRPERSON: Okay alright.

MS MEMELA: Remember the offer was made to in April to the Acting CEO Mr Malola-Phiri who said to them, no do not worry I am still going to go to the Board.

10 **CHAIRPERSON:** *Ja*.

MS MEMELA: I am still going to go to the Exco and stuff and then I will get back to you once I get the approval.

CHAIRPERSON: Yes. No, that is fine. I think Ms Hofmeyr then wants to find out who at SAAT responded and said the revised offer from JM is fine? Who made that decision if you do know?

MS MEMELA: Oh, responding to ...(intervenes).

CHAIRPERSON: *Ja* to this revised offer from JM.

MS MEMELA: No there was no e-mail made back to JM saying, okay we agree or maybe – we just continued with the transaction.

20 **ADV KATE HOFMEYR:** Yes, but I am interested in knowing who in SAAT then agreed to the 248 0000 per unit sale price?

MS MEMELA: The one with the extra 20 000?

ADV KATE HOFMEYR: Yes.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: The one referred to in Ms Sokhulu's e-mail of

21 June.

MS MEMELA: I would say Chair because that is what they came back with after the negotiation and then we continued and then it was sent to Stan Vosloo who is responsible for drawing out the invoice. And then he used what was revised by JM and then he asked me to confirm is this was the revised price. So, to say who made that final decision will be to say, okay I said based on this, this was the final decision. Remember Chair, my duty as the HOD SCM is to run tenders and ensure that tenders adhere to the processes and this one it did not go
10 on a tender because the Board had already made the decision.

CHAIRPERSON: Yes. No, no, I understand that.

MS MEMELA: Ja.

CHAIRPERSON: You see I think what Ms Hofmeyr wants is you have a situation where at the meeting of 21 June ...(intervenes).

MS MEMELA: Yes.

CHAIRPERSON: In 21 June?

MS MEMELA: Yes Chair.

CHAIRPERSON: At that meeting you have told me the price was not finalised.

20 **MS MEMELA:** Yes Chair.

CHAIRPERSON: You have told me that JM was asked to go back and look at the price and then they came back.

MS MEMELA: Yes Chair.

CHAIRPERSON: And they made an increased offer. Okay.

MS MEMELA: H'mm.

CHAIRPERSON: Now at some stage somebody from SAAT had to say, this revised offer is acceptable. And Ms Hofmeyr's question is, do you know who that is?

MS MEMELA: I think Chair it would now be based on the invoice that was signed by the Acting CEO and myself co-signing as a witness. But all I am saying is that because remember the line of questioning by Ms Hofmeyr was referring to the amount from the Asset Register that was included in the submission by Mr Arson Malola-Phiri and then now I also want to bring your attention to the fact that he actually signed the
10 revised and final amount. As much as he made that submission to the Board because remember that is way – the reason why I said let us go back to the Minutes. Because I know that during the discussion with the JM guys, we – they actually asked and said, okay we are aware that the GPU's were used for other things ...(intervenes).

CHAIRPERSON: Okay Ms Memela.

MS MEMELA: Ja.

CHAIRPERSON: The question is simple.

MS MEMELA: H'mm.

CHAIRPERSON: You were instructed to negotiate, is that right?

20 **MS MEMELA:** Yes.

CHAIRPERSON: Yes. When you negotiate you need to know what authority you have. What you can agree to and what you do not have power to agree to.

MS MEMELA: Yes.

CHAIRPERSON: And what issues where you would need to refer it to

your principles.

MS MEMELA: *Ja.*

CHAIRPERSON: Before you can agree to. Now did you have the authority to accept that revised offer on behalf of SAAT yourself?

MS MEMELA: I did not have the authority to accept that.

CHAIRPERSON: You did not have. Did you accept it?

MS MEMELA: I did not write an e-mail to say we accept the price.

CHAIRPERSON: Yes.

MS MEMELA: I think because now there are no evidence that shows
10 that I had spoken to the Acting CEO.

CHAIRPERSON: *Ja.*

MS MEMELA: And gave him a feedback that, okay here is the amount that came back. Because the fact that we have now the invoice Chair that states the amount that was revised and signed by the CEO shows that either was a discussion with the CEO that, okay here is the amount that they came back with therefore ...(intervenes).

CHAIRPERSON: But did you discuss the revised offer with this Acting CEO?

MS MEMELA: My understanding Chair as much as I do not remember I
20 understand Arson as a person who would not sign anything until he understands or until he knows that, okay here is the feedback. This is what we did and then here is the feedback.

CHAIRPERSON: H'mm, do you know whether the Acting CEO accepted the revised offer whether in writing or not in writing as did he communicate to you that this was an acceptable price?

MS MEMELA: There is no written communication Chair except with the invoice.

CHAIRPERSON: But verbally?

MS MEMELA: Sorry?

CHAIRPERSON: Verbally, did he communicate to you that this price was acceptable?

MS MEMELA: As much as I do not remember I cannot – remember I said things that I cannot remember I cannot say ...(intervenes).

CHAIRPERSON: Yes.

10 **MS MEMELA:** That were there but I am basing my assumption to the fact that the fact that he signed the invoice.

CHAIRPERSON: *Ja.*

MS MEMELA: For that amount.

CHAIRPERSON: Yes.

MS MEMELA: Showed that we had a discussion verbally.

CHAIRPERSON: Yes.

MS MEMELA: Before he signed the invoice.

CHAIRPERSON: Okay.

MS MEMELA: Yes Chair.

20 **CHAIRPERSON:** Ms Hofmeyr, I know that you might wish to round off the point.

ADV KATE HOFMEYR: Indeed.

CHAIRPERSON: I do want to take an adjournment as soon as we can. So, but maybe you might be needing ...(intervenes).

ADV KATE HOFMEYR: There are probably two points.

CHAIRPERSON: Two. *Ja*, that is fine.

ADV KATE HOFMEYR: If I may just follow up.

CHAIRPERSON: *Ja*, that is fine.

ADV KATE HOFMEYR: Ms Memela you were the only person on 21st of June at SAAT who was sent the reviewed price by JM Aviation, correct?

MS MEMELA: Chair, yes according to the e-mail yes, I was the only person who was sent the reviewed price by JM. As much as on April also the Acting CEO and the Acting CEO Mr Zwane were the ones you were sent the proposal from JM.

10 **ADV KATE HOFMEYR:** Yes.

MS MEMELA: I was not part of that e-mail.

ADV KATE HOFMEYR: Yes. But it is the reviewed price that SAAT sold the GPU's on and you were the only person at SAAT who received the reviewed price, correct?

MS MEMELA: Correct.

ADV KATE HOFMEYR: Yes. I understand your testimony a moment ago to the Chair to be you did not have the authority yourself to agree to that reviewed price on behalf of SAAT. Is that correct?

20 **MS MEMELA:** Yes, I did not have the authority. But when it was signed by the CEO it means I had a discussion with him.

ADV KATE HOFMEYR: Right so, your evidence is you did not have the authority yourself but you do recall a discussion with the CEO about the review price and that is why you and he – well he issued the invoice and you signed it as a witness. Is that your evidence?

MS MEMELA: Yes, that is my evidence.

ADV KATE HOFMEYR: Okay. We can take the break Chair and then we will return if that is suitable.

CHAIRPERSON: No, that is fine. As I indicated earlier on, we are going to take an extended lunch because of some commitment that I need to attend to. We are at 12:20, we will resume at 14:20.

ADV KATE HOFMEYR: Thank you Chair.

CHAIRPERSON: It is something that I could not avoid. We adjourn.

ADV KATE HOFMEYR: Thank you Chair.

REGISTRAR: All rise.

10 **INQUIRY ADJOURNS**

INQUIRY RESUMES

CHAIRPERSON: Okay let us proceed.

ADV KATE HOFMEYR: Thank you Chair.

CHAIRPERSON: Thank you.

ADV KATE HOFMEYR: Ms Memela just before we broke for the lunch adjournment we were in your second bundle that is DD25B and we had been looking at those communications between yourself and Mr Vosloo. You will find that at page 746 of Exhibit DD25B.

ADV LINDELWA MBANJWA: Oh sorry.

20 **ADV KATE HOFMEYR:** There seems to be an objection.

ADV LINDELWA MBANJWA: Chair I am not objecting. I just want to put in a reminder before we adjourned there had been a request from Ms Hofmeyr that Ms Memela should find the Original Minutes.

CHAIRPERSON: Yes no that is fine.

ADV LINDELWA MBANJWA: They have been found.

CHAIRPERSON: Okay.

ADV LINDELWA MBANJWA: I just want to put that.

CHAIRPERSON: *Ja*. Some of these – you can just make a note and give to her and she will then run with it. Okay.

ADV KATE HOFMEYR: Thank you Chair.

CHAIRPERSON: Thank you.

ADV KATE HOFMEYR: Ms Memela you will see at page 746, do you have that?

MS MEMELA: I have it.

10 **ADV KATE HOFMEYR:** Ms Memela if you will put on your – thank you – your microphone.

MS MEMELA: Oh *ja* sorry.

ADV KATE HOFMEYR: So I just want to get the chronology right to recap where we left off. Is it correct that on the 21st of June after your meeting with JM Aviation they sent back the reviewed priced and that is what is contained at page 747, is that correct?

MS MEMELA: Yes.

ADV KATE HOFMEYR: And then it seems on the 7th of July Mr Vosloo is sent by Mr Aires the offer to purchase, is that correct?

20 **MS MEMELA:** That is correct.

ADV KATE HOFMEYR: And then you respond – he forwards that to you a few days later on the 11th of July and asks you whether you agree to this and that we issue the invoice and then you respond to him on the 11th of July “yes Stan that was the review price”, is that correct?

MS MEMELA: Okay which part must I agree on?

ADV KATE HOFMEYR: Just the chronology. So what happens is they send the review price back on the 21st of June.

MS MEMELA: *Ja.*

ADV KATE HOFMEYR: They then send an offer to purchase on the 7th of July?

MS MEMELA: Yes.

ADV KATE HOFMEYR: Is that correct?

MS MEMELA: That is correct.

ADV KATE HOFMEYR: Mr Vosloo engages you on the 11th of July to
10 understand from you whether you agree to that price and that an invoice be issued, is that correct?

MS MEMELA: That is correct Chair. What I wanted to find out was – it was – she said the offer to purchase was forwarded to me so that is why I wanted to be clear what I am agreeing to.

CHAIRPERSON: *Ja* no she is coming to what ...(intervenes).

MS MEMELA: Okay.

CHAIRPERSON: What she wanted you to confirm.

MS MEMELA: Okay.

ADV KATE HOFMEYR: And then you confirm for him on the 11th of July
20 at page 746.

MS MEMELA: Yes.

ADV KATE HOFMEYR: “Yes Stan that was the reviewed price”, correct?

MS MEMELA: Correct.

ADV KATE HOFMEYR: And then in your evidence just before the break

you said you understood that you did not have the authority yourself to agree on the purchase price that would be paid and so you had some engagements with Mr Phiri about that, is that correct?

MS MEMELA: Yes I did not have authority.

ADV KATE HOFMEYR: And you did speak to him about it?

MS MEMELA: I did.

ADV KATE HOFMEYR: Is that correct?

MS MEMELA: Yes.

ADV KATE HOFMEYR: Did you speak to anyone other than him?

10 **MS MEMELA:** I would not remember Chair; I would not remember but I am sure I would only speak to him since he is the one who actually instructed us.

ADV KATE HOFMEYR: Right. And in terms of the chronology can you place it in time? Was it somewhere between the formal offer on the 7th and your confirmation on the 11th July?

MS MEMELA: Okay the e-mail from Ms Sokhulu was on the 21 June 2016 where he was – she was coming back with the feedback on – on the price. And you can see then Jules sent an e-mail to Stan on the 7th of July. I think maybe a week or two after – yes. So Chair Stan
20 forwards the e-mail to me or maybe sends the e-mail to me with the same subject on the 11 July 2016.

ADV KATE HOFMEYR: Correct.

MS MEMELA: And saying this is the only information I received on the sale of GPU's. Remember Chair there is nowhere in these e-mails where it shows that I had actually given Stan Vosloo a background on

the sale of GPU's. Yet when he writes to me he says this is the only information I received on the sale of the GPU's to Swissport. Do you agree to this and that we issue an invoice as per below? And I say, yes Stan that was the reviewed price.

ADV KATE HOFMEYR: Yes I was asking when you likely spoke to Mr Phiri about it? Was it somewhere on the 11th, was it prior to that, what do you recall?

MS MEMELA: I do not recall. But like I am sure that I spoke to him after I had received an e-mail from Ms Sokhulu.

10 **ADV KATE HOFMEYR:** H'mm.

MS MEMELA: The reason for that Chair I do not know if you will allow because then it will ...(intervenes).

CHAIRPERSON: *Ja.*

MS MEMELA: Give clarity to you in terms of the Minutes that I wanted to refer to earlier on.

CHAIRPERSON: *Ja.*

MS MEMELA: Which will help me answer the question.

CHAIRPERSON: Okay.

MS MEMELA: Of Ms Hofmeyr.

20 **CHAIRPERSON:** That is fine. That will – those would help you to have a better idea.

MS MEMELA: Yes Chair.

CHAIRPERSON: When you might have spoken to him – would have spoken to him?

MS MEMELA: Exactly.

CHAIRPERSON: That is fine.

MS MEMELA: Yes Chair.

CHAIRPERSON: Let us do that. What page are they?

MS MEMELA: I will give you the page just now Chair.

CHAIRPERSON: Yes okay.

MS MEMELA: It is the file Exhibit DD25A Nontsasa Memela. Chair it is page 193 File DD25NM page 193.

CHAIRPERSON: Thank you. Yes can you pick up the part that reminds you – that helps you that will help you to say when you would have
10 spoken to the acting CEO?

MS MEMELA: Okay. The part Chair it is not like really reminding me of the date when I spoke to the Acting CEO. But it reminds me that I spoke to him based on what was discussed on the Board Meeting – in the Board – during the Board Meeting.

CHAIRPERSON: Oh so you – the Minutes help you confirm that you did speak to him?

MS MEMELA: Yes.

CHAIRPERSON: But as to when you are not sure?

MS MEMELA: I do not remember. Yes Sir.

20 **CHAIRPERSON:** But it would have been after you got the e-mail from Ms Sokhulu?

MS MEMELA: After that. Yes Chair.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: Thank you. Ms Memela one last point of recap. You indicated that there was no other correspondence between yourself

and JM Aviation after you received the e-mail from Ms Sokhulu on the 21st June, is that correct?

MS MEMELA: I said I do not remember if there was any communication but I do not remember accepting or accepting the offer as final. Because I do not have that authority to accept the offer as final.

ADV KATE HOFMEYR: Indeed.

MS MEMELA: Yes.

ADV KATE HOFMEYR: Can we go to in Exhibit DD25B page 616?

CHAIRPERSON: What is the page number?

10 **ADV KATE HOFMEYR:** 616 Chair.

CHAIRPERSON: 616

ADV KATE HOFMEYR: Yes of DD25B.

CHAIRPERSON: Okay.

MS MEMELA: Page?

ADV KATE HOFMEYR: 616.

MS MEMELA: Is it DD25B, Nontsasa Memela?

ADV KATE HOFMEYR: Apologies we are out of order again by one so please go to your page 615.

CHAIRPERSON: Just tell her the Exhibit Number?

20 **ADV KATE HOFMEYR:** It is in the same one.

CHAIRPERSON: 25.

ADV KATE HOFMEYR: DD25B at page 615. What is this document Ms Memela?

MS MEMELA: This is the disposal of South African Airways Technical. It is an operated Ground Power Unit. This is the document that is sent

to either the bidder or the person who has won the bidder or – we finalised on.

ADV KATE HOFMEYR: Right.

MS MEMELA: Yes.

ADV KATE HOFMEYR: And did you author this document?

MS MEMELA: Yes I am the author of it.

ADV KATE HOFMEYR: And what – who was it addressed to?

MS MEMELA: It is addressed to – Attention Khosi Sokhulu, JM Aviation.

10 **ADV KATE HOFMEYR**: And the date?

MS MEMELA: The date is 22 June 2016.

ADV KATE HOFMEYR: The day after you got the review price from JM Aviation, correct?

MS MEMELA: Yes.

ADV KATE HOFMEYR: Will you read into the record what you said to Ms Sokhulu in the first line?

MS MEMELA: “Dear Ms Sokhulu your proposal for the purchase of the GPU’s on behalf of Swissport was approved by the Board of SAAT that in accordance with the contract between SAA and Swissport. Kindly note that the approval is based in the latest price review by yourselves.”

20

ADV KATE HOFMEYR: And carry on.

MS MEMELA: “We hereby extend our congratulations to both companies and look forward to a mutual beneficial

business relationship. Should you require any further information and clarification?”

ADV KATE HOFMEYR: Thank you.

MS MEMELA: Ja.

ADV KATE HOFMEYR: Thank you. Ms Memela your evidence this morning was that you did not ever understand JM Aviation to be acting on behalf of Swissport. Why did you say in your letter to JM Aviation on the 22nd of June 2016 then that you understood that they were purchasing the GPU's on behalf of Swissport?

10 **MS MEMELA:** Chair.

CHAIRPERSON: Yes.

MS MEMELA: I did not say I did not remember them acting on behalf of Swissport. The question was this morning from Ms Hofmeyr how did I know that JM was the agent of Swissport? Did we raise that during the meeting? And I raised that on the 21st of April 2016 before the Board Meeting the proposal was sent to the acting CEO where they were actually proposing the – what you call it?

CHAIRPERSON: The purchase?

20 **MS MEMELA:** Exactly. And then when Arson was responding to them and saying, okay we will get back to you after the Board processed ...(intervenes).

CHAIRPERSON: The Board Meeting.

MS MEMELA: And Exco process – once they get approval like they – got back to JM. So I never said like I did not understand them as – I said like that was picked up from there because that is why I seen after

the Board approval he gave us an instruction to negotiate. So I am not – I am not ...(speaking over one another).

ADV KATE HOFMEYR: Ms Memela.

CHAIRPERSON: You also said I think had an issue with the term agent.

MS MEMELA: Yes.

CHAIRPERSON: And you said you understood them to be a BEE ...(intervenes).

MS MEMELA: BEE Company.

10 **CHAIRPERSON:** Partner or component and so on.

MS MEMELA: Yes Chair.

CHAIRPERSON: Is that right?

MS MEMELA: Yes that is right.

CHAIRPERSON: Okay. Ms Hofmeyr.

ADV KATE HOFMEYR: Ms Memela the transcript will reflect the evidence. I recall the question being put to you by myself first and then the Chair in particular whether you understood them to be acting on behalf of Swissport. That is after we had the debate about the agency. Is your evidence now that you did understand them to be
20 acting on behalf of Swissport in their negotiations with SAAT?

MS MEMELA: Chair there was even a point that I made that we were not aware that they were going to resell to Swissport. But we understood that like as their BEE or sub-contractor of Swissport they would operate them as the – SAAT was operating them at that time. Ms Hofmeyr went as far as asking me about the 30% set aside that if I

thought it was them did I then agree with the 30% set aside. Since yesterday – on Friday I have said I did not agree with it legally. So I am not sure. Like I mean where exactly – yes.

CHAIRPERSON: Okay. Okay. Let us try and get clarification.

MS MEMELA: *Ja*.

ADV KATE HOFMEYR: H'mm.

CHAIRPERSON: What is your answer to the question whether you knew that they were acting on behalf of Swissport?

MS MEMELA: Okay.

10 **CHAIRPERSON**: *Ja* did you – were you aware of that? Were you not aware of that at the time?

MS MEMELA: Okay Chair. Remember after the Board Resolution was sent to us by Arson Malola-Phiri I even said he sent me a Board Resolution, he sent me the proposal that was sent to him.

CHAIRPERSON: Okay, okay. Hang on.

MS MEMELA: And then plus the third one.

CHAIRPERSON: Yes hang on.

MS MEMELA: Yes.

CHAIRPERSON: Ms Memela.

20 **MS MEMELA**: *Ja*.

CHAIRPERSON: I want us to go back to just before lunch where you were able to give very crisp answers.

MS MEMELA: Give straight – okay.

CHAIRPERSON: Answers yes, yes. The question is, where you – what do you say now? Were you aware or were you not aware at that time

that they were acting on behalf of Swissport?

MS MEMELA: I was aware based on the proposal Chair.

CHAIRPERSON: Okay.

MS MEMELA: Like I said before lunch.

CHAIRPERSON: Okay alright.

ADV KATE HOFMEYR: Did you make any enquiries from them about what Swissport was willing to pay SAAT for the GPU's?

MS MEMELA: I did not make an enquiry on that. Because remember you made me read – oh in fact you read the provision before break that
10 it will be sold to the Swissport BEE Company. So *ja*.

ADV KATE HOFMEYR: Ms Memela we do not need to have a legal debate about what 8.1 and 8.2 means. It does not say in its terms that Swissport is going to procure the GPU's through the BEE Company. All that I am getting clarity on now is a matter of fact whether you ever engaged with JM Aviation as to what price Swissport was willing to pay SAAT for the GPU's?

MS MEMELA: Chair I would not ask that question because Swissport did not make any proposal or I was never given an instruction by the acting CEO to discuss with Swissport.

20 **ADV KATE HOFMEYR:** And then you go on in your letter and – to JM Aviation the day after you have met with them to say:

“Kindly note that the approval”

That is the approval of the Board I take it that you were referring to in the previous sentence.

“Is based on the latest price review by yourselves.”

Do you see that?

MS MEMELA: Yes.

ADV KATE HOFMEYR: Had you communicated with the Board about whether they agreed to this price review that you indicated to JM Aviation on the 22nd of September they had accepted?

MS MEMELA: Have I – okay Chair.

CHAIRPERSON: Yes.

MS MEMELA: *Ja* I do not communicate with the Board.

CHAIRPERSON: Yes.

10 **MS MEMELA:** So I did not communicate with the Board.

CHAIRPERSON: Yes. Okay.

MS MEMELA: Yes.

CHAIRPERSON: But did you know whether anybody had communicated with the Board to establish that they were happy with the price?

MS MEMELA: According to the Board Resolution Chair the Board had never said like the price after it is finalised should go back to them.

CHAIRPERSON: H'mm. H'mm.

20 **MS MEMELA:** That statement that Ms Hofmeyr is referring to where I said the Board had approved. Remember Arson's e-mail to Jules when he responded and said, I am going to go to Exco and the Board and after approval I will get back to you.

CHAIRPERSON: Yes.

MS MEMELA: So like that statement is referring to that part. Not to the Board.

ADV KATE HOFMEYR: Well let us look at this letter if we may Ms

Memela because the first sentence says:

“Your proposal for the purchase of the GPU’s on behalf Swissport by approved by the Board of SAAT and in accordance with the contract between SAA and Swissport.”

MS MEMELA: *Ja.*

ADV KATE HOFMEYR: The very next sentence says:

“Kindly note that the approval.”

What approval is that?

10 **MS MEMELA:** Kindly note that the approval is based in the latest price review by yourselves.

ADV KATE HOFMEYR: Yes let us stop at Kindly note that the approval.

MS MEMELA: Yes okay.

ADV KATE HOFMEYR: What approval are you referring to there?

MS MEMELA: I am talking about the approval of the reviewed price. The latest price that they put on the table that was discussed with the acting CEO of SAAT.

ADV KATE HOFMEYR: Yes.

MS MEMELA: *Ja.*

20 **ADV KATE HOFMEYR:** So you discuss it with the acting CEO of SAAT before the 22nd of June?

MS MEMELA: Before the 22nd June – I said like I discussed after the e-mail that was coming from JM.

ADV KATE HOFMEYR: Yes.

MS MEMELA: Yes between that.

ADV KATE HOFMEYR: So you had his agreement by that stage?

MS MEMELA: I have had?

ADV KATE HOFMEYR: His agreement by that stage?

MS MEMELA: I am sure I did.

ADV KATE HOFMEYR: And you not – you do not accept that the approval you are referring to here is the approval of the Board that you have been referring in the previous sentence?

MS MEMELA: Okay Chair. I just need to give clarity for your understanding.

10 **CHAIRPERSON:** Yes. Yes.

MS MEMELA: My understanding is that Arson Malola-Phiri when he was writing that submission.

CHAIRPERSON: Yes.

MS MEMELA: To the Board.

CHAIRPERSON: Yes.

MS MEMELA: He was writing based on the proposal that was made by JM.

CHAIRPERSON: H'mm.

20 **MS MEMELA:** And then his understanding or maybe the knowledge now that Swissport and SAA had concluded a contract. *Ja* – so him discussing and tabling this whole submission to the Board involved that we were going to deal with the BEE Company of Swissport being JM. Yes.

CHAIRPERSON: Well let me just – I think what Ms Hofmeyr is trying to establish is that. In the first sentence of that letter dated 22 June 2016

addressed to Mr Sokhulu of JM Aviation.

MS MEMELA: Yes.

CHAIRPERSON: You say your proposal for the purchase of the GPU's on behalf of Swissport was approved by the Board of SAAT. And then in the next sentence you say, "kindly note that the approval". And that approval as I read and you must tell me if I am wrong.

MS MEMELA: Okay.

CHAIRPERSON: That approval can only refer to the approval you talk about in the first sentence.

10 **MS MEMELA:** Yes.

CHAIRPERSON: That approval of the Board was based on the latest price review.

MS MEMELA: Price review.

CHAIRPERSON: By yourselves.

MS MEMELA: Yes.

CHAIRPERSON: Now my reading of what you are saying here suggests that you are saying that there are – the Board provided its approval being aware of the review to price. Is my understanding of what you are saying correct?

20 **MS MEMELA:** That was not my understanding or maybe the interpretation when I authored this letter.

CHAIRPERSON: That is not what you were conveying?

MS MEMELA: No Chair.

CHAIRPERSON: What did you intend to convey when you said, "kindly note that the approval is based on the latest price review by

yourselves”?

MS MEMELA: Okay the approval – remember Chair the proposal by JM Aviation. Let us go back to the date. It was 21 April 2016 which was before the Board Meeting in the 15th of June 2016. So when Arson took the submission to the Board to request them to dissolve these – or to sell the GPU’s it was in that understanding that it – the GPU’s will be sold to the BEE Company of Swissport. Yes. So when we were negotiating in terms of the price it was after the Board had approved. So we did not go back to the Board nor do I have any maybe
10 understanding if whether the acting CEO went back to the Board or maybe the Board or maybe the company secretary to confirm. Yes that is why I said earlier on the fact that the acting CEO signed the invoice shows that he actually agreed with the price.

CHAIRPERSON: But tell me what your understanding of that first sentence is? That second sentence I am sorry. Because as I read it, it seems to imply that you are saying, the Board when it granted its approval of the purchase was aware of the latest price review by JM.

MS MEMELA: Okay Chair. My understanding of this sentence is that I was trying to bind them to the latest price review. Remember before
20 Arson went to the Board they had proposed a different amount. Right and then after the Board approval we discussed with them, negotiated and they went back and checked and then came back with a reviewed price with R20 000 more. So this was ensuring that when maybe we finalise or have the invoice or we will have the correct reviewed price. They will not go back to the previous price on the proposal on the –

what April 2016. *Ja.*

CHAIRPERSON: So are you saying that you were not necessarily saying in this sentence that the Board was aware of the reviewed price? You were saying the Board has provided its approval but you must know that when we talk about the approval we talk about the latest review.

MS MEMELA: The review yes Chair.

CHAIRPERSON: And not the earlier price.

MS MEMELA: The price that they ...(intervenes).

10 **CHAIRPERSON:** Price.

MS MEMELA: They sent to the acting CEO.

CHAIRPERSON: Yes.

MS MEMELA: Before the Board Meeting yes.

CHAIRPERSON: Yes. Okay Ms Hofmeyr do you want to take it further?

ADV KATE HOFMEYR: Thank you Chair. When the Board met on the 15th of June it was told that the GPU's would be sold at their current asset value was it not?

MS MEMELA: Yes, yes Chair it was told that they will be sold at the current asset value.

20 **ADV KATE HOFMEYR:** H'mm. And now they were going to be sold at R248 000 per unit which was not the current asset value, correct

MS MEMELA: Chair before I answer that then let – this is the part where I find it relevant that I read that provision of the Minutes that I kept on referring to.

CHAIRPERSON: Okay. Is it a brief part?

MS MEMELA: It is just a brief part Chair.

CHAIRPERSON: *Ja* okay read it.

MS MEMELA: Yes.

ADV KATE HOFMEYR: Could you give us the page again please?

MS MEMELA: Oh okay. The page of the Minutes from DD25 it is 1 – sorry.

CHAIRPERSON: 25B?

ADV KATE HOFMEYR: A.

CHAIRPERSON: A.

10 **MS MEMELA:** Yes Chair.

CHAIRPERSON: Okay.

MS MEMELA: Oh it is page 193.

CHAIRPERSON: Yes.

MS MEMELA: Chair can I – before I go there can I read just for the court purposes who was in attendance?

CHAIRPERSON: *Ja*.

MS MEMELA: And present.

CHAIRPERSON: That is fine.

20 **MS MEMELA:** Yes. During this Board Meeting held 15 June 2018 present was Ms Yakhe Kwinana, non-executive Director Chairperson. Dr J Tambi, non-executive Director. Mr M Zwane, Executive Director acting Group CEO. Mr D Eria, Chief Financial Officer. In attendance there was Mr M Malola-Phiri, acting Chief Executive Officer of SAAT. Ms P Nhantsi, SAA interim Chief Financial Officer. Ms U Figelephi, SAA GM Legal Risk and Compliance. Mr S Vilikazi, SAA Chief Audit

Executive. Ms M Makake, Deputy Company Secretary and apologies were from. Ms R Ibuka. So I just want to read Chair now where it talks about the depreciation of the GPU's.

CHAIRPERSON: Yes.

MS MEMELA: Which made me understood – understand that when Arson agreed to this.

CHAIRPERSON: Yes.

MS MEMELA: It was because of this part of the Minutes.

CHAIRPERSON: *Ja*.

10 **MS MEMELA:** “The submission proposed that SAAT should
...(intervenes).”

CHAIRPERSON: You ...(intervenes).

MS MEMELA: Oh sorry Chair.

CHAIRPERSON: What page are you reading from?

MS MEMELA: Page 197.

CHAIRPERSON: 197?

MS MEMELA: *Ja* second paragraph.

CHAIRPERSON: Yes.

20 **MS MEMELA:** “The submission proposed that SAAT should
consider whether to recover the difference between the
purchase value of the GPU's and the current asset value
from SAA. The Interim Chief Financial Officer and the
GM Legal Risk Compliance indicated that SAAT had been
utilising the GPU's whilst SAA was resolving its
contractual issues with its ground handling service

provider. Therefore the reduction in value of the GPU's was due to the depreciation and was not a loss."

This was during the Board Meeting Chair made by the Group CFO and the Group GM Legal Risk and Compliance. So to respond to Ms Hofmeyr's question where it says okay then you decided to sell at the – but 248 at the end.

CHAIRPERSON: You did not say roof of there?

MS MEMELA: Did I say?

CHAIRPERSON: Ja you said Ms Hofmeyr.

10 **ADV KATE HOFMEYR:** Yes.

MS MEMELA: Ms Hofmeyr Chair.

CHAIRPERSON: Okay.

MS MEMELA: Yes.

CHAIRPERSON: Yes.

MS MEMELA: So Chair the amount there that was signed for in the invoice between my – like between myself and the acting CEO Arson Malola-Phiri my understanding then – now that I am reading is that the reason why he agreed on that price instead of going back to what he had written on his submission is what was raised by Group CFO and
20 GM Legal. And there was that understanding that the shortfall of the amount will be recovered from SAA. Because remember the reason SAAT bought these GPU's was to provide services to SAA. They did not buy them like for the purposes that they were used for.

ADV KATE HOFMEYR: Ms Memela the paragraph that you have drawn our attention to which is the same paragraph that was in the extract of

the Minutes that we read into the record earlier.

MS MEMELA: *Ja.*

ADV KATE HOFMEYR: Is not comparing the current asset value of the GPU's and the sale price that was eventually agreed with JM Aviation. It is comparing the purchase price at which SAAT bought the GPU's the year before and the current asset value that had been communicated to the Board by Mr Phiri.

MS MEMELA: Oh did you make that calculation Ms Hofmeyr?

ADV KATE HOFMEYR: No I am saying the words say the submission
10 proposed that SAAT should consider whether to recover the difference
between the purchase value of the GPU's. That is the price that SAAT
paid for them a year earlier and the current asset value from SAA which
is the current asset value that was set out in Mr Phiri's submission to
the Board. That is the difference between the purchase price of about
R782 000 which is reflected on the invoice and the R648 000 which was
the current asset value. This is a debate between the Members of the
Board because we have seen the record of the proceedings. It is a
debate between whether SAAT can recover from SAA because it is
being forced to sell these units. The difference between the price it
20 paid when it bought them and the price that SAAT was going to be
selling them at the current asset value. I put it to you Ms Memela that
this paragraph has absolutely nothing to do with the difference between
the current asset value that went before the Board and it agreed to sell
these GPU's at which was R648 000 odd and the R248 000 a few weeks
later that was agreed with JM Aviation.

MS MEMELA: The current asset value ...(intervenes).

ADV KATE HOFMEYR: Do you have a response?

MS MEMELA: The current asset value Chair based on what? On the Asset Register that she rejected later or what?

ADV KATE HOFMEYR: No Ms Memela.

CHAIRPERSON: Well what ...(intervenes).

ADV KATE HOFMEYR: Based on the submission of the CEO to the Board of SAAT.

MS MEMELA: Do you know where the acting CEO got that amount?

10 **CHAIRPERSON:** Well hang on Ms Memela.

MS MEMELA: Ja.

CHAIRPERSON: Ms Hofmeyr has put something to you.

MS MEMELA: Okay.

CHAIRPERSON: Just listen to her I am going to ask her to repeat and then tell me what you say about what she is putting to you?

ADV KATE HOFMEYR: Ms Memela the paragraph that you have read from the extracts of the Minute refers to a comparison between the purchase price that SAAT paid for the GPU's and the current asset value. And whether that difference should be recovered by SAAT from
20 SAA. It has nothing to do with the current asset value at the time that the Board met and the later review price that you agreed with JM Aviation should be paid. Do you have a response to that?

MS MEMELA: Okay my response Chair will be that even Ms Hofmeyr does not know what the current asset value was at that time.

CHAIRPERSON: No, no, no. Do you agree or do you not agree with

her proposition?

MS MEMELA: I do not agree Chair.

CHAIRPERSON: Namely that the paragraph you have read has nothing to do with the issue of the current value at the time of the assets to the price that they were going to be paid for by ...(intervenes).

ADV KATE HOFMEYR: JM.

CHAIRPERSON: JM Aviation. That is the point she is making. She is saying her interest is on something else. You are referring her to a paragraph that deals with something else. Not with what she is
10 interested in.

MS MEMELA: For me Chair ...(intervenes).

CHAIRPERSON: H'mm.

MS MEMELA: It is relevant.

CHAIRPERSON: Huh-uh.

MS MEMELA: That paragraph it is relevant and you will find out during re-examination.

CHAIRPERSON: Well let us deal with it now. The submission proposed that SAAT should consider whether to recover the difference the purchase value of the GPU's and the current asset value from SAA.
20 That seems to support what Ms Hofmeyr says. That sentence. It says – it talks about the purchase value of the GPU's and the current asset value from SAA.

MS MEMELA: Chair, the ...(intervenes).

CHAIRPERSON: On the face of it seems to support what she is saying.

MS MEMELA: I was bringing your attention from the sentence where it

says:

“The Interim Chief Financial Officer ...(intervenes).”

CHAIRPERSON: Yes.

MS MEMELA: “ ... and GM ...(intervenes).”

CHAIRPERSON: Yes.

MS MEMELA: “ ... Legal Risk Compliance indicated that

SAAT had been utilising the GPU's whilst SAA was
resolving its contractual issues with its ground
handling service provider. Therefore the reduction
10 in value of the GPU's was due to the depreciation
and was not a loss.”

So now I am talking depreciation. That is why I was actually
asking if Ms Hofmeyr – I know. Maybe she has not done that or maybe
she had proof.

CHAIRPERSON: H'mm.

MS MEMELA: That is why I was asking if she has proof like she had
earlier this morning that there was that Asset Register which then we
rejected, because it did not say who was it coming from. So I am
saying for us to actually agree that okay the current value of the GPU's
20 at that time were the amount that the Acting CEO had put there.

There shall be a document that supports that. So that is why
I am saying I do not agree to that, because she is saying current –
based on the submission by the Acting CEO – only the Acting CEO can
explain maybe when he gets a chance to come here and say I came up
with this amount based on this and that. If it is not here.

It is not helping us and it is not helping Chair to give you a proper answer.

CHAIRPERSON: Okay. Ms Hofmeyr.

ADV KATE HOFMEYR: Ms Hofmeyr, Chair – I am referring to myself. I see that Ms Mbanjwa has her hand up.

CHAIRPERSON: Oh. Yes.

ADV KATE HOFMEYR: I do not know if she can ...(intervenes).

CHAIRPERSON: Ms Mbanjwa.

MS LINDELWA MBANJWA: Thank you Chair.

10 **CHAIRPERSON:** Yes.

MS LINDELWA MBANJWA: I just want to point out something.

CHAIRPERSON: Yes.

MS LINDELWA MBANJWA: The reason why there is a difficulty with that paragraph which appears in page 197.

CHAIRPERSON: H'mm.

MS LINDELWA MBANJWA: Is because the questions that are put to Ms Memela ...(intervenes).

CHAIRPERSON: H'mm.

MS LINDELWA MBANJWA: Are based on a flawed premise.

20 **CHAIRPERSON:** H'mm.

MS LINDELWA MBANJWA: If there is going to be an attack ...(intervenes).

CHAIRPERSON: H'mm.

MS LINDELWA MBANJWA: On the review price to say the review price was below the current asset value.

CHAIRPERSON: H'mm.

MS LINDELWA MBANJWA: Then we need to have certain inputs and the inputs come from the Asset Register.

CHAIRPERSON: Huh-uh.

MS LINDELWA MBANJWA: The Asset Register must say when were the GP Units acquired.

CHAIRPERSON: Huh-uh.

MS LINDELWA MBANJWA: How are they depreciated and what is the basis of the depreciation and with that depreciation having been
10 applied then the current asset value is this amount. What Ms Hofmeyr now is doing is taking a floating paragraph and is insinuating that these ...(intervenes).

CHAIRPERSON: Remember is it Ms Memela who referred to this paragraph.

MS LINDELWA MBANJWA: Yes. The reason why Ms Memela ...(intervenes).

CHAIRPERSON: Not Ms Hofmeyr.

MS LINDELWA MBANJWA: Yes.

CHAIRPERSON: H'mm.

20 **MS LINDELWA MBANJWA:** Yes Chair. The reason why there is a difficulty and why Ms Memela is dealing with this is because it is the line of questioning and I do not want to be critical. This is a complicated matter in the sense that firstly it is an accounting Asset Register entry.

MS MEMELA: H'mm.

MS LINDELWA MBANJWA: It is for that reason why when Ms Memela objected to the Asset Register. I supported that objection, because I knew for a fact that if the Asset Register is not validated as an evidential document. Then it means the inputs are going to be incorrect or she is going to be cross-examined on inputs that are not really properly there.

So what I suggest Chair is this with your permission and I am not shielding Ms Memela with asking questions. Can we deal with two things concerning this question of the price? Whether the review price
10 was the correct, because related to this question is another question that has been dealt with in a manner which is not satisfactory to us.

It is the issue but Chair saw it and tried to analyse to say. Was Ms Memela empowered to determine this price? So if we can be given a chance maybe – I know not today. I want the matter to flow. To deal with those two aspects, because they are directly related. First who had the power to decide the price to dispose of the GPU's?

Secondly, where is the genuine Asset Register and where are the inputs in the Asset Register and what is the conclusion in the Asset Register insofar as what the actual current price was at the time the
20 disposal was made ...(intervenes).

CHAIRPERSON: H'mm. H'mm.

MS LINDELWA MBANJWA: And lastly if the review price
...(intervenes).

CHAIRPERSON: H'mm.

MS LINDELWA MBANJWA: That is the subject of the e-mails

...(intervenes).

CHAIRPERSON: H'mm.

MS LINDELWA MBANJWA: Was below or equivalent ...(intervenes).

CHAIRPERSON: H'mm.

MS LINDELWA MBANJWA: Or above ...(intervenes).

CHAIRPERSON: H'mm.

MS LINDELWA MBANJWA: That price.

CHAIRPERSON: H'mm.

MS LINDELWA MBANJWA: As it pleases Chairperson.

10 **CHAIRPERSON:** No. That is fine. Ms Hofmeyr, will deal with what you have said, but if necessary later on – you can bear it in mind – later on at some stage we can come back to it if necessary, but if we can deal with it now. It is fine.

ADV KATE HOFMEYR: Thank you Chair. Ms Memela, do you accept that Mr Phiri made representations to the Board of SAAT in his submission identifying what the asset value was according to the register at SAAT?

MS MEMELA: According to this submission Chair signed by Mr Malola-Phiri. Yes.

20 **ADV KATE HOFMEYR:** And do you accept that the Board made its decision to sell the asset value – to sell the SAAT GPU's at the asset value based on that submission from Mr Phiri?

MS MEMELA: Yes Chairperson.

ADV KATE HOFMEYR: Thank you. What did you to establish the book value of the GPU's before they were sold?

MS MEMELA: Chair, like I said earlier on this morning if I remember correctly. I did say that as we were sitting there we discussed with the JM representative and asked them how did they reach the conclusion to put that amount to their proposal. Can they actually go back and see and at the same time there was no way that we could have known for sure how much was the current value at that time based on the book value, because I said it was reliant on an outdated system being MEMIS.

Everybody at SAAT knows that system. It – the software has
10 not been updated for years. Even before I joined SAAT. So everybody who checks the price there Chair in terms of the price catalogue. They were told to not rely on that because it could be something. It could be maybe less or it could be more.

So they should see if they cannot – they can get something else somewhere else. You know. So and the Asset Register being managed and controlled by finance. So they are the ones who keep on updating. That is why when I raise this to Ms Hofmeyr like my discomfort in terms of the document that she presented to the Commission.

20 That it was the Asset Register. It had the dates 2015. Yet it was written by hand 2016.

CHAIRPERSON: But the short answer is you did not do anything to establish the book value. Is that correct?

MS MEMELA: We did not do anything to establish the book value Chair.

CHAIRPERSON: *Ja.*

MS MEMELA: *Ja. We ...(intervenes).*

CHAIRPERSON: Okay.

MS MEMELA: We relied on the negotiation on the table.

CHAIRPERSON: Okay.

MS MEMELA: Based on the ...(intervenes).

CHAIRPERSON: Yes.

MS MEMELA: Initial proposal. Yes.

CHAIRPERSON: Remember I said I want us to go back to those crisp
10 answers.

MS MEMELA: Crisp – yes, Chair.

CHAIRPERSON: *Ja.* Okay.

ADV KATE HOFMEYR: And what did you do to establish the fair
market value?

MS MEMELA: Chair, I will try to give that crisp answer as much as I
can.

CHAIRPERSON: Yes.

MS MEMELA: Remember Chair, for me or maybe for SCM to give – to
make – to be – to confirm or to be comfortable that the fair market
20 value or what is out there at the market we should run a tender. In this
regard a tender was not ran and remember Chair I can – we cannot run
a tender after the Board had decided, because the Board had decided
based on the submission – based on the proposal made by
Mr Arson Malola-Phiri and based on the contract between SAA and
Swissport.

So to answer Ms Hofmeyr it will be difficult to tell you what - what would have been a fair price, because ...(intervenes).

ADV KATE HOFMEYR: No. I asked what did you do to determine fair price.

MS MEMELA: Okay. There was nothing ...(intervenes).

ADV KATE HOFMEYR: Yes.

MS MEMELA: That could have been done ...(intervenes).

ADV KATE HOFMEYR: Yes.

MS MEMELA: At that time, because the tender was not ran. So there
10 is no way that you can determine that without running a tender.

ADV KATE HOFMEYR: And that is despite the fact that clause 8.2 of the agreement which is the whole basis for the sale required them to be sold either at book value or at fair market value. Is that right? You could do neither of those inquiries before you sold it?

MS MEMELA: Chairperson, the provision that Ms Hofmeyr is referring to of the Swissport and SAA Contract was concluded between – it went to the Board of SAAT. You see if maybe the owner of the GPU's – at that time when he actually was showing discomfort or maybe he was uncomfortable with selling all 12, but he wanted to sell seven. Maybe
20 he came to SCM.

Give the instruction or requisition request to go out on the market and test the market in terms of what could be found here before it went to the Board. I would have understood, because like then I will have something that says there is a requisition form where I mean the owner of these GPU's had requested a procurement to say okay.

Let us test the market. Even if so Chair that he had – if he had maybe asked us. Maybe he was going to be told again that okay, but this thing has already been decided on the Swissport/SAA Contract. Remember I said earlier Chair yes Mr Makaleng raised the fact that he was not happy with selling all GPU's and I said Mr Malola-Phiri, Acting CEO, said our hands are tied.

The Acting CEO said that our hands are tied, because this thing has been agreed upon to do this by the high powers. There is absolutely nothing that he could have done and for me to run or test
10 the market to get the fair price would have been before the Board
...(intervenes).

CHAIRPERSON: Okay.

MS MEMELA: And after the instruction Chair, because we do not just go out on a tender as we please.

ADV KATE HOFMEYR: Ms Memela that letter of the 22nd of June that you wrote. Were you requested to write that letter to JM Aviation?

MS MEMELA: These letters Chair we usually write after we have spoken to the person who has given you instruction. Hence I said I am sure after – as much as we do not have evidence. You do not have
20 evidence as well, but after receiving the e-mail from Ms Sokhulu confirming that okay this now is the price ...(intervenes).

CHAIRPERSON: Okay. Remember I think your answer is I was not requested.

MS MEMELA: No, no, no. My answer is ...(intervenes).

CHAIRPERSON: You were not requested ...(intervenes).

MS MEMELA: No. You do not ...(intervenes).

CHAIRPERSON: To write the letter. That is the question as I understood it.

MS MEMELA: We write the letter after the agreement Chair.

CHAIRPERSON: You do not have to be requested by anybody?

MS MEMELA: You do not have to be requested by anybody.

CHAIRPERSON: Okay.

MS MEMELA: Once the approval is done ...(intervenes).

CHAIRPERSON: Is that a short answer ...(intervenes).

10 **MS MEMELA**: Yes.

CHAIRPERSON: Ms Hofmeyr?

ADV KATE HOFMEYR: Thank you.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: The evidence of Mr Cole of Swissport is that they were demanding repeatedly from JM Aviation that they get some letter from SAA confirming – sorry SAAT confirming that JM Aviation was SAAT's selected BEE partner for this bid and for this purchase and what came back was this letter from you on the 22nd of June. Were you not requested to provide this letter by JM Aviation?

20 **MS MEMELA**: Chairperson, this is the letter either of award or when the final decision has been made. I would never write a letter based on the supplier requesting me to write it. That is why I said after they had written that e-mail. Of course it was discussed with the Acting CEO and then once it is discussed with the Acting CEO I am sure the understanding was to move forward and finalise and then give the letter

of award.

We have never given any letter of awards to people because they are asking for them. We give letter of awards when we know that okay the process internally has been done which in this regard it has gone through the Broad. Finalised, approved and we negotiated. So ... (intervenes).

ADV KATE HOFMEYR: This is a – Ms Mbanjwa sent me a note helpfully. Just to say could I give her the reference to where it is in Mr Cole's affidavit. I do not suggest we have to go there for present
10 purposes, because Ms Memela has indicated she did not receive a request, but for the record it is at DD25A.

It is at page 267 and I will just read it into the record before Ms Mbanjwa makes her point. This is Mr Cole's affidavit to the Commission. He says:

“In terms of SAAT's letter to JM Aviation dated
22 June 2016 included in Exhibit 18 I wish to stress
that Swissport South Africa was neither consulted
on the content of the letter nor do we agree with the
wording used therein. The letter was forwarded to
20 Swissport South African in response to your
repeated requests for evidence whether SAA or
SAAT had officially appointed JM South Africa as a
B-BBEE partner for the GPU transaction and if so
whether the parties had reached agreement on the
sale of the units.”

That is what I was putting to Ms Memela.

MS MEMELA: H'mm.

ADV KATE HOFMEYR: As the background to why Swissport had requested the letter, but I understand Ms Memela's evidence to be she was never told by JM Aviation that such a letter was required.

CHAIRPERSON: Yes. Ms Mbanjwa.

MS LINDELWA MBANJWA: Just very briefly Chairperson.

CHAIRPERSON: Yes. Come closer to the mic.

MS LINDELWA MBANJWA: Yes. I would really beg ...(intervenes).

10 **CHAIRPERSON:** H'mm.

MS LINDELWA MBANJWA: That this be this procedure so that I do not have to object.

CHAIRPERSON: Huh-uh.

MS LINDELWA MBANJWA: Every time Ms Hofmeyr ...(intervenes).

CHAIRPERSON: H'mm.

MS LINDELWA MBANJWA: Refers to a document.

CHAIRPERSON: H'mm.

MS LINDELWA MBANJWA: That document must first be put to Ms Memela ...(intervenes).

20 **CHAIRPERSON:** H'mm.

MS LINDELWA MBANJWA: And we must be given a chance to place to the document.

CHAIRPERSON: H'mm.

MS LINDELWA MBANJWA: So that we can read the document and understand it for ourselves.

CHAIRPERSON: Huh-uh.

MS LINDELWA MBANJWA: It is not correct for her.

CHAIRPERSON: H'mm.

MS LINDELWA MBANJWA: That is why I am making this strong objection. To put a statement of a certain Mr Cole which we have not seen and cross-examine or ask questions from Ms Memela. It is very prejudicial and we will ...(intervenes).

CHAIRPERSON: No, no, no.

MS LINDELWA MBANJWA: Be forced to object.

10 **CHAIRPERSON:** No, no, no. It is permissible for her to – for Ms Hofmeyr to ask the question first and only go to a document on which the question is based later if necessary, because sometimes the answer does not make it necessary to go to the document, but sometimes the answer makes it necessary.

So it is a question of choice – a preference. She might start by referring to the document before asking the question or ask the question first and if the answer makes it necessary to go to the document. Go to the document, but the answer might not make it necessary to go to the document.

20 **MS LINDELWA MBANJWA:** In that case ...(intervenes).

CHAIRPERSON: You understand?

MS LINDELWA MBANJWA: Yes. In that case ...(intervenes).

CHAIRPERSON: Yes.

MS LINDELWA MBANJWA: Chairperson I will simply take comfort in the sense ...(intervenes).

CHAIRPERSON: H'mm.

MS LINDELWA MBANJWA: That you said ...(intervenes).

CHAIRPERSON: H'mm.

MS LINDELWA MBANJWA: If I feel acute discomfort I must I make an objection.

CHAIRPERSON: Yes. Yes. No, no. Definitely. Definitely.

MS LINDELWA MBANJWA: As it pleases.

CHAIRPERSON: Ja.

ADV KATE HOFMEYR: Chair just for the record this is not a document
10 that Ms Memela has not seen.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: It has been in her bundle and she considered it closely before her evidence on Friday for that half an hour.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: So there is no sense in which she has not seen Mr Cole's affidavit prior to ...(intervenes).

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: Today.

CHAIRPERSON: Okay.

20 **MS MEMELA:** Chair, sorry.

CHAIRPERSON: Yes.

MS MEMELA: Just to give correction to Ms Hofmeyr.

CHAIRPERSON: Yes.

MS MEMELA: This affidavit is the – is ...(intervenes).

CHAIRPERSON: I am sorry. Am I hearing something that Ms Memela

is not saying? Why do I always hear something like hoof before Meyr?

MS MEMELA: Oh. Ms Hofmeyr.

CHAIRPERSON: Ms Hofmeyr.

MS MEMELA: Ms Hofmeyr.

CHAIRPERSON: *Ja.*

MS MEMELA: *Ja.*

CHAIRPERSON: Oh. You say Hoofmeyr.

MS MEMELA: Hoofmeyr. I mean ...(intervenes).

CHAIRPERSON: Hofmeyr.

10 **MS MEMELA:** Chair, *ja.*

CHAIRPERSON: Oh. No. It is Hofmeyr.

MS MEMELA: H'mm.

CHAIRPERSON: Okay. No. I was just wondering whether I am hearing something that you are not saying or whether I am hearing something you are saying.

MS MEMELA: *Ja.* She is lucky Chair ...(intervenes).

CHAIRPERSON: *Ja.* She is Ms Hofmeyr.

MS MEMELA: She is lucky Chair that my surname is quite straightforward and very simple.

20 **CHAIRPERSON:** Yes.

MS MEMELA: So that is why for her it is easy to say Memela.

CHAIRPERSON: Yes.

MS MEMELA: If she was using my maiden surname we would be correcting every minute. Yes. So Chair ...(intervenes).

CHAIRPERSON: *Ja.* No, no. No. I just wanted to make sure that the

record does not reflect that you called her something ...(intervenes).

MS MEMELA: Okay.

CHAIRPERSON: By a name that is not hers.

MS MEMELA: Okay. *Ja*.

CHAIRPERSON: *Ja*. Okay. Alright.

MS MEMELA: Alright. Chair, I confirmed that for me I did not read in detail the affidavit of Mr Cole, because I never received any 3.3 – yes – I even asked Ms Hofmeyr if like this is for my attention and she said like it is just for my – what – ease of reference or maybe for
10 information.

CHAIRPERSON: Okay.

MS MEMELA: Yes.

CHAIRPERSON: Okay.

MS MEMELA: So that 30 minutes there is no way that like with me applying my mind reading this document I would have finished by the time. I was going through some additional documents where I had received ...(intervenes).

CHAIRPERSON: Yes.

MS MEMELA: 3.3. Yes Chair.

20 **CHAIRPERSON:** You – in other words you say you did not understand the document ...(intervenes).

MS MEMELA: I just ...(intervenes).

CHAIRPERSON: To be important ...(intervenes).

MS MEMELA: Yes. I just browsed through.

CHAIRPERSON: For any ...(intervenes). *Ja*. Okay.

MS MEMELA: I did not exactly ...(intervenes).

CHAIRPERSON: No. That is fine. That is fine.

ADV KATE HOFMEYR: Thank you. Ms Memela, I would like to move off the GPU's now to the components tender, but in just summing it up I would like to put to you some of the observations from your evidence so that you can comment on them if you need to.

MS MEMELA: Okay.

ADV KATE HOFMEYR: Your evidence before this Commission is that you did not take any steps to determine the fair market value of the
10 GPU's. Is that correct?

MS MEMELA: Chair, I want to give you that crisp answer, but it does not allow me. This question does not allow me.

CHAIRPERSON: Well you can start by giving the crisp answer ...(intervenes).

MS MEMELA: Ja.

CHAIRPERSON: And see whether you want to elaborate, but just ...(intervenes).

MS MEMELA: Okay.

CHAIRPERSON: Say yes or no and ...(intervenes).

20 **MS MEMELA:** Yes. I did not test the market ...(intervenes).

CHAIRPERSON: H'mm.

MS MEMELA: Because the Board had already decided ...(intervenes).

CHAIRPERSON: Yes. Okay.

ADV KATE HOFMEYR: And you did not check their book value either yourself?

MS MEMELA: The book value like I said Chair we checked MEMIS which was outdated.

CHAIRPERSON: Yes.

MS MEMELA: So we could not rely on that amount.

CHAIRPERSON: H'mm. Okay.

ADV KATE HOFMEYR: And you were selling – you were concluding this agreement with JM Aviation for the sale price of the GPU's about a month and a bit after JM Aviation had paid the 2.5 million towards your Bedfordview house. Is that correct?

10 **MS MEMELA:** I was – sorry.

ADV KATE HOFMEYR: You were finalising the sale price of the GPU's with JM Aviation.

MS MEMELA: Yes.

ADV KATE HOFMEYR: About a month and a number of weeks after they had paid 2.5 million towards your Bedfordview house. Is that correct?

MS MEMELA: Chair, would I be problematic to ...(intervenes).

CHAIRPERSON: Well I think you probably want to say when they had paid that amount ...(intervenes).

20 **MS MEMELA:** Yes.

CHAIRPERSON: On behalf of your mother?

MS MEMELA: Yes.

CHAIRPERSON: I think that is the point you wanted to ...(intervenes).

MS MEMELA: Yes. Thank you Chair.

CHAIRPERSON: Ja. That is the point you wanted to make

...(intervenes).

MS MEMELA: Thank you. It was ...(intervenes).

CHAIRPERSON: But in terms of the time frame she is correct more or less a month or so.

MS MEMELA: The amount was paid for the sale of the property of my mother ...(intervenes).

CHAIRPERSON: Yes.

MS MEMELA: And towards the purchase of the - or the intention to purchase the sale – the property from Cove Ridge.

10 **CHAIRPERSON**: *Ja*.

MS MEMELA: Yes. So ...(intervenes).

CHAIRPERSON: *Ja*.

MS MEMELA: This had nothing to do with the GPU's and I wanted to ask Ms Hofmeyr.

CHAIRPERSON: H'mm.

MS MEMELA: You see now I am conscience because I kept on saying Hoofmeyr. So ...(intervenes).

CHAIRPERSON: H'mm.

MS MEMELA: Hofmeyr to direct me to the invoice ...(intervenes).

20 **CHAIRPERSON**: H'mm.

MS MEMELA: Of the GPU's.

CHAIRPERSON: H'mm.

MS MEMELA: Yes.

CHAIRPERSON: Okay.

MS MEMELA: Because I would just like ...(intervenes).

ADV KATE HOFMEYR: Which invoice?

MS MEMELA: The invoice of the – when SAAT was ...(intervenes).

ADV KATE HOFMEYR: The sale from SAAT to ...(intervenes).

MS MEMELA: To JM Aviation.

ADV KATE HOFMEYR: JM Aviation?

MS MEMELA: Yes.

ADV KATE HOFMEYR: Not the invoice form JM Aviation to Swissport?

MS MEMELA: No. Remember that has nothing to do with us.

ADV KATE HOFMEYR: It is at DD25B at page 617.

10 **MS MEMELA:** Okay.

CHAIRPERSON: Ms Mbanjwa, I see you raising your hand, but you do – you feel apologetic about it and okay.

MS LINDELWA MBANJWA: I am Chair.

CHAIRPERSON: Yes.

MS LINDELWA MBANJWA: I just want to make a very quick conclusion.

CHAIRPERSON: Ja.

MS LINDELWA MBANJWA: There is going to be a problem with these conclusions that are put ...(intervenes).

20 **CHAIRPERSON:** H'mm.

MS LINDELWA MBANJWA: To the witness ...(intervenes).

CHAIRPERSON: H'mm.

MS LINDELWA MBANJWA: Because first they are patently incorrect.

CHAIRPERSON: H'mm.

MS LINDELWA MBANJWA: We know there has been evidence here to

say the 2.5 million was for the purchase of the property at Mpindweni.

CHAIRPERSON: H'mm.

MS LINDELWA MBANJWA: Then secondly there is evidence here that the decision to dispose ...(intervenes).

CHAIRPERSON: H'mm.

MS LINDELWA MBANJWA: Of the GP use ...(intervenes).

CHAIRPERSON: H'mm.

MS LINDELWA MBANJWA: Was from SAA.

CHAIRPERSON: H'mm.

10 **MS LINDELWA MBANJWA:** Not even SAAT. That is the main holding company. Yet the statement that comes from Ms Hofmeyr is that Ms Memela sold these things. If Ms Memela can – if Ms Hofmeyr can just kindly be very careful about the manner in which she words the things.

CHAIRPERSON: Yes, but you see all those concerns belong to your re-examination.

MS LINDELWA MBANJWA: I ...(intervenes).

CHAIRPERSON: Note them and when you re-examine you highlight what you believe is incorrect. Whatever it is that you believe was
20 incorrect which Ms Hofmeyr would have put to her.

MS LINDELWA MBANJWA: Thank you Chair.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: Ms Memela, did you share pricing information with a bidder about the prices that other bidders had bid for a tender while was still open?

MS MEMELA: Oh. Are we now – okay Chair I had the question.

CHAIRPERSON: Oh. Okay. Just hang on.

MS MEMELA: *Ja.*

CHAIRPERSON: Was there not a question you had asked or proposition you had put to her ...(intervenes).

MS MEMELA: Yes.

CHAIRPERSON: Which she was still in the process of answering.

ADV KATE HOFMEYR: Apologies Chair if that was the case. I had understood – my last question was ...(intervenes).

10 **CHAIRPERSON:** *Ja.*

ADV KATE HOFMEYR: That chronology.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: Was the sale of price agreed with JM Aviation ...(intervenes).

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: A month and a bit after the ...(intervenes).

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: Purchase price ...(intervenes).

CHAIRPERSON: Yes.

20 **ADV KATE HOFMEYR:** Had been directed to the Bedfordview house ...(intervenes).

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: And I understood Ms Memela to say after your ...(intervenes).

CHAIRPERSON: *Ja.*

ADV KATE HOFMEYR: Introduction.

CHAIRPERSON: HM.

ADV KATE HOFMEYR: Yes, but insofar as it was related to a purchase for her mother's ...(intervenes).

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: Property.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: That had concluded my questions ...(intervenes).

10 **CHAIRPERSON:** Yes.

ADV KATE HOFMEYR: On the GPU and so I was moving to the components ...(intervenes).

CHAIRPERSON: She said wanted to look at an invoice ...(intervenes).

MS MEMELA: Yes.

ADV KATE HOFMEYR: Oh, right.

CHAIRPERSON: And I do not think she ...(intervenes).

MS MEMELA: That is right.

ADV KATE HOFMEYR: Yes.

CHAIRPERSON: Had made the point ...(intervenes).

20 **ADV KATE HOFMEYR:** Apologies.

CHAIRPERSON: She wanted to make on the invoice.

ADV KATE HOFMEYR: Yes.

MS MEMELA: Yes Chair.

CHAIRPERSON: Did you find the invoice?

MS MEMELA: I found the invoice Chair and ...(intervenes).

CHAIRPERSON: Huh-uh. Well where do we find the invoice?

ADV KATE HOFMEYR: DD25B at page 617.

CHAIRPERSON: Do I need to go to it?

MS MEMELA: You do not have to Chair.

CHAIRPERSON: Ja. Okay.

MS MEMELA: I just wanted to check the date ...(intervenes).

CHAIRPERSON: Okay. Alright.

MS MEMELA: And confirm, because Ms Hofmeyr was referring to the letter that was sent to JM in terms of telling them that okay. They –
10 this has been approved and then I see that the invoice was signed on the 11th of July 2016 which I am trying to now give clarity of like. These two matters like the payment of the property versus the Swissport being finalised and stuff – have absolutely no link in between.

Other than what has been painted out there in the public that maybe the amount that was paid for my mother's property could have been found from here. That is my assumption, because I am trying to understand why is this question asked between like I mean. Okay. This was finalised between – after the payment was made
20 ...(intervenes).

CHAIRPERSON: Okay.

MS MEMELA: And Chair just to add one sentence now.

CHAIRPERSON: H'mm.

MS MEMELA: I remember I promised that I will bring the offer to purchase between ...(intervenes).

CHAIRPERSON: Yes.

MS MEMELA: Yes. My mum and Mr Ndzeke ...(intervenes).

CHAIRPERSON: Yes.

MS MEMELA: And if I remember correctly it was signed around November 2015 ...(intervenes).

CHAIRPERSON: Huh-uh.

MS MEMELA: But because I was supposed to go to Eastern Cape today to get these documents and stuff and ...(intervenes).

CHAIRPERSON: H'mm.

10 **MS MEMELA:** I could not go ...(intervenes).

CHAIRPERSON: Huh-uh.

MS MEMELA: And I will provide that as soon as I get the chance, because I wanted to finalise with this ...(intervenes).

CHAIRPERSON: Yes.

MS MEMELA: And then make sure that ...(intervenes).

CHAIRPERSON: Yes.

MS MEMELA: I provide that information and then she is going to see ...(intervenes).

CHAIRPERSON: *Ja.*

20 **MS MEMELA:** That actually this was signed for 1 November ...(intervenes).

CHAIRPERSON: H'mm.

MS MEMELA: 2015.

CHAIRPERSON: H'mm.

MS MEMELA: The fact that like the payment for that purchase of that

property to ...(intervenes).

CHAIRPERSON: H'mm.

MS MEMELA: To pleasing me.

CHAIRPERSON: H'mm.

MS MEMELA: Is neither here nor there.

CHAIRPERSON: H'mm. Okay. Ms Hofmeyr.

ADV KATE HOFMEYR: Thank you Chair. I am indebted. I had forgotten about that page. If we can then move to the components tender and then ...(intervenes).

10 **CHAIRPERSON:** And we moving to the bundle that has got her affidavit?

ADV KATE HOFMEYR: We are indeed.

CHAIRPERSON: Okay and where about ...(intervenes).

ADV KATE HOFMEYR: And we will pick it up – I need first actually to refer to an aspect of Ms Sambo's evidence. So if I could – we do not have to go there ...(intervenes).

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: But the response is actually contained in Ms Memela's response to Ms Sambo. Ms Memela you recall
20 Ms Sambo's evidence was that you had provided her with a flash disk containing pricing information at a point while a certain tender was open. Do you recall that?

MS MEMELA: I recall the affidavit by Ms Sambo Chair.

ADV KATE HOFMEYR: And you have denied in response to her that you gave her that flash disk.

MS MEMELA: Yes.

ADV KATE HOFMEYR: Correct.

MS MEMELA: Yes Chair.

ADV KATE HOFMEYR: Are you aware that she found the flash disk and provided it to the Commission?

MS MEMELA: If you have sent it to me – if you have sent that information then it means I have not received it.

ADV KATE HOFMEYR: H'mm.

MS MEMELA: I do – I did hear Chair from – comments from of course
10 my friends and family that apparently there was a flash disk that was shown that Ms Sambo conveniently found it. After I had said for a person who was hell-bent to collect information about me. To an extent where she went to Facebook and took my photos and stuff and then the memory stick that she refers to gets lost.

So for me I – since I did not receive that and maybe 3.3 then that says okay. Now she has found it

CHAIRPERSON: Okay. I think let us ...(intervenes).

MS MEMELA: I did not ...(intervenes).

CHAIRPERSON: I think the brief answer

20 **MS MEMELA:** Ja.

CHAIRPERSON: Is you never received it prior to your coming to give evidence ...(intervenes).

MS MEMELA: Yes Chair.

CHAIRPERSON: But you did become aware in the past few days or last week from people who told you that in the Commission

...(intervenes).

MS MEMELA: H'mm.

CHAIRPERSON: Ms Sambo indicated she had – that she had found it.

MS MEMELA: Yes.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: So your evidence today is still to deny that you gave her the flash disk. Is that correct?

MS MEMELA: I deny giving her the flash disk, because ...(intervenes).

ADV KATE HOFMEYR: Can we look at ...(intervenes).

10 **MS MEMELA:** Okay.

ADV KATE HOFMEYR: Apologies. Continue.

CHAIRPERSON: Yes. Finish your answer.

MS MEMELA: Okay. I deny giving her the flash disk, because first of all Chair. There is no way that I will have those prices. The only time that maybe I will give her prices or for instance maybe that information in terms of me naively helping a black owned woman and stuff. It will be just the prices that is out there on the market.

Not the price that is discussed by the CFST, because I do not sit in the CFST as I early indicated in 2015.

20 **ADV KATE HOFMEYR:** Thank you. After we received the flash disk which was on the night before Ms Sambo began testifying. We managed to analyse it. Chair, I did indicate that there was going to be an affidavit from the relevant person in the Commission who did that analysis. It has been included in Ms Memela's Bundle DD25B at page 653.

MS MEMELA: Page 65?

ADV KATE HOFMEYR: 3.

MS MEMELA: 3.

CHAIRPERSON: Yes page 653 okay.

MS MEMELA: Chair when was this made available here?

CHAIRPERSON: Well she – Ms Hofmeyr is going to indicate that but it's a recent affidavit.

ADV KATE HOFMEYR: So you will see that it was deposed to on the 5th of February 2020 you'll see that at page 657 Bundle DD25B it was
10 deposed to on the 5th of February 2020 ...(intervenes)

CHAIRPERSON: Can you see that Ms Memela, are you on the right page?

ADV KATE HOFMEYR: On page 657.

MS MEMELA: 657.

ADV KATE HOFMEYR: I'm getting to the last page of the affidavit.

MS MEMELA: *Ja.*

ADV KATE HOFMEYR: That's the 5th of February 2020, that was Wednesday last week, it was then included in your bundle prior to your evidence on Friday. So what Mr Sefumba who is the representative –
20 Digital Forensic Investigator of the Commission indicates in this affidavit is the circumstances in which it was obtained by the Commission and then he goes over to indicate that he took certain steps to image the USB and he extracted what is called the metadata from the file, you'll find that at page 656 and then his Annexure A which is at 658 is a screenshot of the metadata which indicates who the

author of the document was on – sorry I didn't see that.

CHAIRPERSON: Well maybe let's finish – let's get to the question first, Ms Mbanjwa before we can interrupt or do you not have the page?

MS MBANJWA: No Chairperson I'm not even objecting to the questions, can I raise – it's a very fundamental objection.

CHAIRPERSON: *Ja.*

MS MBANJWA: The very nature of the evidence, I understand, having read the rules that the Chairperson has a full discretion on what evidence must be submitted. All I want to place before the Chairperson
10 is how seriously prejudicial this evidence is going to be. What has happened is a document that went where we do not know and there is no chain of evidence to say that it left Ms Memela and went directly to the person who testified, it's now being presented here as a fact. So what we are asking is, because the Commission also had an expert to do this imaging, so what we are saying is, can we also have an expert and then we will also have an expert on this document, because I, as an attorney, there is no way I'm going to even be able to cross-examine or to even re-examine or even do anything about this document because I am presented now with this expert evidence of such a
20 technical nature. This is one of those situations where I am begging the Chairperson to afford us an opportunity and we will ask our expert to sit with the expert of the Commission just to validate the veracity of whatever is there.

CHAIRPERSON: Yes, no, no, no I understand what you're saying but I think it's not something that – I think the question should be finalised.

You will get an opportunity, I mean Ms Memela, I assume she is not a Forensic Investigator, I'm not sure, I don't have the expertise. She will be able to say I'm able to say something in response to this question or I'm not able to say anything in response to the question but you will get an opportunity if you apply in terms of the rules for leave to bring a witness – an expert to deal with this expert's evidence, so that can be provided in due course. We should just hear what Ms Hofmeyr – what question she was putting to her and she is free to say, I'm able to answer or I'm not able to answer okay.

10 **MS MBANJWA:** Thank you Chair.

CHAIRPERSON: But you will get an opportunity if you comply with the rules to bring your expert, yes Ms Hofmeyr?

ADV KATE HOFMEYR: Thank you, we were at DD25B at page 658 and what Mr Sefumba explains there is that this is a representation of what's called the metadata, it identifies the properties of the documents that are on the flash disk, the Excel spreadsheet, and what this revealed as metadata was that the author of the Excel spreadsheet was Leon Roberts and that the excel spreadsheet was last saved by, and the name there is Nontsasa Memela, do you see that?

20 **MS MEMELA:** I see that Chair.

ADV KATE HOFMEYR: Do you nonetheless persist in your evidence that you would not have had access to any such information?

MS MEMELA: Chair I'm not prepared to answer that until I know for sure ...(intervenes).

CHAIRPERSON: You get advice?

MS MEMELA: Exactly, I know for sure where is this whole information, because I actually see that Mr Leon Roberts also wrote an affidavit mentioning me but I never was given the Notice or 3.3 from Mr Leon Roberts.

CHAIRPERSON: Yes.

MS MEMELA: Yes.

CHAIRPERSON: Okay, so you're saying you are not prepared to say you stand by the answer you gave earlier on until you have got expert advice?

10 **MS MEMELA:** I'm saying I'm prepared to stand by that answer that I gave to my statement earlier on with regard to Ms Sambo's admissions that I had given her the memory stick with the prices ...(intervenes).

CHAIRPERSON: Yes okay that's fine.

MS MEMELA: For that tender.

CHAIRPERSON: That's fine *ja*.

MS MEMELA: Yes

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: And just to be clear, so that I know where we've left off, your evidence after that that you would not have had
20 access to this pricing information at all, you want to hold on confirming that until you've had ...(intervenes).

MS MEMELA: I want to hold on confirming to that, hence, I said Chair, the price that I could have maybe, it would be price from the market just changing what is out there on the market, not the spreadsheet from the CFST where it is voted on and signed by the CFST.

CHAIRPERSON: Okay, thank you.

ADV KATE HOFMEYR: Thank you, let's move on then, I think to aid processes, we'll await any further application and we can take this evidence forward after that.

CHAIRPERSON: Yes that's fine.

ADV KATE HOFMEYR: Let's move to your communications on the 14th of January 2016 with Ms Sokhulu ...(intervenes)

CHAIRPERSON: So I think maybe just to conclude for now, the point you are making, you might want to put to Ms Memela what you make of
10 this evidence.

ADV KATE HOFMEYR: Indeed.

CHAIRPERSON: And then she will answer in whatever way but she will get – she will have an opportunity to consult an expert and they can apply for leave to lead the evidence of a different expert, that will be fine.

ADV KATE HOFMEYR: Thank you Chair.

CHAIRPERSON: As long as they comply with the rules, okay, but I think to conclude it, it's important to state what it is that we ...(intervenes)

20 **ADV KATE HOFMEYR:** No absolutely, I'm indebted Chair. So we were focused on Annexure A which is indicating the properties of the Excel spreadsheet and what I'm indicating to you Ms Memela is that when our expert looked at the Excel spreadsheet, the information contained in its metadata was that you were the person who last saved that spreadsheet, do you have a response to that?

MS MEMELA: I won't have the response Chair because it's something that was found from an expert that – and I was not notified of it.

CHAIRPERSON: No that's fine *ja*.

ADV KATE HOFMEYR: And just for the record, that – on the same page as indicated as having been done on the 3rd of August 2015 do you see that on page 658? So this is useful because if there's aspects that the expert needs to address, it will be whether in any respect, these facts recorded are wrong.

CHAIRPERSON: Yes.

10 **ADV KATE HOFMEYR:** And are you aware that the 3rd of August 2015 was 16 days before AAR submitted its tender on the five-month components tender?

MS MEMELA: No I'm not aware, remember I don't have the chronology.

ADV KATE HOFMEYR: Right.

MS MEMELA: But what I remember Chair, is that, Ms Sambo who made these statements was not party to the bid and that will be proven by her letter of aggrieve, like where he sent an e-mail to SAAT complaining that – in fact he sent this to ENY, Ernest & Young Forensic
20 Investigators that he never bided with AAR, she never gave them the authority to use her company and stuff.

CHAIRPERSON: *Ja*.

MS MEMELA: So that's where I'm actually not sure that ...(intervenes)

CHAIRPERSON: *Ja*.

MS MEMELA: *Ja* when she said she's got this here, like in the other

letter she says she never got the – gave them the authority to do this.

CHAIRPERSON: Okay, no that's fine.

ADV KATE HOFMEYR: Thank you Chair, I was going to move to the communications between Ms Memela and Ms Sokhulu on the 14th of January 2016, Ms Memela you'll find those in Ms Sambo's affidavit that is Exhibit DD18, that should be next to you and available.

MS MEMELA: DD18 page?

CHAIRPERSON: She will tell you the page just now.

ADV KATE HOFMEYR: Have you got DD18 I don't think we've taken it
10 out yet today.

CHAIRPERSON: Have you got an Exhibit marked DD18?

ADV KATE HOFMEYR: It's the evidence of Ms Sambo.

CHAIRPERSON: It might not be there.

MS MEMELA: Oh DD18 is here Chair.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: And we'll pick it up at page 339.

CHAIRPERSON: Ms Hofmeyr are you going to need to – oh okay, not that's fine.

ADV KATE HOFMEYR: I'm actually realising in the chronology it
20 would be better to start at 367 of that Exhibit DD18, so if you'll just turn up 367 because there were two communications on the 14th of January.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: Let's start, Ms Memela with the one at 637, do you have that?

MS MEMELA: 367?

ADV KATE HOFMEYR: Yes.

MS MEMELA: Yes Chair I'm here.

ADV KATE HOFMEYR: So that is the 14th of January 2016, can you tell us who sends the e-mail and to whom it is addressed, the one in the second half of the page?

MS MEMELA: Second half of the page it's coming from Ms Sokhulu, 14th January 2016 to Nontsasa, my iCloud account.

ADV KATE HOFMEYR: And what does the subject read?

10 **MS MEMELA:** "Hi cuz so here is the latest ...(intervenes)

ADV KATE HOFMEYR: Sorry just the subject first if you don't mind?

MS MEMELA: Okay, forward re: South Africa Draft Proposal.

ADV KATE HOFMEYR: And then the contents of the e-mail?

MS MEMELA: "Hi cuz, so here is the latest proposal, please let me know if it is acceptable".

ADV KATE HOFMEYR: And then there's a thanks.

MS MEMELA: And then there's a thanks.

20 **ADV KATE HOFMEYR:** And then at 369 as I understand it is the proposal that was attached. You've made the point that the only track changes on this proposal are those that are not from you, is that correct?

MS MEMELA: Yes Chair.

ADV KATE HOFMEYR: Now on the 14th of January 2016, the bids were still coming in on the final five-year components tender, is that correct?

MS MEMELA: Yes Chair.

ADV KATE HOFMEYR: They were due to be submitted on the 19th of January 2016, correct?

MS MEMELA: Yes.

ADV KATE HOFMEYR: And the allegation is that that communication with the bidder was in breach of the tender requirements, do you have a response to that?

MS MEMELA: Was in breach of the tender requirement, Chair if the person sits at the Evaluation Committee or Bid Evaluation Committee
10 which is the CFST, so it is in conflict in that regard because you are sitting there, you know all the information and you are the one who is going to vote, who is going to decide on this information. So the reason I say it's not – I'm not sure maybe Ms Hofmeyr is going to direct me on the legislation or maybe provision that says, it's against the tender requirement for a person who does not sit in the Bid Evaluation Committee to help or comment on certain proposals especially with regard to what I had stated on my statement.

ADV KATE HOFMEYR: Yes, Ms Memela as I understand it your statement makes this very point, you say there's untoward about the
20 communication, because you did not sit on any of the decision making bodies, is that correct?

MS MEMELA: That is correct Chair.

ADV KATE HOFMEYR: And let's look at the second communication from that day, you will find it at 339.

MS MEMELA: Before we go to that 339 I wanted us to finish here

Chair from ...(intervenes).

CHAIRPERSON: Yes.

MS MEMELA: 367 and its attachment.

ADV KATE HOFMEYR: Yes, what would you like to say about the attachment?

MS MEMELA: I said on my statement Chair I am sure whatever that Ms Sokhulu sent me this for was to confirm and check if the Supplier Development program or Supplier Development proposal is in order as I have said that the Supplier Development program was a new program at
10 SAAT, we had never given an opportunity to Black-Owned Companies to joint ventures with SAAT. The person who actually started that to empower black-owned suppliers in terms of these multinational suppliers.

Now from what Ms Hofmeyr had referred to with which is my – the e-mail from Ms Sokhulu to me I see no evidence, maybe she is going to direct me to that, I see no evidence or e-mail that is responding to Ms Sokhulu and also on their comments because it does show that this was a draft and there were track changes. There is nowhere where there are track changes where it says Advocate Memela
20 ...(intervenes).

CHAIRPERSON: Yes, but she hasn't asked questions about that, she wanted to move onto something and you said you wanted to look at something and I thought it was relating to the last question she had asked.

MS MEMELA: Okay Chair maybe my wrong, because this is the

proposal and I thought the one in 339 is talking to the JV, but *ja*, but ...(*intervenes*).

CHAIRPERSON: Okay no that's fine.

MS MEMELA: But *ja* these are two different documents.

CHAIRPERSON: *Ja*, okay thank you.

ADV KATE HOFMEYR: Given that you have drawn attention to it I do have a follow up question, you said you are sure that Ms Sokhulu was sending it to you to look at the supply development aspects, correct?

MS MEMELA: I think so yes Chair.

10 **ADV KATE HOFMEYR:** You think so, so did you have a conversation with her about it?

MS MEMELA: Did I?

ADV KATE HOFMEYR: Have as conversation with her about it when she told you what she wanted you to look at was Supplier Development?

MS MEMELA: No I don't remember having a conversation in writing Chair, I may have had a conversation verbally, maybe saying I think it actually covers the supply development. These are the communications that I have received from so many BEE companies Chair and as I mentioned in my statement that I even had an MOU from Kwane Capital
20 being the BEE company of Air France, which I signed for, so I mean those are the people that – it was the first time for the door to be opened for them to actually deal or maybe participate in these big companies and with these big multinational international companies. You know so it was my duty in terms of the job description and also in terms of the – I don't know if Ms Hofmeyr I have sent you that but there

is an enterprise development supplier program that was done in 2014, that actually gives us that obligation to promote the joint venture relationship between multinational companies and local companies.

ADV KATE HOFMEYR: So just let me get your evidence clear, you did have a conversation with her in which you responded to this e-mail on the 14th of January telling her that you thought the Supplier Development aspect of the bid looked okay, that was your evidence?

MS MEMELA: I am saying – okay I am saying Chair I said I don't remember if there is any written response from me, but I do know that
10 when I receive these, like I receive from any other supplier, BEE suppliers, I respond either by phone and say okay I think this is in line with what is required.

CHAIRPERSON: Yes, but she is saying do you recall whether you did have a conversation with her telephonically, or in a meeting with her.

MS MEMELA: I don't recall Chair.

CHAIRPERSON: You don't recall?

MS MEMELA: I don't recall.

CHAIRPERSON: Ja, okay.

ADV KATE HOFMEYR: So you have no other basis for thinking that
20 she was just asking about Supplier Development, unless you'd had a conversation with her, correct?

MS MEMELA: I have no, sorry?

ADV KATE HOFMEYR: Basis for concluding that she was only interested in your input on Supplier Development, unless you'd had a conversation with her.

MS MEMELA: The basis will be that Chair I would not have the information to discuss any other information of the tender, other than Supplier Development with her, because I don't sit in the Evaluation Committee, being the CFST as such, and the other basis is the fact that there is no way where I had helped them for them to win. I corrected Ms Hofmeyr on Friday when she referred to Lufthansa as being number three bidder and I said Lufthansa was number one bidder, so that was the winning bidder in terms of the scoring points.

ADV KATE HOFMEYR: And Ms Memela do you recall considering the
10 proposal that was attached to that e-mail when you received it?

MS MEMELA: Considering it?

ADV KATE HOFMEYR: Looking at it, reviewing it?

MS MEMELA: I don't recall Chair, I think it was – when was it, it was in 2016, so I don't recall what happened, and Chair the reason why I would say I don't recall as well is that the reason why Ms Sambo has these documents it was again for the same basis that made Ms Sokhulu send me the documentation, it was to assist her.

Remember in 2016 in the final five year tender Ms Sambo what she did not mention here in the Commission when she was here, or
20 maybe in her affidavit she did not bid in that tender, because she did not have any partner to bid with, you understand, so – and the reason why I gave her because she was frustrated, she wanted to see if she can actually approach other multinational companies because remember in the five months period contract or tender they had not seen eye to eye where they are, exactly, so of course ...(intervenes).

CHAIRPERSON: Yes, I think I she mentioned that.

MS MEMELA: Yes, so she couldn't bid with them.

CHAIRPERSON: Yes.

MS MEMELA: So the reason I gave her this was me saying okay remember you have been complainant about this ...(intervenes).

CHAIRPERSON: Okay Ms Memela, okay, okay, the question is not about that.

MS MEMELA: I was giving the evidence for you Chair to understand the background yes.

10 **CHAIRPERSON:** Yes, no I understand. Ms Hofmeyr?

ADV KATE HOFMEYR: Let us go to the other e-mail on the 14th of January you will find that at 339 of the same bundle, Exhibit DD18.

MS MEMELA: Page 339.

ADV KATE HOFMEYR: Yes, just tell us who the e-mail is from and to?

MS MEMELA: The e-mail is from Ms Nkosi Sokhulu.

ADV KATE HOFMEYR: And it is to?

MS MEMELA: It is to Nontsasa Memela on the same date as the proposal was sent.

ADV KATE HOFMEYR: And the subject this time?

20 **MS MEMELA:** The subject this time is joint venture draft agreement.

ADV KATE HOFMEYR: And what does Ms Sokhulu say in the first three lines?

MS MEMELA: "Hi Cousin, this is the first draft of JV so far,

Jules did a quick review and noticed the following..."

And then she states:

1. Agreed participation JM 5%, AAR 95%, 6 participation interest JM 5% ...”

Do you want me to read the whole thing?

ADV KATE HOFMEYR: Yes that’s fine.

MS MEMELA: Okay.

“As per the collaboration agreement JM is to receive 5% of any amounts received by AAR from SAAT. This is linked to revenue not, profits for example if SAAT remits 100 000 US Dollars to AAR then JM is to receive 5 000 US Dollars. The way the participation interest clause is written states that JM will receive 5% of the profits, this is not correct. We need to determine what will 5% of revenue equate to as a percentage ownership of the joint venture for JM. Please let me know if there is anything else we might have overlooked.”

ADV KATE HOFMEYR: Thank you. Why would a bidder on a components tender that is still not closed be engaging with you as the Head of Procurement about the details of their JV agreement with their bidding partner?

20 **MS MEMELA:** Okay, Chair as I said it is just that you did not give me that opportunity, maybe I will be worried that I will be my old self and take long, I wanted to give the full background.

CHAIRPERSON: Well if you can.

MS MEMELA: It will give me, it will take me about two to three minutes, I promise.

CHAIRPERSON: That is quite long.

MS MEMELA: Oh, one and a half.

CHAIRPERSON: Okay, alright.

MS MEMELA: Okay Chair. Chair as I mentioned on Friday SAAT had always used the international multinational companies to supply spares and everything else, and there has never been any participation between local companies and maybe joining ventures with international companies, and then we had the likes of Ms Sambo who had been knocking on SAAT's door from 2012, I am sure you can see the
10 evidence, where she started bidding with AAR, and from that moment she had not had the JV that was protecting her from in case AAR runs away, like they did, you know and during that time when she actually introduced herself to me the first question I asked her do you have a JV with these guys, because like remember you will not have a formal claim or a legitimate claim from them if you don't have a JV, so for me I was fully involved in terms of discussing the JV's and supply development program and others, it was MOU between multinational company and versus local company like ...(indistinct) with Air France they had an MOU.

20 So to answer Ms Hofmeyr's question it is that the reason why they had maybe sent it to me was also to check if they are doing it, because they were using their own lawyer, they were not using me, but maybe they just wanted me to check if they are not negotiating what – to their disadvantage, like Ms Sambo had done. For the first time during her affidavit I saw that okay she had a contract with AAR, which

she never disclosed to me because I would have told her there and then that that is not going to work.

CHAIRPERSON: Okay Ms Memela.

MS MEMELA: Yes.

CHAIRPERSON: Okay, okay.

ADV KATE HOFMEYR: So Ms Memela they were coming to you for legal advice?

MS MEMELA: No they were not coming to me for legal advice, they were coming to me like for a JV and having the relationship with the
10 multinational company, because remember that JV will be the basis of what will be maybe accepted by SAAT in terms of like understand that okay there was no fronting, or maybe there was no they just like used these black people because they were available and stuff, so it will be something that will go for the remainder of the contract.

ADV KATE HOFMEYR: So it was to understand what would be acceptable to SAAT?

MS MEMELA: No it was to – remember the JV is an independent document from SAAT.

ADV KATE HOFMEYR: Yes that is why I am interested in why they are
20 sending it to the Head of Procurement.

CHAIRPERSON: Yes, Ms Hofmeyr's interest really is why would a bidder who is preparing their bid to the company where you are HOD of Procurement ...(intervenes).

MS MEMELA: Yes Chair.

CHAIRPERSON: Be sending you their draft proposals and asking for

your assistance?

MS MEMELA: I will think Chair they wanted to hear my view, if they are not negotiating to their disadvantage. I mean even Kwane Capital and Air France during the five months tender they sent me the MOU between themselves and it was talking – now it was not as detailed as this but it was talking about the percentage that Kwane Capital is entitled to.

CHAIRPERSON: But that would be strange, would it not be, because isn't the position with regard to tenders that each bidder is supposed to
10 prepare its bid to the best of its ability and put it in without sharing it with another potential bidder for the same thing, put it in, the bidders shouldn't know each other's bids or proposals and the employer, SAAT, in this case would then on a certain day open them, look at them and see which one is the best and in the process as they prepared their bids they might disadvantage them, they might put in something that will count against them, they might put something that will not count against them but they have got to put their bid as they prepare them.

MS MEMELA: This JV Chair was not part of the bid, so I am trying to correct that part where they're saying they should, they are the only
20 one that was part of the bid it's this proposal.

CHAIRPERSON: H'mm.

MS MEMELA: And I will go back to ...(intervenes).

CHAIRPERSON: Yes but remember that part of Ms Hofmeyr's question is why are they – why were they giving you all of these documents asking you for assistance from you when one, they were at one of the

bidders. Two, the bid had not been closed.

MS MEMELA: Chair, in my reading of the e-mail, I do not see anywhere where they ask for my assistance other than they said please let me know anything else we might have overlooked.

CHAIRPERSON: Well that is asking for assistance is it?

MS MEMELA: Okay, Chair.

CHAIRPERSON: Yes

MS MEMELA: And also, there is no e-mail that shows that I had gone back to them and given ...(intervenes).

10 **CHAIRPERSON:** Now we – Ms Hofmeyr she is still simply at the point where we know ...(intervenes).

MS MEMELA: Ja.

CHAIRPERSON: There are sending you documents including a proposal ...(intervenes).

MS MEMELA: Okay

CHAIRPERSON: Tell us if this is fine.

MS MEMELA: Yes Chair.

CHAIRPERSON: So she is asking question, why would a bidder be asking the Head of Procurement of the company to whom to which they
20 are going to submit a bid, to first check whether their proposal is acceptable. Why are they not simply putting their bid after preparing their bid to the best of their ability and then being judged on that?

MS MEMELA: For the proposal Chair that you are referring to, that is why I am saying I think they were asking me if their supply development is in line with what is required because as I said that was a new

program at that time.

So whatever was put on the table it was new and we were working together and since I was not sitting at the evaluation table I was the one who they could approach.

CHAIRPERSON: Ms Hofmeyr.

ADV KATE HOFMEYR: Thank you Chair. Ms Memela the one thing we have not noticed yet, for the record is what e-mail address of yours these requests for assistance were sent to. Could you read into the record, what e-mail address they were sent to?

10 **MS MEMELA:** Chair if I read my e-mail address it will be known to the public and I will receive insults and whatever ...(intervenes).

CHAIRPERSON: Okay, no, no.

ADV KATE HOFMEYR: No, no, so I can ask it differently, thank you. They were not sent to your SAAT e-mail address, were they?

MS MEMELA: They were not sent to my SAAT e-mail address Chair. They were sent to my private e-mail, and I did mention on my statement that others would send me SMS's on my private phone and then I will respond to that, as I had been also communicating with Ms Sambo.

20 You will notice that I had communicated with her on the private side, you know not because like we were running away from anything but I took that me, that I am actually guiding them. To add there Chair, I will not take long, there is somewhere where it talks about the joint venture or shareholders agreement or Consortium on that five months contract or five months tender, where there were other Black-Owned Companies that I saw from Mr Human's what file, that there was a

Consortium also it is also in my file.

There was a Consortium where it was listing certain people and Mr Human in his affidavit he said I agreed to meet with the BEE companies, like that were forming that what, shareholders agreement. Just to prove that I was I had not only communicated with maybe JM or maybe they were the ones who actually communicated with me.

I am actually trying to prove that there were other people who were reaching me on the side to see, and then I remember on the Consortium one we did not agree because I told them that you cannot
10 just come with something that has already been done and then when this thing is run by SAAT.

ADV KATE HOFMEYR: So, did you use your I-Cloud e-mail address when you were providing guidance and your formal SAAT e-mail address when it was formal communications with entities?

MS MEMELA: When it was formal okay...(intervenes).

ADV KATE HOFMEYR: You see, let me...(intervenes).

CHAIRPERSON: She is asking when did you use your private e-mail address and when did you use the – your official e-mail address in communicating with these companies – BEE companies?

20 **MS MEMELA:** Okay Chair it depended if I was at work. Some would communicate with me via my work e-mail, but because I had had a problem with my connection at home and because I will connect only via my private e-mail. So, if I am at home and people want to talk to me they would use my iCloud account. Yes Chair.

ADV KATE HOFMEYR: Right, thank you for that. I would like to take

you to – oh before I do that – Ms Memela should we not take it as in any sense an indication that something was happening alongside this bidding process that your iCloud or private e-mail was being used. I understand your evidence to be – you would regularly use that in your interactions with bidders?

MS MEMELA: I said I would use it when I am in the home, like when they cannot reach me on my work e-mail then I will let them use my private e-mail account.

ADV KATE HOFMEYR: So, were you at home at 16:00 in the afternoon
10 of the 14th of January 2016? Because that is when the e-mail came from Ms Sokhulu to you.

MS MEMELA: I would not remember Chair where I was.

ADV KATE HOFMEYR: So, but do you remember specifically saying use my iCloud e-mail address because I am not at work?

MS MEMELA: Remember Chair if, for the fact that Ms Sokhulu sent that e-mail at 16:00 pm, does not mean I have read it at 16:00 pm. It may happen that okay maybe I read it later or maybe I was – so I cannot really answer that, I was at home at that time.

ADV KATE HOFMEYR: No but ...(intervenes).

20 **CHAIRPERSON:** Did they, was the position that during normal business hours if they wanted to send you an e-mail they would use your official e-mail, but during, but after hours they would use your home – your personal private e-mail address. Is that the position?

MS MEMELA: Yes, that is the position Chair.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: Ms Memela your previous evidence, this morning I think it was, was that as the head the HOD of Supply Chain Management, your role was to run tenders and to make sure they adhered to processes. Is that your evidence before this Commission?

MS MEMELA: What I had said also on Friday Chair if I must repeat, is that the CFSTO maybe the Bid Evaluation Committee. They bring the recommendation to me without any other administrative documentation to check if it is flowing and I will be able, we will be able to talk to it when we go to Exco to be AC and then when the CO goes to the Board

10 So like she, Ms Hofmeyr asked me, if I am saying I signed as the Exco member and I corrected and I said no, I sign as HOD SCM as I am signing in support of the Bid Evaluation Committee, based on what they had put on the table to me.

ADV KATE HOFMEYR: Yes, and I understood your evidence to be you are one of the checks that the process has been properly followed is that correct?

MS MEMELA: Remember the duty to check the process if it is properly followed and stuff, it is partly mine but mainly by the BAC, as I said that the BAC will check all the relevant legislation on Friday. I said if
20 they check all the relevant legislation and whatever that they have gone through CFST and see if everything was checked ...(intervenes).

CHAIRPERSON: So, your answer is that you check parts of it.

MS MEMELA: For instance, Chair, I said on Friday there is a recommendation that is made by the project manager. In this regard it was Leon Roberts and then for the 2016 and when he brings the

recommendation with the – what do you call this, summary of what they had discussed there and evaluated and whatever and then come with the proposal to say this is the highest scoring bidder in this regard. The initial highest scoring bidder was Lufthansa.

CHAIRPERSON: Yes, but the answer – you answered to Ms Hofmeyr is that yes you are part of the people who check. You are not the only one, but you are part of the people who check.

MS MEMELA: Yes but ...(intervenes).

CHAIRPERSON: That is right.

10 **MS MEMELA:** Yes Chair.

ADV KATE HOFMEYR: Were you aware that it was prohibited under this bid for there to be any communication between a bidder and somebody other than the project manager at SAAT?

MS MEMELA: I am aware of that.

ADV KATE HOFMEYR: Let us go to it if we may.

MS MEMELA: Ja.

ADV KATE HOFMEYR: It is in Human's bundle. You will find it at DD22E and it is at page 2052.

MS MEMELA: DD?

20 **ADV KATE HOFMEYR:** DD22E at page 2052.

MS MEMELA: Did you say DD22E?

ADV KATE HOFMEYR: Correct, yes.

MS MEMELA: Of Mr Human ...(intervenes).

ADV KATE HOFMEYR: Mr Human. And then you will turn up page 2052.

MS MEMELA: 2052, okay.

ADV KATE HOFMEYR: Chair I have picked it up in the middle of the document just for records purposes. The document begins at 2043, and that is the request for bid on the final components tender, that was eventually awarded for five years to the joint venture of JM Aviation and AAR, and Ms Memela your evidence was that you were aware of the provision in this tender that prohibited communications and I would like to take you to the relevant clause. It is clause 1.6 at page 2052.

CHAIRPERSON: Have you got it?

10 **MS MEMELA:** 1.6 communications surrounding the RFP, yes Chair.

ADV KATE HOFMEYR: So, 1.6.1 there records:

“All queries or information relating to this document or surrounding the bid must be addressed to the Project Manager as stipulated on page 1 of this RFP in writing.

Clause 1.6.2 provides:

“Any queries addressed to individuals other than as stipulated whether verbal, telephonic, hand-written or in any other form, will eliminate the bidder from this process.”

20

Do you see that?

MS MEMELA: I see that.

ADV KATE HOFMEYR: Do you accept that JM Aviation’s communications with you on the 14th of January meant that they should have been eliminated from this process?

MS MEMELA: I do not agree Chair.

ADV KATE HOFMEYR: Why is that?

MS MEMELA: Okay. The people or maybe the individuals that are referred to in this tender Chair, are the individuals that are sitting at the bid evaluation committee. The people that sit and go through this tender, putting the specifications in this tender, a Specification Committee which form part of the CFST.

So those are the people that are not supposed to talk or maybe get what – communicate with the bidder. And I even made an
10 example for the bid of 2014 ...(intervenes).

CHAIRPERSON: Well, before you make the example – what is the basis for your evidence that the individuals referred to in clause 1.6.2 are there specific individuals you are talking about?

MS MEMELA: My basis Chair is the fact that the people who come up with the specification of the tender, are those people that sit at the CFST who know exactly what is required by SAAT.

CHAIRPERSON: Okay alright. Let us do it this way. Is there anything in this document where clause 1.6.2 appears, is there anything or any page on this document which makes you say the reference to
20 individuals in that clause is a reference to the people who deal with specifications, or there is nothing in this document?

MS MEMELA: In this clause it is not here Chair.

CHAIRPERSON: Ja, in the document as a whole?

MS MEMELA: In the document as a whole I have not gone through the document as a whole ...(intervenes).

CHAIRPERSON: But you are not basing what you are saying on the document ...(intervenes).

MS MEMELA: But I know that Chair before this documents is put through, like I mean is put together there is a CFST Team that is responsible for specification and everything that is going to be part of this tender and this is usually referred to them because they know more about the tender information, that they are voting for evaluating or adjudicating. So, I wanted to add Chair ...(intervenes).

CHAIRPERSON: Yes.

10 **MS MEMELA:** Yes, the reason why I say this is referring to the people that sit at the CFST, remember there was a point where Mr Human referred in his affidavit that during the bid of 2014 the Board was in discussion with AAR at that time.

Remember like the bidder also was AAR but the Board was discussing with them in terms of the MOU and all that and then ...(intervenes).

CHAIRPERSON: I am sorry Ms Memela, we might have to come back to what you are saying but let me just draw your attention to this. clause 1.6.2 is clear, it says:

20 “Any queries addressed to individuals other than as stipulated”

So it means it is very specific that if you are going to communicate, these are the only people you must communicate with, and your answer seems to suggest that this clause – you understood this clause not to restrict communication to individuals – to certain

individuals.

MS MEMELA: Yes, Chair because I think it will be referring to individuals that are directly making the voting and the evaluation ...(intervenes).

CHAIRPERSON: Yes, but Ms Hofmeyr do you know where, as stipulated refers to? Let us go to that.

ADV KATE HOFMEYR: Yes, I can give you that. It is at 2043, yes because what happens on 2043 is the Project Manager is identified. You will see it says as stipulated on page 1, let us just read it
10 ...(intervenes).

MS MEMELA: Sorry.

CHAIRPERSON: Sorry 2043.

ADV KATE HOFMEYR: Yes, it is page 1 of the RFP. If you look at the bottom it is page 144 right. If I can just give the assistance. What 6.1.6.1 is saying is:

“All queries or information relating to this document
or surrounding the bid must be addressed to the
Project Manager as stipulated on page 1 of this
RFP.”

20 So, then you go to page 1 of the RFP ...(intervenes).

CHAIRPERSON: I am sorry, I am sorry Ms Hofmeyr, I cannot see where you are reading. I am at 2043.

ADV KATE HOFMEYR: I do apologise, okay, so I was just giving the context for why I take you to that page.

CHAIRPERSON: Ja, okay.

ADV KATE HOFMEYR: What we need to be looking at is 2052, which is where the relevant clause is.

CHAIRPERSON: *Ja.*

ADV KATE HOFMEYR: And I am just seeing what the clause provides is in 1.6.1.

“All queries or information relating to this document or surrounding the bid must be addressed to the project manager as stipulated on page 1 of this RFP.”

10 That is why I take you back to 2043 because that is page 1 of the bid and you will see in that first block, RFP particulars, you will see on the left hand side there is a column saying bid queries, and across from bid queries in the second column is project managers.

So, they are the project managers stipulated on page 1 of the RFP. They are Mr Leon Roberts and Ms Evelyn Fallot. So that is the cross reference I think Chair that you were looking for.

CHAIRPERSON: Yes, no that is the one I was looking for.

ADV KATE HOFMEYR: Yes.

CHAIRPERSON: You see ...(intervenes).

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

CHAIRPERSON: You see the way I read clause 1.6.2 Ms Memela, is that it must be read with clause 1.6.1 and page 1 of the document and that it prohibits communication between a bidder and anybody within SAAT other than the people stipulated in terms of clause 1.6.1 and page 1.

MS MEMELA: Okay Chair.

CHAIRPERSON: Ja that is how I understand it.

MS MEMELA: That's how, yes.

CHAIRPERSON: Yes.

MS MEMELA: Chair, I will explain now to you that this is the document, as I said with a specification and the document that is compiled by the CFST right. And the document is compiled for the bidders. This document is not given to me as you can see that it is not assigned to me or maybe where I signed off right.

10 So I am not trying to defend the fact that maybe I might have not know, might have not seen the clause that is referred to that they should not communicate with anyone. Maybe they were aware, I was not aware and I even searched my statement. Even Mr Nico Bezuidenhout being the Acting Group CEO of SAA at that time and with Mr Barakas. They met with Air France.

 Air France went there to discuss the bid of the tender during the bid process and when I tried to check if after I find out, because Nisha came and notify me. Remember I would not, okay Nisha Chair was the Senior Manager SCM at that time.

20 She came and notify me because she was called in that meeting and said Nontsasa these Air France people went to discuss with Mr Nico Bezuidenhout and Barakas. And what they were discussing there, was exactly what the bidder has bided on the tender. So the reason why what you call this, I could not disqualify them from the tender after getting that information, after sitting with Mr Masimba

Dau was the CPO of SAA of that time.

We sat down with a legal and this was discussed and they said but this for instance Mr Nico Bezuidenhout and Mr Barakas does not have it, only the supplier has it. Which is the reason why when I sent an e-mail to the supplier asking them, they must give me valid reason why I should not disqualify them and unfortunately that has not been.

Open Water knows about it but the Team of the Commission did not bring that e-mail, but I am just going back there Chair. The fact that this is written here, it does not necessarily mean that like the
10 people who are not sitting there understand it because it is not given to us before it is sent to the bidders.

CHAIRPERSON: Okay so your answer is you were not aware of this prohibition. Your understanding was that there was nothing wrong with the communications, with the bidder, is that what you are saying?

MS MEMELA: The understanding is that there was nothing wrong, because I do not sit in the Evaluation Committee. The only people that are not allowed to talk to the bidders, because they have all the information, they sitting there are the people in the CFST. The Bid Evaluation Committee Chair.

20 **ADV KATE HOFMEYR:** Ms Memela the challenge I think that your understanding presents and I want to put it to you in fairness is that no one at SAAT other than you knew that JM Aviation was corresponding with you on the 14th of January, to get input on their bid proposal, is that correct?

MS MEMELA: Yes. There was no one.

ADV KATE HOFMEYR: So only you know that a bidder is currently asking for your input on their bid proposal, correct?

MS MEMELA: Yes.

ADV KATE HOFMEYR: And then there is a provision of the RFP that says they cannot communicate with anyone other than the Project Manager, and if they do they will be eliminated from the bid. You have indicated that you were not aware of that provision at the time, correct?

MS MEMELA: I was not aware of that provision because ...(intervenes).

10 **ADV KATE HOFMEYR:** If you had been aware would you have raised the flag when you got the submission from CFST and said I see that you have evaluated JM Aviation and AAR but they should be eliminated from this bid because they have breached clause 1.6 of the RFP?

MS MEMELA: For instance Chair if there was certain policy that is know to all the executives for instance including even Mr Nico Bezuidenhout and Mr Barakas at that time which notifies the Management or maybe Executive that okay, should you receive any communication from the bidder even if it has nothing to do with the requirements of the tender.

20 It is just about Supplier Development, yes then I would have notify Leon, the Project Manager. And just to add there Chair, okay this is the part you said you will allow me to add with regard to Open Water report but like let me ...(intervenes).

CHAIRPERSON: I said later

ADV KATE HOFMEYR: If I may just have a follow up question?

CHAIRPERSON: I said later, you must just not forget, make a note, *ja*.

ADV KATE HOFMEYR: Ms Memela your evidence a moment ago was that all that you were sent was something in relation to supply development by JM Aviation, correct?

MS MEMELA: That is my version.

ADV KATE HOFMEYR: Yes, except that what you were sent was the entire bid proposal, is that not correct?

MS MEMELA: The entire bid proposal I said Chair the reason why, I just want to note this so that I do not forget later ...(intervenes).

10 **CHAIRPERSON:** *Ja*, note it, note it.

MS MEMELA: The part that I want to raise at the end with regard to bidders communicating with people at SAAT.

CHAIRPERSON: Note it *ja*.

MS MEMELA: Okay Chair.

ADV KATE HOFMEYR: Thank you Ms Memela, you confirm that you were sent the entire proposal?

MS MEMELA: I confirm that this is an entire proposal but I said earlier on Chair that it probably because she was asking me, what could have been the reason for them to send, I said probably because they knew that
20 I did not have the information for the tender as I do not sit in the Bidding Evolution Committee so it was for me to check the Supplier Development part.

And the reason why it was this I did not see anything wrong with me sharing with Ms Sambo. It was to help guide her when she approaches other bidders, other suppliers to become their joint partner,

her joint partner.

ADV KATE HOFMEYR: Ms Memela how will JM Aviation know that you were not sitting on the Bid Evaluation Committee?

MS MEMELA: How will they know?

ADV KATE HOFMEYR: Yes.

MS MEMELA: I mean every, we get the briefing sometimes. Sometimes they going to sit, they know exactly that I do not sit in the CFST ...(intervenes).

ADV KATE HOFMEYR: You briefed them ...(intervenes).

10 **MS MEMELA:** No, I do not brief them. All the bidders know that I do not sit on the Bid Adjudication Committee.

ADV KATE HOFMEYR: I am just trying to understand how they are given that information?

MS MEMELA: How are they given that information?

ADV KATE HOFMEYR: Yes.

MS MEMELA: Because I mean the HOD SCM has never seated at the Bid Adjudication Committee, ever.

ADV KATE HOFMEYR: Ja, but that is knowledge internal to SAAT, how do external parties to SAAT know who sits at the Bid Evaluation
20 Committee?

MS MEMELA: Chair, I do not know if you remember on Friday, I mentioned that one of the JM Directors, Mr Jules, has been the SAAT supplier since 1992. They get to know about this internal information. What happens where. Who sits at the Board. ...(intervenes).

CHAIRPERSON: On an official basis?

MS MEMELA: No not on an official basis sometimes. Sometimes like just through discussions ...(intervenes).

CHAIRPERSON: Do they get to know something they are not supposed to know?

MS MEMELA: No, not that like it is something that is hidden but like it has never occurred that an HOD or maybe a person at the executive level would sit at the CFST. At the CFST ...(intervenes).

CHAIRPERSON: No, no, that is internal. The question is, if SAAT did not officially inform the bidders who would sit on the CFST, how would
10 they know?

MS MEMELA: Okay, as I said Chair when I was talking about that proposal that the only reason I know that they would send me that proposal to check is for Supplier Development because I was open to them about Supplier Development.

I was fully involved about Supplier Development because it gave points back to SAAT. So, it was not about me saying they knew ...(intervenes).

CHAIRPERSON: Yes, but that does not answer the question. You remember Ms Hofmeyr is saying here are people, here is a bidder
20 communicating with you at a time when they are preparing to submit their bid and your answer is, there is nothing wrong with that because you did not sit on the CFST.

MS MEMELA: Yes Chair.

CHAIRPERSON: So her question is how would they have known that?

MS MEMELA: Okay Chair, I said that I would assume that since Mr Jules

Aires had been at the database of SAAT since 1992, would have maybe known that information because it is not something that is critical to hide or whatever.

Sometimes like I mean during the tender process there is a briefing session where the bidders would know who is part of the evaluation during that meeting where all their bidders are there. All the CFST Team are there.

CHAIRPERSON: Well I do not know but if I was told that the identity of the Members of the CFST was not supposed to be disclosed to bidders, I
10 would understand that. It maybe that at SAAT there was nothing wrong with that because it was believed that that could not compromise them in any way but you are not saying, or are you saying that officially the identity of Members of the CFST were made known to the bidders at some stage or the other.

MS MEMELA: Not really Chair.

CHAIRPERSON: Not officially?

MS MEMELA: Not officially. That is why I was saying sometimes during the briefing process they would meet all the CFST members, because they are there to answer their question in terms of the specification of the
20 tender.

So they will see that okay maybe Ms Memela is not there, the CEO is not there or maybe all the GM's are not there, the same as Mr Nico Bezuidenhout would not sit there. So when they meet, when they ask for instance, Air France asked meet Mr Nico Bezuidenhout and Barakas, the understanding is that they would have find out somehow that

these guys are not part of the CFST or Bid Evaluation Committee.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: Ms Memela the other possibility is not that they found out, but that they trying their luck, is that not it?

MS MEMELA: Okay, the other possibility is that like ...(intervenes).

ADV KATE HOFMEYR: So that they do not know who sits on the CFST and who does not, but they are communicating with somebody hoping they will get a response.

MS MEMELA: Trying their luck, I do not know, I would not agree. That
10 is your version.

ADV KATE HOFMEYR: And just to finalize, because I did not think I had a crisp answer to the question, if you had been aware of clause 1.6 of the RFP at the time, would you have raised the flag before or once you got the CFST recommendation and said, hang on we cannot possibly award this to JM Aviation and AAR because they were communicating with me during the bid.

MS MEMELA: Okay, Chair. If I had known this document or as I said if there was a formal document signed somewhere that says okay Executives be aware of this. Should anybody communicate with you
20 please do not communicate back or just notify the CFST then we will disqualify them.

Then I would have raised a hand and called Leon and said okay Leon these people are communicating with me. Leon knows that I did not hide anything from him. I did tell him who was talking to me, in terms of Supplier Development and he did not have a problem with that. AJ

Walters like they had their own BEE company and they were talking to me about that like for guidance in terms of Supplier Development.

ADV KATE HOFMEYR: Yes, except Ms Memela your evidence a moment ago was no one else other than you at the time knew they had communicated with you on the 14th of January 2016.

MS MEMELA: Okay.

CHAIRPERSON: I think she is making a different point.

MS MEMELA: Yes, I was making ...(intervenes).

ADV KATE HOFMEYR: Apologies.

10 **CHAIRPERSON:** Yes, she is making a point that JM was not the only one communicating with her.

MS MEMELA: The only BEE company.

ADV KATE HOFMEYR: Apologies Chair. And I picked up on the point that she said she had been communicating with Mr Roberts about the fact that there had been these other engagements on Supplier Development. I guess in fairness I should be clear. I just want to be certain that I understand your evidence in relation to the JM Aviation communications on the 14th of January. No one other than you knew that they had had those communications with you prior to the bid closing on the 19th of
20 January, correct?

MS MEMELA: My recollection is that Chair that they have- they had communicated with me, JM Aviation.

ADV KATE HOFMEYR: Yes.

MS MEMELA: So of course, I did not say I have told Leon every communication. I said I had shared with Leon some of the communication

and some of the BEE.

ADV KATE HOFMEYR: Thank you.

MS MEMELA: Just to add there of course Chair like it would be added in the re-examination but this information was given to Ms Sambo in that notion that I am helping a black owned company to have an understanding of what is required in terms of Supplier Development.

I heard her talking about NIP obligation and I could tell even from Mr Schalk Human that they both do not understand the difference between the NIP obligation and the Supplier Development. They do not
10 understand that a NIP obligation is actually managed and controlled by the DTI and then Supplier Development gives SAAT that advantage to control what is happening within the contract within everything that has been agreed upon. That way we are getting back the points for BEE status.

ADV KATE HOFMEYR: We will come to NIP in a moment but just before we go there. Were you aware that it was a requirement of this bid that a NIP obligation be undertaken?

MS MEMELA: Remember Ms Hofmeyr, you cannot apply both Chairperson. You cannot apply both NIP obligation and Supplier
20 Development. The only requirement that the DTI makes is that you must make sure that whatever that you decide to apply is stated in the tender from – you see from this tender from the beginning so that the suppliers are aware exactly what they are putting themselves in. So yes, in terms of the amount it fell within the NIP obligation but because we introduced the Supplier Development in the beginning of the program, NIP obligation

fell away.

ADV KATE HOFMEYR: Ms Memela my question was, are you aware that the request for bid made the NIP obligation applicable to this tender?

MS MEMELA: Made the NIP – so are you saying the NIP obligation was the requirement of the tender?

ADV KATE HOFMEYR: Indeed. Would you like me to take you to the page ...(intervenes)?

MS MEMELA: Please.

ADV KATE HOFMEYR: Where it was the requirement?

10 **MS MEMELA:** *Ja.*

ADV KATE HOFMEYR: Let us go to that, it is in the same bundle DD22E at page 2083.

MS MEMELA: 2083?

ADV KATE HOFMEYR: Yes.

CHAIRPERSON: Are you there Ms Memela?

MS MEMELA: I am here Chair.

ADV KATE HOFMEYR: My question was, were you aware that it was a requirement of this RFP that the NIP obligation be undertaken by bidders?

20 **CHAIRPERSON:** I think you wanted to tell her to identify the part of the page ...(intervenes).

ADV KATE HOFMEYR: Indeed.

CHAIRPERSON: That has – I think that is 1.0, is it not?

ADV KATE HOFMEYR: Indeed. So, it begins by explaining to the bidders what the pillars of the NIP program are. It requires them over the page at

2084 at clause 3.1 to submit SBD5 together with the bid. That is a document relating to the NIP obligation. And then over the page at 2085 at clause 4 it deals with the process to satisfy the NIP obligation. Once – at 4.1 it reads;

“Once the successful bidder or contractor has made contact with and furnished the DTI with the information required the following steps will be followed.”

And then it indicates how satisfaction of the NIP obligation

10 “Which the bidder undertakes to involve itself in when it submits the bid will then be followed.”

MS MEMELA: Chair can I put this to Ms Hofmeyr for clarity of what is meant by the requirement of the tender? This ...(intervenes).

CHAIRPERSON: What she means is it was obligatory that the bidders satisfy the NIP requirement. That is what she is talking about.

MS MEMELA: Okay Chair.

CHAIRPERSON: She wants to check with you whether you agree that there was such an obligation ...(intervenes).

MS MEMELA: Chair.

CHAIRPERSON: On the bidders.

20 **MS MEMELA:** As I said that the guidelines for the NIP obligation from the DTI it says, what is applied on that tender shall be put on the tender as the requirement, right. And then the bidders will be aware of what is expected of them when they bid. And then Ms Hofmeyr takes me to this page, this page is a page coming from the DTI that usually the Team from SAAT that are running the tender, they copy and paste.

In this regard I will think maybe they did not think because this was the first contract that we had applied Supplier Development. So, they did not take it out. So no, it is not obligatory and it is not a requirement. I want to take you through the requirement of the tender Chair and then hopefully that Ms Hofmeyr is going to understand ...(intervenes).

CHAIRPERSON: Well at this stage ...(intervenes).

MS MEMELA: How it works.

CHAIRPERSON: At this stage you say it was not a requirement.

10 **MS MEMELA:** It was not a requirement.

CHAIRPERSON: It is your answer to her question.

MS MEMELA: Yes Chair.

CHAIRPERSON: Yes. Ms Hofmeyr do you want her to refer to a page which specifies what the requirements were?

ADV KATE HOFMEYR: What I am just struggling with ...(intervenes).

MS MEMELA: I will not take long.

CHAIRPERSON: H'mm.

ADV KATE HOFMEYR: Is this is Appendix 13 to the RFP.

CHAIRPERSON: Yes.

20 **ADV KATE HOFMEYR:** Right, we see that at the top of the page.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: It indicates to bidders this document must be signed and submitted together with your bid. And there is a signature page available at 2085. And then it explains in addition to that that the bidders are required to sign and submit the standard bidding document

SBD5 which is also a document dealing with the NIP obligation. So, in fairness to Ms Memela I would just like to understand how it could be that despite this being part of the RFP, the NIP obligation was not undertaken by bidders.

MS MEMELA: The NIP obligation.

ADV KATE HOFMEYR: H'mm.

MS MEMELA: Okay. Like I said Chair earlier on that the tender documentation is worked on by the Team that are sitting at the CFST Team and of course sometimes they would need if I was involved in this, I
10 would have guided them in terms of the guidelines of the DTI. What should be here and I think I suspect although I am not aware, I suspect that they had put it here in case the Supplier Development program or the Supplier Development commitment from these multinational suppliers does not come through.

Remember I told you on Friday that most multinational companies or maybe bidders or suppliers of SAAT, they have never adhered to the NIP obligation because that was the control and Management of the DTI. So now I would just like to go through this, it is just two pages and I am not going to read everything. I just want to make
20 it clear for Ms Hofmeyr to understand what – when they talk about the requirement of the tender ...(intervenes).

CHAIRPERSON: Hang on.

MS MEMELA: What elements.

CHAIRPERSON: Yes. When you – what you want to read is it part of the request for bid document?

MS MEMELA: Yes Chair, it is part of the tender document.

CHAIRPERSON: Okay.

MS MEMELA: And then I am going to tell you which page.

CHAIRPERSON: Let us go there.

MS MEMELA: Yes.

CHAIRPERSON: Ja.

MS MEMELA: Yes. It is page 2062.

CHAIRPERSON: 2064 – 62?

MS MEMELA: 2062 Chair.

10 **CHAIRPERSON:** Okay. Yes.

MS MEMELA: You will see here Chair on this page it talks about evaluation criteria. And it gives you phase one. Phase one – *ja*, I said I am not going to read everything. I am just listing the ...(intervenes).

CHAIRPERSON: Yes.

MS MEMELA: Yes. Phase one talks to critical criteria. The critical criteria are the part where if the bidders do not say yes or no, they get disqualified automatically. So, this the critical criteria are the first phase. Phase two, in this regard I think the critical criteria was mixed with the functionality. Sometimes the functionality does not apply if the critical
20 criteria is here. So, phase two talks to price and BEE evaluation.

CHAIRPERSON: Yes.

MS MEMELA: And then under BEE evaluation and price it talks to reciprocal work should amount to 10% of the value of the contract and it be based on the following. And then it states what is required from them. And then there is a partnership joint venture 10%. There is Supplier

Development must form 10% of the contract value and it must entail the following. It states what is required from the bidder.

So, when – Chair when the CFST Team does the evaluation, these are the elements they are looking at. They do not even look at the NIP obligation at that time. So that is what I was trying to highlight to Ms Hofmeyr is that the NIP obligation does not apply when Supplier Development is part of the document and it has been made as the element of the bid.

CHAIRPERSON: But you agree that the page to which Ms Hofmeyr referred you does or does say the NIP obligation was a requirement?

MS MEMELA: Where – okay can – Chair can I ask Ms Hofmeyr ...(intervenes).

CHAIRPERSON: It was page – what page was that?

ADV KATE HOFMEYR: It commences at 2083.

CHAIRPERSON: 2083.

ADV KATE HOFMEYR: Yes Chair.

CHAIRPERSON: Is my understanding of that part of the page correct?

ADV KATE HOFMEYR: Indeed Chair.

20 **CHAIRPERSON:** 2083.

ADV KATE HOFMEYR: Yes.

CHAIRPERSON: Ja.

ADV KATE HOFMEYR: That is where the whole Appendix dealing with the NIP obligation begins. But I can give Ms Memela another reference that will make it absolutely clear it was an obligation of this RFP. But before I

get there just to clarify, you were not involved in the specifications for this bid, were you?

MS MEMELA: No.

ADV KATE HOFMEYR: No. So that is left to the CFST Team as I understand your evidence. They put out the RFP and they define its criteria, correct?

MS MEMELA: Chair?

CHAIRPERSON: Yes.

MS MEMELA: It is not up to the CFST members to decide what the
10 criteria or maybe the requirements are in terms of the NIP obligation.

CHAIRPERSON: Well your evidence suggested that actually you were saying when it comes to how they dealt with the matter, they dealt with the matter in a manner that showed that as far as they were concerned the NIP obligation – NIP was not – the NIP requirement was not an obligation. That is how I understood your evidence.

MS MEMELA: The evidence earlier on.

CHAIRPERSON: Your evidence.

MS MEMELA: The evidence. Remember the evidence Chair was talking about the requirements of tender. So, I want to clarify that confusion.

20 **CHAIRPERSON:** *Ja* but the question is this, page 2083.

MS MEMELA: Yes Chair.

CHAIRPERSON: And I have just had a look and that first paragraph makes it clear in that after the cabinet decision referred to therein all state and parastatal purchases, lease contracts, for goods, works and services entered into after this date, that is 30 April 1997, are subject to

the NIP requirements. That is what it says.

MS MEMELA: That is what it says Chair.

CHAIRPERSON: Now something is not a requirement if you can do – you can dispense with it.

MS MEMELA: Chair this ...(intervenes).

CHAIRPERSON: That suggest that it is obligatory.

MS MEMELA: *Ja*.

CHAIRPERSON: That is how I read it.

MS MEMELA: Yes.

10 **CHAIRPERSON:** So, I want you to say exactly how you understand this as well irrespective of whether in practice it was applied. But is that how you understand this?

MS MEMELA: The understanding Chair as I said this is coming from the guidelines of the DTI in terms of the NIP obligation.

CHAIRPERSON: Yes.

MS MEMELA: And it is copied and pasted on these things so it is ...(intervenes).

CHAIRPERSON: But you understand it to – do you understand it the way that I understand it?

20 **MS MEMELA:** I understand the way that you understand it when it talks to the multinational companies alone with no application of Supplier Development.

CHAIRPERSON: Okay.

MS MEMELA: Yes Chair.

CHAIRPERSON: Okay but do you agree that in this paragraph that we

talk about ...(intervenes).

MS MEMELA: *Ja.*

CHAIRPERSON: No distinction is made between multinational companies and companies who supply development? Do you agree with that?

MS MEMELA: In this document I agree Chair.

CHAIRPERSON: You agree with that. But you rely on something else to say ...(intervenes).

MS MEMELA: I rely on the proper legislation from the DTI that gives differences between Supplier Development program which is under the
10 indirect NIP obligation versus the NIP obligation.

CHAIRPERSON: Yes. Okay alright. So, Ms Hofmeyr can take it from there.

ADV KATE HOFMEYR: Yes, I will draw your attention to the earlier provision of the RFP that made it very clear that it was a condition of the proposal that bidders comply with a NIP obligation. So, I am not relying simply on Annexure 13 which I understand your evidence to be is cut and paste from something from the DTI.

MS MEMELA: *Ja.*

ADV KATE HOFMEYR: Let us see what the people who specified the
20 conditions of the bid required.

MS MEMELA: Which page?

ADV KATE HOFMEYR: It is at 2043 – 47. You will see there is a clause on that page 1.2. Can you read the heading of that clause?

MS MEMELA: You said 2047, right?

ADV KATE HOFMEYR: 2047 and you will see it start with a heading,

conditions and then there is a 1.1 and a 1.2. Do you see that?

MS MEMELA: 1.1 and 1.2 yes.

ADV KATE HOFMEYR: Yes. What is the heading of 1.2?

MS MEMELA: Condition of the Proposal.

ADV KATE HOFMEYR: Right. And read 1.2.1, the first sentence please.

MS MEMELA: “This bid is subject to an offset obligation under the National Industrial Participation requirements mandated by the South African Department of Trade and Industry.”

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

MS MEMELA: Direct – can I continue?

ADV KATE HOFMEYR: Yes.

MS MEMELA: Because I mentioned direct NIP and indirect NIP Chair.

ADV KATE HOFMEYR: Oh certainly.

MS MEMELA: Yes.

20 “Direct NIP” which is used in procurement where there is potential to develop or support direct strategic industries or indirect NIP which is used in procurement where there is no potential for local manufacturing or supporting strategic industries and is to be applied to this bid as one of the four tiers of procurement.”

ADV KATE HOFMEYR: Yes, so unless you tell me otherwise Ms Memela, I read this to make it absolutely clear to bidders. This bid is subject to the offset obligation under the NIP and then that is followed up in Appendix 13 because the details of the NIP program are set out the

obligations of the bidders are made clear. You have to immediately alert the DTI after you are successfully awarded the bid. So, in that whole conspectus of this RFP can you indicate to us why you still maintain that it was not a requirement of the RFP?

MS MEMELA: Chair I think either Ms Hofmeyr is not understanding what I am trying to point out. In the provision that she asked me to read it talks about indirect versus direct NIP. Direct NIP, that is where it is between the multinational company and DTI, SAAT does not get involved. And indirect NIP it could be under four tiers and it could be through
10 supply development and through other elements that I do not remember right now.

But I am just trying to say still this does not say, okay the NIP obligation, the direct part of it should have applied here because they are actually saying to the suppliers either or and then go as far as giving the suppliers the link to the DTI. This is when the suppliers is going to find out that you cannot apply both Supplier Development and NIP obligation both because like I said earlier the Supplier Development is managed and controlled by the SOC versus the direct NIP which is managed and controlled by the DTI.

20 SAAT does not even take – in fact they deal with DTI immediately after the tender has been given to them and then DTI is notified that, okay these guys are the ones that have been awarded. Then the DTI is going to deal with them. Yes ...(intervenes).

CHAIRPERSON: But ...(intervenes).

MS MEMELA: So, I am hoping that I am clear this time Chair.

CHAIRPERSON: Yes. The NIP provisions.

MS MEMELA: Yes Chair.

CHAIRPERSON: You say there is a reference here to direct NIP and indirect NIP.

MS MEMELA: This is indirect NIP Chair. So, the direct – yes.

CHAIRPERSON: But the provisions would be the same. The difference would be which one is regarded as direct, which one is regarded as indirect.

MS MEMELA: The provision is not necessarily the same.

10 **CHAIRPERSON:** Yes.

MS MEMELA: Because on the indirect NIP.

CHAIRPERSON: Ja.

MS MEMELA: It gives back the BEE points to the SOC where they now calculate that okay under – I actually mentioned this on Friday ...(intervenes).

CHAIRPERSON: Supplier Development.

MS MEMELA: Yes. Under Supplier Development, this is what the local supplier or black owned supplier is going gain or benefit ...(intervenes).

CHAIRPERSON: Must do.

20 **MS MEMELA:** Out of this. I even made an example Chair of the tier agreement for instance that maybe it is shipped from Brussels to Durban and then they could agree or make an arrangement that, okay the local supplier to – what you call this – to benefit out of this contract. They will be then be transporting the tiers from Durban ...(intervenes).

CHAIRPERSON: Durban.

MS MEMELA: To SAAT right. And I even added that other elements of the Supplier Development are through job creation and then also the others are transfer of skills, know-how and technology. So that now is indirect NIP obligation Chair. And then the NIP obligation is the one that is mentioned in the page where Ms Hofmeyr was reading for me.

CHAIRPERSON: Yes.

MS MEMELA: Exactly. That one is direct and it is dealt with by DTI and the multinational companies. SAAT has nothing to do with that.

CHAIRPERSON: Yes. SAAT would be involved with an indirect NIP.

10 **MS MEMELA:** Thank you Chair.

ADV KATE HOFMEYR: Yes.

CHAIRPERSON: But when we talk about a NIP obligation it could be either or. It could be either direct NIP or indirect.

MS MEMELA: Or indirect, yes Chair. Hence, I was saying ...(intervenes).

CHAIRPERSON: Whether it is a direct or indirect.

MS MEMELA: Yes Chair.

CHAIRPERSON: It would be obligatory, is that right?

MS MEMELA: It will be obligatory.

20 **CHAIRPERSON:** Yes.

MS MEMELA: Which in this regard remember I read for you the elements of this tender.

CHAIRPERSON: *Ja*.

MS MEMELA: Which involved the Supplier Development.

CHAIRPERSON: *Ja*.

MS MEMELA: Which counted 10%.

CHAIRPERSON: Okay.

MS MEMELA: The direct NIP Chair, Ms Hofmeyr did not read that. I do not know if it is in that document but the direct NIP charge is 30% of the contract. Yes. And then on the Supplier Development because I even mentioned to you that I did not apply or maybe my Team did not apply that 30% set aside therefore they were saying 10% that is where they will be evaluated upon.

CHAIRPERSON: Oh okay. Ms Hofmeyr.

- 10 **ADV KATE HOFMEYR:** Are you aware that SAAT engaged with the DTI after this agreement was concluded in about March of 2019. Were you aware of that evidence of Mr Human?

MS MEMELA: March 2019 Chair, I was not at SAAT so I am not aware who and how DTI was approached but I do know that for the entire tender contract, I did approach DTI for the CCMA case and asked them the difference between the direct NIP versus indirect NIP. I remember the DG of the NIP obligation actually took me through the processes that is followed and even explained that you cannot apply both. You apply either or the other.

- 20 **CHAIRPERSON:** Okay.

ADV KATE HOFMEYR: And Ms Memela are you aware from Mr Human's evidence that the DTI responded to SAAT, asked for the bid – the RFP, asked for JM Aviation and AAR bids and concluded that either SAAT or JM Aviation ought to have immediately alerted the DTI after they were awarded the tender pursuant to tender obligations.

MS MEMELA: I am not aware of that Chairperson.

ADV KATE HOFMEYR: Okay. There is an affidavit to that effect from the DTI included in Mr Human's Annexures. We will go there in a moment if we can. But before we do that, I just want to complete on the RFP because we are in that document. It is in Exhibit DD22E Ms Memela.

MS MEMELA: Chair, are we still – are we closing up on NIP because I do not want us to leave. There is this part that you have raised that talks about Mr Human ...(intervenes).

ADV KATE HOFMEYR: Yes, I – sure, I will take you to the DTI Annexure.

10 **MS MEMELA:** Yes. So, I want us to close that.

CHAIRPERSON: Yes. No, she will take you.

MS MEMELA: So that whoever is watching this understands exactly how it works.

CHAIRPERSON: *Ja.*

ADV KATE HOFMEYR: Okay so the DTI affidavit is in Exhibit 22G it is one of the files of Mr Human's evidence.

MS MEMELA: 22G?

ADV KATE HOFMEYR: Yes.

MS MEMELA: 22.

20 **ADV KATE HOFMEYR:** G.

MS MEMELA: Oh. Page?

ADV KATE HOFMEYR: It commences at page 2972. Chair that is where the affidavit of Mr October commences. That is 2972. The relevant paragraph to which I was making reference in my question to Ms Memela appears at 2975.

MS MEMELA: Mr October I must put it on record Chair that Mr Lionel October is the DG Department of Trade and Industry. It does not state that he is the DG for NIP obligation. So which page you said I must go to?

ADV KATE HOFMEYR: I am not sure what to make of that response. Are we to disregard what he said in his affidavit?

MS MEMELA: No, I am not saying that. I am not saying that Chairperson, I am saying remember for each and every department in our government there is a certain person deals with a specific subject.

10 **CHAIRPERSON:** Okay.

MS MEMELA: Yes Chair.

CHAIRPERSON: No, hang on hang on ...(intervenes).

MS MEMELA: So, I just thought I should put on the record.

CHAIRPERSON: Wait until you hear what question you are asked.

MS MEMELA: Okay.

CHAIRPERSON: And then if you need to emphasise that in answer to the question then you can emphasise. But let us hear what the question is first.

20 **MS MEMELA:** Chair the question was, was I aware that Mr Human or whoever from SAAT had communicated with the DTI and then there is communication that says JM Aviation should have notified SAAT or SAAT should have notified SAAT.

CHAIRPERSON: H'mm.

MS MEMELA: Yes. So that was the question.

CHAIRPERSON: I thought that we are coming to this affidavit

...(intervenes).

ADV KATE HOFMEYR: Indeed.

CHAIRPERSON: Because Ms Hofmeyr wants to ask a question on this affidavit.

ADV KATE HOFMEYR: Yes.

MS MEMELA: Okay.

ADV KATE HOFMEYR: So the ...(intervenes).

CHAIRPERSON: Of Mr October.

ADV KATE HOFMEYR: Oh, Ms Memela had requested us to be taken to
10 the affidavit which is why we are going there and the relevant paragraph
is at 2975 at paragraph 15. There is some background that has been set
out by the Director General of the DTI prior to that talking about NIP
obligations. How they work in the tender process etcetera.

MS MEMELA: H'mm.

ADV KATE HOFMEYR: And then at paragraph 15 Mr October says:

20 "As advised in paragraphs 3 and 6 supra whenever a NIP
obligation is created by virtue of a purchase agreement
between a procurement entity and service provider as in
the present instance between SAAT and JM Aviation, there
is an obligation on both the procuring entity as well as the
successful bidder to inform the DTI of the purchase
agreement. In this regard one may note that the National
Treasury Practice note is addressed to all Accounting
Officers, all Accounting Authorities, all Chief Financial
Officers, all Heads of Provincial Treasuries and all

Provincial Accountants General. In paragraph 5.1 of the National Treasury Practice note Accounting Officers and Accounting Authorities are required to utilise the revised standard bidding document for NIP obligations SBD5 when inviting bids that are estimated to be in excess of 10 million Rand.”

Chair I just pause there because you will recall we were in Appendix 13 of the RFP there was specific reference to the fact that the bidders had to complete the SBD5 form. Then it goes on to say:

10 According to paragraph 5.1 B Accounting Officers and Accounting Authorities;

“Are required to furnish the DTI with the information listed in that paragraph after the award of any contract that is in excess of 10 million Rand. The DTIs contact details are then set out”.

And importantly, he says, paragraph 5.2 provides that the “information must be sent within 5 working days after award of a contract.” So Ms Memela you asked to be taken to where it was that the DTI’s Director General had made it clear in his evidence before this
20 Commission that there was an obligation on both SAAT and JM Aviation within 5 days of the award of the tender to them to alert the DTI to the fact that the agreement had been concluded.

MS MEMELA: Chair?

ADV KATE HOFMEYR: Are you satisfied that that is his evidence?

MS MEMELA: Chair in his affidavit Mr or Ms October is addressing

both direct and indirect NIP obligation as I was saying earlier and he goes as far at the end because like now before that he is talking about 10 million or over 10 million and whatever. But he goes as far as saying under paragraph 19.

“In the present instance.”

CHAIRPERSON: Yes.

MS MEMELA: Of course he is not clear but like I mean remember we might interpret this differently based on what is written here. But for me this statement says, after he has stated exactly what is expected of the
10 bidders, multinational bidders in terms of the direct NIP obligation to notify the DTI or the Accounting Authority which is the Board, Accounting Officer which is the CO to notify DTI on the direct NIP obligation. But on this instant in the present instance meaning now he understands that it is not the same NIP obligation because this one the supply development applies therefore he even says:

“It was the obligation of JM Aviation being the local company that is benefitting from this supply development. They should have notified DTI.”

Not because DTI is going to manage or control them. But at
20 least they will have a record and of course this should be managed by SAAT but they will have a record that the reason why the direct NIP obligation did not apply there was indirect NIP that involved Supplier Development. So that is my understanding of the affidavit Ms Hofmeyr based on the background I have on the NIP obligation.

ADV KATE HOFMEYR: Ja Ms Memela the difficulty is that nowhere in

this affidavit does Mr October draw this direct / indirect NIP contrast. He does not refer to a Supplier Development. What he says in paragraph 19 in fact and I will read it into the record is:

“In the present instance despite the fact that there was a duty on JM Aviation to immediately inform the DTI that the particular contract was awarded to it, it failed to inform the DTI.”

That is what he is saying in paragraph 18. He has previously told us that there is an obligation. He sketched what it is. He said
10 there are – it has to be done in five days. And what he says at 19 is he tells the reader what happened in this case. What happened in this case is despite the fact that there was a duty on JM Aviation to immediately inform the DTI that the particular contract was awarded to it, it failed to do so. Do you read it in a different way?

MS MEMELA: It looks like you read it in the different way in terms of understanding the NIP obligation.

CHAIRPERSON: No, no. What she is asking ...(intervenes).

MS MEMELA: Chair the ...(intervenes).

CHAIRPERSON: What she is asking is whether your reading of it
20 differs from her reading of it?

MS MEMELA: Yes it differs from her reading of it.

CHAIRPERSON: Okay. Yes.

MS MEMELA: Not the legislation.

CHAIRPERSON: Right.

MS MEMELA: Yes. Or the guidelines that are guiding the NIP

obligation.

ADV KATE HOFMEYR: Thank you. Chair I think we have exhausted the NIP obligation.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: If we can go back to the RFP because there is another provision of the RFP that concern that was breached by JM Aviation.

MS MEMELA: Chair.

ADV KATE HOFMEYR: There seems to be a problem.

10 **MS MEMELA:** I want to add just one statement.

CHAIRPERSON: Yes, yes okay.

MS MEMELA: Yes. Remember I mentioned to you that we had at SAAT three big contracts. The logistics, the tyre and components. The component that you are talking about now. And then out of these three the two components were provided by a multinational company with no involvement of local company. The tyre was provided by Bridgestone being based in Brussels without any involvement of local company. The NIP obligation had always involved them because they are dealing with that but the logistics it was provided for by KWE being the South
20 African company. By virtue of that them being the South African company and having the BEE points and stuff they did not have to adhere to the NIP obligation. And as a result there is proof that the DTI did not even approach or expect the KWESA to adhere to the NIP obligation because they were a local company. So that is what I was trying to explain to Ms Hofmeyr the difference between direct and

indirect NIP obligation. We can close Chair.

ADV KATE HOFMEYR: Let us go back to DD22E if we may because that is the document that contains the RFP and ...(intervenes).

MS MEMELA: DD?

ADV KATE HOFMEYR: E – 22E which had the RFP that we were looking at.

MS MEMELA: The one that we were looking at before?

ADV KATE HOFMEYR: Yes.

MS MEMELA: DDB or E?

10 **ADV KATE HOFMEYR:** E.

MS MEMELA: E.

ADV KATE HOFMEYR: And pick it up at page 2054 if we may. 2054 of Exhibit DD22E.

MS MEMELA: H'mm.

ADV KATE HOFMEYR: You will see there Ms Memela there is a clause 1.13 headed Corruption.

MS MEMELA: H'mm.

ADV KATE HOFMEYR: Do you see that?

MS MEMELA: Yes I see that.

20 **ADV KATE HOFMEYR:** And this was a provision of the RFP that said the following:

“If a bidder or any person employed by the bidder is found to have either directly or indirectly offered, promised or given to any person in the employ of South African Airways Technical any commission,

gratuity, gift or other consideration South African Airways Technical shall have the right and without prejudice to any other legal remedy which it may have in regard to any loss or additional cost or expenses to disqualify the RFP bidder from further participation in this process and any other subsequent process in this regard.”

And then it goes on and records:

10 “The RFP bidder will be responsible for all and any loss that South African Airways Technical may suffer as a result thereof. In addition South African Airways Technical reserves the right to exclude such bidder from future transactions with South African Airways.”

MS MEMELA: *Ja.*

ADV KATE HOFMEYR: Do you see that?

MS MEMELA: I see that.

ADV KATE HOFMEYR: Now what concerns me about this provision is that it prohibits bidders or any person employed by the bidder to either
20 directly or indirectly give to any person in the employ of SAAT any commission, gratuity, gift or other consideration.

MS MEMELA: Yes.

ADV KATE HOFMEYR: And I would like to put to you in the context of that prohibition.

MS MEMELA: Okay.

ADV KATE HOFMEYR: Why it was not that when JM Aviation paid indirectly for your benefit because we traversed that on Friday. You accepted that it was indirect benefit that R2.5 million. And they paid that to you an employee of SAAT to purchase your Bedfordview house.

MS MEMELA: What?

ADV KATE HOFMEYR: Why would that not be in breach of this provision?

MS MEMELA: Chair I still maintain and the reason why I corrected Ms Hofmeyr on Friday when she said direct and I said indirect. I maintain
10 that there was not benefit with regard to this tender. The reason why I say that is because the agreement to sell the property of my mother and look to Mr Ndzeke had nothing to do with me other than that the – some of the deposit being 1.5 was going to be paid to the Cove Ridge property. Contrary to what Ms Hofmeyr keeps on referring to the Bedfordview. Of course like that happened after I had changed my mind about the Cove Ridge property. Now the reason why I am saying there was no benefit direct or indirect is the fact that I did not sit in the Bid Evaluation Committee. I did not sit in the Board that made the decision to award to AAR and JM Aviation. I did not reciprocate
20 ...(intervenes).

CHAIRPERSON: Well not sitting in the Board or in the Committee would not affect the question of whether there was a benefit or not to you and whether it was direct or indirect. Not sitting may be a point to say, there was no problem because I did not have decision making powers which you have said before.

MS MEMELA: Yes Chair.

CHAIRPERSON: But I think your answer you are supposed to deal with why was this not an indirect benefit to you?

MS MEMELA: Why it was not an indirect benefit to me it is because I had never reciprocated the JM to have a winning bid either in GPU or in component. Ms Hofmeyr does have – Hofmeyr sorry *ja*. Hofmeyr does have evidence that the submission that was made as a recommendation to Exco, to BAC initially it said, Lufthansa being the highest preferred bidder. Remember Ms Sambo put it out there to the public that

10 Nontsasa Memela helped JM to be the winning bidder. I had to correct that. The winning bidder was Lufthansa because it was a highest scored bidder. And because of certain risk that were picked by the Board or maybe the CFST it was written back. And then the second one was Air France based on the points that were put by the CFST that okay the risk will be if we start with any other company that has never dealt with SAAT before so we would rather appoint or award to Air France and Kwane Capital at that time. Now I said to you Chair I had signed in support of the recommendation by the CFST. Meaning I was satisfied with what they had said to me that okay the reason why we

20 are going for Air France is because of this. So the reason why I am saying there is no direct or indirect benefit or gratification towards me because I did not sign any tender that was giving AAR and JM in 2016 saying they must win this. We signed the recommendation for Air France and then the Board made its own independent decision to say, I see Management CFST you have recommended this but from us as the

Accounting Authority of this organisation this is what we think should happen and then they overruled the recommendation by the CFST and Management of SAAT and awarded it to JM Aviation.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: Chair just one follow up question if I may and then it might be a convenient time to talk about logistics? Ms Memela this particular provision of the RFP does not link the benefit to any possible influence that it may have on the recipient, do you see that?

MS MEMELA: Are you – okay can you ask the question again?

10 **ADV KATE HOFMEYR:** Sure. I understood your answer to be it is not a benefit because I did not reciprocate.

MS MEMELA: Yes.

ADV KATE HOFMEYR: Was that your evidence?

MS MEMELA: That is the evidence.

ADV KATE HOFMEYR: I say this clause of the RFP does not require it to constitute corruption under this clause that the benefit then be reciprocated or the benefit result in an ability to influence decision making. On its own terms it is a clear prohibition on any bidder directly or indirectly giving a gratuity gift or other consideration to any person
20 in the employ of SAAT. And I would like to know why if you contend this provision was not breached by the R2.5 million that was used for your Bedfordview house why it is? And let me just be clear.

MS MEMELA: Chair.

ADV KATE HOFMEYR: Your answer until this point has drawn focus on reciprocation. I am saying reciprocation has nothing to do with this

provision.

MS MEMELA: Chair it is read very clear that it talks to gratification, gifts, gratuity gift or other consideration. None of these apply to me because there was no gratification and I explained – the reason why I explained – why there was no gratification. I was getting to this. And there was no gift coming from the bidder directly to me. So that like they can win the tender or do anything. I did explain earlier on Chair that the offer to purchase like which the Commission will see eventually either from Mr Ndzeke or after I had gone to Eastern Cape to send it
10 afterwards. They will see that like that offer to purchase was signed November 2015 and the fact that the – Mr Ndzeke through JM paid in May 5 does not make the gratuity it – the gratuity to me or the gift. It was still paying for that property that was bought from my mother. And secondly Chair the award was made by the Board I think on the 12th of May 2016. Remember Ms Hofmeyr is trying to link certain dates because the payment was made on the 5 of May and then the award by the Board was made on the 12 May 2016 but she did not add the fact that the contract commenced in October 2016. Where after the award? So in case like maybe there is a picture that is being put out there that
20 okay they must have used the money from here that they received from SAAT to pay for the property for my mother and stuff like – so I just had to *gooi* in the date when the contract commenced which is all the suppliers get paid after they start providing services.

CHAIRPERSON: Ms Hofmeyr.

ADV KATE HOFMEYR: Chair I am just mindful of the time. We have

hit 17:00 and you indicated ...(intervenes).

CHAIRPERSON: Yes we are at 17:00.

ADV KATE HOFMEYR: That you were happy to sit late.

CHAIRPERSON: Yes but we now have a good idea that Ms Memela may have to come back.

ADV KATE HOFMEYR: H'mm.

CHAIRPERSON: Because she and her legal representative are still going to consult her next bet. So we have – one option is that we stop and then when she comes back she comes back at a time when they
10 have been able to do – to consult an expert. And then she continues and until she finishes that is one option. Another option would be that we continue maybe for another 30 minutes but it may be that it will not serve much purpose to continue for another 30 minutes if she is going to come back anyway some other time. But it may well be that in terms of your plan it might help you to close off something.

ADV KATE HOFMEYR: H'mm.

CHAIRPERSON: What do you think?

ADV KATE HOFMEYR: Chair I want to propose that there is maybe a third option.

20 **CHAIRPERSON**: Yes.

ADV KATE HOFMEYR: If I may?

CHAIRPERSON: H'mm.

ADV KATE HOFMEYR: Certainly the debate between experts.

CHAIRPERSON: H'mm.

MS MEMELA: May actually resolve themselves.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: You know that is how the experts usually one side, one side ...(intervenes).

CHAIRPERSON: *Ja.*

ADV KATE HOFMEYR: They look at – they give a report and then ...(intervenes).

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: If there is not a dispute between them.

CHAIRPERSON: *Ja.*

10 **ADV KATE HOFMEYR:** Because the expert's evidence is very limited.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: It simply does the metadata show what the Commission's investigators has said it has shown.

CHAIRPERSON: Yes, *ja.*

ADV KATE HOFMEYR: All that I am reluctant to do is delay all of the evidence.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: In completing of Ms Memela for a situation where there may be agreement between experts.

20 **CHAIRPERSON:** Yes okay.

ADV KATE HOFMEYR: We just do not know.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: So I wanted to say in relation to finalising her evidence but for the expert engagement.

CHAIRPERSON: *Ja.*

ADV KATE HOFMEYR: Which must certainly take place you had indicated that we could continue for 30 minutes. My concern with that is that Ms Mbanjwa has already indicated that she would like to re-examine.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: And my sense is that that will not be completed this evening.

CHAIRPERSON: *Ja*, no, no that will not be completed – that might not be completed.

- 10 **ADV KATE HOFMEYR:** So our proposal Chair is really the following. If it would be possible to start a bit earlier tomorrow we could then complete Ms Memela's questions from our side. We could then move to the re-examination that Ms Mbanjwa wishes to do. And then once that is completed subject to other clarifications we would move to the evidence of Mr Ndzeke. I have already spoken to Mr Ndzeke's legal representatives and they indicated that they would be able to start early tomorrow. I cannot recall whether I asked Ms Mbanjwa about that but we can get her views now. Our proposal from the Legal Team's side would be we reconvene a bit earlier tomorrow, we seek to conclude
- 20 Ms Memela with the re-examination tomorrow and hold off on experts because it may be resolved and she will not have to come back. We then move to the evidence of Mr Ndzeke which Chair I am fairly confident we would complete tomorrow but possibly with a bit of use of the evidence on Wednesday. We had been in touch about the possibility of slotting another witness in on Wednesday but

unfortunately I can report to you that his Legal Team is not available on Wednesday. So we actually do have Wednesday morning to the extent that you are available Chair to then conclude Mr Ndzeke's evidence. And it would be our submission that we then conclude this aspect of the investigation and it would be in the interest of the Commission to do so.

CHAIRPERSON: H'mm. Well let me check with Ms Memela and then I will go to Ms Mbanjwa. Would your situation permit you to be back tomorrow? I know that you made special arrangements to be available
10 today.

MS MEMELA: Okay Chair after my lawyer had mentioned to me that she will need extra time to go through certain documentation.

CHAIRPERSON: Yes.

MS MEMELA: Including the policy of the company, certain legislation and stuff so before she can start with her re-examination.

CHAIRPERSON: Re-examination.

MS MEMELA: Yes so I had already postponed my trip again.

CHAIRPERSON: Oh okay.

MS MEMELA: To Eastern Cape so I will be available.

20 **CHAIRPERSON:** You would be available?

MS MEMELA: Tomorrow yes.

CHAIRPERSON: Tomorrow. Oh okay.

MS MEMELA: But I am not sure about the early part of it yes.

CHAIRPERSON: Yes, yes, ja we will talk about that now. Ms Mbanjwa what do you say to this suggestion?

ADV LINDELWA MBANJWA: Firstly Chair I may have difficulties. I do not know how early is maybe that should be ...(intervenes).

CHAIRPERSON: Well she is leaving it to me that is why she has not said.

ADV LINDELWA MBANJWA: No, no it is just that ...(indistinct) Chair is ...(intervenes).

CHAIRPERSON: Well I am thinking that well actually Ms Hofmeyr is listening. If Wednesday's witness is not going to be coming and therefore Wednesday morning is available for Mr Ndzeku to finish if he
10 did not finish – if he does not finish tomorrow afternoon I wonder whether there would be a need to even start early tomorrow morning. From your side how much more time do you think you might need to finish your part before Ms Mbanjwa re-examines?

ADV KATE HOFMEYR: Chair if it was only ...(intervenes).

CHAIRPERSON: I know that ...(intervenes).

ADV KATE HOFMEYR: It was only me.

CHAIRPERSON: *Ja* I know that Ms Memela will ...(intervenes).

ADV KATE HOFMEYR: And that is me in a room without the Chair, Ms Memela.

20 **CHAIRPERSON:** But she will be very crisp tomorrow.

ADV KATE HOFMEYR: Or Ms Mbanjwa.

CHAIRPERSON: She will be very crisp tomorrow.

MS MEMELA: I will be crisp tomorrow.

CHAIRPERSON: In her answers.

ADV KATE HOFMEYR: I should not be more than half an hour then

Chair.

CHAIRPERSON: Yes okay. Well in that event it does not look like Ms Mbanjwa you can come – it does not look like we should really need to start early so maybe we should just start normal time 10:00?

MS MEMELA: Ten o'clock. Yes Chair.

CHAIRPERSON: Would that be fine with you Ms Mbanjwa?

ADV LINDELWA MBANJWA: Yes that – no that would assist.

CHAIRPERSON: That would assist?

ADV LINDELWA MBANJWA: That would assist Chair.

10 **CHAIRPERSON**: Yes.

ADV LINDELWA MBANJWA: Yes.

CHAIRPERSON: Okay. Okay. No, no that is fine.

ADV KATE HOFMEYR: Chair sorry I have just had an indication from Mr Ndzeke's lawyers.

CHAIRPERSON: *Ja*.

ADV KATE HOFMEYR: They are a little bit concerned about how long Ms Mbanjwa anticipates the re-examination might be.

CHAIRPERSON: *Ja*.

20 **ADV KATE HOFMEYR**: Just insofar as how much time we would lose tomorrow.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: So maybe it would be useful if she could also give us an indication there. I think they are quite keen to be able to conclude the evidence.

CHAIRPERSON: Yes. Ms Mbanjwa what is your estimation? I will not

allow you to have as much as you might wish but what is your estimate of how much time you might need for re-examination?

ADV LINDELWA MBANJWA: I – we wanted a full day Chair.

CHAIRPERSON: I will not give you a full day.

ADV LINDELWA MBANJWA: Then if we do not get a full day then we will just take it as far as we can be allowed.

CHAIRPERSON: You see ...(intervenes).

ADV LINDELWA MBANJWA: But what ...(intervenes).

CHAIRPERSON: The re-examination contemplated in the regulations
10 as I understand it is meant to enable you to just clarify areas where the witness might not have – her evidence might not be understood. You know. So that is why I would not give you a whole day.

ADV LINDELWA MBANJWA: Too much time.

CHAIRPERSON: So I think if it helps you I can tell you that counsel who have re-examined their clients before I do not remember anybody who has gone beyond two hours if I recall correctly. Mostly it has been under that. If that helps to give guidance. But let us say you get the message from me.

MS MEMELA: I get the message.

20 **CHAIRPERSON:** *Ja.*

MS MEMELA: I get the message.

CHAIRPERSON: So let us start tomorrow at 10:00, do the best you can to focus on really areas of clarification and then we will take it from there.

MS MEMELA: Thank you Chair.

CHAIRPERSON: Okay. Alright. Okay so we are going to adjourn for today and resume tomorrow. We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS TO 11 FEBRUARY 2020

10

20

TRANSCRIBER'S CERTIFICATE FOR COMMISSION OF INQUIRY INTO STATE
CAPTURE
HELD AT
PARKTOWN, JOHANNESBURG

DATE HELD : 2020-02-10

DAY: : 210

TRANSCRIBERS : B KLINE; M NETTA; D STANIFORTH;
B DODD; D BONTHUYS

Audio's are typed verbatim, as far as audible/possible



Accura Africa Group

Your Forward-Thinking Partner