

**COMMISSION OF INQUIRY INTO STATE CAPTURE**

**HELD AT**

**PARKTOWN, JOHANNESBURG**

10

**11 FEBRUARY 2020**

**DAY 211**

20

**PROCEEDINGS RESUME ON 11 FEBRUARY 2020**

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

**ADV KATE HOFMEYR:** Good morning Chair.

**CHAIRPERSON:** Ys are we ready?

**ADV KATE HOFMEYR:** We are indeed.

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

**ADV KATE HOFMEYR:** Thank you.

**CHAIRPERSON:** Yes.

**ADV KATE HOFMEYR:** Ms Memela we were at the end of yesterday's  
10 evidence dealing with your involvement in the various components  
tenders for SAAT and the one point I want to pick up on is Ms Sambo  
provided to the commission a series of WhatsApp communications  
between yourself and her. You will find them in DD18 and you can pick  
it up at page 532. Exhibit DD18 page 532.

**CHAIRPERSON:** Ms Memela are you fine this morning?

**MS MEMELA:** I am okay Chair.

**CHAIRPERSON:** Okay alright you – you did not look fine to me.

**MS MEMELA:** Oh.

**CHAIRPERSON:** Okay alright.

20 **MS MEMELA:** Page?

**CHAIRPERSON:** Are you able to find the bundle? DD18.

**MS MEMELA:** Ja the bundle is here.

**ADV KATE HOFMEYR:** And page 532. Ms Memela yesterday your  
evidence was that you denied having given Ms Sambo pricing  
information on a flash disk, is that correct?

**MS MEMELA:** That is correct.

**ADV KATE HOFMEYR:** Ms Memela if you will just turn on your microphone.

**CHAIRPERSON:** Your microphone.

**MS MEMELA:** Oh. Thanks.

**ADV KATE HOFMEYR:** So let me just ask the question again for the record. Your evidence yesterday was that you denied giving pricing information to Ms Sambo on a flash disc, is that correct?

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

10 **ADV KATE HOFMEYR:** Did you give pricing information to her relevant to the tenders at any other point?

**MS MEMELA:** As I said Chair yesterday that it will be relevant pricing from the market – on the market that time. For instance like information that is – is known to us at procurement not because it is coming from the CFST.

**ADV KATE HOFMEYR:** Sorry so let me just get clear. You do admit to giving pricing information to Ms Sambo, is that right?

**MS MEMELA:** No I am not admitting. I am saying it would not be the pricing information that is coming from the CFST the bid evaluation  
20 committee.

**ADV KATE HOFMEYR:** But Ms Memela we need to focus on the specific question. We can break it up if we may in due course? But first of all what is your version on whether at any point you gave pricing information to Ms Sambo?

**MS MEMELA:** Chair I said I do not remember giving Mr Sambo – Ms

Sambo any information on the tender.

**ADV KATE HOFMEYR:** Thank you.

**MS MEMELA:** Pricing information. And Chair just to add there. These WhatsApp messages this is the first time I see them today.

**CHAIRPERSON:** Yes.

**MS MEMELA:** So like – like the memory stick.

**CHAIRPERSON:** Yes.

**MS MEMELA:** I do not – I am not sure of the authenticity of them.

**CHAIRPERSON:** Yes.

10 **MS MEMELA:** Yes Chair.

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

**MS MEMELA:** I would like my lawyer to intervene ja.

**CHAIRPERSON:** That is fine. Well she will ask you questions and we will see if you are able to answer or if there is any problem.

**MS MEMELA:** Okay Chair.

**CHAIRPERSON:** Yes. Ms Mbanjwa.

**ADV LINDELWA MBANJWA:** Thank you Chair. I just want to draw the attention of the Chair to the fact that these sms's or WhatsApp messages we have the same objection that we had to the alleged  
20 information from the flash disk. Because we do not know whether this information is the genuine information that was downloaded. So before cross-examination or asking question on this information we would be happy if we can be given an opportunity to make an application so that we can test the authenticity thereof. And in a way Chair I am not making this request on an ugly basis. I was phoned this morning by

someone who said there is information which she knows was at CIPRO in a particular format and it seems as if that information has been tampered with. It is not concerning this matter of Ms Memela but I am just saying that it seems as if in these matters where there is electronic evidence there are problems.

**CHAIRPERSON:** Ja. No I do not think it is a matter for an objection. Ms Hofmeyr may put questions to Ms Memela on the WhatsApp messages but you do have – you will be given an opportunity to make whatever investigations and challenge the validity in due course if you  
10 want to challenge anything. But she will be able to say, I am able to answer this because I know I have never sent such a message or she will say, I do not remember whether I sent a message and then we will take it from there.

**ADV LINDELWA MBANJWA:** As it pleases Chair.

**CHAIRPERSON:** Thank you.

**ADV KATE HOFMEYR:** Ms Memela I would just like to pick up on the point that you made a moment ago that this is the first time you are seeing these WhatsApp messages.

**MS MEMELA:** Hm.

20 **ADV KATE HOFMEYR:** You received Rule 3.3 Notices more than 16 days before Ms Sambo was going to testify that she was going to testify. Did you not?

**MS MEMELA:** I did Chairperson and these messages were not part of that.

**ADV KATE HOFMEYR:** That is correct.

**CHAIRPERSON:** Ja.

**ADV KATE HOFMEYR:** And in that notice you were notified that one of your rights was to be present during her evidence which was going to commence on Tuesday last week, do you recall seeing that in the notice?

**MS MEMELA:** Yes I recall that Chair.

**ADV KATE HOFMEYR:** And when you began your evidence you indicated that you had followed some of the evidence last week, is that correct?

10 **MS MEMELA:** I followed some of the evidence – what do you mean?

**CHAIRPERSON:** Some of the evidence presented by Ms Sambo?

**MS MEMELA:** I followed it?

**ADV KATE HOFMEYR:** Yes.

**CHAIRPERSON:** She is saying when you began your evidence.

**MS MEMELA:** Yes.

**CHAIRPERSON:** Last week you said that you had followed some of Ms Sambo's evidence.

**MS MEMELA:** Yes I had gone through some of the attachments that I received from the commission.

20 **ADV KATE HOFMEYR:** Oh I thought you indicated that you had watched some of the evidence from home?

**MS MEMELA:** No I did not.

**ADV KATE HOFMEYR:** You did not.

**MS MEMELA:** I even said Chair yesterday I heard from people that were talking that the – she is talking about a certain memory stick that

she has eventually found. Ja that is what I heard. And the reason why I decided not to watch Ms Sambo's video before I come to testify it was because I did not want to distract myself emotionally. I wanted to prepare and not focus on her assertions. So I thought I will watch her videos only when I come to cross-examine her.

**ADV KATE HOFMEYR:** Hm.

**MS MEMELA:** Yes Chair.

**ADV KATE HOFMEYR:** Ms Memela you see the challenge I have with that is that on Wednesday last week you communi – Ms Sambo started  
10 her evidence on Tuesday and she continued her evidence on Wednesday. And on the afternoon of Wednesday last week you sent an email to the commission indicating that you did not intend to appear for your evidence on Friday. So how could it have been that you were using that time to prepare for your evidence when your communication to the commission on Wednesday was that you did not intend to appear?

**MS MEMELA:** Chair I am not sure if Ms Hofmeyr listens to me when I speak. I did not say I used that time to prepare for evidence. I said the reason why I chose not to watch Ms Sambo's videos was to ensure  
20 that I do not distract myself why I am preparing – look preparing myself to come and appear here. Yes I have said on Thursday I do not know which day did I send my email between Wednesday and Thursday that I am waiting for my lawyer who is in Cape Town and I heard from somebody saying okay the Chairperson had said I would need to be here and then I see if I will apply for postponement and stuff. Then I

decided on that last day that I will be coming tomorrow morning.

**ADV KATE HOFMEYR:** Hm. Let us go to what is recorded in this Whatsapp message at page 535? And the part that I am interested in is a fairly long message from yourself – it is indicated as Nontsasa SAAT Memela and it is against the...

**CHAIRPERSON:** Did you say 535 Ms Hofmeyr?

**ADV KATE HOFMEYR:** Apologies I might have I meant 532 Chair.

**CHAIRPERSON:** I -532?

**ADV KATE HOFMEYR:** Yes.

10 **CHAIRPERSON:** Okay. Okay.

**ADV KATE HOFMEYR:** And where the relevant communication is, is just below halfway down the page. You will see the last date entered on the left hand side is 217.03.20 and the time is at 21:44:19 and then it indicates that the communication comes from Nontsasa SAAT Memela. And then what follows is what Ms Sambo said in her evidence was a WhatsApp message she received from you. I would like you to move down that to about a third of the way in that discussion because it is there that it is recorded in this WhatsApp message under the name of Nontsasa SAAT Memela that the following appears. It is E – it  
20 begins with the sentence “even before that”, do you see that?

**MS MEMELA:** Ja.

**ADV KATE HOFMEYR:** It says there:

“Even before that when you wanted price info for  
Cheryle I gave that to you.”

**MS MEMELA:** No, no, no, where are you reading it?



**ADV KATE HOFMEYR:** So are in the last communication on that page that begins with 2017.03.20?

**MS MEMELA:** Chair.

**CHAIRPERSON:** Yes.

**MS MEMELA:** Can I request since I have not read these I would ask Ms Hofmeyr to read the whole thing.

**ADV KATE HOFMEYR:** Certainly.

**CHAIRPERSON:** That is fine ja.

**MS MEMELA:** Ja because ja.

10 **ADV KATE HOFMEYR:** Right so we starting in the last one on that page.

**MS MEMELA:** I just want to understand the background.

**ADV KATE HOFMEYR:** And Ms Memela it begins “so she said” this is your communication to Ms Sambo.

20 “So she said by the time you got to her you were ready to show her the info. Which made her uncomfortable because she started asking herself if you had shown it to someone else. You were even contemplating to call City Press to give them the info. Now my Sister all I want to know is when...”

**CHAIRPERSON:** Just one second Ms Hofmeyr do not forget where you are. Are you able – have you been able to identify where she is – where she is reading?

**MS MEMELA:** I have identified Chair.

**CHAIRPERSON:** Oh okay alright. Okay.

**MS MEMELA:** I have.

**ADV KATE HOFMEYR:** Thank you Chair. Let me pick it up from:

“Now my Sister all I want to know is when did this become about me? When did I become your sudden enemy? Apparently you said to her, I am the one who forced you not to work with AAR. I was on speed dial because every decision you took it was my advice. Hibo, I was really shocked. All I ever did for you was to help. Even the info. That you are using now was sent to you in good faith to help you. Even before that when you wanted price info for Cheryle I gave that to you as I never thought you would one day plan to use it against me.”

Let us stop there. That appears to be a reference to you confirming that you gave price information to Ms Sambo when she wanted it for Cheryle. I assume that is a reference to Cheryle Jackson. Is that correct?

**MS MEMELA:** Yes Chair it looks like that but at the same time as I said it might be price information that as is standard knowledge from Supply Chain. So I – it is not price info from the CFST as I had indicated earlier that I do not sit in CFST.

**ADV KATE HOFMEYR:** Why would she be using it against you then?

**CHAIRPERSON:** Okay hang on one second. Ms Mbanjwa.

**ADV LINDELWA MBANJWA:** Thank you Chair.

**CHAIRPERSON:** Hm.

**ADV LINDELWA MBANJWA:** I must once more raise my serious reservations about the prejudicial nature of this information.

**CHAIRPERSON:** Yes.

**ADV LINDELWA MBANJWA:** Apart from the fact that we have placed on record the fact that we are not happy with the authenticity whether it really came from Ms Memela. But there is a second problem here. The identification of the information. It is said that you wanted price info for Cheryle. I believe that it would be in our best interest and remove the element of prejudice to Ms Memela. If Ms Hofmeyr can say, this  
10 price info it was price info that related to what? Because if we are to re-examine...

**CHAIRPERSON:** No but she is just reading an email that the investigators believe came from her and an email that Ms Sambo says came from her. She is not talking about somebody else she is just reading what is here and asking Ms Memela to comment on that.

**ADV LINDELWA MBANJWA:** Yes – yes.

**CHAIRPERSON:** Assuming...

**ADV LINDELWA MBANJWA:** Yes.

**CHAIRPERSON:** That the – the – this came from her phone.

20 **ADV LINDELWA MBANJWA:** Chair with all respects I do not want to be argumentative.

**CHAIRPERSON:** Yes.

**ADV LINDELWA MBANJWA:** But I would like to remind Chair of the prefacing statement which started yesterday and was repeated today.

**CHAIRPERSON:** Yes.

**ADV LINDELWA MBANJWA:** It was said that you shared pricing information of the tenders with the bidders. And now today Ms Hofmeyr has again said, are you denying that you shared this pricing information? So the understanding given the context that has been said by Ms Hofmeyr is that, this is pricing information for the tenders or for the bids which were currently in operation. It is for that reason why we are of the humble view that we need to have Ms Hofmeyr she can identify it and say, this was the pricing information that pertained to a specific bid. So that when we deal with the question in re-examination  
10 then we can be able to dispute that actually and when we have this information which is allegedly in this flash disk then we can compare if really this information that is in the flash disk is the information that was in the said tender.

**CHAIRPERSON:** Well Ms Hofmeyr has heard what you say. She will indicate how she intends proceeding. It seems to be that you – you think there is some uncertainty about whether the information – price information relates to a specific tender or not.

**ADV LINDELWA MBANJWA:** Yes Chair. Actually that is where the element of prejudice comes in. It is because a statement has been  
20 made that information that pertains to tenders and it is pricing information which is obviously very sensitive information has been shared by Ms Memela.

**CHAIRPERSON:** Yes.

**ADV LINDELWA MBANJWA:** In all fairness that information needs to be identified because I am not going to be in a position to re-examine if

I cannot even say what pricing information is? But I think Chair understands my difficulty.

**CHAIRPERSON:** What – I understand. What – what is clear is that Ms Memela is able to say – because I think she has said so. She would have shared with Ms Sambo and I think she may have said with other people as well particularly black owned BBBEE enterprises pricing information that was available in the public domain and not specific pricing information – not info – pricing information specific to a particular tender. And it may be because if she is able to say that  
10 maybe she takes care of that concern.

**ADV LINDELWA MBANJWA:** Regrettable Chair again without being argumentative.

**CHAIRPERSON:** Yes.

**ADV LINDELWA MBANJWA:** I see things from a different perspective.

**CHAIRPERSON:** Hm.

**ADV LINDELWA MBANJWA:** And that perspective with all humility is this.

**CHAIRPERSON:** Hm.

**ADV LINDELWA MBANJWA:** In order to defend Ms Memela's position.

20 **CHAIRPERSON:** Hm.

**ADV LINDELWA MBANJWA:** We need to have all the guns firing.

**CHAIRPERSON:** Hm.

**ADV LINDELWA MBANJWA:** We are limited if a broad statement is going to be thrown out there because in the same way that Ms Hofmeyr is actually not only eliciting information but is cross-examining – is

cross-examining as to credibility. We also need to be given an opportunity to state if the information that has been placed before this tribunal is actually incorrect information.

**CHAIRPERSON:** Hm.

**ADV LINDELWA MBANJWA:** Or if the information that has been placed before this tribunal is information that has not been properly researched. And in order for us to do that we need to be able to attack the very information that is the actual information. If for instance it is figures the figure is 100 we need to be able to say, no that figure was  
10 not 100. That figure was R50.00.

**CHAIRPERSON:** Yes. Yes. Okay thank you.

**ADV LINDELWA MBANJWA:** Thank you Chair.

**CHAIRPERSON:** Ms Hofmeyr.

**ADV KATE HOFMEYR:** Thank you Chair. I would just like to respond to Ms Mbanjwa in one respect and then proceed with the questions. Chair we began a line of questioning yesterday in relation to the flash disk. And it was in response to that that an objection was received because Ms Mbanjwa acting for Ms Memela was concerned about their inability to test and possibly dispute what our expert within the  
20 commission had said about that flash disk. It was at that point that the line of questioning in relation to the flash disk seized because you had given an indication that there should be a process whereby they could interrogate it. I left any further questioning in relation to the flash disk. Had I been able to persist many of the questions that Ms Mbanjwa wants answered today would have been answered. Because we have

an affidavit from Mr Robertse who explains on affidavit precisely how that spreadsheet was created. It explains precisely where the pricing information came and he explains precisely when it came which was when the five month tender was still open and AAR were still bidding on it. But we did not go there because there was an objection. The consequence of that is that I pick up today on the WhatsApp communications. That is a different matter. All that I am asking Ms Memela today is for her account on the WhatsApp communications. It is in black and white on the page before me that Ms Memela said at a point in communications that Ms Sambo said she received from Ms Memela that “even before that when you wanted price information for Cheryle I gave that to you as I never thought it would one – you would one day plan to use it against me.” Ms Memela’s response under oath has been clear. If there was any pricing information she shared with Ms Sambo it related to generally available pricing information. And that is the point I would like to pick up with her on in relation to the context in which this recordal of this message appears.

**CHAIRPERSON:** Yes I see Ms Mbanjwa you want to respond?

**ADV LINDELWA MBANJWA:** What I need to put on record Chair is it seems as if Ms Hofmeyr does not understand or accept the nature of evidence. Each evidence is an independent specimen before the court. The evidence of the flash disk was independent. We objected to it because of what covered it. This evidence of the Whatsapp is another separate specimen of evidence. She cannot say because our objection to the evidence of the flash disk was upheld. She therefore has a right

to submit..

**CHAIRPERSON:** Well...

**ADV LINDELWA MBANJWA:** To submit now...

**CHAIRPERSON:** Well let us just make..

**ADV LINDELWA MBANJWA:** This evidence.

**CHAIRPERSON:** Let us make sure we are accurate. We did not get to the stage of upholding or rejecting any objection. But we – I gave some indications with a view that we could have progress and some understanding. Even now I have not made any ruling. I am seeking to  
10 make sure that we can have progress and if we can do so without having to make a ruling that would be fine. But if I have to make a ruling I will. So I am listening to both of you and seeing whether we can make progress without having to make a ruling. But if – if we cannot find a way to move forward and have progress without a ruling I will have a ruling. So – so no ruling has been made but I made some inclination – some indications and to see if there could be common ground and Ms Hofmeyr was able to handle the matter the way she did and to accommodate your concerns. If I have to make a ruling I will say make your submissions and I will now make a ruling. So right now  
20 I think that we need to find a way of moving forward and if we cannot find a way I will just have to make a ruling and we move on. As I see it you know listening to your objection and listening to Ms Hofmeyr I can understand why Ms Hofmeyr who knows more about the evidence that she is presenting because she has focussed on it in preparation and knows why she is bringing a certain witness at a certain time why she



might say, not proceeding and finalising the evidence relating to I keep on calling it a –

**ADV LINDELWA MBANJWA:** Flash disk.

**CHAIRPERSON:** A flash?

**ADV LINDELWA MBANJWA:** Flash disk.

**CHAIRPERSON:** Flash disk.

**ADV LINDELWA MBANJWA:** Yes.

**CHAIRPERSON:** She knows what is it in there and she knows what affidavits relate to that. I may have my – my attention may have been  
10 directed to one affidavit or two. So – so it does not surprise me if she says, look had I proceeded and gone ahead with that line of questioning these issues would not be arising. You see. So – so I – I think what I am going to do is this. I do have need to take a five minute break to attend to some – something. So I am going to take a few minutes break and give a chance to you and Ms Hofmeyr to have a discussion on how we can achieve a smooth running of the proceedings without prejudicing your client's rights. If when I come back you have found each other and I am happy with what you have reached we will proceed. If you have not found each other I may have to make a ruling.  
20 Is that alright?

**ADV LINDELWA MBANJWA:** Thank you Chair.

**CHAIRPERSON:** Okay alright. Ms Hofmeyr is that fine?

**ADV KATE HOFMEYR:** Indeed Chair. Thank you.

**CHAIRPERSON:** Yes. So it is twenty-eight minutes past on my watch let us say I will return at twenty to eleven. We adjourn.

**ADV LINDELWA MBANJWA:** Thank you Chair.

**REGISTRAR:** All rise.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** Ms Hofmeyr.

**ADV KATE HOFMEYR:** Chair, Ms Mbanjwa indicated to me over the break that they were happy to have Ms Memela answer the questions, but ...

**CHAIRPERSON:** Okay.

- 10 **ADV KATE HOFMEYR:** I understand from Ms Mbanjwa that there is something she nonetheless wants to raise with you.

**CHAIRPERSON:** Okay. Alright.

**MS LINDELWA MBANJWA:** No. It is fine Chairperson.

**CHAIRPERSON:** Is it fine?

**MS LINDELWA MBANJWA:** Yes.

**CHAIRPERSON:** Okay. Thank you.

**ADV KATE HOFMEYR:** Thank you.

**CHAIRPERSON:** Thank you very much.

- 20 **ADV KATE HOFMEYR:** Ms Memela, you indicated that the only pricing information you would have given to Ms Sambo was general publically available information. Is that correct?

**MS MEMELA:** Yes Chair. That is my understanding. Maybe it will be prices coming from previous tenders and - and stuff. I have not checked Leon's affidavit. That Ms Hofmeyr kept on - I have not read it.

**CHAIRPERSON:** Ja.

**MS MEMELA:** So we just preparing other that are relevant to the re-examination. Yes.

**ADV KATE HOFMEYR:** Why would pricing information from previous tenders be publically available?

**MS MEMELA:** Remember it has already - the tender has already passed ...

**ADV KATE HOFMEYR:** Hm.

**MS MEMELA:** And usually I - I do not know if you remember during our meeting - during our meeting Chair with Ms Hofmeyr and Ms -  
10 Mr Kaplan (?). I mentioned to them that our purpose from 2013 when I joined procurement - the purpose was to ensure that we save as much as possible to SAAT, because Air France - the previous supplier - had been charging SAAT an arm and the leg since two - 2008.

So I remember Mr Kaplan even asking me okay, but how was testing the market for that short period going to help, because anyway the tender before that had given prices and I said if he - he will have the full information from SAAT and take the tender from 2013/2014 when it was awarded to Pegasus and it was cancelled and the five year tender and the final tender.

20 He will how much SAAT has saved since then. Right now in the current contract my understanding on the submission that was done by the same Leon Roberts that Ms Hofmeyr was referring to. SAAT - my understanding - is saving 800 million out of this current contract compared to Air France.

**ADV KATE HOFMEYR:** Ms Memela, the pricing information of a bidder

is commercially sensitive to it. Is it not?

**MS MEMELA:** Commercially sensitive how?

**ADV KATE HOFMEYR:** It is confidential to the bidder. It is their pricing.

**MS MEMELA:** No, no, no. Oh. Okay.

**ADV KATE HOFMEYR:** I see that there is another objection Chair. If I may just make a point in advance of Ms Mbanjwa's ...

**CHAIRPERSON:** Yes. Yes.

**ADV KATE HOFMEYR:** Objection.

10 **CHAIRPERSON:** Yes.

**ADV KATE HOFMEYR:** Chair, we are now at quarter to 11 ...

**CHAIRPERSON:** *Ja.*

**ADV KATE HOFMEYR:** Today.

**CHAIRPERSON:** Hm.

**ADV KATE HOFMEYR:** I understood from your indications yesterday ...

**CHAIRPERSON:** Hm.

**ADV KATE HOFMEYR:** That there was a request that there be an ability for the evidence to flow.

**CHAIRPERSON:** Hm.

20 **ADV KATE HOFMEYR:** That matters either come to me by a note.

**CHAIRPERSON:** Hm. Hm.

**ADV KATE HOFMEYR:** If there is a matter or it be reserved for re-examination ...

**CHAIRPERSON:** Hm.

**ADV KATE HOFMEYR:** Provided it is clarificatory.

**CHAIRPERSON:** Hm.

**ADV KATE HOFMEYR:** I believe it is my duty at this point ...

**CHAIRPERSON:** Hm.

**ADV KATE HOFMEYR:** To indicate we will not finish this evidence today.

**CHAIRPERSON:** Hm. Hm.

**ADV KATE HOFMEYR:** If these objections happen after every second or third question ...

**CHAIRPERSON:** *Ja.*

10 **ADV KATE HOFMEYR:** And we will not finish the evidence of Mr Ndzeke tomorrow.

**CHAIRPERSON:** *Ja.*

**ADV KATE HOFMEYR:** If we do not move more fluidly today ...

**CHAIRPERSON:** Yes.

**ADV KATE HOFMEYR:** But let me hand over to my learned friend.

**CHAIRPERSON:** Yes.

**MS LINDELWA MBANJWA:** It is fine Chair. She can continue.

**CHAIRPERSON:** Okay. Alright.

**ADV KATE HOFMEYR:** Ms Memela, I was saying it is confidential to  
20 the bidder. What their pricing was for a particular bid. Do you accept that?

**MS MEMELA:** It is confidential like during the tender process. Something that ...

**ADV KATE HOFMEYR:** Oh.

**MS MEMELA:** *Ja.* Something that happened previously.

**ADV KATE HOFMEYR:** Hm.

**MS MEMELA:** It is something that I mean has given us an indication at supply chain that maybe at the market currently this is how much they are charging.

**ADV KATE HOFMEYR:** Hm.

**MS MEMELA:** So which is the reason why maybe we had tested the market previously. So it does not necessarily mean that if the bidder had tendered - tendered the certain amount previous tender. They will - they will be the - the same amount for the next one.

10 **ADV KATE HOFMEYR:** Hm.

**MS MEMELA:** As much as I am - I am actually trying to explain this Chairman. I am - I am still not saying it was the - whatever price. I am saying like it - it could have been any other normal price that like we would have known from SCM. I am saying it cannot be coming from the tender, because even if like Leon would say okay. I had said he must do a spreadsheet. It would not be a spreadsheet coming from the CFST.

**CHAIRPERSON:** Yes. Okay.

**MS MEMELA:** Yes.

20 **CHAIRPERSON:** Ms Memela, let us go back to crisp answers.

**MS MEMELA:** To the crisp answers.

**CHAIRPERSON:** Like yesterday.

**MS MEMELA:** Okay.

**CHAIRPERSON:** Okay.

**MS MEMELA:** It is just that Chair sometimes ...

**CHAIRPERSON:** *Ja.*

**MS MEMELA:** These kind of questions. They leave a bitter taste in the public's mouth, but it is fine.

**CHAIRPERSON:** Yes. No, no, no.

**MS MEMELA:** I will try and be as crisp as possible.

**CHAIRPERSON:** Yes. No, no, no. I understand. I understand. I am trying to make sure we make progress. I - but also I am saying this because I know I will grant your lawyer ...

**MS MEMELA:** *Ja.*

10 **CHAIRPERSON:** An opportunity to re-examine.

**MS MEMELA:** Re-examine.

**CHAIRPERSON:** So she can pick up some of the things where she knows you would have liked to put a certain perspective.

**MS MEMELA:** Okay.

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

**ADV KATE HOFMEYR:** Did you check with the previous bidders whether they were happy for their pricing information to go to a competitor in the market?

20 **MS MEMELA:** Okay. Remember Chair Ms Hofmeyr did read something on the bid about the Project Manager - being Leon in this regard. That is the only one that was supposed - what - inquire by information and whatever. So my understanding is that there is - there is no way that I would have forced Leon to give me information that is forbidden.

**ADV KATE HOFMEYR:** No Ms Memela. It is not clear whether he knew you were going to give it to another bidder. My question to you was a

different one. Did you yourself before you handed over the pricing information to Ms Sambo check whether the previous bid prices of the bidders ...

**MS MEMELA:** Hm.

**ADV KATE HOFMEYR:** They were happy ...

**MS MEMELA:** Hm.

**ADV KATE HOFMEYR:** To have handed over to a competitor.

**MS MEMELA:** Remember Ms Hofmeyr - remember Chair, I - I - the memory stick that she is referring to - because I can see when she is  
10 using the hand now. It is like she say when you gave that information. Remember the memory stick part of the information is still questionable from us. So ...

**CHAIRPERSON:** Yes.

**MS MEMELA:** Ja.

**CHAIRPERSON:** But the question is.

**MS MEMELA:** Hm.

**CHAIRPERSON:** Whenever you gave pricing information to Ms Sambo or anybody else based on previous tenders - I think - as you say.

**MS MEMELA:** Hm.

20 **CHAIRPERSON:** The question is whether you would have checked with the previous bidders to which that information related that they had no objection to you giving this information to a potential competitor.

**MS MEMELA:** Chair, since - you remember when Ms Hofmeyr read that document - that tender document yesterday. That all inquiries will be done with Leon. My understanding is that if I ask for information from



Leon that is something confidential for the CFST. She would have checked then with the bidders, but like it shows that this one was not something that is forbidden if I were to share it at all. Yes.

**CHAIRPERSON:** Is your answer that you did not?

**MS MEMELA:** I did not Chair.

**CHAIRPERSON:** Ja.

**MS MEMELA:** Hm.

**ADV KATE HOFMEYR:** Thank you and then what would be the problem Ms Memela and how could that information be used against you - as is  
10 reflected in the WhatsApp communication - if it was information that could freely be shared?

**MS MEMELA:** Okay. You see she is talking about the information that could be used against me. The other information that she is not mentioning other the price that she is focusing on. It will be the JV that we discussed yesterday and the proposal. So that is exactly what I was saying to her, because remember I had sent that to her confidentially.

Helping her as a Black owned supplier and like we will then - we will show that with my lawyer during the re-examination what is my  
20 obligation towards Black owned suppliers and stuff.

**ADV KATE HOFMEYR:** So Ms Memela, when you said and I quote:

“Even before that when you wanted price info ...”

**MS MEMELA:** Okay. Where are you - where are you Ms ...?

**ADV KATE HOFMEYR:** Apologies.

**MS MEMELA:** Hm.

**ADV KATE HOFMEYR:** I am at 5-3-2 in EXHIBIT DD18. It is the same sentence that I have read previously. It is about midway down that last ...

**MS MEMELA:** Okay.

**ADV KATE HOFMEYR:** Communication on the page.

**MS MEMELA:** Hm.

**ADV KATE HOFMEYR:** So I just want to be clear on your evidence. When you wrote to Ms Sambo and I quote:

10                   “Even before that when you wanted price  
information for Cheryl ...”

**MS MEMELA:** Hm.

**ADV KATE HOFMEYR:** “...I gave that to you as I never  
thought you would one day plan to use it against  
me.”

You were actually not referring to the pricing information. You were referring to the proposal and the JV Agreement. Is that your evidence?

**MS MEMELA:** Okay. No. This is - has something to do with the price Chair.

20   **ADV KATE HOFMEYR:** Hm.

**MS MEMELA:** As I said like I have not read this WhatsApp. So I am saying some of this WhatsApp it is very long. I have not read it this morning, but my understanding is that it was on JV proposal and whatever price. That is from the claims I have given to her and Ms - Ms Hofmeyr's next question was - before we took a break was why

would Sibongile or Sambo turn against me. I do not know if she is still going to come to that question.

**ADV KATE HOFMEYR**: No.

**MS MEMELA**: Because I would like to clarify.

**ADV KATE HOFMEYR**: What I am focusing on is ...

**MS MEMELA**: Hm.

**ADV KATE HOFMEYR**: This very sentence.

**MS MEMELA**: Okay.

**ADV KATE HOFMEYR**: You have explained in your evidence that you  
10 did give pricing information, but it was pricing information that you  
could freely share with Ms Sambo, because it related to historic tenders  
and I am asking you if that is the pricing information that you are  
referring to in the sentence. How could that possibly be used against  
you if it is information that can freely be given?

**MS MEMELA**: Chairperson, I am sitting here today. I am answering  
the question regarding the same information. So that is exactly what is  
being used against me - against me. Well the person ...

**CHAIRPERSON**: Well at that time you did not know you would sit here  
today.

20 **MS MEMELA**: No. Remember Chair ...

**CHAIRPERSON**: Hm.

**MS MEMELA**: She - she - there is somewhere where I have mentioned  
City Press and stuff. So I am talking about information that a person is  
using, because they talking City Press or maybe whatever. So going to  
the media about those kind of things and stuff and you know the media

with no full background information and when they write about stuff - somebody. So like it was that used against me. Not because it is illegal or anything like that. As I understand Ms Hofmeyr's question.

**ADV KATE HOFMEYR:** Ms Memela, to conclude on this point I want to give you an opportunity to comment on the following observation.

**MS MEMELA:** Hm.

**ADV KATE HOFMEYR:** It will be our likely submission in due course that this information was not freely available and it was given and that is why you were concerned that it would be used against you in future.

10 If it was to be freely given there would be no worry about Ms Sambo going to City Press ...

**MS MEMELA:** Huh-uh.

**ADV KATE HOFMEYR:** And there would be no reason for you to say it could be used against you. Do you have a response to that?

**MS MEMELA:** I have a response to that Chairperson and I will refer to the JV information that you asked me about that why would a supplier talk to me about JV. I would refer to the proposal as well. As I said yesterday that when suppliers come to me. It is all about Supplier Development and as much as then Air France BEE would have come to  
20 me for information.

JM would have come to me. Sibongile herself or any other supplier. When I give them information it is not something that I expect that in the future like it has done now. It will be used as evidence against me. So that is - that is the point that I was trying to make there and this JV is here, but like at least we will be able to clarify during

re-examination in terms of JV what was my obligation in terms of helping suppliers and all that.

So that is where I think my point was being made on that WhatsApp. It is a pity that Chair I mean when you discuss certain things with a person. The last thing that you - you think the person is doing is to keep certain information that was discussed a long time ago, because now we do not really recollect exactly what was said at that time and from what context and - and I did not mention on Friday - earlier - that the - the Supplier Development issue was a sensitive  
10 issue at SAAT.

Unfortunately I was looking for an email that I wanted to read. For the Chair to see exactly what I had to go through to try and prove - to push the Supplier Development. Some of my team during like this whole process were really against it. They will agree in my face and then behind my face they do something else and not empower the same people.

As I said that BEE was called Nontsasa's BEE and stuff. So that it was my way of trying to say okay. I will help the people in terms of I mean making sure that they understand exactly what is expected of  
20 them and stuff. Not - not to say I was taking something so confidential that is illegal you know. So I will explain that during my re-examination Chair in - in detail.

**CHAIRPERSON:** Well you have said quite a few times.

**MS MEMELA:** Hm.

**CHAIRPERSON:** Something that gives me the impression that you are

saying that it was part of your job to share information with ...

**MS MEMELA:** Suppliers.

**CHAIRPERSON:** Ja. Black suppliers in order to assist them.

**MS MEMELA:** Yes Chair.

**CHAIRPERSON:** Now it may be that we should deal with that now rather than in re-examination. I - is that your evidence that that was part of your job?

**MS MEMELA:** That was part of my job Chair. We will read that from the SCM and the enterprise ...

10 **CHAIRPERSON:** Yes.

**MS MEMELA:** Policy. Yes.

**CHAIRPERSON:** Okay. I - I would like us to go there if there is something written down that says that was part of your job. So that before your lawyer re-examines. We have had a chance to understand the source of or the basis of that evidence. Ms Mbanjwa.

**MS LINDELWA MBANJWA:** Thank you Chair. I have actually prepared something very specific. So I do not know if the Chair wants us to present it now. We can present it, because we have documentation and we have proof of what we are saying. So we are actually using  
20 documents from SAAT. We just thought that it will be proper that we do it as part of our re-examination.

**CHAIRPERSON:** Ja. No, no. It is better that when Ms - Ms Hofmeyr finishes she has been able to canvas everything and all that remains is clarificatory questions from your side. Maybe what we should do is that share with Ms Hofmeyr during the tea break what you have and

whatever other documents you may have been intending to hand up.

So that she can see whether they could assist in understanding certain things and then putting certain questions to her and then - so that when she sits down. The re-examination is really aimed at clarification and not at raising new things, because that is not what it is supposed be.

**MS LINDELWA MBANJWA:** Yes Chairperson, but can we please with all due respect reserve our rights. I am going to be upfront Ms Hofmeyr's attitude is very confrontational. I am not complaining.  
10 She has chosen to follow the path. Can we please reserve our own re-examination? She has decided to do things - to conduct things in this way. When she gave me the file the other time she threw it at me.

**MS MEMELA:** Hm.

**MS LINDELWA MBANJWA:** I am fine with this Chairperson. I - I will continue like this. The hostility is fine. It is welcome. Let us proceed like this Chairperson. We are just grateful about the fact that you are really considerate in these proceedings. You noted immediately that client is not really well today. She is indeed not well, but she is able to continue.  
20 We do not want to delay the proceedings, but I prefer to play my cards very close to my chest. I will not prejudice, because the documents which we are going to use are the documents which come from the files that are with them. The only thing that we have done is to extract them and to put the proper interpretation. There will be no surprises Chairperson.

**CHAIRPERSON:** Oh. Okay. Okay. Well I would just encourage of course I have not heard what Ms Hofmeyr has to say and she might choose not say anything. I will just encourage that - I would encourage collegiality and I would encourage that we all try and work well together and try and may - ensure a smooth running of the proceedings. I am sure that things can be sorted out.

So if the documents you are talking about are documents that come from the bundles that Ms Hofmeyr has. Then it should not be a problem, but it would help if her attention and my attention is drawn to  
10 specific documents that might deal with this area - area, because as I say the - the examination - re-examination is supposed to be - just to clarify issues that might not have been clarified.

So - but we - we will see. I mention that. I am not forcing you to do anything that you might not want to do now, but as long as you bear that in mind.

**MS LINDELWA MBANJWA:** I have borne it in mind your worship.

**CHAIRPERSON:** Is it? Yes.

**MS LINDELWA MBANJWA:** We will be very, very, very brief.

**CHAIRPERSON:** Okay. Alright.

20 **MS LINDELWA MBANJWA:** Thank you.

**CHAIRPERSON:** Thank you. Ms Hofmeyr.

**ADV KATE HOFMEYR:** Chair, I do not think it is fruitful for me to engage in the allegation of hostility. It is my submission that that is false. That I have a job to do here in ...

**MS MEMELA:** Huh-uh.



**ADV KATE HOFMEYR:** This Commission and I have been doing it and as far as collegiality goes Ms Mbanjwa and Ms Memela know the steps that I have gone to - to ensure that they can consult freely and not in a situation where there is any chance that we would overhear them. There is an issue with the rooms next door to us and there is actually an ability to hear between the rooms.

I took steps to go to them and indicate that they must be aware of the fact that there is a - a transmission of sound between them, because I wanted to be absolutely sure that they could consult  
10 freely.

**MS MEMELA:** Ja.

**ADV KATE HOFMEYR:** So I would like to move on then if we may.

**CHAIRPERSON:** Yes. Okay.

**ADV KATE HOFMEYR:** Let us then go Ms Memela to a point that you referenced. I think it was yesterday or Friday.

**MS MEMELA:** Hm.

**ADV KATE HOFMEYR:** It is a part of your statement where you raise Mr Bezuidenhout's previous involvement in speaking to a - a bidder and you said you were hoping that we would get to that and so I would like  
20 to take you to it. It is at page 10 of your statement and that is in DD25A and you will find it at page.

**CHAIRPERSON:** That does not mean we are done with the WhatsApp messages or does it?

**ADV KATE HOFMEYR:** No. It does mean that we are done.

**CHAIRPERSON:** Okay.

**ADV KATE HOFMEYR:** Indeed.

**CHAIRPERSON:** Okay. Alright.

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

**MS MEMELA:** Oh. Are we done?

**ADV KATE HOFMEYR:** Yes. So we move ...

**CHAIRPERSON:** We are not done with the WhatsApp messages. She - she will still continue.

**MS MEMELA:** Oh.

**ADV KATE HOFMEYR:** No, no. Sorry. I am indicating we are done  
10 with the WhatsApp messages.

**CHAIRPERSON:** Oh. You say you ...

**ADV KATE HOFMEYR:** We have concluded. I have put to ...

**CHAIRPERSON:** Oh.

**ADV KATE HOFMEYR:** Ms Memela what I wanted her response on and now we are moving to an aspect in relation to the interactions between tenderers and the - SAAT.

**CHAIRPERSON:** Yes. Okay. No. I ...

**MS MEMELA:** Which page Chair?

**CHAIRPERSON:** I am - I am sorry. Can I take you back to the ...

20 **MS MEMELA:** Oh.

**CHAIRPERSON:** WhatsApp messages?

**ADV KATE HOFMEYR:** Certainly.

**MS MEMELA:** What was the page?

**CHAIRPERSON:** It was 5-3-2 of EXHIBIT DD18.

**MS MEMELA:** I am there Chair.

**CHAIRPERSON:** Are you there?

**MS MEMELA:** Yes Chair.

**CHAIRPERSON:** Okay. I have not refreshed my memory on this WhatsApp message, but last week I had looked at it properly. I understood that one of the things you said or the message - the WhatsApp message reflects is that you acknowledged having given Ms Sambo some information to give to Ms Jackson - Cheryl Jackson.

Is - is that your recollection of one of the things reflected in the - in the SM - in the WhatsApp message?

10 **MS MEMELA:** Chair, I had said - my response was if I had given her any information with regard to pricing.

**CHAIRPERSON:** Yes.

**MS MEMELA:** It will be just the standard pricing that we know from supply chain ...

**CHAIRPERSON:** Yes.

**MS MEMELA:** And from - it will be maybe from the previous tenders and - and whatever.

**CHAIRPERSON:** Yes.

**MS MEMELA:** So I said if I had given ...

20 **CHAIRPERSON:** Yes.

**MS MEMELA:** To her. Yes.

**CHAIRPERSON:** If - if you had given. Ja.

**MS MEMELA:** Yes and ...

**CHAIRPERSON:** Yes.

**ADV KATE HOFMEYR:**

**MS MEMELA:** It was more helping her more than anything and ...

**CHAIRPERSON:** Yes.

**MS MEMELA:** We will go in detail. Not - not long in terms of her looking for prices ...

**CHAIRPERSON:** Yes.

**MS MEMELA:** Versus her coming back to Ernst & Young and saying she did not bid with AAR.

**CHAIRPERSON:** Yes.

**MS MEMELA:** Ja. So that is my point that I will make later on.

10 **CHAIRPERSON:** Yes. In any event I think she did testify that you gave her information that was relevant to the tender that AAR wanted to bid for that she was going to give to Ms Cheryl Jackson.

**MS MEMELA:** Hm.

**CHAIRPERSON:** What do you say to her evidence in that regard?

**MS MEMELA:** Chair that could not be accurate, because I do not sit at CFST. As I said that if Leon had done a spreadsheet he had done a spreadsheet not out of the CFST. Remember CFST works together whatever the information they do. They do together. So I am not sure in his affidavit if we - if he had stated that he had taken the information  
20 from the CFST.

From what I read like when I was browsing through his affidavit. He had said I had asked her (sic) to compile a spreadsheet about certain information and then he went as far as the historical prices. I think e.g. Lufthansa. He gave an example of Lufthansa. So I - I do not agree that I gave Ms Sambo what was on that tender for - for

the five months contract.

**CHAIRPERSON:** She said you gave her this information when she had - she met with you at a Shell Garage in Alberton. Do you remember any meeting that you may have had with her at Shell Garage in Alberton?

**MS MEMELA:** Chair, I would not remember. That is why I said you see some of this information is coming from 2017 and, *ja*. So I said to my statement I do not remember meeting Ms Sambo at the Shell Garage. Most of our meetings were at - at SAAT. She will just pop up and come  
10 to my office. Ask for certain things and stuff. So I do not remember the Shell Garage part.

**CHAIRPERSON:** So I - I am - I ...

**MS MEMELA:** As much as I do not remember me giving her the memory stick.

**CHAIRPERSON:** I take - I take your evidence to be that you are not necessarily denying that you had a meeting at some stage with her at Shell Garage, but you say you - you cannot remember.

**MS MEMELA:** No. I do not remember Chair.

**CHAIRPERSON:** Yes.

20 **MS MEMELA:** Hm.

**CHAIRPERSON:** Yes. Okay. She also told me about a meeting that she said she had with you at a restaurant. Was it Mimosa?

**ADV KATE HOFMEYR:** I do not recall.

**CHAIRPERSON:** At - when - when you broke ...

**ADV KATE HOFMEYR:** (Intervenes).

**CHAIRPERSON:** The news to her that the tender had been given to ...

**ADV KATE HOFMEYR:** AAR.

**CHAIRPERSON:** AAR ...

**MS MEMELA:** Hm.

**CHAIRPERSON:** And she said she - she cried and you were quite surprised at her reaction. Do you remember that meeting with her at - at a restaurant in Alberton again?

**MS MEMELA:** I do remember that meeting Chair.

**CHAIRPERSON:** You do remember that one?

10 **MS MEMELA:** I remember that meeting.

**CHAIRPERSON:** Yes.

**MS MEMELA:** I am not sure about her saying I - I was quite surprised.

**CHAIRPERSON:** Yes.

**MS MEMELA:** I am not sure if maybe she is trying to paint a picture that maybe I was not feeling sorry for her or anything like that.

**CHAIRPERSON:** Well ...

**MS MEMELA:** Ja.

**CHAIRPERSON:** On the contrary my - my understanding of that part of her evidence is that she was conveying that you - you may have felt  
20 that you - that this was bad and that you know you did not expect her to - to be hurt like that by that decision, but I - I did not get the impression that she was saying ...

**MS MEMELA:** Chair.

**CHAIRPERSON:** Anything in that meeting at the restaurant to hurt her as such.

**MS MEMELA:** Okay Chair.

**CHAIRPERSON:** Hm.

**MS MEMELA:** *Ja.* In her statement what - my understanding of what she was saying. She said I wanted - maybe I wanted her to be the first one to tell her the information. Since like I knew that - how she felt about AAR and whatever and I am saying that - that cannot be correct, because I remember very well when we made a recommendation.

It went to the Board and then I do not know how long the Board took and then before we knew we were getting calls. I cannot  
10 mention name here, because I have not mentioned the names from - but we were getting calls from a high - top people asking why did the Board give the tender to AAR and we - we explaining that we have from supply chain submitted for Air France and we have not even received the Board Resolution yet.

Arson - he is not back yet from the meeting. In fact every - everybody was already going up and down discussing this thing and I do not know how it went out of the Board Meeting, but it was already discussed and then before we knew it. It was on the news and then A - Air France was taking SA - SAAT to court. So I am saying it is - it  
20 cannot be true that I - I went to her there, because I wanted me to be the first person to tell her.

I could have went there to - to tell her, because I could tell that she was not okay and the reason why I have - like I mean shared some of the JV information and I was preparing her if she could meet up with other multinational suppliers and stuff and it does also show in

this WhatsApp that I have advised her from the beginning that you cannot have any claim from somebody if you do not have a contract and I even offered if I could draft it for free, because I mean I - I thought maybe she was worried about legal fees and stuff and I said I can draft it for free, because I want to make sure that like you have an exclusive agreement from these people.

So me sharing the JV with her was actually trying to highlight to her that this is how you enter into a JV agreement with multinational suppliers to ensure that your rights are protected and stuff, so going  
10 there and the yes she cried, I remember that, and there was nothing I could do and I had to explain to her that remember as much as maybe I cared for you and you have been working so hard on this component tender from 2012 and I was hoping that one day maybe you will get a supplier that you will work with successfully.

I did say, Chair you promised that you will give me some time at the end but I wanted to say that the only other problem I have mentioned also in my statement is that Ms Sambo had a severely sense of entitlement, I don't know how many suppliers I have introduced to her. There is one ...[indistinct] and Aerospace where the lady from  
20 Dubai was supplying parts to SAAT every day and then Ms Sambo sit and do nothing but when the invoice is sent to SAAT to pay she will go and say okay but you are using my name and stuff also, that is when I had - I thought I had an obligation to explain to her that supplier development is not about a black face, you don't just sit and do nothing.



**CHAIRPERSON:** Okay.

**MS MEMELA:** Okay I will explain that later Chair.

**CHAIRPERSON:** Yes, yes, yes, you will.

**MS MEMELA:** But I just got carried away.

**CHAIRPERSON:** Okay let's – so the meeting at the restaurant you remember.

**MS MEMELA:** It did take place.

**CHAIRPERSON:** The one at the Shell Garage you don't remember.

**MS MEMELA:** I don't remember that one.

10 **CHAIRPERSON:** You are not saying it did not happen, you are just saying you don't remember.

**MS MEMELA:** I don't remember it yes.

**CHAIRPERSON:** Yes, now please explain to me how giving her information about pricing from previous tenders to give to Ms Jackson, if you did give, because I think you said if you did give, how that would have helped them. Why would that information be relevant?

**MS MEMELA:** Okay, uhm ...[intervenes]

**CHAIRPERSON:** In your view?

20 **MS MEMELA:** I think in my view then if I had shared such information with Sibundi one thing I'd noticed from her is that she did not have much knowledge about MRO and she did not have much knowledge about the kind of parts or part numbers or whatever the kind of components that SAAT requires, so those are the kind of information that I remember, AAR when it was still tendering with her from 2012, they kept on getting disqualified because they were short on certain

part numbers when they were bidding, so I think it will be maybe something in that way I would notice that okay maybe we should do something like this next time. Remember sometimes you as the head of supply chain or the CPO you can give a person a feedback, the reason why you did not succeed on the previous tender was because of these gaps and stuff, so my understanding is that it would have been maybe the information around that.

**CHAIRPERSON:** But you accept that she could have used such information to the prejudice of any previous bidder if there was a  
10 tender, a similar tender in the future?

**MS MEMELA:** No Chair it wouldn't be to the prejudice to other previous bidder, remember the information with the previous bidders was working for that previous tender, that other tender would be something else because CFS, or CFST when they go out and keep on going back to the bidders and saying okay maybe you must sharpen up your pencil, do this now, so it has nothing to do with their previous bid.

**CHAIRPERSON:** But if there is a similar tender in the future then if I have an idea what that competitor's pricing was a year or two ago I could be able to have a good indication what their likely pricing is a  
20 year later isn't it?

**MS MEMELA:** Not really Chair that's not how it works.

**CHAIRPERSON:** Why not?

**MS MEMELA:** Remember as I said that this tender started in 2013, and if we can get, if we had the time for this Commission so that everybody out there understands if we had the file for 2013 versus

2014, 2015 and the last one 2016 we will see like how much difference like in terms of the prices. It does not mean that okay because that one bid, for instance I will make an example with A J Walters with their BEE supplier Pegasus, in 2014 they bid extremely low, extremely low, and through Pegasus and then we had a problem that okay because Pegasus was going to sub-contract to A J Walters and then out of the blue then remember the PPFA does not actually even allow that 25%, more than 25% sub-contracting, that is the reason that they couldn't get, that was 2014.

10           If you can check the submission of the A J Walters in 2016, the final tender the reason why they were disqualified they kept on going up instead so that's why I am trying to say that it does not mean that like when it comes it's coming from the previous tender then when you run another tender the supplier automatically goes lower than the previous one, and remember that previous one, the five year period tender versus – the five months period tender versus the five year period tender, those are two different periods. You know that's the reason why we even ended up giving to Air France which was the current supplier at that time.

20   **CHAIRPERSON:** Ms Hofmeyr?

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

**CHAIRPERSON:** Yes.

**ADV KATE HOFMEYR:** I am indebted for those follow up questions. With your leave I do propose to move to the next topic.

**CHAIRPERSON:** That's fine yes.

**ADV KATE HOFMEYR:** Thank you. Ms Memela that was going to be in your Bundle 25A, DD25A and to pick it up at page 10.

**CHAIRPERSON:** I see we are at quarter past but I am quite happy to take the tea break at half past unless the witness or somebody pleads that we take the break now?

**MS MEMELA:** Is it DD?

**ADV KATE HOFMEYR:** Sorry DD25A but we're proposing 15 more minutes and then we will break?

**CHAIRPERSON:** Ja, we will take the tea break at half past.

10 **MS MEMELA:** Okay Chair.

**CHAIRPERSON:** Ja, okay.

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

**MS MEMELA:** Which page?

**ADV KATE HOFMEYR:** Page 10.

**CHAIRPERSON:** Which bundle are we going to?

**ADV KATE HOFMEYR:** DD25A Chair.

**CHAIRPERSON:** The one that has got Ms Memela's statement?

**ADV KATE HOFMEYR:** Indeed, and we are going to be in her statement at page 10.

20 **CHAIRPERSON:** Okay. Yes.

**ADV KATE HOFMEYR:** Ms Memela there's a paragraph just before the heading on that page which reads "discussions with AAR", do you see that?

**MS MEMELA:** I see that.

**ADV KATE HOFMEYR:** And in that paragraph you talk about the rule

of a tender that does not allow bidders to meet with anyone who is a decision maker from the company while the tender is still running, do you see that?

**MS MEMELA:** *Ja.*

**ADV KATE HOFMEYR:** And I understand you in this paragraph to be saying that there had been previous meetings between Mr Bezuidenhout and Mr Parsons that you regarded as in conflict with that rule, is that correct?

**MS MEMELA:** Okay, can we read until the end.

10 **ADV KATE HOFMEYR:** Yes certainly, why don't you do so.

**MS MEMELA:** Okay I said at the end there "but Air France was not disqualified because Mr Bezuidenhout and Mr Parsons were not part of the evaluation nor adjudication team."

**ADV KATE HOFMEYR:** Thank you, no that does clarify.

**MS MEMELA:** I don't know where you read about the conflict.

**ADV KATE HOFMEYR:** No apologies, that is my error, I was confusing evidence you gave previously where you said you wanted to go to the Mr Bezuidenhout issue and I had understood from your testimony that you were concerned that he had breached the rule of the tender, but  
20 you have clarified for me now, you weren't saying he breached it, but can I just clarify, do you regard it as a rule of tender procurement that you can't meet with a bidder, if you are part of a decision making body in relation to that tender while it is still open.

**MS MEMELA:** Chair my understanding of that question, and correct e if I didn't understand it well, it says – she says if you are part of the

decision making body.

**CHAIRPERSON:** Yes, let me put the question this way, is it your understanding that if somebody is part of the decision-making process in regard to a tender that person may not meet with somebody who is bidding for the tender before decisions have been made?

**MS MEMELA:** Chair we do not have a specific provision from the supply chain that talks to that. Ms Hofmeyr read from the bid, the tender documentation when she was talking about who is prohibited to meet.

10 **CHAIRPERSON:** Yes, but hang on, hang on, hang on, she is not asking what the tender document says, she is asking whether it is your understanding that it is not allowed for somebody who is involved in decision making in regard to a tender to meet with a bidder before the tender is finalised, she is asking your understanding.

**MS MEMELA:** Okay my understanding on the tenders is based on the delegation of authority. Remember I said these tenders were within the delegation authority of the Board and the Board is the decision maker, the final decision maker when it comes to the tenders, so for me to say I think it is wrong for decision makers to meet suppliers, or  
20 maybe potential suppliers I would be wrong because we all know, all over South Africa, not just SAA or SAAT in corporate State Owned Companies, board members meet with their suppliers and discuss with them, so I would be wrong to say okay they are not allowed because that would be coming from me, I am not sure which provision of the legislation that would be prohibiting them from doing that. Maybe I

don't understand the question.

**CHAIRPERSON:** No, no, no I think you do understand that question.  
Ms Hofmeyr?

**ADV KATE HOFMEYR:** Thank you Chair, it is just your own statement  
Ms Memela, that is what I am working from, so your statement at page  
10 says the last paragraph before the heading:

“This is also the time when Air France went and met with the  
then acting CEO, Mr Nico Bezuidenhout and Mr Barry  
Parsons.”

10 And this is the part I would like to emphasize:

“...against the rule of the tender that does not allow bidders  
to meet with anyone who is a decision maker from the  
company whilst the tender is still running.”

I am taking it from your own statement, is that consistent with your  
understanding that it is a rule of tender procurement that the members  
of the decision maker cannot meet with a bidder while the tender is still  
open.

**MS MEMELA:** No, no, Chair I would say then she is using a wrong  
reference there in trying to raise her point. Mr Bezuidenhout and Mr  
20 Parsons did not sit in the Board of SAAT that took the final decision of  
the tenders, so they were not the decision makers of SAAT.

**CHAIRPERSON:** Well let's start by what your statement that she  
refers to means, because she is basing her questions on what the  
statement says. You say in that paragraph this is also the time when  
Air France went and met the then Acting CEO Mr Nico Bezuidenhout.

So now we know Air France and Mr Bezuidenhout met and Mr Barry Parsons also, it was the two of them, and you say against the rule of the tender that does not allow bidders to meet with anyone whom is a decision maker from the company whilst the tender is still running. I understand that sentence to say there is a rule relating to tenders that prohibits meetings between bidders and anyone from the company who is a decision maker while the tender is running.

Is my understanding of what you are saying here correct?

**MS MEMELA:** Chair the tender rule I may have been referring to the  
10 provision that Ms Hofmeyr was referring to yesterday and remember I did say that we never got that documentation, and so but I ...[intervenes]

**CHAIRPERSON:** Yes but hang on, let's go back to our crisp answers like yesterday. So my question is I told you what my understanding is of what you are saying here, my question is whether my understanding is not correct?

**MS MEMELA:** Okay, I ...[intervenes]

**CHAIRPERSON:** I repeat it, I understand you to be saying in this statement it is – there is a rule relating to tenders that prohibits the  
20 meeting between a bidder and a decision maker in relation to that tender from the company whilst the tender is running. Is my understanding of what you are saying there correct?

**MS MEMELA:** Okay, ja maybe Chair that is your understanding of what I was saying, but now the sentence ...[intervenes]

**CHAIRPERSON:** Okay, I didn't hear what you said, just repeat.



**MS MEMELA:** I am saying that is your understanding of what I was saying.

**CHAIRPERSON:** Yes now but is it a correct understanding of what it is as far as you are concerned?

**MS MEMELA:** Not *per se* Chair because there was a continuation in terms of the paragraph.

**CHAIRPERSON:** *Ja*, just tell me what you say you understand the statement yesterday to mean?

**MS MEMELA:** Okay, I said this is also the time when Air France went  
10 and met the then Acting CEO, Mr Bezuidenhout and Mr Barry Parsons,  
against the rule of the tender that does not allow the bidders to meet  
with anyone and I said in brackets whom is a decision maker from the  
company whilst the tender is still running, yes. And that ...[intervenes]

**CHAIRPERSON:** *Ja*, and what is your understanding of what that means, is it different from my understanding that there is a rule?

**MS MEMELA:** Yes, it does not necessarily mean when I put decision makers within the bracket I was saying they were the decision makers of SAAT, but remember they could influence the decision because of the role they hold.

20 **CHAIRPERSON:** No, no leave out as to whether Mr Bezuidenhout and Mr Parsons were decision makers; let's just take what their role means that you are referring to, I am saying I understand you to be saying there is a rule relating to tenders that there should be no meeting between a bidder and somebody within the company who will be involved in decision making in relation to a particular tender to meet.

Do you understand it differently? Just what that rule is that you are referring to.

**MS MEMELA:** Chair I think then maybe how my statement is written because when I add that, but Air France was not disqualified because these two guys that I have mentioned here do not sit in the evaluation committee and the bid evaluation committee.

**CHAIRPERSON:** No, no I accept that. Remember that what I am still trying to establish now is, is there a rule and if there is what does it say, that is without applying it to Mr Bezuidenhout and Mr Parsons, just  
10 what the rule is that you are referring to, so that it is at the general level that I am talking.

**MS MEMELA:** There is no rule Chair that I know of.

**CHAIRPERSON:** Ja.

**MS MEMELA:** As I said that most of these decision makers according to their delegation of authority they would meet with potential suppliers, suppliers and discuss certain information.

**CHAIRPERSON:** Mmm, but remember that the fact that they meet doesn't necessarily mean, shouldn't necessarily mean there was no rule because they could be meeting suppliers in breach of the rule, so are  
20 you saying that in this, this statement should not be taken to say you are saying there is a rule.

**MS MEMELA:** Ja, because I am this person Chair who when I refer to something or when I agree to say okay that is the rule, I shall be able to pick it up and say okay this is the rule, this is the paragraph that says that. So that's why I am saying I don't remember of any rule that

– other than that rule in the tender document that was read by Ms Hofmeyr yesterday.

**CHAIRPERSON:** Okay, Ms Hofmeyr?

**ADV KATE HOFMEYR:** It was Mr Human's evidence, he now is in an acting position in the position that you previously occupied as the head of supply ...[intervenes]

**CHAIRPERSON:** I am sorry Ms Hofmeyr to do this to you, Ms Memela I just want to close off our discussion a few minutes ago. I understood your evidence maybe on Friday or maybe yesterday to also be to the  
10 effect that the reason why there was nothing wrong with you communicating with J M Aviation and so on was because you were not going to be involved in any decision making?

**MS MEMELA:** I was not going to – I was not involved in the CFST.

**CHAIRPERSON:** Yes, but ...[intervenes]

**MS MEMELA:** In the evaluation committee.

**CHAIRPERSON:** That is my recollection of your evidence that you thought part of the reason you used to justify the fact that you were communicating with them was that you were not going to be involved in decision making and therefore if you are not involved in decision  
20 making there is no problem. Is my recollection of your evidence wrong?

**MS MEMELA:** Yes that is a correct recollection Chair but it was in addition to say I don't yes.

**CHAIRPERSON:** Okay, now the reason why I am referring to it is because it seems to be consistent with this statement that we have just

been discussing.

**MS MEMELA:** Okay so remember there was even a part where Ms Hofmeyr asked if when I sign or when I signed the recommendation to the Board was I signing as the Exco member and I explained that no I was signing as HOD SCM, supporting the CFST because she was getting to a point where she wanted to find out who makes a decision, she even asked me Chair so is it just a recommendation ...[intervenes]

**CHAIRPERSON:** I said why was BAC called adjudicating committee if it does not adjudicate.

10 **MS MEMELA:** Yes, it does not take a decision exactly, and I said because of the delegation of authority the final decision maker falls within the tender, sorry the Board of SAAT because it was within the delegation of authority.

**CHAIRPERSON:** But the point, the reason why I am referring you to your evidence, as I do, is that I am saying if that is what you said to justify your interactions, engagements with J M it is consistent with what I understand you to be saying in this sentence namely I am not breaking any rule by getting involved with J M and discussing with them because I am not involved in decision making, by implication if I was  
20 involved in decision making I would be breaking a rule if I engaged with J M.

**MS MEMELA:** Yes Chair, that is what I just said that it was in addition also, like I added that but also I did not take a decision to this tender to award to them.

**CHAIRPERSON:** Yes.

**MS MEMELA:** In addition to the cross functional evolution.

**CHAIRPERSON:** Yes but what it leads to and I just want you to comment on that, what it leads to is that if that was your evidence then it is contradictory for you if you now say there is no such rule, because you have now said, and you must tell me if I have misunderstood, you have now said no, no, no there is no such rule.

**MS MEMELA:** No, okay Chair ...[intervenes]

**CHAIRPERSON:** Have I misunderstood you?

**MS MEMELA:** Ja, I am really confused Chair.

10 **CHAIRPERSON:** Okay maybe – yes?

**MS MEMELA:** I am really confused because I think the way it is interpreted how I had responded to say I did not see any conflict of interest because I don't sit in the bid evaluation committee.

**CHAIRPERSON:** Yes, yes.

**MS MEMELA:** And I even said – and also in addition to that I did not take a decision or make a decision or even recommend for them to be awarded a tender.

**CHAIRPERSON:** Yes, yes.

20 **MS MEMELA:** So ja now it is – what confuses me is the rule versus what I had said.

**CHAIRPERSON:** Ja, you see at a certain level it looks strange to me that you would be engaged with J M the way you were engaged. At a certain level when you say as long as I was involved in decision making I was not breaking any rule, there is something to be looked at there because it may be that it makes sense that as long as you are not

going to be involved in any decision making what is the problem, but there is still something about that engagement that I think needs clarification.

**MS MEMELA:** Yes.

**CHAIRPERSON:** But now with special reference to this I am simply saying I would have expected you in relation to this statement in that paragraph at page 10 of your statement I would have expected you to say yes there was a rule or I believed that there was a rule, whether it was a rule that is written down or just a rule that is understood by  
10 everybody, even though not written down, that if you are involved in decision making you can't be having meetings with one or more of the bidders and that for me would be consistent with what you said when you said there is nothing wrong with me engaging with J M because I am not involved in decision making.

So I am making this so that you get a chance to comment and if there is something missing you get a chance to say here is something that may be confusing you Chair.

**MS MEMELA:** Okay Chair, now let me try and go because I am trying to remember back at the time. Ms Michelle Lalloo who was reporting to  
20 me at that time, I was driving to Eastern Cape and she wrote me a long email saying she is coming from a meeting between Mr Bezuidenhout and Mr Parsons, it was Air France that was actually presenting what was – they had bidden in that bid that year. So her understanding at that time when she came to me was that there is this role and remember she actually printed just part of that legislation, which if I

remember it was regulation 16A of the National Treasury Regulations and after I said remember yesterday I said I engaged legal from SAA, I engaged Dr Dhawas who was the CPO of SAA, and upon talking and sitting down and then also when I had already returned to Air France asking them why should I not disqualify them we realised I think upon reading the proper applicability of Regulation 16A that we found out that it did not apply to a Schedule 2 company so that would have been the rule that I thought they acted against at that time, so that's why I am thinking there is no rule at SAAT but at that time when she came to  
10 complain to me and then we took steps and sat on the meeting and discussed how we are going to handle this, it was 16A and we realised that 16A does not apply to Schedule 2 companies.

So the reason why I did not put that here is because like we had since realised that we had applied the wrong rule.

So that's why you see there ...[indistinct] would collude disqualifying them because the reason with the bidder would be disqualified would be then if Mr Parsons and Mr Bezuidenhout would sit in the bid evaluation committee.

**CHAIRPERSON:** Okay, I think we should take the tea adjournment.

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

**CHAIRPERSON:** We are at twenty seven minutes to, shall we resume at five to twelve?

**ADV KATE HOFMEYR:** Certainly, thank you Chair.

**CHAIRPERSON:** Yes, we will adjourn and we will resume at five to twelve. We adjourn.

**REGISTRAR:** All rise.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** Let us put on the mic. Yes.

**MS MBANJWA:** Yes, I just want to apologise. It is not that we were late. Miss Memela is really not feeling well, but she wants to continue. One of the legal team, the investigator has asked, has said he will bring a Grandpa, so I just was checking up on this [intervenes].

**CHAIRPERSON:** Yes. That is fine. That is fine. Miss Memela.

10 **MS MBANJWA:** Yes.

**CHAIRPERSON:** Miss Memelo.

**MS MEMELA:** Yes Chair.

**CHAIRPERSON:** I am happy that you are able to continue.

**MS MEMELA:** I am able to continue Chair.

**CHAIRPERSON:** Okay. Alright.

**ADV KATE HOFMEYR:** Thank you, Chair.

**CHAIRPERSON:** And then put on your mic.

**MS MEMELA:** It is on, Chair.

**CHAIRPERSON:** Okay. Oh, I think the bottle was...

20 **ADV KATE HOFMEYR:** Obscuring it?

**CHAIRPERSON:** Ja. Okay.

**ADV KATE HOFMEYR:** Thank you, Chair. Miss Memela, I would like to pick it up at the second of the five-year component's tenders. Do you recall that that tender was issued in October 2014. Does that accord with your memory?



**MS MEMELA:** Can I ask Miss Hofmeyr to repeat the question, please?

**ADV KATE HOFMEYR:** Sure. So, there was a series of these tenders over time, right? The second one, just for the record that was SP437 of 14 that is one that came second, and it was a five-year tender and it was issued on the 29<sup>th</sup> of October 2014. Do you agree with that?

**MS MEMELA:** Where are you reading Miss Hofmeyr?

**ADV KATE HOFMEYR:** No, it is my note.

**MS MEMELA:** Okay Chair, I cannot agree on something I do not have.

**CHAIRPERSON:** Yes, she was asking whether what she is saying  
10 accords to your recollection and if you do not recall you can say you do not recall.

**MS MEMELA:** Okay Chair, because like there were lots of -of - of tenders.

**CHAIRPERSON:** Or if there is something you want to look at that would help you remember that is fine.

**MS MEMELA:** And I would request Miss Hofmeyr to go back to my statement because there was somewhere, ...[intervenes].

**CHAIRPERSON:** Where you had written that.

**MS MEMELA:** Yes. Where I had given them the history of the  
20 component tenders from 2013 up to so maybe so like that when she quotes a certain tender I am able to - we are in the same page.

**ADV KATE HOFMEYR:** Yes, indeed. Let me take you there. I have not anticipated that it would be contentious. So, let me just take you there it is in DD25(a) and you will find it at page 8 at the bottom.

**MS MEMELA:** Alright. I have got it Chair.

**ADV KATE HOFMEYR:** In your own statement you said,

“The second tender which was SP437/14 was issued  
on the 29<sup>th</sup> of October 2014.”

Do you see that?

**CHAIRPERSON:** Right at the bottom. Ja.

**MS MEMELA:** Yes, Chair.

**ADV KATE HOFMEYR:** So, we are on the same page it was issued on  
the 29<sup>th</sup>?

**MS MEMELA:** We are on the same page. Yes.

10 **ADV KATE HOFMEYR:** Correct, and then by the middle of 2015 that  
tender was still open, correct?

**MS MEMELA:** Hmm?

**ADV KATE HOFMEYR:** In the sense it had not been decided yet?

**MS MEMELA:** In the middle of 2015 it looks like, Chair we are on the  
same page where it says date retracted. Looks like it was retracted 22 of  
June 2015.

**ADV KATE HOFMEYR:** Yes, so, sorry. So, let me be much more specific  
so in May of 2015 the tender was still open?

20 **CHAIRPERSON:** Miss Hofmeyr when you say it was still open are you  
disregarding the retractions or are you saying there had been no  
retraction in the meantime.

**ADV KATE HOFMEYR:** No, not at that point yet because as  
Miss Memela has correctly pointed out at page 9. Her records record that  
it was retracted on 22 June 2015. So just to get the chronology right, it  
is issued on the 29<sup>th</sup> of October 2014 as Miss Memela correctly states at

page 9 it was retracted on 22 June 2015. So, my follow-up question was as a consequence of that in May 2015 it was still open. Correct Miss Memela?

**CHAIRPERSON:** Okay.

**MS MEMELA:** Oh, 2015? Yes, it was still open according to the...

**ADV KATE HOFMEYR:** According to your statement?

**MS MEMELA:** Ja, according to the history, ja.

**ADV KATE HOFMEYR:** Yes, and it was during May 2015 that you and three members of the SAAT Board travelled to AAR in the United States.

10 Is that correct?

**MS MEMELA:** That is correct.

**ADV KATE HOFMEYR:** So that was at a time when the tender was still open and AAR had bid in that tender, correct?

**MS MEMELA:** AAR had bided in this tender. Yes.

**ADV KATE HOFMEYR:** And amongst the people accompanying you were members of the SAAT Board, is that correct?

**MS MEMELA:** Yes, they were members of the SAAT Board.

20 **ADV KATE HOFMEYR:** They were I think we had from evidence previously they were Miss Kwenana, Mr Zwane and Dr Tambi, is that correct?

**MS MEMELA:** Yes, Mr Zwane is the - was the CEO of SAAT.

**ADV KATE HOFMEYR:** Right so an executive member of the Board and Miss Kwenana and Dr Tambi were non-executive members of the Board, is that correct?

**MS MEMELA:** Yes, yes, Chair.

**ADV KATE HOFMEYR:** Now that was at a time when the tender was still open and what I am interested in is whether you conveyed to them prior to that trip that they should not be meeting with AAR because of the previous point that we debated before the break, which is that people in a decision making role in relation to tenders should not be having meetings with bidders while the tender is still open.

**MS MEMELA:** Chairperson, I am not the advisor of the Board right, and I will give you an example as why I say this it is because the decision to go to AAR was actually taken from I think SAA Board and then because it  
10 was a matter of technical it was moved to SAAT Board and they had decided from there that the reason why they were going to AAR is to view their facilities and before they can actually try and discuss anything with regard to the partnership framework that was in place at SAAT at that time.

There was a partnership framework Chair that had been talked about at SAAT as far back as 2012 during the Board changes and stuff like that because, in 2012 there was a different Board from the 2015 one.

Ja. So they were going to discuss that and I did say during in my statement also during the our meeting with Miss Hofmeyr and  
20 investigative team that I was only informed on the day we were going to Chicago that we will be going on a trip and the reason why they actually came with me was to ensure that I do not allow maybe AAR or any other party to talk to them about anything that have to do with the tender.

**CHAIRPERSON:** Just repeat that last statement.

**MS MEMELA:** Okay so they, their reasoning for [intervenes].

**CHAIRPERSON:** For including you.

**MS MEMELA:** For including me in the trade because I was not included in the trade all this time and was that because from a procurement point of view I would advise them during meetings when they go through the facilities or should AAR maybe try and talk about something that is related to components instead of talking about the MOU or maybe partnership framework that they were going there for.

So, like the trip was more like on the partnership framework that has been long going at SAA and it even had a document that was put  
10 down. I even mentioned and actually forwarded the Commissions team the MOU between Air-France and SAAT and an MOU between IAI Israel Aero Space and SAAT to prove that the MOU between AAR and SAAT was not the first MOU that was put in place and I know if maybe the former CEO or maybe the former Board members are called in they going to confirm this that there were other MOU's with Rolls' Royce as well as, although I was not part of that. Ja, so Chair, yes. We, ja.

**CHAIRPERSON:** Okay.

**ADV KATE HOFMEYR:** So I understand your evidence to be that you did not at any point advise them that that trip would be against the rule of the  
20 tender that does not allow bidders to meet anyone who is a decision maker from the company while the tender is still running. You did not give that advice to the Board members?

**MS MEMELA:** I did not give that advice to the Board members.

**ADV KATE HOFMEYR:** Thank you. Do you now regard it as wrong for them to have attended?

**CHAIRPERSON:** Hang on, Miss Mbanjwa has something, Miss Mbanjwa

**MS MBANJWA:** Chair the reason why I am objecting to this question is because [intervenes].

**CHAIRPERSON:** Do not start speaking while you are far from the mic, otherwise.

**MS MBANJWA:** In this pressure of time, Chair, thank you.

**CHAIRPERSON:** Yes.

**MS MBANJWA:** Chair the reason why I am objecting to this question is because one of those questions were Chair, was at pace was to explain, 10 to get clarification from Miss Memela, and if we can turn to that page 010. I am not saying that matter has been resolved Chair, but in the same bundle I just want to [intervenes].

**CHAIRPERSON:** Well tell me first what the basis, whether it is an objection and what the basis is before we go and look in the document.

**MS MBANJWA:** I am objecting [intervenes].

**CHAIRPERSON:** Ja, what is the basis for objection?

**MS MBANJWA:** The basis for objection is because what is now put to Miss Memela is what Miss Memela has already explained that there was nothing wrong, because they were not part of the evaluation nor 20 adjudication team. Because this is a similar scenario to the Bezuidenhout scenario [intervenes].

**CHAIRPERSON:** Yes, I think leave it to her to deal with the question.

**MS MBANJWA:** As it pleases Chair.

**CHAIRPERSON:** Thank you Miss Mbanjwa.

**ADV KATE HOFMEYR:** Thank you Miss Memela. It was after that group

returned from the U.S. that that five-year component tender was cancelled or retracted, correct?

**MS MEMELA:** It was after that Chair, and the reasons were stated. I remember the first one, if I remember correctly was because Pegasus, is it the correct one? Ja. Pegasus had bided okay extremely low which was good for us because we wanted to save but they were going to sub-contract to AJ Walters and that was not allowed in terms of the PPFA.

You cannot sub-contract as a local company if you have bided you must at least take full responsibility of 75 percent of what should be  
10 done. Otherwise that would be fronting.

And then the second one was, it was stated that it was to give the Board enough time to actually continue with the discussions regarding the MOU or partnership framework with AAR.

**ADV KATE HOFMEYR:** The challenge that that presents for me Miss Memela and I would like to have your comment on it is, the facts seem to indicate that the Board of SAAT while a tender is still open goes to visit the facilities of one of the tenderers, and thereafter that very Board takes a decision to retract the tender in which there would have been other competitors and the reason for doing so is that they want to  
20 embark on a partnership with one of those bidders.

And the subject matter of that partnership was going to be to provide that exact same services that the tender which was retracted would have provided to SAAT. Do you not see that as a concern?

**MS MEMELA:** You see that as a concern? Chairperson, I do not. And I will give you an example why, to get into a partnership requires an

approval of the shareholder in terms of section 54 of the PFMA. And before it even gets to that there is no way that the Board will be talking about what is with regard to the component services without the approval of the shareholder.

But like my understanding is that like the discussions between the Board in terms of the Board resolution that are in the file, they were not discussing anything that had to do with the tender but their reasoning like I mean to allow to cancel the tender at that time was to ensure that nobody feels maybe infringed or feels prejudiced while they are  
10 discussing, as much as they are not discussing what is in the bid. Yes  
Chair.

**ADV KATE HOFMEYR:** The partnership was to provide the exact same services that the tender would have provided to SAAT. Is that not correct?

**MS MEMELA:** Chair, there were lots of list, there were a list of what could have been part of the partnership, as much as it was part of the list with Air France and II, Etihad and any other supplier or maybe airline.

But what I am trying to put on record for Miss Hofmeyr is that before that partnership could even go on it will be approved by the  
20 shareholder. There is a long process that is followed there. So, in terms of the non-binding MOU, that is when they realised, they had to enter into a non-binding MOU that will guide their discussions, you know? Yes.

**ADV KATE HOFMEYR:** But the decision to retract the tender and go on the partnership, happened before any section 54 approval, correct?

**MS MEMELA:** Remember you cannot go and apply for section 54 before



you have everything in place. That is why I said to the Chair there are processes that you have to follow first before you even get to the partnership approval. Yes.

**ADV KATE HOFMEYR:** Yes, Miss Memela my question was not what processes you have to follow, it was just a question of fact. At the time that the decision was taken to retract the tender and go on the partnership model, there was no section 54 approval from the shareholder was there?

**MS MEMELA:** Yes, there was not, because remember the partnership  
10 model is something that was approved Chair by the Board of SAAT as far back as 2012. So, the partnership model is something that is actually just guiding them on how they move forward with the partnership framework. It does not require the approval at that time.

**ADV KATE HOFMEYR:** But from the time that the partnership model was being pursued by the SAAT Board there was no competitive process being followed was there?

**MS MEMELA:** There was no competitive process. That is why I am saying Chair it was something that was done by the Board of Bagus, Mr Mpondo with Mr Mabizela and stuff before the other one that followed,  
20 and the one that actually was in this trip.

**ADV KATE HOFMEYR:** Thank you, and then I would like to go to another meeting that took place while that second five-year tender was opened [intervenes].

**MS MEMELA:** Okay before you get there, Miss Hofmeyr I am sorry Chair can I add also on the same trip.

**CHAIRPERSON:** Yes.

**MS MEMELA:** Just to lay out there to the public so that they understand that the trip was not just taken by certain people. After the Board members came back.

I remember some of them were taking photos of the facility to come back so that when they give feedback, they actually even have photos. And then after that there was a trip that was taken by the IT the Chief, the former Chief IT officer of SAA.

Because also if you remember on that frame, partnership  
10 framework there was also systems, okay they had updated systems, compared to SAA that they could help us upgrade on. And then there was technicians I think like two groups of technicians went to their operations facilities.

So I am just trying to put it out there that it was not just the Board, like just to prove that it was something to ensure that we know like the Board knew what it was getting itself into before they even maybe continued to move forward to a partnership framework

That is my understanding Chair. I do not sit in the Board and I am not talking on behalf of the Board. I understand that the Commission  
20 will give the Board their opportunity to state their side. So, whatever that I am putting here is my view.

**CHAIRPERSON:** Ja. Before Miss Hofmeyr moves away from the trip, you said that you were told that you had been included in the trip on the day of departure, is that correct?

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

**CHAIRPERSON:** Did you say that you were told that the reason why you were included in the trip was so that you could advise the delegation with regard to not talking to AAR people about the pending tender?

**MS MEMELA:** To ensure that should AAR raise, because remember AAR does not know the rules of this Country at that time. So it was to ensure that should they during the discussion of what they were there for, should they raise anything that I have to do with the like component tender or anything like that, that I would be able to say you cannot discuss this. Ja, because this is part of the component tender and we will have the  
10 tender running. Yes Chair.

**CHAIRPERSON:** Am I right to think that the reason why it would have been thought that you were the right person to play that role was because of your position as H.O.D. of procurement.

**MS MEMELA:** Yes, Chair that was the reason.

**CHAIRPERSON:** Yes – yes.

**MS MEMELA:** Because I remember the Board does not understand, they do not really know what is being, what is part of the tender or maybe what is put to them. Remember when they take a submission to the Board it is just a brief summary of what they have written and ja.

20 **CHAIRPERSON:** Now, was there a rule that was to the effect that the members of the delegation could not discuss the tender with AAR people on that trip?

**MS MEMELA:** Not that there was a rule that I know of Chair. As I said that the concern was more from the side of AAR. Being the private company from U.S and not knowing how we work in South-Africa that they

do not raise some things or certain information that they are not supposed to talk to the Board with.

**CHAIRPERSON:** Yes, but that is exactly what I am talking about.

**MS MEMELA:** Oh.

**CHAIRPERSON:** Your, what you - the reason you say that was given to you for including you in the trip suggests to me that there was a rule that prohibited people who might have been in the delegation or all of them, or some of them, from discussing the pending tender with anybody from AAR.

10 **MS MEMELA:** There was no rule Chair.

**CHAIRPERSON:** Are you saying there was no rule?

**MS MEMELA:** There was no rule Chair. I will give you an example as to why I say so. For instance, on the five-months tender that was ran afterwards to test the market.

The Board had already or maybe through the SAA legal had appointed the transactional advisor from CDH to help them with regard to this non-binding MOU and also the discussions going forward. So at procurement we were off the view that, okay because they are discussing, remember the reason for retracting the previous tender was to give the  
20 Board chance to discuss with them, and – and – discuss with them like issues of non-binding MOU.

And then now we decided okay since that was the reason, we were going to exclude them when we run the five year tender and then the transactional advisor from CDH advised against that because we had already excluded them and the tender was already issued to those that

were not discussing with the Board, and they said no because the Board is not discussing anything that has to do with the component tender so it will be prejudicial to AAR to exclude them from the tender.

I am sure Miss Hofmeyr will see that there was a separate tender issued for AAR to include them. But it was easy because it was a closed bid because we were just testing the market. It was not an open bid.

**CHAIRPERSON:** So you understand that when I talk about a rule I am not necessarily talking about a rule that is written down, I am also talking  
10 about ...[intervenes].

**MS MEMELA:** The understanding.

**CHAIRPERSON:** Any rule that everybody may have understood exists even if it was an unwritten rule.

**MS MEMELA:** Okay, I can agree with you there Chair because maybe that was an understanding at that time and also what lead us to decide to exclude AAR from the five months tender at first.

**CHAIRPERSON:** So, to go back to this trip at the time of the trip to AAR.

**MS MEMELA:** Yes.

**CHAIRPERSON:** So, was there a rule written or unwritten that either  
20 some of the people in the delegation or everybody in the delegation with not have been allowed to discuss the pending tender with AAR people?

**MS MEMELA:** I do not remember any written rule, Chair.

**CHAIRPERSON:** Unwritten?

**MS MEMELA:** I do not remember any written rule, but the instruction that I be part of the tender came from them and of course like I did not

know what to do because I did not even have the visa the U.S visa at that time and I am sure [intervenes].

**CHAIRPERSON:** Who did this who told you that this was the motivation for including you?

**MS MEMELA:** I think I was called by the company's secretary at that time and said the Board had decided that they should include [intervenes].

**CHAIRPERSON:** They should include you?

**MS MEMELA:** Yes, Chair.

10 **CHAIRPERSON:** Yes and gave this reason as the reason.

**MS MEMELA:** And gave this reason but it was not written down.

**CHAIRPERSON:** Ja.

**MS MEMELA:** Yes, Chair.

**CHAIRPERSON:** And now there may have been no written rule. You as head of procurement in the company did you understand it to be, would you have understood it to be acceptable for any member or members of the delegation and you know who was in the delegation, who were in the delegation. Would you have regarded it as acceptable if they discussed with AAR people the pending tender?

20 **MS MEMELA:** Would I have regarded as acceptable? No Chair.

**CHAIRPERSON:** You would not have accepted as acceptable?

**MS MEMELA:** I would not have regarded it as acceptable.

**CHAIRPERSON:** Yes.

**MS MEMELA:** Yes Chair.

**CHAIRPERSON:** And why would you have though it would be

unacceptable?

**MS MEMELA:** Because the Board is the one that makes the final decision. Therefore, to discuss that current tender at the time instead of discussing what they were going there for which was the non-binding MOU, will be something opposite to what they went there for.

**CHAIRPERSON:** Now the actual meeting even if they did not discuss the pending tender, would you not have considered that the timing of the meeting could give rise to perceptions that maybe AAR was being given special treatment even if you and the Board did not think so because  
10 there was still a tender that was still to be finalised in which AAR was interested.

Should the timing not have been after the finalization in terms of your understanding of acceptable behaviour during procurement processes?

**MS MEMELA:** My understanding from here Chair, AAR had already been disqualified, but just to answer your question [intervenes].

**CHAIRPERSON:** Well you must point out if I am missing something because I could miss, I could be missing something. I thought that at that time the tender was still pending.

20 **MS MEMELA:** Ja no it was pending but Air France, AAR was disqualified [intervenes].

**CHAIRPERSON:** AAR was not bidding at the time?

**MS MEMELA:** Yes, they were disqualified at the time.

**CHAIRPERSON:** Oh okay, okay.

**ADV KATE HOFMEYR:** Miss Memela I [intervenes].

**CHAIRPERSON:** I am sorry but if they were disqualified at the time why would the Board have been concerned that they should not discuss the tender with a bidder who has been disqualified, because the bidder is not in the race?

**MS MEMELA:** I think maybe it was for the reason that like for the future or for I am not sure but there are no specific dates here, so I am just reading here that disqualified bidder it says AAR.

So, I am not sure if it was by the, during the time of the trip, it was disqualified already. But I know it was disqualified on the, for not  
10 bidding on the full spare list.

**CHAIRPERSON:** Miss Hofmeyr.

**ADV KATE HOFMEYR:** It was not disqualified at the time of the trip.

**MS MEMELA:** Not yet.

**ADV KATE HOFMEYR:** No.

**MS MEMELA:** Okay.

**ADV KATE HOFMEYR:** And the reason for that is that you can go to DD 22(c) at page 1066.

**MS MEMELA:** 1066.

**CHAIRPERSON:** Thank you.

20 **ADV KATE HOFMEYR:** This is a letter written by Nisha Laloo. Who was that Miss Memela?

**MS MEMELA:** Oh, you want me to read the [intervenes].

**ADV KATE HOFMEYR:** No, I am just saying who was Nisha Laloo.

**CHAIRPERSON:** The letter that Ms Hofmeyr is addressing is written by Nisha Laloo and it is addressed to ... (intervenes)



**MS NONTSASA MEMELA:** Okay I will read that- her title. She was Senior Manager Strategy Procurement.

**ADV KATE HOFMEYR:** And what is the date of the letter?

**MS NONTSASA MEMELA:** The date of the letter was 27 May 2015.

**ADV KATE HOFMEYR:** That was after the trip to the US, correct?

**MS NONTSASA MEMELA:** When was the trip to the US?

**ADV KATE HOFMEYR:** The 2<sup>nd</sup> to the 9<sup>th</sup> of May 2015.

**MS NONTSASA MEMELA:** Oh okay.

**ADV KATE HOFMEYR:** So, it was after.

10 **MS NONTSASA MEMELA:** Ja it was after.

**ADV KATE HOFMEYR:** And as I read this- feel free to read it if you have not done for a while. It is a request to AAR that they extend the validity period of their bid which was still open for a further 6 months.

**MS NONTSASA MEMELA:** Mm-hmm.

**ADV KATE HOFMEYR:** While the process on that tender was still being finalised.

**MS NONTSASA MEMELA:** Okay. I see that.

**ADV KATE HOFMEYR:** So, it could not have been a reason for the board to be able to have the trip in early May that AAR had already been  
20 disqualified, correct?

**MS NONTSASA MEMELA:** Yes Chair, we have just confirmed and to answer your question because you said why had they ... (intervenes)

**CHAIRPERSON:** Well I was about to say it resuscitates my question.

**ADV KATE HOFMEYR:** Yes.

**MS NONTSASA MEMELA:** Yes Chair.

**CHAIRPERSON:** Ja. In terms of your understanding of acceptable conduct and behaviour during procurement processes was the time when this trip was undertaken the correct time when there was this tender pending. Did this time- did the fact that there was this tender pending not make it unacceptable for people particularly those who would be involved in decision making to undertake a trip to AAR?

**MS NONTSASA MEMELA:** Okay Chair, as I said that I am not a member of the board and I will be speaking from the level that I have occupied.

**CHAIRPERSON:** Yes.

- 10 **MS NONTSASA MEMELA:** Yes. And sitting here I do not really understand the duties and responsibilities of the board. But I do know that they are responsible to ensure of the continuous improvement within the company and also implement certain proposals that will see the company change for the better and act in the best interest of the company. So, I would from where I am sitting, trying to think from their shoes that the reason why it was ... (intervenes)

**CHAIRPERSON:** No, I do not want you to try and think- to put yourself in their shoes.

**MS NONTSASA MEMELA:** Okay.

- 20 **CHAIRPERSON:** I want ... (intervenes)

**MS NONTSASA MEMELA:** I must answer from my perspective.

**CHAIRPERSON:** Yes. You were the HOD for procurement in the company. Here is the board deciding that it is going to undertake a trip to one of the bidders in regard to- I mean one of the bidders and there is a tender that is still pending in which they are bidding and you are Head

of Procurement. Was that acceptable in terms of procurement processes?

**MS NONTSASA MEMELA:** You see now Chair, in terms of procurement processes- because the board does not sit in the bid evaluation committee so we cannot involve the procurement processes. Of course, I can answer you in terms of the decision makers. We go back to that question although we had agreed that there is no return rule.

**CHAIRPERSON:** Well you emphasised earlier on that the board is the ...  
(intervenes)

**MS NONTSASA MEMELA:** Decision maker.

10 **CHAIRPERSON:** The final decision maker.

**MS NONTSASA MEMELA:** Yes.

**CHAIRPERSON:** So, I asked the question.

**MS NONTSASA MEMELA:** Mm.

**CHAIRPERSON:** Was it an acceptable thing for the board being the decision maker in the tender that was pending for the board or some of its members to undertake a trip to one of the bidders in regard to the tender while that tender had not been finalised?

**MS NONTSASA MEMELA:** We cannot help the perception Chair but if the board was going there to discuss something that has nothing to do with  
20 the tender. I do not think it was unacceptable except they started discussing the bid or something to do with the tender.

**CHAIRPERSON:** So are you saying as Head of Procurement in the company at the time you would have found it acceptable for the board which was going to make a decision on a pending tender in which AAR was involved to go and have meetings with AAR overseas while that

tender was pending.

**MS NONTSASA MEMELA:** Chair the board had a transactional advisor.

**CHAIRPERSON:** Mm?

**MS NONTSASA MEMELA:** The board ... (intervenes)

**CHAIRPERSON:** Ja.

**MS NONTSASA MEMELA:** Had a transactional advisor appointed to advise them exactly on those kinds of discussions and the board ... (intervenes)

**CHAIRPERSON:** But you were the HOD of Procurement. I expect that  
10 you would be the one official in the company who had the responsibility to alert even those members of the board who might not be au fait with some of the do's and do not's in regard to procurement, to say, no, no, I know you might not know but this would taint your decision afterwards if you- if you do this this would taint the procurement. I would expect that that would have been part of your responsibility. Is that understanding on part of your role not correct?

**MS NONTSASA MEMELA:** Chair I do not advise the board.

**CHAIRPERSON:** Yes.

**MS NONTSASA MEMELA:** I said in my earlier answer.

20 **CHAIRPERSON:** Yes, you said so but you then said that you were phone by the company secretary who told you that the board wanted you to come along on the trip because they needed your advise in regard to not discussing the tender with AAR. So, and you agreed to go.

**MS NONTSASA MEMELA:** Chair it is as if maybe I was given an opportunity to advise the board before they decided to go. They had

already made that decision that they were going to Chicago. And advising maybe the board about how I feel that maybe they should not go, I would not have stopped them from going. I am not sure if I understand your question because I just wanted to take you through the roles of the board in terms of the SEM.

**CHAIRPERSON:** No, no, I am not looking at the roles of the board. I am looking at the role of HOD.

**MS NONTASASA MEMELA:** No, no, I am saying Chair the role of a board in the SEM activities.

10 **CHAIRPERSON:** No, no, no, I am not interested in that one. I am interested in what you as HOD would have regarded as acceptable and whether what you would have said to whoever in the company that might do something that might taint the tender process. Whether they would listen to your advice or not might be another matter because they might say we have other responsibilities because of this and that and that. But as I understand your position you have said that you would not have regarded it as unacceptable for the board to go and have this- to go on this trip as long as they would not discuss the tender with AAR. Is that right?

20 **MS NONTASASA MEMELA:** Yes, Chair and also just to add.

**CHAIRPERSON:** Yes.

**MS NONTASASA MEMELA:** I do not sit in board meetings.

**CHAIRPERSON:** Mm?

**MS NONTASASA MEMELA:** I do not sit in board meetings other than through an invite.

**CHAIRPERSON:** Yes.

**MS NONTSASA MEMELA:** So, to be expected to have advised the board outside the meeting, that is the part that I do not get.

**CHAIRPERSON:** No, no, I mean it is legitimate for you if you say I did not- well maybe legitimate is not the right word. But you may say I did not consider it as part of my duty to advise the board because maybe there are other people whose duty it was to advise them even on these issues, not me. Maybe someone more senior than you, I do not know. That is why I said I wanted to check with you whether my understanding  
10 of your role was the same as yours. But you say that you did not think that it would have been your role to advise the board.

**MS NONTSASA MEMELA:** I am saying Chair also I am not even close to that level to advise the board. That is why I was saying the board has got a company secretary with that duty to advise the board.

**CHAIRPERSON:** Okay.

**MS NONTSASA MEMELA:** And there is GM legal that sits in the board.

**CHAIRPERSON:** Yes.

**MS NONTSASA MEMELA:** That is supposed to advise the board around those issues.

20 **CHAIRPERSON:** Yes.

**MS NONTSASA MEMELA:** And just to raise Chair, we did not- I think we did not only visit AAR also during that time. I remember myself and Ursula Fikelephi also visited Air France and went and negotiated the price, their current price to SAAT.

**CHAIRPERSON:** Mm.

**MS NONTSASA MEMELA:** Yes, but the board members was not- the board members were not ... (intervenes)

**CHAIRPERSON:** Were not involved.

**MS NONTSASA MEMELA:** Ja, were not involved ja.

**CHAIRPERSON:** Okay. Ms Hofmeyr.

**ADV KATE HOFMEYR:** Apologies, that was another trip, correct Ms Memela?

**MS NONTSASA MEMELA:** That was another trip.

**ADV KATE HOFMEYR:** Yes. I just want to pick up one thing in your  
10 answers to the Chair. You said this trip- I am talking about the May 2<sup>nd</sup> to  
9<sup>th</sup> of 2015 trip that you took with the board.

**MS NONTSASA MEMELA:** Ja.

**ADV KATE HOFMEYR:** I tried to take down your words. Had nothing to do with the tender. Do you recall saying that?

**MS NONTSASA MEMELA:** I recall saying that because during that meeting I was there, I know that they did not discuss anything that had to do with the tender at that time.

**ADV KATE HOFMEYR:** But it did have something to do with the tender in a different way did it not?

20 **MS NONTSASA MEMELA:** What different?

**ADV KATE HOFMEYR:** Because it was a consequence of that trip that when the board returned, they later decided to retract that very tender so that the partnership could be pursued with AAR.

**MS NONTSASA MEMELA:** Chair I am saying at Chicago when the meeting took place there was no discussion regarding the tender that was

pending.

**ADV KATE HOFMEYR:** So, it is not that it had nothing to do with it. It was that there was no discussion about the pending tender, is that correct?

**MS NONTSASA MEMELA:** Yes.

**ADV KATE HOFMEYR:** Thank you. I then want to move to an event a little bit later in May of 2015 because you will remember this trip is the 2<sup>nd</sup> to the 9<sup>th</sup> of May and then on the 27<sup>th</sup> of May you had a meeting with AAR at SAAT. Do you recall that?

10 **MS NONTSASA MEMELA:** I had a meeting with AAR or with the team at AAR- with the team at SAAT with AAR.

**ADV KATE HOFMEYR:** Yes.

**MS NONTSASA MEMELA:** Yes, we had a meeting with the team Chair from SAAT and AAR.

**ADV KATE HOFMEYR:** Right. And in your response to Mr Human's evidence in which he made reference to what Mr Kenny had to say about that meeting on the 27<sup>th</sup> of May. You said to- in response to Mr Human and I picked this up in your statement in your application to cross-examine Mr Human at page 6 paragraph 5.7. It is one sentence. I will  
20 read it for you for the benefit of the record.

**MS NONTSASA MEMELA:** Okay.

**ADV KATE HOFMEYR:** It is not true that Mike Kenny advised me that SAAT should not be engaging with a component support bidder. As I was not the one who was call the shots, what would be discussed and what not. Do you recall saying that in your statement?



**MS NONTSASA MEMELA:** I recall saying that.

**ADV KATE HOFMEYR:** So, do you maintain in your evidence today that Mr Kenny did not warn you about going to that meeting with ... (intervenes)

**ADV KATE HOFMEYR:** Which meeting?

**ADV KATE HOFMEYR:** The 27 May meeting that I was talking about.

**MS NONTSASA MEMELA:** But he was there as well.

**ADV KATE HOFMEYR:** No, he was not.

**MS NONTSASA MEMELA:** Okay do we ... (intervenes)

10 **CHAIRPERSON:** Is that not one of those where he says he was and she says he was not?

**MS NONTSASA MEMELA:** No, no, no Chair those are different ones.

**CHAIRPERSON:** Or you say he was and then she says he was not.

**MS NONTSASA MEMELA:** Can you ... (intervenes)

**ADV KATE HOFMEYR:** This is one where there is at least email correspondence that suggest that Ms Memela did know that he was not going to go.

**MS NONTSASA MEMELA:** Okay can you direct me to the, ja.

**ADV KATE HOFMEYR:** Yes certainly. But before we go to the letter, I  
20 just want to understand whether it remains your evidence today that he did not warn you about going to the meeting on the 27<sup>th</sup> of May?

**MS NONTSASA MEMELA:** Chair I do not understand why would Mr Kenny advise me from not going to the meeting because we were all given instruction to engage the representative of AAR as some of our- what you call this- technicians have gone to the AAR facilities. So, and now they

were doing the same now coming here. They are coming to SAAT to check the MRO facilities as well.

**CHAIRPERSON:** Mm.

**MS NONTSASA MEMELA:** Yes so I do not understand.

**CHAIRPERSON:** Ms Mbanjwa.

**MS L MBANJWA:** Thank you Chair. I understand that there is pressure for time but I just want Ms Hofmeyr to observe the order. If the witness is saying, can I please be referred to a particular document in order to confirm because that document that she wanted to be referred to- I am  
10 not saying she is correct, is a document which would assist in showing whether she is correct this Mr Human was there. So, the question cannot precede the document because by the time she goes to the document then already there will be a problem. So, I know the rush but.

**CHAIRPERSON:** Yes but I think it is the kind of thing that when you re-examine you can go back and say, do you remember you were asked such and such a question and you wanted to have a look at a document and Ms Hofmeyr asked a question before you could look at the document. Let us look at that document. And then you take care of it.

**MS L MBANJWA:** Chairperson I am not being argumentative because it is  
20 today.

**CHAIRPERSON:** Yes.

**MS L MBANJWA:** I just want to explain something.

**CHAIRPERSON:** Yes.

**MS L MBANJWA:** The reason why there is an English word contemporaneous unfortunately that is the only word, I cannot translate it

into your language. The reason why there is that English word contemporaneous is because the trust and the value of the evidence in equity comes with contemporaneousness. I am going to re-examine on evidence that was given on Friday. Already that evidence is dead.

So, we cannot kill the evidence more that even when a witness is saying, please refer me first to a particular document to ascertain this fact that is left for cross-examination because Ms Human now is forcing her to admit that this gentleman advised her not to go. She wants to demonstrate contemporaneously that actually this gentleman was in that meeting.

10 That is my plea Chairperson, I will not press it further.

**CHAIRPERSON:** Yes. No, no, you see it has happened that I ask her a question and she want to go to a document but I know that before we go there, I would like her to give an answer to a certain question. It does not mean we will not go there. But her answer might make it unnecessary to go there. So as long as in the end if there is still a need we go there. But the need might fall away during the exchange you see.

**MS L MBANJWA:** Ja as long as ... (intervenes)

**CHAIRPERSON:** So, I might ask a question and she understand in a certain way and wants to go to a document but I see that for my purposes  
20 I do not need the document. Then I ask her but having answered she still feels that for her answer to be meaningful she needs to go to the document, then she mentions that again, I will still like us to go to that document and then we take it from there.

**MS L MBANJWA:** That will maintain the contemporaneous Chairperson.

**CHAIRPERSON:** Okay alright, thank you. Ms Hofmeyr.

**ADV KATE HOFMEYR:** Thank you. The document is that I was going to take you to after the question Ms Memela is in DD22C at page 1263.

**MS NONTSASA MEMELA:** 1263.

**ADV KATE HOFMEYR:** Mm. It is DD22C at page 1263. Now this is an email chain that was attached to Mr Human's affidavit in respect of which Ms Sambo- Ms Memela you received a Rule 3.3 notice. And so just to follow the train chronological Chair I suggest we start at the bottom of page 1263.

**CHAIRPERSON:** Just before we proceed are, we still on matters  
10 connected with the trip?

**ADV KATE HOFMEYR:** So, this is- we have returned from the trip and now there is a meeting later in May on the 27<sup>th</sup> of May.

**MS NONTSASA MEMELA:** Mm.

**CHAIRPERSON:** Yes.

**ADV KATE HOFMEYR:** And this email correspondence relates to that meeting.

**CHAIRPERSON:** Yes. No, before we do that.

**ADV KATE HOFMEYR:** Mm.

**CHAIRPERSON:** Ms Memela.

20 **MS NONTSASA MEMELA:** Yes Chair.

**CHAIRPERSON:** I would have expected that while the delegation was visiting AAR and I think it was- was it over 4 days or 5 days or more or less ... (intervenes)

**ADV KATE HOFMEYR:** I think it was 7 days, the 2<sup>nd</sup> to the 9<sup>th</sup>.

**CHAIRPERSON:** About 7 days, ja.

**ADV KATE HOFMEYR:** Yes.

**MS NONTSASA MEMELA:** Mm 7 days?

**ADV KATE HOFMEYR:** I think some people might have been there for a bit shorter Ms Memela or were you ... (intervenes)

**MS NONTSASA MEMELA:** The 2<sup>nd</sup> to the 9<sup>th</sup>?

**ADV KATE HOFMEYR:** My record says the 2<sup>nd</sup> to the 9<sup>th</sup> of May.

**MS NONTSASA MEMELA:** Oh I- ja I do not remember Chair but I think it was cut short. It was not more than 3 days.

**ADV KATE HOFMEYR:** Okay.

10 **MS NONTSASA MEMELA:** If I remember correctly.

**CHAIRPERSON:** Oh okay.

**MS NONTSASA MEMELA:** Yes.

**CHAIRPERSON:** Well somebody will check. I assume that as you host AAR would have hosted the delegation in dinners and so on socialising as one would expect when one is a host. Is that right?

**MS NONTSASA MEMELA:** Chair?

**CHAIRPERSON:** I am saying I would expect that AAR being your host would have had dinners with the delegation and so on. Is my assumption correct?

20 **MS NONTSASA MEMELA:** Yes, your assumption is correct.

**CHAIRPERSON:** Okay alright. Okay.

**ADV KATE HOFMEYR:** And just in so far as that is concerned, I am looking back at the Facebook post that you made at the time which would assist us with the dates. But amongst the things that AAR provided to you was a private jet, is that correct

**MS NONTASASA MEMELA:** Yes, we flew to- from Chicago to Indiana Police and then from Indiana Police to Miami. Because it was something that had to be done within one day.

**CHAIRPERSON:** In their private jet.

**MS NONTASASA MEMELA:** Ja I am not sure if it is theirs owned by them.

**CHAIRPERSON:** Yes.

**MS NONTASASA MEMELA:** I am not sure.

**CHAIRPERSON:** Yes.

**MS NONTASASA MEMELA:** I cannot confirm that.

10 **CHAIRPERSON:** Okay.

**MS NONTASASA MEMELA:** Ja.

**ADV KATE HOFMEYR:** And did they pay for the transportation by the limousine back to the jet?

**MS NONTASASA MEMELA:** Payment?

**ADV KATE HOFMEYR:** Yes, did they cover the cost of the limousine ride back to the jet?

**MS NONTASASA MEMELA:** Our understanding is that is their limousine. I do not know.

**ADV KATE HOFMEYR:** That is their limousine.

20 **MS NONTASASA MEMELA:** Mm-hmm.

**ADV KATE HOFMEYR:** Okay, thank you. Right, so just back to the 27<sup>th</sup> of May if we may- sorry, now I have lost my page reference because I was going back.

**MS NONTASASA MEMELA:** It is 1 ... (intervenes)

**ADV KATE HOFMEYR:** 1263, was it not?

**CHAIRPERSON:** 1263, ja.

**MS NONTASASA MEMELA:** Ja.

**ADV KATE HOFMEYR:** Great, thank you. Okay so we are at 1263 and we start at the bottom. There is an email from Sonia Lopez to yourself Ms Memela. Do you see that?

**MS NONTASASA MEMELA:** Ja.

**ADV KATE HOFMEYR:** And Sonia Lopez, where was she from?

**MS NONTASASA MEMELA:** From AAR, it is written here.

**ADV KATE HOFMEYR:** And if you will just read- sorry, that is the date of  
10 that email?

**MS NONTASASA MEMELA:** It is 26May 2015.

**ADV KATE HOFMEYR:** And what does she say to you in that email?

**MS NONTASASA MEMELA:** Can you please arrange transportation to pick up Ken Hein, Chris Fiddes and Cheryle Jackson at 10:30 AM on Wednesday, May 27<sup>th</sup> from the Intercontinental Hotel.

**ADV KATE HOFMEYR:** Thank you. And then you deal with that in an email above it between yourself and Mr Kenny. Do you see that?

**MS NONTASASA MEMELA:** Yes.

**ADV KATE HOFMEYR:** So, what do you say to Mr Kenny in the next  
20 email?

**MS NONTASASA MEMELA:** Hi guys, please take note.

**ADV KATE HOFMEYR:** Thank you. And if you go a page earlier because now, we are following it chronologically. So, if you go to 1262.

**MS NONTASASA MEMELA:** And then Mr Kenny responds; Will do.

**ADV KATE HOFMEYR:** Will do. And that is on the 27<sup>th</sup> of May 2015,

correct?

**MS NONTSASA MEMELA:** Yes.

**ADV KATE HOFMEYR:** And then will you read us the next email from you to him on the 27<sup>th</sup> of May 2015?

**CHAIRPERSON:** At what page?

**ADV KATE HOFMEYR:** 1262 Chair.

**CHAIRPERSON:** Okay.

**MS NONTSASA MEMELA:** Thanks Mr Kenny. Will you please let me know when your guy goes to fetch them so I can leave Premier Hotel to  
10 there. Further take note that we will be using the Operational Purchasing boardroom.

**ADV KATE HOFMEYR:** Thank you. Then if you go back a further page 1261.

**MS NONTSASA MEMELA:** Ja.

**ADV KATE HOFMEYR:** What does Mr Kenny respond to you?

**MS NONTSASA MEMELA:** Hi Nontsasa, not sure when the guy will leave SAAT but will be at the hotel at 10:30. I will not make it to the meeting.

**ADV KATE HOFMEYR:** And what do you respond to Mr Kenny above  
20 that?

**MS NONTSASA MEMELA:** I say, why?

**ADV KATE HOFMEYR:** Why? I think with sad face emoticon, is that right?

**MS NONTSASA MEMELA:** Is it a sad version of a smiley face? I do not know.



**ADV KATE HOFMEYR:** No, I do not know. Maybe it is a smiley face.

**MS NONTASASA MEMELA:** You tell me.

**CHAIRPERSON:** I can never make out these faces.

**ADV KATE HOFMEYR:** I cannot, indeed.

**MS NONTASASA MEMELA:** Ja, I am sure you have noticed Ms Hofmeyr I smile a lot so it cannot be ... (intervenes)

**ADV KATE HOFMEYR:** It could- no, it might have been a- if it was a smiley face then you were happy that he was not coming.

**CHAIRPERSON:** I do not think you would ask why ... (intervenes)

10 **MS NONTASASA MEMELA:** Oh my God.

**CHAIRPERSON:** If you were happy.

**ADV KATE HOFMEYR:** Yes indeed.

**MS NONTASASA MEMELA:** Even though it's changing and getting back to me that I was happy that Mr Kenny was not going.

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

**MS NONTASASA MEMELA:** I really do not understand that.

**ADV KATE HOFMEYR:** No, I had just assumed it was sad because you were disappointed that he was not coming. But that might have been an unfairness assumption to have made.

20 **MS NONTASASA MEMELA:** We are still on the fact finding mission right Ms Hofmeyr?

**ADV KATE HOFMEYR:** Yes, because it is related to his response at 1260.

**MS NONTASASA MEMELA:** Okay.

**ADV KATE HOFMEYR:** What did Mr Kenny respond to you.

**MS NONTSASA MEMELA:** Understand that- okay where is this? After why ... (intervenes)

**ADV KATE HOFMEYR:** It is at the bottom of 1260.

**MS NONTSASA MEMELA:** Okay.

**ADV KATE HOFMEYR:** So, you have asked, Why? And then Mr Kenny responds as to why he will not be attending the meeting.

**MS NONTSASA MEMELA:** Okay. He said, I have a meeting with a customer regarding work in Uganda taking place in plan and concerned about discussing components support issues with someone who is the  
10 bidder in the process and the process is still ongoing corporate governance issues. However, I will not be available for this meeting. Anyway, you prior arrangement which have been confirmed.

So, Chair here in this email he is raising his concerns. There is nowhere, where he advises me not to go to a meeting. Maybe Ms Hofmeyr is still going to show me that email.

**ADV KATE HOFMEYR:** No ... (intervenes)

**CHAIRPERSON:** Wait for her to ask you questions.

**MS NONTSASA MEMELA:** Ja.

**ADV KATE HOFMEYR:** Let us go to your response because as I read  
20 what Mr Kenny is saying there, he is saying, he is concerned about going because you would be discussing components support issues with somebody who is a bidder in the process and the process is still ongoing. What was your response to Mr Kenny above that?

**MS NONTSASA MEMELA:** He is saying; And are concerned about discussing component support issues with someone who is the bidder.

**ADV KATE HOFMEYR:** Yes.

**MS NONTASASA MEMELA:** He is not saying because you will- ja so I would like us Chair to read the email as it is and not put words that are not there.

**ADV KATE HOFMEYR:** No, I was just trying to give the context for your response. What was your response Ms Memela.

**MS NONTASASA MEMELA:** And then I said; The process has been put on hold. I am sure it is when then it was retracted.

**ADV KATE HOFMEYR:** No, it is not yet.

10 **MS NONTASASA MEMELA:** Okay. Ja.

**ADV KATE HOFMEYR:** Because actually on the very same day that was when we looked at the letter previously where AAR had been asked to extend the validity period of its bid. So, it was very much still alive.

**MS NONTASASA MEMELA:** Okay.

**ADV KATE HOFMEYR:** But you said to Mr Kenny the process has been put on hold and then what did Mr Kenny respond.

**MS NONTASASA MEMELA:** I understand that it is on hold but that means it is still open and ongoing.

**ADV KATE HOFMEYR:** Yes.

20 **MS NONTASASA MEMELA:** Ja.

**ADV KATE HOFMEYR:** So, Ms Memela do you stand by your evidence that Mr Kenny did not advise you to attend a meeting with a bidder while a tender was still open?

**MS NONTASASA MEMELA:** This is not what his email is saying Chair. That is not my understanding of his email. He was concerned for himself

because he is saying he was attending a meeting with a customer from Uganda and he is raising his concern with me, his colleagues, why he- what the discussions that are taking place with the bidder whilst the bid is still ongoing.

**ADV KATE HOFMEYR:** But you did not have any difficulty going to the meeting while the bid was still open?

**MS NONTSASA MEMELA:** No, I did not have any difficulty because it was the technicians from AAR as much as we had the technicians from SAAT going to AAR.

10 **ADV KATE HOFMEYR:** Did it not give you pause for concern that somebody who was not even in the procurement space was not willing to go to a meeting with a bidder while the bidder was- while the bid was still open?

**MS NONTSASA MEMELA:** Chair, I am not sure how I am supposed to answer this question.

**CHAIRPERSON:** You say, yes, I did have concern or no I did not have concern.

**MS NONTSASA MEMELA:** I did not have concerns Chair because they were discussing what was in the MRO hangers.

20 **CHAIRPERSON:** Thank you.

**MS NONTSASA MEMELA:** Yes.

**ADV KATE HOFMEYR:** Thank you. And then I would like to go to one other interaction in this period before the bid was retracted. And that is something that Ms Jackson said in an email on the 5<sup>th</sup> of June 2015.

**MS NONTSASA MEMELA:** Where is that?

**ADV KATE HOFMEYR:** I would like to take you to that. It is at Exhibit DD22C the file that we are in at page 1278. Apologies, I have to do something before that in the chronology.

So, there is this meeting on the 27<sup>th</sup> of May that you attended, is that correct? That is the one that we have looked at previously.

**MS NONTASASA MEMELA:** Oh, the one that Mike Kenny had a concern of?

**ADV KATE HOFMEYR:** Yes.

**MS NONTASASA MEMELA:** Ja.

10 **ADV KATE HOFMEYR:** Then I just want to establish because there is an email that suggest to me you had a discussion after that meeting with Ms Jackson. So, could we go to that? That is at page 1274.

**MS NONTASASA MEMELA:** 1274.

**ADV KATE HOFMEYR:** Yes. What is that document?

**MS NONTASASA MEMELA:** Oh, this is an email coming from me Chair on the 30<sup>th</sup> of May 2015.

**ADV KATE HOFMEYR:** And to whom is it sent?

**MS NONTASASA MEMELA:** It sent to Cheryle Jackson, Bongani More and R Bagus of Morning Tide.

20 **ADV KATE HOFMEYR:** Is that a Mr Rafique Bugus?

**MS NONTASASA MEMELA:** Yes.

**ADV KATE HOFMEYR:** Whom we have heard evidence about.

**MS NONTASASA MEMELA:** Ja.

**ADV KATE HOFMEYR:** Thank you. Now what makes me think there was a discussion after the 27 May meeting is because in the third line there

you will see you say;

Good afternoon, I hope my email finds you well. I refer to the discussion we had on the 29<sup>th</sup> May 2015 and wish to confirm the following.

Do you see that?

**MS NONTSASA MEMELA:** Mm-hmm. Yes, I see that.

**ADV KATE HOFMEYR:** Do you recall that discussion, was it telephonic, was it in person?

**MS NONTSASA MEMELA:** I recall Chair, it was in person. A meeting in person.

10 **ADV KATE HOFMEYR:** Right. So, there is the meeting on the 27<sup>th</sup> then there is a meeting on the 29<sup>th</sup> were you at this stage responsible for most of the interactions with AAR?

**MS NONTSASA MEMELA:** Chair, can I ask- I know that we are actually running out of time. I would like to read this.

**ADV KATE HOFMEYR:** Sure.

**MS NONTSASA MEMELA:** If I ... (intervenes)

**CHAIRPERSON:** Yes ja. Okay you want to ja.

**MS NONTSASA MEMELA:** Yes. I do not know if you want me ... (intervenes)

20 **CHAIRPERSON:** You want to read it to yourself or?

**MS NONTSASA MEMELA:** Ja, I just want to read it quickly so that I am able ... (intervenes)

**CHAIRPERSON:** Able to remember.

**MS NONTSASA MEMELA:** To respond properly. Yes.

**CHAIRPERSON:** Okay.

**MS NONTASASA MEMELA:** I do not know if you also want me to read for everybody no ... (intervenes)

**CHAIRPERSON:** No, you can read for yourself.

**MS NONTASASA MEMELA:** For myself.

**CHAIRPERSON:** Okay.

**MS NONTASASA MEMELA:** Okay.

**CHAIRPERSON:** Okay.

**MS NONTASASA MEMELA:** Thank you Chair.

**CHAIRPERSON:** Are you ready to answer or do you want the question to  
10 be repeated?

**ADV KATE HOFMEYR:** I just asked at this stage were you the person mainly responsible for the interactions with AAR?

**MS NONTASASA MEMELA:** Chair I do not know if you have noticed that the email is on about Supplier Development BEE initiatives and stuff.

**CHAIRPERSON:** Well I have not read ... (intervenes)

**MS NONTASASA MEMELA:** Yes.

**CHAIRPERSON:** It carefully.

**MS NONTASASA MEMELA:** Okay.

**CHAIRPERSON:** Ja but ... (intervenes)

20 **MS NONTASASA MEMELA:** So, this is a question ... (intervenes)

**CHAIRPERSON:** The question is factual.

**MS NONTASASA MEMELA:** Ja.

**CHAIRPERSON:** Ja, it does not need you to look at the email.

**MS NONTASASA MEMELA:** No, I am just talking about interaction with AAR.

**CHAIRPERSON:** Ja.

**MS NONTSASA MEMELA:** Because she is talking AAR.

**CHAIRPERSON:** Okay ja.

**MS NONTSASA MEMELA:** And there were apparently BEE companies that they had selected on their own there.

**CHAIRPERSON:** Ja okay.

**MS NONTSASA MEMELA:** Yes. Ja, so this was in- with regard to that meeting that took place and I was advising them on the stand of SAAT. Ja.

10 **ADV KATE HOFMEYR:** Sorry.

**CHAIRPERSON:** No, she is asking whether at that stage and we are talking end of May 2015.

**MS NONTSASA MEMELA:** Ja.

**CHAIRPERSON:** You were the person mostly responsible at SAAT for interactions with AAR.

**MS NONTSASA MEMELA:** There is a board resolution Chair that gives Mr Musa Zwane that authority, not me.

**CHAIRPERSON:** No, no, no, let us not talk about the authority. Factually, is it what was happening? Were you the person- he may have  
20 been given authority but he might have decided he will ask you to do most of the interactions and report to him? So, the question is, looking at the factual position as to- as opposed to what was the legal position, did you have authority or not have authority. But the question is simply whether you were the person that was mostly interacting with AAR at that time?

**MS NONTSASA MEMELA:** No Chair.



**CHAIRPERSON:** You might not know. You might know.

**MS NONTSASA MEMELA:** No Chair.

**CHAIRPERSON:** You were not.

**MS NONTSASA MEMELA:** Ja this meeting was not with- about AAR or with AAR. It was regarding Supplier Development and BEE.

**ADV KATE HOFMEYR:** But it was a meeting that AAR attended, correct, on the 29<sup>th</sup> of May?

**MS NONTSASA MEMELA:** One of the employees of AAR attended together with a local black owned representative.

10 **ADV KATE HOFMEYR:** Right. And that was Ms Jackson who attended, is that correct?

**MS NONTSASA MEMELA:** Yes, that was the employee of AAR.

**ADV KATE HOFMEYR:** Thank you. And then I would like to go to the email that I went to incorrectly in the chronology. That is at 1278.

**MS NONTSASA MEMELA:** Chair, before we go to that email.

**CHAIRPERSON:** Yes.

**MS NONTSASA MEMELA:** Can I read then what at the end, not the whole meeting- not the whole email.

**CHAIRPERSON:** Ja on page 1274.

20 **MS NONTSASA MEMELA:** 1274 Chair.

**CHAIRPERSON:** Yes read.

**MS NONTSASA MEMELA:** Kindly take note that as discussed yesterday SAAT had already identified some of the local black owned companies. Mostly of which is owned by black women to participate on the program Enterprise Supplier Development and benefit out of the

potential transaction. As advised yesterday and as initially agreed between management of AAR and SAAT it will benefit both the parties if SAAT and AAR work together in concluding in any kind of agreement that will regulate the empowerment program.

So, it shows what was discussed there and what I had advised them from SAAT point of view in terms of Supplier Development.

**ADV KATE HOFMEYR:** Thank you. And then if we can go to 1278. Now this is- if you pick it up at the bottom of the page it appears to be an email that Ms Jackson writes to a number of her colleagues including  
10 John Holmes, Rahul Shah etcetera. Do you see that?

**MS NONTSASA MEMELA:** I see that.

**ADV KATE HOFMEYR:** And we- I am not going to read the whole email into the record but it starts off by saying;

Hi all, last week Chris Fiddes, Ken Hein and I met with the SAAT team and membership. Below is a scope of work and list of initiatives that SAAT would like to work on with AAR- work with AAR on or explore further as part of a partnership.

And then the email goes on over two pages but the part that I am interested in is at page 1280.

20 **MS NONTSASA MEMELA:** Mm?

**ADV KATE HOFMEYR:** If you go to page 1280.

**MS NONTSASA MEMELA:** 1280.

**ADV KATE HOFMEYR:** Yes. See- I do apologise, I should have indicated. This was an email written on the 4<sup>th</sup> of June 2015 Chair. Apologies for that. But at the- at 1280 Ms Jackson is setting out a

timeline there and the first item on the timeline she indicates as June 5: SAAT PBHRFP cancellation becomes official. Do you see that?

**MS NONTSASA MEMELA:** Ja I see that.

**ADV KATE HOFMEYR:** How would Ms Jackson have known on the 4<sup>th</sup> of June 2015 that there was going to be a retraction of the tender that was still open at that stage?

**MS NONTSASA MEMELA:** I cannot answer for her Chair.

**ADV KATE HOFMEYR:** So, you were not party to any meetings at which that was communicated to Ms Jackson by SAAT officials?

10 **MS NONTSASA MEMELA:** Ja no, I would not- I do not remember.

**ADV KATE HOFMEYR:** Mm.

**MS NONTSASA MEMELA:** Ja.

**ADV KATE HOFMEYR:** Because it was only actually ever retracted on the 22<sup>nd</sup> of June. Do you recall that?

**MS NONTSASA MEMELA:** And then when was this one?

**ADV KATE HOFMEYR:** This was- she was writing it on the 4<sup>th</sup> of June and she is anticipating that it is going to be cancelled the next day or at least officially cancelled the next day.

**MS NONTSASA MEMELA:** Chair I ... (intervenes)

20 **CHAIRPERSON:** You ... (intervenes)

**MS NONTSASA MEMELA:** I would not know how she knew that.

**CHAIRPERSON:** How she got the information.

**MS NONTSASA MEMELA:** Yes.

**ADV KATE HOFMEYR:** Would it concern you that she had that information before the decision had officially been taken?

**MS NONTSASA MEMELA:** Yes Chair, that will be a concern. Thank you  
Chair, I see we have gone just over the lunch break.

**CHAIRPERSON:** Yes.

**ADV KATE HOFMEYR:** So, it may be convenient time to adjourn.

**CHAIRPERSON:** Yes. Let us adjourn for lunch and we will resume at  
14:05.

**ADV KATE HOFMEYR:** Chair I see ... (intervenes)

**CHAIRPERSON:** Oh Ms Mbanjwa.

**MS L MBANJWA:** Chair maybe this is an opportune time to just place on  
10 record that we were told yesterday that Ms Hofmeyr has only 30 minutes.

**CHAIRPERSON:** Yes.

**MS L MBANJWA:** After which she will finish. I am not saying she must  
finish.

**CHAIRPERSON:** Yes.

**MS L MBANJWA:** But I am just saying this is how difficult our re-  
examination is going to be. Because yesterday I had already asked for  
an estimation of the day and we are now again meeting all this  
information that is in emails and which may be necessary.

**CHAIRPERSON:** Mm.

20 **MS L MBANJWA:** So, when we ask for more time, I just want Chairperson  
to make a comparison to see how difficult it is to wrap these things up. I  
do not want to irritate Chairperson ... (intervenes)

**CHAIRPERSON:** Well but do remember that part of the delay is the  
interruptions that have happened and I am not saying that the  
interruptions were not legitimate. I am just saying as reality we have had

interruptions. Certainly, it has been more than we normally see in these proceedings. So, as I say I am not saying illegitimate but certainly that has contributed. Let us see how it goes.

**MS L MBANJWA**: Thank you Chair.

**CHAIRPERSON**: Is that alright?

**MS L MBANJWA**: Thank you.

**CHAIRPERSON**: Okay we will take the lunch adjournment and resume at 14:05.

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

10 **CHAIRPERSON**: We adjourn.

**REGISTRAR**: All rise.

**INQUIRY ADJOURN**

**INQUIRY RESUMES**

**CHAIRPERSON**: Okay let us continue.

**ADV KATE HOFMEYR**: Thank you Chair. Chair and Ms Memela before lunch we had concluded on the aspects in relation to the second tender that I wanted to take you to and so I would like to now move in the chronology to the final tender which takes us to 2016. Ms Memela we have already looked at in the evidence the submission that went to the  
20 BAC from the CFST for the recommendation on the final tender. And you will recall that although Lufthansa was the cheapest bidder for the final tender CFST recommended not to go with Lufthansa, do you recall that?

**MS MEMELA**: Initially Chair the CFST recommended to go with Lufthansa, yes.

**ADV KATE HOFMEYR:** And then by the time they make the final submission to the BAC as I understand it they were then recommending Air France, is that right?

**MS MEMELA:** Okay Chair let me explain how the process works at SAAT. SAAT being the technical part of SAA. Remember I explained that for BAC they go for BAC – to BAC for notification. Sometimes they could go even afterwards because it is just for notification of approval. So it went to the Board and the Board – because there was – they questioned why did it go to BAC and then apparently there was no-one  
10 who understood that part where it said to the BAC just goes for notification and then the Board said, okay take it back to the CFST. Yes and then it must go back to BAC. But like I think they raised also concerns about like why – why would CFST recommend and management of SAAT recommend Lufthansa based on the lower price. And the fact that they were not committing to supply development. Yes.

**ADV KATE HOFMEYR:** Ms Memela I – I am now talking about May 2016.

**MS MEMELA:** Ja.

**ADV KATE HOFMEYR:** When on the 4 May there is a submission to the  
20 BAC and then that is followed by the acting CEO's submission to the board for their meeting on the 9 May.

**MS MEMELA:** Yes.

**ADV KATE HOFMEYR:** And as you have pointed out previously in your evidence although CFST originally identified Lufthansa as the preferred bidder and the one who should be awarded the contract there was

certain reservations that they expressed about Lufthansa, do you recall that?

**MS MEMELA:** I recall that.

**ADV KATE HOFMEYR:** And what I want to know is you attended a CFST meeting in the lead-up to that in April, correct?

**MS MEMELA:** I attended the CFST in the?

**ADV KATE HOFMEYR:** A meeting – it was in April?

**MS MEMELA:** April. Can we...

**ADV KATE HOFMEYR:** That is the one where it records that your  
10 joined the meeting and you stress the urgency of the decision that  
needed to be taken and you were there to provide guidance.

**MS MEMELA:** Okay.

**ADV KATE HOFMEYR:** Do you recall that?

**MS MEMELA:** Okay so ja.

**ADV KATE HOFMEYR:** Okay so all that I am wanting to glean from you  
is the reasons for not going with Lufthansa. We see those from the  
BAC's submission and we see them later in the CEO's submission.

**MS MEMELA:** Okay.

**ADV KATE HOFMEYR:** And the one that I just want to pick up on is  
20 there was a concern raised that Lufthansa still had outstanding NIP  
obligations. Do you recall that as being a reason for not going with  
Lufthansa?

**MS MEMELA:** From the Board?

**ADV KATE HOFMEYR:** No this is from now CFST is doing their  
submission to the BAC and that is taken as the submission by the CEO

to the Board. And in both of those submissions which are virtually identical the point is made that amongst the problems with Lufthansa is that the bidder still has outstanding unresolved NIP obligations. Do you recall that?

**MS MEMELA:** Okay can you direct me to the document?

**ADV KATE HOFMEYR:** Yes certainly

**MS MEMELA:** Okay.

**ADV KATE HOFMEYR:** It is at DD22F.

**MS MEMELA:** DD22F.

10 **ADV KATE HOFMEYR:** DD22F and it will be at page 2294.

**MS MEMELA:** Page?

**ADV KATE HOFMEYR:** 2294.

**MS MEMELA:** 2294.

**ADV KATE HOFMEYR:** Just to orientate you Ms Memela this is a page within the submission that was prepared by Leon Robertse for the BAC.

**MS MEMELA:** Hm.

**ADV KATE HOFMEYR:** Okay. And the page I am interested in is the one at 2294. Because you will see that page they have dealt with the scoring and they have set out in the submission and now we get to  
20 page 2294.

**MS MEMELA:** Ja.

**ADV KATE HOFMEYR:** And it says the following at the top of the page.

“Based on the above scoring tables Lufthansa has  
quoted the lowest price but due to the risk  
highlighted below the CFST recommend the bid be



awarded to Air France Industries subject to successful contract negotiations.”

And then there is another line:

“Risks identified with the tender would be defined as follows:”

And there is a heading for the risks identified for JM/AAR and then there is a heading Lufthansa. Okay and it is the second bullet that I am highlighting there.

**MS MEMELA:** Okay.

10 **ADV KATE HOFMEYR:**

“The issue raised as a risk with Lufthansa was that the bidder still had outstanding unresolved NIP obligations from a previous tender.”

**MS MEMELA:** Yes.

**ADV KATE HOFMEYR:** Do you see that?

**MS MEMELA:** I see that.

**ADV KATE HOFMEYR:** Yes. Were you – was this something that was discussed at that meeting that you attended in April with the CFST?

**MS MEMELA:** On the NIP obligations?

20 **ADV KATE HOFMEYR:** Yes.

**MS MEMELA:** The NIP obligation I would believe that Chair it was the knowledge of everybody at Supply Chain because he supplier – what Lufthansa was the – the previous supplier components supplier of SAAT. And they have never adhered to NIP obligation. As I had explained that it is actually managed by the DTI and then also I think –

because the final tender was the one that included the supplier development. So...

**CHAIRPERSON:** But can you remember whether it was discussed at the meeting?

**MS MEMELA:** I would not remember Chair.

**CHAIRPERSON:** You would not remember?

**MS MEMELA:** I would not remember yes.

**CHAIRPERSON:** But you saying everybody was aware of it?

**MS MEMELA:** Everybody was aware of – of their...

10 **CHAIRPERSON:** Their situation on this point?

**MS MEMELA:** Their reluctance into anything that has to do with transformational agenda.

**CHAIRPERSON:** Okay.

**MS MEMELA:** Because even on the final one they did not want to commit on a supply development.

**CHAIRPERSON:** Okay.

**MS MEMELA:** Yes.

**ADV KATE HOFMEYR:** But – but supply development as I understand it is different to the NIP obligation. That is why I was concerned to pick  
20 this up. Because your evidence yesterday was that the NIP obligation had nothing to do with this final tender because there had been a decision to replace the NIP obligation with a supplier development obligation. If that was your evidence why would Lufthansa's previous performance under a NIP obligation be relevant to this tender at all?

**MS MEMELA:** Chair I want to explain again my testimony yesterday

with regard to NIP.

**CHAIRPERSON:** Yes.

**MS MEMELA:** I explained to Ms Hofmeyr that there is direct NIP and indirect NIP. They are both NIP but the supplier development falls under indirect NIP. So it is still NIP regardless. And also both these elements are still under transformational agenda of this country. Yes.

**ADV KATE HOFMEYR:** Did anyone actually find out whether Lufthansa had complied with its NIP obligations?

**MS MEMELA:** I remember who is this – the CM operation at that time  
10 Chair we had gone to DTI with them and HOD Workshop because we wanted to find out with regard to certain other contracts with Lufthansa other than that previous one that they had adhered to the NIP obligation. But at that time there was just like some disagreements between them and the DTI. As I said that it is always a relationship between Lufthansa and DTI. Sometimes these multinational companies they understand to have adhered to the NIP obligation only to find that like how it is explained by the DTI it is not what it was supposed to be. Yes Chair.

**ADV KATE HOFMEYR:** You see the DTI has given an affidavit to the  
20 commission. It is the one that we looked at yesterday in which they have confirmed that Lufthansa was never non-compliant with its NIP obligations. Do you have a response to that?

**MS MEMELA:** Can you go to that affidavit for when?

**ADV KATE HOFMEYR:** Yes certainly since 2013. I will give it to you. It is at Exhibit DD22G.

**MS MEMELA:** Since 2013 Lufthansa in 2013 Chair so that we do not waste time. Lufthansa in 2013 was not the supplier – service provider for component tender.

**ADV KATE HOFMEYR:** No the point that I am making, you said for what period had they not been non-compliant. In other words for what period had they been compliant? According the DTI's affidavit I will read it to you. It is in 22G at page 2977.

**MS MEMELA:** Page? 29...

**ADV KATE HOFMEYR:** 2977.

10 **MS MEMELA:** I am here Chair.

**ADV KATE HOFMEYR:** So what the Director General of the Department of Trade and Industry Mr October says at the bottom of that page in paragraph 27 is the following:

"I should also place on record that Ms Kurland..."

That is a reference to the commission's investigator.

20 "Requested information in relation to Lufthansa's performance of its duties flowing from the obligation agreement which was entered into between the DTI and Lufthansa. The agreement was signed on the 17 February 2013 and is attached hereto marked Annexure I. According to the DTI's NIP records there is no indication that Lufthansa is non-compliant in relation to its current NIP obligation. In this regard I have attached hereto a printout of Lufthansa's performance status as at 30 September 2019."

And he attaches that as an annexure. He goes and says:

“The DTI has never received correspondence from  
SAAT in relation to Lufthansa’s non-compliance with  
its current NIP obligation.”

**MS MEMELA:** Chair I think maybe there is a misunderstanding with regard to the interpretation of Ms Hofmeyr or maybe Mr Kurland or – and Mr Human. In 2013 Lufthansa was not the service provider of component for SAAT.

**CHAIRPERSON:** Hm.

- 10 **MS MEMELA:** This tender that you were talking about like their non-compliance with NIP obligation it was specifically referred to that tender. Remember Lufthansa may have had other contracts at SAAT that have nothing to do with tender – component tender or component services. So they might comply.

**CHAIRPERSON:** They might have been compliant.

**MS MEMELA:** On the other.

**CHAIRPERSON:** In regard to other tenders.

**MS MEMELA:** Exactly Chair. Yes.

**CHAIRPERSON:** Hm.

- 20 **MS MEMELA:** Yes. So...

**ADV KATE HOFMEYR:** No but – then I do not understand. Because I understood you to say that a reason for not recommending Lufthansa was that it had outstanding NIP obligations from a previous tender. That is what was recorded...

**MS MEMELA:** Previous component tender.

**ADV KATE HOFMEYR:** No.

**MS MEMELA:** Not the other – not the other services.

**ADV KATE HOFMEYR:** No but there – what previous components tender had Lufthansa been awarded?

**MS MEMELA:** Okay like – Chair remember there is commitment that all the suppliers should make they respond to the tenders. With regard to the NIP obligation there is a form that they are supposed to fill in to commit to NIP obligation. So it was actually referring to that previous tender for the component. Remember the component tender started  
10 from 2013 up to – it was finalised in 2016. So Ms Hofmeyr referring to the affidavit of Mr October.

**CHAIRPERSON:** Mr October.

**MS MEMELA:** Yes like that – whatever that is confirming has nothing to do with component tender. Yes.

**ADV KATE HOFMEYR:** Ms Memela I do have to just conclude this point. Lufthansa submitted a compliant bid for the final components tender because they were not disqualified. Amongst the requirements in the final components tender was the filling out of the SBD5 form that we looked at yesterday. So they had fully undertaken to comply with  
20 the NIP obligation for the final tender.

**MS MEMELA:** In the final tender.

**ADV KATE HOFMEYR:** Indeed. What was...

**MS MEMELA:** There was no need – there was no NIP obligation.

**CHAIRPERSON:** Let – let her finish Ms Memela.

**ADV KATE HOFMEYR:** What is recorded here is that the bidder still

has outstanding unresolved NIP obligations from a previous tender.

**MS MEMELA:** Yes.

**ADV KATE HOFMEYR:** Indeed. But that tender was never awarded.

**MS MEMELA:** Yes.

**ADV KATE HOFMEYR:** But then I struggle to understand because there could never be a NIP obligation that was undertaken in respect of a tender that was not awarded.

**MS MEMELA:** Chair.

**CHAIRPERSON:** I think Ms Hofmeyr is saying to you and Ms Hofmeyr  
10 you will listen.

**ADV KATE HOFMEYR:** Of course.

**CHAIRPERSON:** And you will tell me if I misunderstand your question.

**MS MEMELA:** Okay.

**CHAIRPERSON:** I think her point is if Lufthansa was compliant in regard to the NIP obligation or undertook to comply with that obligation in regard to a tender that was being looked at, at that time.

**MS MEMELA:** Hm.

**CHAIRPERSON:** It is difficult to understand why they would be disqualified or they would not be given a tender simply because in the  
20 past there was a tender in respect of which they did not comply. Ms Hofmeyr is that –

**ADV KATE HOFMEYR:** Indeed Chair.

**CHAIRPERSON:** Is that right?

**ADV KATE HOFMEYR:** If I may?

**CHAIRPERSON:** I think that is...

**ADV KATE HOFMEYR:** If I may say far more eloquently than I put it.

**CHAIRPERSON:** Ja.

**MS MEMELA:** Were they disqualified for not complying with the NIP?

**ADV KATE HOFMEYR:** No the point Ms Memela is that the final tender, the one that CFST was evaluating in April 2016.

**MS MEMELA:** Hm.

**ADV KATE HOFMEYR:** Had a requirement that you had to undertake a NIP obligation and you had to with your bid submission sign a SBD5 form. And all of these bidders, Lufthansa, JM, AAR, Air France  
10 complied with that. So in their bids for the final tender they submitted the SBD5 form. That is why when CFST records this they do not talk about this tender. They say the bidder still has outstanding unresolved NIP obligations from a previous tender. And I understand you to say your understanding of that was that one of the previous components tenders that was never awarded they might not have submitted a SBD5 form. Is that your understanding?

**MS MEMELA:** My understanding Chair was that since Lufthansa was the previous component tender of SAAT before Air France. They had never adhered to the NIP obligation as required by the...

20 **CHAIRPERSON:** In the past?

**MS MEMELA:** In the past.

**CHAIRPERSON:** But you ...

**MS MEMELA:** That will be my understanding of what is written here.

**CHAIRPERSON:** Yes.

**MS MEMELA:** I do not know what is the understanding of Ms Kate but I



was still going to ask him – ask her to direct me to the agreement that she said it was an attachment to the...

**CHAIRPERSON:** Okay before that. Let us just make sure we understand the basic information.

**MS MEMELA:** Ja.

**CHAIRPERSON:** Do you accept that in regard to the tender that Ms Hofmeyr – that we are talking about now – in regard to that tender do you accept that Lufthansa was compliant or undertook to comply with the NIP obligation?

10 **MS MEMELA:** I would not know Chair.

**CHAIRPERSON:** You would not know?

**MS MEMELA:** No.

**CHAIRPERSON:** And do you – or have you come across anything that suggests that CFST at the time thought that Lufthansa was not compliant in regard to the NIP obligation in regard to the tender they were considering?

**MS MEMELA:** Not on the tender they were considering Chair.

**CHAIRPERSON:** Ja only the previous one?

**MS MEMELA:** On the previous contract that they had with SAAT.

20 **CHAIRPERSON:** Okay.

**MS MEMELA:** Because remember a NIP obligation started long time ago.

**CHAIRPERSON:** Yes okay.

**MS MEMELA:** Yes and Lufthansa was the previous component support.

**CHAIRPERSON:** Yes.

**MS MEMELA:** Like supplier of SAAT.

**CHAIRPERSON:** Yes.

**MS MEMELA:** Yes before Air France.

**CHAIRPERSON:** Now – well my question and maybe Ms Hofmeyr's question is, why would they – if they were compliant with regard to the NIP obligation undertook to comply in regard to the tender that was being considered.

**MS MEMELA:** The final one.

**CHAIRPERSON:** Ja the final one. Why would the fact that some time  
10 in the past in regard to another tender they might not have complied  
why would that be used against them?

**MS MEMELA:** My understanding is that like because the final tender the 2016 one required all the multinational suppliers to bring their commitment towards the supplier development. And my understanding will be that Lufthansa did not bring the commitment like other company – other multinational companies like Air France brought in Kwane Capital. AJ Walters brought in Pegasus.

**CHAIRPERSON:** I am sorry I do not want to – I am not sure that I understand I think we are on the same page.

20 **MS MEMELA:** Ja.

**CHAIRPERSON:** That with regard to the final tender you have not come across anything that says, Lufthansa was not compliant? You are not aware of anything that relates to them not having being compliant in regard to the final tender. You are aware of a concern that sometime in the past – sometime before this tender.

**MS MEMELA:** Before this tender yes.

**CHAIRPERSON:** They were not compliant?

**MS MEMELA:** Yes and...

**CHAIRPERSON:** So my question before I speak to Ms Mbanjwa is I am not sure that I would understand why the fact that some time in the past in respect of a previous tender they might not have complied and it was not awarded to them, why that would be used against them in regard to the final tender.

**MS MEMELA:** I guess Chair it will be used based on the fact that SAAT  
10 and SAA that time was driving a national – a transformational agenda and NIP is part of the transformational agenda.

**CHAIRPERSON:** So even if they were compliant at the moment so to speak.

**MS MEMELA:** I am not sure I am still going to ask Ms Hofmeyr if they have a complaint on the 2016 one.

**CHAIRPERSON:** Yes.

**MS MEMELA:** But like from what I was reading, what was written there by the CFST it said.

**CHAIRPERSON:** Okay.

20 **MS MEMELA:** Ja. About supply development I do not...

**CHAIRPERSON:** Okay she will address your concern. Ms Mbanjwa has your concern fallen away?

**ADV LINDELWA MBANJWA:** No this is not an objection Chair.

**CHAIRPERSON:** Yes, yes.

**ADV LINDELWA MBANJWA:** Just for me to be able to follow.

**CHAIRPERSON:** Yes.

**ADV LINDELWA MBANJWA:** I wanted to know if because I hear Ms Memela saying Lufthansa was previously.

**CHAIRPERSON:** Non-compliant.

**ADV LINDELWA MBANJWA:** No was previously the supplier for the components tender. I want to clear that or is it not like that?

**CHAIRPERSON:** Oh I did not understand that. I think the...

**ADV LINDELWA MBANJWA:** Yes because that is ...

**CHAIRPERSON:** I think leave a note for Ms Hofmeyr but my  
10 understanding is that it was not – Lufthansa was not compliant in  
regard to the NIP obligation but that tender for which it had put in a bid  
was not awarded. Is that fine Ms Memela? Okay Ms – we will clarify it  
Ms Mbanjwa.

**ADV LINDELWA MBANJWA:** Please. Yes.

**CHAIRPERSON:** Are we confusing you?

**MS MEMELA:** Yoh I am so confused Chair.

**ADV KATE HOFMEYR:** Chair if I may assists.

**MS MEMELA:** Ja.

**CHAIRPERSON:** Yes

20 **ADV KATE HOFMEYR:** Because Ms Memela first of all asked could she  
be taken to the agreement.

**MS MEMELA:** Yes like the one we talking about.

**ADV KATE HOFMEYR:** Between Lufthansa and the DTI. Because in  
fact it is an agreement.

**MS MEMELA:** Ja let us...

**ADV KATE HOFMEYR:** Related to SAAT.

**MS MEMELA:** Okay

**ADV KATE HOFMEYR:** And component support. So let us go to that. It is in DD22G and it is at page 3124. Apologies the first page is 3123.

**CHAIRPERSON:** I am sorry did you change the page number?

**ADV KATE HOFMEYR:** 3123 Chair.

**CHAIRPERSON:** 3123?

**ADV KATE HOFMEYR:** Yes.

**CHAIRPERSON:** Okay.

- 10 **ADV KATE HOFMEYR:** Chair just to orientate ourselves what Mr October had said in his affidavit was, he had been asked by the commission's investigators whether Lufthansa was non-compliant with its NIP obligations and he had gone back to the records and he found the agreement that was entered into and you see that at page 32 – 3123. It is between the Government of the Republic of South Africa and Lufthansa in broad terms. And if you turn over the page it tells you what contract this is in relation to. That is at the top of the page. It says:

- 20                   “Whereas the obligor that in Lufthansa has been awarded a contract for the maintenance classic power by the hour and cost prevent PBTH of and then it is a series of engine – well an engine – operated by South African Airways and or maintained by South African Airways Technical from time to time. Currently this number is 39 engines. Contract

reference and then it has got the SAAT reference.

And it says it was entered into in writing on the 23

July 2013.”

**MS MEMELA:** Ja.

**ADV KATE HOFMEYR:** So I understand Mr October’s evidence in his affidavit he says:

“This agreement was inforce at the time that the 2016 bids were being adjudicated and according to the DTI records Lufthansa was fully compliant. He attaches the schedule to that effect and he says that there was no respect in which non-compliance had been raised in writing with the DTI.”

10

But does that assist Ms Memela?

**MS MEMELA:** Chairperson.

**CHAIRPERSON:** Yes.

**MS MEMELA:** Ms Hofmeyr I do not know maybe she does not want to listen to my explanation. Before she read this agreement she said...

**CHAIRPERSON:** Well we – we are all – we can – at different times we all – we are all getting confused at some stage or another so.

20 **MS MEMELA:** Okay Chair she had said – said that has nothing to do with component tender. And she said that actually has everything to do with component tender. This agreement is an engine agreement. It is not the component tender agreement.

**CHAIRPERSON:** Hm.

**MS MEMELA:** So I do not know how I explain this. Like I am saying it

does not matter how many contracts...

**CHAIRPERSON:** Well you did – you did make the point earlier that ...

**MS MEMELA:** Yes so I am trying to explain.

**CHAIRPERSON:** You were referring to the specific component tender and that they might have been compliant in regard to other tenders.

**MS MEMELA:** They – they have complied to engine contract not the component tender contract.

**CHAIRPERSON:** Hm.

**MS MEMELA:** Yes.

10 **ADV KATE HOFMEYR:** Which one was that? Was that the one from 2008?

**MS MEMELA:** This is – no, no, the one from 2008 remember is between SAAT and Air France. Lufthansa was the supplier of SAAT before that.

**ADV KATE HOFMEYR:** Oh before 2008?

**MS MEMELA:** Before 2008.

**ADV KATE HOFMEYR:** Sorry, sorry that obligation that you understood...

**MS MEMELA:** And also...

20 **ADV KATE HOFMEYR:** So that obligation that you understood they had been non-compliant in respect of?

**MS MEMELA:** That would have been but like remember also Chair I said this tender was run from 2013 and it was only finalised in 2016. 2016 that is when the supplier development was introduced. So by previous although they are not specific they might be referring to one

of those tenders where they did not commit. But I do know at the back of my mind Lufthansa has always been that supplier that is reluctant to adhere to NIP obligation. And that applies to the one previously because remember NIP obligation started in 1997 so a person cannot say okay because it was long time ago therefore it is okay. Ja.

**ADV KATE HOFMEYR:** Thank you.

**MS MEMELA:** But like I am glad that Ms Hofmeyr understands now that this agreement sent by Mr October is for engine. It is not for component.

10 **ADV KATE HOFMEYR:** So in 2013 it was compliant with its NIP obligations, correct?

**MS MEMELA:** For engine.

**ADV KATE HOFMEYR:** No but it was not a supplier for components at that time. So in 2013 Lufthansa was a – I understood you to say the components related to the pre 2008 position?

**CHAIRPERSON:** [indistinct] it will be sorted out. I am sorry I am thinking it will be sorted out maybe let us wait a bit.

**ADV LINDELWA MBANJWA:** Chair.

**CHAIRPERSON:** Ja.

20 **ADV LINDELWA MBANJWA:** Thank you Chair. It is not only she who is being confused. I am also being confused. And it is the manner in which the evidence is being handled.

**CHAIRPERSON:** Hm.

**ADV LINDELWA MBANJWA:** She is given an omnibus set of questions to which to respond to. Broken down so that I can also understand as a



legal representative which tender was Lufthansa involved in? Was it a components tender or was it an engine tender?

**CHAIRPERSON:** Yes that is why I was saying if you wait a bit it is going to be sorted out.

**ADV LINDELWA MBANJWA:** That way I was going to ask Chairperson you to intervene because you have a way of taking those steps.

**CHAIRPERSON:** Ja.

**ADV LINDELWA MBANJWA:** If you can assist us the way you have been doing.

10 **CHAIRPERSON:** Yes.

**ADV LINDELWA MBANJWA:** Otherwise I am also very confused.

**CHAIRPERSON:** Yes, no, no that is fine.

**ADV LINDELWA MBANJWA:** Thank you Chair.

**CHAIRPERSON:** Ms Hofmeyr.

**ADV KATE HOFMEYR:** Ms Memela am I correct to understand your evidence to be that prior to 2008 Lufthansa was a supplier of component services to SAAT?

**MS MEMELA:** Yes.

20 **ADV KATE HOFMEYR:** And it is in respect of those services that it may not have been compliant with its NIP obligation?

**MS MEMELA:** And it could also be possible Chair that like within these tenders from 2013 when they were – when they were responding like they did not commit to NIP obligation. Because also not committing like that is counted as work does not matter whether the tender is awarded or not. Once the supplier shows reluctance like that by the

CFST it is looked at. Ja.

**ADV KATE HOFMEYR:** Okay so then that has been helpful. So from 2013 it may – your evidence is it may have been that when they submitted previous bids for tenders they did not comply with the NIP obligation, is that right?

**MS MEMELA:** Why we talking about 2013 now?

**ADV KATE HOFMEYR:** Because you just spoke about 2013.

**MS MEMELA:** No like this 2013 was referring to this engine.

**CHAIRPERSON:** Yes you did talk about 2013 Ms Memela.

10 **ADV KATE HOFMEYR:** Just in your answer a moment ago.

**MS MEMELA:** No but like I was explaining Chair that remember the tenders that kept on being retracted started from 2013 and finalised in 2016.

**CHAIRPERSON:** Yes.

**MS MEMELA:** So it might – I said it might happen between 2013 and 2016 on those tenders that kept on going out.

**CHAIRPERSON:** That is what she is talking about.

**MS MEMELA:** Them I have not ...

**ADV KATE HOFMEYR:** That is exactly it.

20 **MS MEMELA:** But now she is referring to 2013 alone.

**CHAIRPERSON:** Well not really. No I do not think she refers to it alone but she is following up on your evidence that it is possible that even from 2013 onwards Lufthansa might not have been compliant or might still have been reluctant.

**MS MEMELA:** For components?

**CHAIRPERSON:** Yes. For components.

**MS MEMELA:** Not want engines.

**CHAIRPERSON:** Yes.

**MS MEMELA:** Yes.

**ADV KATE HOFMEYR:** Yes.

**CHAIRPERSON:** I think she is - that is where she is ...

**ADV KATE HOFMEYR:** That is ...

**CHAIRPERSON:** She is, *ja*.

**ADV KATE HOFMEYR:** Precisely where I was. Thank you Chair.

10 **CHAIRPERSON:** Hm.

**ADV KATE HOFMEYR:** I am indebted. So when this risk in relation to Lufthansa was identified for the final components tender. What was taken into account was that on previous bid submissions they had made on components since 2013. They may not have committed to an obligation.

**MS MEMELA:** It is not written there Ms Hofmeyr.

**ADV KATE HOFMEYR:** Yes. I am getting the benefit of your insight.

**MS MEMELA:** *Ja*. I am saying - remember I said it is possible ...

**ADV KATE HOFMEYR:** Hm.

20 **MS MEMELA:** But what the CFST has written is not - is not saying from - that is why you hear me - they may have been referring to the one before Air France ...

**CHAIRPERSON:** Yes.

**MS MEMELA:** Or maybe between the ones that were cancelled or whatever.

**CHAIRPERSON**: Yes. Okay.

**MS MEMELA**: Yes.

**CHAIRPERSON**: No. That is fine. So you are saying you are not sure which ones they gave. You are referring to ...

**MS MEMELA**: *Ja*, because it is not clear of the dates. Yes Chair.

**CHAIRPERSON**: But you are saying that you do know ...

**MS MEMELA**: Hm.

**CHAIRPERSON**: That in the past ...

**MS MEMELA**: They did not comply.

10 **CHAIRPERSON**: There had been reluctance on their part to commit themselves to ...

**MS MEMELA**: To NIP Obligations.

**CHAIRPERSON**: NIP Obligations.

**MS MEMELA**: Yes. In terms of the component ... (intervenes).

**CHAIRPERSON**: In terms of the components?

**MS MEMELA**: Yes Chair.

**CHAIRPERSON**: In regard to other contracts you do not know?

**MS MEMELA**: *Ja*. With regard to other engine contracts ...

**CHAIRPERSON**: *Ja*.

20 **MS MEMELA**: Because they had lots of ...

**CHAIRPERSON**: Contracts, *ja*.

**ADV KATE HOFMEYR**: Contracts with SAAT.

**CHAIRPERSON**: Okay.

**MS MEMELA**: Yes.

**CHAIRPERSON**: Alright.

**ADV KATE HOFMEYR:** And then we can move to the Board decision itself on the final award Ms Memela.

**MS MEMELA:** Okay.

**ADV KATE HOFMEYR:** The ...

**MS MEMELA:** Can we go there if ... (intervenes)?

**ADV KATE HOFMEYR:** The Board decision took place on 9 May 2016. You will recall that.

**MS MEMELA:** Yes. Can you - can we go there?

**ADV KATE HOFMEYR:** Yes of course.

10 **MS MEMELA:** *Ja*.

**ADV KATE HOFMEYR:** I am just wanting to establish where we are in the evidence and your knowledge of it.

**MS MEMELA:** Okay.

**ADV KATE HOFMEYR:** So you - you recall that the decision was on 9 May 2016. Is that correct?

**MS MEMELA:** Chair, the reason why I am asking if we can go there. I want to confirm something I - I am looking at.

**CHAIRPERSON:** Okay.

**MS MEMELA:** So that I do not say ...

20 **ADV KATE HOFMEYR:** Let us go to it.

**MS MEMELA:** I think so ...

**CHAIRPERSON:** Yes. Let us go there.

**MS MEMELA:** Or I do know exactly.

**ADV KATE HOFMEYR:** It is at DD22F. I think it is the one that was in front of you. DD22F and you will find it at page 2-3-0-4.

**MS MEMELA:** Page?

**ADV KATE HOFMEYR:** 2-3-0-4.

**MS MEMELA:** Page 2-3-0-4.

**ADV KATE HOFMEYR:** Chair this is the page that you do not like, because there is handwriting over the pagination ...

**CHAIRPERSON:** Yes.

**ADV KATE HOFMEYR:** But we did look at it before in Mr Human's evidence.

**CHAIRPERSON:** Yes. Yes.

10 **ADV KATE HOFMEYR:** If you look at 2-3-0-5. It is - it is easier. What is this document Ms Memela?

**MS MEMELA:** I am still getting there.

**ADV KATE HOFMEYR:** Sorry.

**MS MEMELA:** 2-3-0-4 right?

**ADV KATE HOFMEYR:** Yes.

**MS MEMELA:** Ja.

**CHAIRPERSON:** But I think ultimately she wants you to go to 2-3-0-5.

**ADV KATE HOFMEYR:** Indeed and while you are getting there maybe I just read into the record what we are looking at. We are looking at the  
20 minutes of the Special Meeting of the South African Airways Technical SOC Ltd Board ...

**MS MEMELA:** Huh-uh.

**ADV KATE HOFMEYR:** Of Directors held on Monday 9 May 2016 at 08:30 at the main boardroom and I indeed wanted to direct you to 2-3-0-5, because that as I have it at Clause 4.1 on that page or

paragraph 4.1 is where the submission relating to the final tender is reflected and then a little bit further down that we have the resolution of the Board in relation to the final tender.

**MS MEMELA:** Hm.

**ADV KATE HOFMEYR:** Do you have that Ms Memela?

**MS MEMELA:** 2-3-0-5?

**ADV KATE HOFMEYR:** 2-3-0-5 ...

**MS MEMELA:** Okay.

**ADV KATE HOFMEYR:** There is a paragraph 4.

10 **MS MEMELA:** Okay.

**ADV KATE HOFMEYR:** That says matters for consideration or approval

...

**MS MEMELA:** Huh-uh.

**ADV KATE HOFMEYR:** And at 4.1 it records in these minutes:

20                   “The submission was tabled and considered.  
According to the submission management recommended that the tender be awarded to Air France. A discussion on the matter ensued and the Board made the following comments: a,  
management’s rationale for recommending that Air France be awarded the tender was not substantive considering the bidders resistance to align itself to SAAT’s development agenda i.e. supplier development. Furthermore the benefits as outlined by the submission as a result of selecting Air

France were not compelling enough to position the latter as the preferred bidder. The concerns regarding JM/AAR especially management view that this bidder was lowballing could be mitigated by reducing each party's obligations as well as terms and conditions to writing."

And then the resolution is reflected.

10 "Resolve that the request for the approval of the award of a tender for the aircraft component support and services on ATA Chapter for both the Boeing and Airbus Fleets for a period of five years to JM/AARB and here is hereby approved subject to the mitigation of all risks highlighted in the submission."

Do you see that?

**MS MEMELA:** I see that Chair.

**ADV KATE HOFMEYR:** Were you aware of this resolution at the time it was made?

20 **CHAIRPERSON:** Or soon after it was made or - *ja*. You might not have been aware at the time ...

**ADV KATE HOFMEYR:** Yes.

**CHAIRPERSON:** It was made, because you were not at the Board meeting.

**MS MEMELA:** Exactly. Yes.

**CHAIRPERSON:** *Ja*.



**ADV KATE HOFMEYR:** No. Apologies. Maybe later that day or ...

**CHAIRPERSON:** *Ja. Ja.*

**ADV KATE HOFMEYR:** Shortly thereafter. Were you aware of the resolution?

**MS MEMELA:** We were made aware Chair after Mr Malola Phiri - I think he sent the - the Board resolution, but already as I said earlier there were already talks that some people already knew what was happening and some had already notified Air France. Air France was already taking steps to take SAAT to court and all that, but I - I do  
10 know that of course we usually get now when I am talking about formal - provisional formal.

*Ja. We - we get the feedback after the - the CEO comes back from the Board Meeting.*

**CHAIRPERSON:** Okay.

**ADV KATE HOFMEYR:** And you were not present at that meeting. That is clear from the minutes. Correct?

**MS MEMELA:** Correct.

**ADV KATE HOFMEYR:** And did you support the decision that the Board had taken on that day?

20 **MS MEMELA:** Did I support it?

**ADV KATE HOFMEYR:** Hm.

**MS MEMELA:** Chair, remember ...

**CHAIRPERSON:** What she is talking about - what she is talking about is when you came to know that this was the decision that was taken. What was your view about it? If you had any.

**MS MEMELA:** Okay Chair. First of all when the Board - what - what we used to. Not that it is a legislation or any rule. So that we - we do not come back discussing a written rule or what. The precedents so far like what we have seen with regard to the Board Resolution. When they are not happy like they were not happy with Lufthansa. Remember.

**CHAIRPERSON:** Is that - when you say “they” now. You mean the - the bidders?

**MS MEMELA:** The Board.

10 **CHAIRPERSON:** The Board?

**MS MEMELA:** The Board.

**CHAIRPERSON:** When - when they are not happy with a bidder?

**MS MEMELA:** With a - huh-uh. With a recommendation.

**CHAIRPERSON:** A recommendation?

**MS MEMELA:** Yes.

**CHAIRPERSON:** *Ja*.

**MS MEMELA:** From CFST and - and management they either - they usually comment and ask for work and - and state what needs to - to be corrected. Like for instance they have said here that the risks that are  
20 raised - whatever shall be this and that ...

**CHAIRPERSON:** I am going to interrupt you.

**MS MEMELA:** But ...

**CHAIRPERSON:** Ms Memela.

**MS MEMELA:** Hm.

**CHAIRPERSON:** I want us to go back to the crisp answers.

**MS MEMELA:** Oh. Okay.

**CHAIRPERSON:** What was your view of this resolution? Did - did you have a view? Did you think it was good - a good decision? Did you think it was not a good decision or you had no view at all about it?

**MS MEMELA:** Of course we were all shocked. We - we were not used to the Board making a decision there and there on the recommendation. As - okay. Now I am worried that I will not be crisp, but like the - the Board usually says if they are not happy ...

**CHAIRPERSON:** Sends it back to - to ...

10 **MS MEMELA:** Go back for a work ...

**CHAIRPERSON:** And work, *ja*.

**MS MEMELA:** And then when you come back and then they will say maybe approval subject to ...

**CHAIRPERSON:** Yes. *Ja*.

**MS MEMELA:** Or something or maybe decline.

**CHAIRPERSON:** *Ja*.

**MS MEMELA:** Go back for work and ...

**CHAIRPERSON:** Hm.

**MS MEMELA:** Address these issues and come back to us.

20 **CHAIRPERSON:** Hm. Hm.

**MS MEMELA:** Yes.

**CHAIRPERSON:** When you say you were all shocked. Can - can I take that to mean you did not support the - the decision or are you saying I was shocked. Not necessarily that I did not support it or I did not have a view on it, but I did not expect it.

**MS MEMELA:** Okay. I - I would say when you say we were, because some of us - executives were discussing this and we said we - we have never dealt with an issue like this, but at the end of the day we understood the Board being the accounting authority and they had their own reasons that they made that decision.

**CHAIRPERSON:** Okay.

**ADV KATE HOFMEYR:** Thank you. I would then like to take you to the minutes of the Board Meeting that occurred on 15 June 2016.

**MS MEMELA:** The 15<sup>th</sup>.

10 **ADV KATE HOFMEYR:** So it is about a month or so later. For that Ms Memela you will have to go into DD25B. That is your bundle. It is the smaller second bundle and you will pick it up at page 2 - page 6-2-1. While you are looking for it Ms Memela. I do apologise. My - my ...

**MS MEMELA:** Page?

**ADV KATE HOFMEYR:** Let me give you the page. It is DD25B at page 6-2-1. Ms Memela, I have made an error in what I put to you earlier and I - I do need to correct it for the record. I - I apologise. I have been alerted to it. I said in one of my questions to you. You were not  
20 present at the Board Meeting on 9 May 2016 and that seems to be incorrect based on the minutes.

You will see where we were previously in DD22G at page 2-3-0-4. Sorry F. We were in DD22F. The minutes of that meeting - the one where the decision was taken to award it to AAR indicates that attendance included you. Can you assist us on that?

**MS MEMELA:** 15 June 2016?

**ADV KATE HOFMEYR:** No. Sorry. Ms Memela, I did not want to disrupt things too much. We are going to move to 15 June meeting in a moment. So please keep that open.

**MS MEMELA:** Oh. Okay.

**ADV KATE HOFMEYR:** I said that - it has been pointed out to me that I made an error in a question I asked you previously. I said that I had thought the minutes reflected that you were not in attendance ...

**MS MEMELA:** Huh-uh.

10 **ADV KATE HOFMEYR:** At the Board Meeting on 9 May, but it has been brought to my attention that the minutes reflect that you were in attendance. I would like us just to clear that up in your evidence.

**MS MEMELA:** (Intervenes).

**ADV KATE HOFMEYR:** The previous minutes - Chair I do not suggest you need to go there. Just for the record it is DD22F at page 2-3-0-4. You will see that is the minutes of the meeting of 9 May and in attendance includes yourself. Is that correct?

**MS MEMELA:** (Witness reading to herself).

**MS LINDELWA MBANJWA:** (Indistinct).

20 **ADV KATE HOFMEYR:** Certainly.

**MS LINDELWA MBANJWA:** The page?

**ADV KATE HOFMEYR:** The page is 2-3-0-4.

**MS LINDELWA MBANJWA:** 2-3-0-4.

**MS MEMELA:** Ja. The - the attendance Chair it is written that I was in attendance.

**ADV KATE HOFMEYR:** Do you recall that?

**MS MEMELA:** No. I do not recall, because as I said I remember that we got it through the calls.

**ADV KATE HOFMEYR:** Hm.

**MS MEMELA:** It is just that this one compared to the one for the GPUs. You see that one it shows that a person walked in for a specific item - to talk about a specific item. So I may have been given what do you call this? A pack to attend for a specific item, because I can see that there were also tyres - the approval for tyres as well and then also  
10 it looks like I was going to talk about - confirm something from BAC point of view.

**ADV KATE HOFMEYR:** Hm.

**MS MEMELA:** Yes. So it might happen that I was called for that specific item.

**ADV KATE HOFMEYR:** Hm.

**MS MEMELA:** It is just that this one is not specific as the GPUs one ...

**ADV KATE HOFMEYR:** Hm.

**MS MEMELA:** Because the GPU one the - in fact it depends which company secretary writes, but others say a person walked in during this  
20 moment.

**ADV KATE HOFMEYR:** Yes.

**MS MEMELA:** Hm.

**ADV KATE HOFMEYR:** Thank you for that. So you do not have a recollection of being in attendance?

**MS MEMELA:** I do not have a recollection.

**ADV KATE HOFMEYR:** Thank you.

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

**ADV KATE HOFMEYR:** I just wanted to clear that up. We can now go to the ...

**CHAIRPERSON:** But - I am sorry. You do not have a recollection, but it is possible that the minutes are - are right?

**MS MEMELA:** I am - I am saying Chair. It might be possible that because of how - like - like I mean ...

**CHAIRPERSON:** *Ja.*

10 **MS MEMELA:** *Ja.* It differs from one company secretary to the other.

**CHAIRPERSON:** Yes.

**MS MEMELA:** Others are specific that a person is walking in. Joining the meeting for a specific item.

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

**MS MEMELA:** You know, because I remember I said I do not attend the meeting, but only through and invite when the Board requires certain feedback from me or ...

**CHAIRPERSON:** Can - can I take the minutes then - can I take it that what you are saying in regard to these minutes is that to the extent that  
20 the minutes reflect that you were present. You do not dispute having been present ...

**MS MEMELA:** *Ja,* but ...

**CHAIRPERSON:** But what you - what you suspect is that it is unlikely you were present throughout the meeting.

**MS MEMELA:** *Ja.* Not throughout the meeting.

**CHAIRPERSON:** *Ja.* You - you would have been present you think for a certain period of time ...

**MS MEMELA:** Yes.

**CHAIRPERSON:** And the minutes just ...

**MS MEMELA:** For a specific item.

**CHAIRPERSON:** Happens not to show - not to make a distinction between people who were present for the entire meeting and those who may have come and attended for - only a short time?

**MS MEMELA:** Yes.

10 **CHAIRPERSON:** Okay.

**ADV KATE HOFMEYR:** Thank you. Then I would like to go to DD25B, because we were going to look there at the minutes of the meeting of 15 June 2016 and that was at page 6-2-1. Do you have that Ms Memela?

**MS MEMELA:** Page 6-2-1? Yes.

**ADV KATE HOFMEYR:** Yes. Now these are the minutes that we have looked at previously related to the GPUs ...

**MS MEMELA:** Okay.

20 **ADV KATE HOFMEYR:** And as I have your evidence you - as you have just indicated you joined the meeting at a point and you can actually find that at page 6-2-5. If you go to page 6-2-5 at paragraph 4.6 there.

**MS MEMELA:** Huh-uh.

**ADV KATE HOFMEYR:** Under the heading “Logistics Phased Approach Rollout”. It is reflected there in italics.

*“SAAT HOD Supply Chain Management joined the*



*meeting.”*

**MS MEMELA:** Ja.

**ADV KATE HOFMEYR:** Is that what you were referring to?

**MS MEMELA:** Yes. That is what I was referring to ...

**ADV KATE HOFMEYR:** Thank you.

**MS MEMELA:** Chair, but also was saying different - like I mean depending on which company secretary is sitting there. My understanding is that I think for the Board at that time it was Mr Maso and then for GPUs it was Ms Maake (?).

10 **ADV KATE HOFMEYR:** Hm.

**MS MEMELA:** So each company's secretary writes the minutes their own style. Yes.

**ADV KATE HOFMEYR:** Indeed.

**MS MEMELA:** Hm.

**ADV KATE HOFMEYR:** No. I - I do not think that is a matter of contention.

**MS MEMELA:** Okay.

**ADV KATE HOFMEYR:** What I would like to look at is what you said after you joined that meeting about the AAR award of the components  
20 tender, because that was also something that was actually discussed at this meeting and you will find that at page 6-2-7. At page 6-2-7 ...

**MS MEMELA:** Huh-uh.

**ADV KATE HOFMEYR:** There is a paragraph 4.9 which is headed "Addressing the Sunday Times Article on AAR." Do you see that?

**MS MEMELA:** I see that.

**ADV KATE HOFMEYR:** So what this minute reflects is that the Deputy Company Secretary circulated two documents from the SAA Board Chairperson.

**MS MEMELA:** Huh-uh.

**ADV KATE HOFMEYR:** A letter addressed to the SAAT Board Chairperson and an additional draft letter addressed to the Minister of Finance regarding the AAR article.

**MS MEMELA:** Yes.

**ADV KATE HOFMEYR:** Do you recall that article?

10 **MS MEMELA:** I do not recall it detail by detail.

**ADV KATE HOFMEYR:** Right.

**MS MEMELA:** *Ja*, but I do recall there was something written on that matter.

**ADV KATE HOFMEYR:** Right. It goes on and it says:

“The Chairperson gave feedback to the letters and indicated that the SAA Board had initiated an investigation into procurement processes and contracts management at SAA and its subsidiaries.”

**MS MEMELA:** Huh-uh.

20 **ADV KATE HOFMEYR:** “She stated that AAR was not - was initially not within the scope of the investigation which was conducted by Ernst & Young, because it was not yet conducting business with SAAT.”

**MS MEMELA:** Huh-uh.

**ADV KATE HOFMEYR:** She continued that:

“The Chairperson of the SAA Board had then indicated that she would not accept the SAAT Report without investigation into AAR.”

**MS MEMELA:** Huh-uh.

**ADV KATE HOFMEYR:** “Thereafter Ernst & Young had initiated an investigation into AAR. The meeting was informed that the SAA Board Chairperson was of the view that the AAR Contract should be terminated.”

10 And then we go over the page to page 6-2-8.

“Member of the Board discussed the matter and concluded that on presentation of the tender evaluation to the Board. SAAT Management could not support their recommendation to appoint Air France and therefore the contract was awarded to AAR which was second best.”

Do you see that?

**MS MEMELA:** Huh-uh.

**ADV KATE HOFMEYR:** And then it is recorded here that you reported  
20 something to the Board, because it says:

“The HOD SCM ...”

That is a reference to you as I understand it. Is that correct?

**MS MEMELA:** That is correct.

**ADV KATE HOFMEYR:** You reported that:

“SAAT Management supported the Board’s decision

to appoint AAR, because it was justifiable.”

And you went on and stated that:

“SAAT had responded to a letter received from Lufthansa and Air France and had not received any further correspondence thereafter.”

**MS MEMELA:** Huh-uh.

**ADV KATE HOFMEYR:** And you highlighted that:

“The MRO would be more at risk of facing litigation should it endeavour to cancel the AAR award.”

10 And then it concludes with:

“The Board observed that it was clear that the complaints against the award of the contract to AAR were that of a disgruntled service provider as opposed to legitimate concerns.”

Do you see that?

**MS MEMELA:** I see that.

**ADV KATE HOFMEYR:** Would it be fair to say then that by 15 June 2016 you - you were in support of the Board’s decision to award this to AAR?

20 **MS MEMELA:** Chair, I - I think I - actually even before I answer this. Remember I was saying to Ms Hofmeyr during our meeting on 6 December last year that as much as we - the Board - had made their own decision that was different from management and - *ja*. So - but when the company faces issues like the media reporting negatively on the company and Air France taking the company to court.

Our duty as SAAT Executives is to ensure that we - we act in the best interest of SAAT. That is when I even said we then had appointed the lawyers to represent SAAT and make sure that SAAT does not lose and indeed the - SAAT won the case from court with costs. So supporting from that period of course there was absolutely nothing that I could have done.

**CHAIRPERSON**: Well I am not sure I understand the connection that I think you make between the stance of sending lawyers to the - to court to defend SAAT ...

10 **MS MEMELA**: Hm.

**CHAIRPERSON**: Because of the obligation to act in the best interest of SAAT, because that obligation is always there whatever you do. Is it not?

**MS MEMELA**: Thank you. So I was just confirming that Chair.

**CHAIRPERSON**: Ja.

**MS MEMELA**: That we always have to support the company and the decision that was made by the Board at that time. It had already been made and we had to go with it and make sure that we defend in court.

**CHAIRPERSON**: Yes.

20 **MS MEMELA**: Yes.

**CHAIRPERSON**: But your obligation to act in the best interest of the company does not mean supporting a - a wrong decision. Is it not?

**MS MEMELA**: Chair.

**CHAIRPERSON**: Or does it go that far. I am just wanting to clarify this particular part of your evidence.

**MS MEMELA:** Chair, remember I - when I responded I said ...

**CHAIRPERSON:** *Ja.*

**MS MEMELA:** The Board made their own decision ...

**CHAIRPERSON:** Yes.

**MS MEMELA:** And they had their reasons why.

**CHAIRPERSON:** Yes. Yes.

**MS MEMELA:** Which is - my understanding is that I - I know that ...

**CHAIRPERSON:** *Ja.*

**MS MEMELA:** Maybe one time or eventually ...

10 **CHAIRPERSON:** Hm.

**MS MEMELA:** You - you will call the Board ...

**CHAIRPERSON:** Hm.

**MS MEMELA:** Members in ...

**CHAIRPERSON:** Hm.

**MS MEMELA:** To respond on their behalf.

**CHAIRPERSON:** Hm.

**MS MEMELA:** On - on their own.

**CHAIRPERSON:** Hm.

**MS MEMELA:** So they will be able to give reasons why ...

20 **CHAIRPERSON:** Hm.

**MS MEMELA:** They - they took that decision.

**CHAIRPERSON:** You see ...

**MS MEMELA:** So I said for - I said for us ...

**CHAIRPERSON:** *Ja.*

**MS MEMELA:** Because we are talking between ...

**CHAIRPERSON:** *Ja.*

**MS MEMELA:** Management and we were shocked at that time ...

**CHAIRPERSON:** Yes.

**MS MEMELA:** And I explained why we were shocked. It is because usually ...

**CHAIRPERSON:** Yes.

**MS MEMELA:** The Board when they are not happy ...

**CHAIRPERSON:** Okay.

**MS MEMELA:** Yes.

10 **CHAIRPERSON:** Do not explain again.

**MS MEMELA:** Oh. Okay.

**CHAIRPERSON:** I - I would understand when - if you say look we might not have agreed with the decision, but the Board had made the decision and some of the decisions that are made by the Board we as management just have to live with and that - that I would understand, but I ...

**MS MEMELA:** Oh. I thought I was making ...

**CHAIRPERSON:** But I did not - I did not understand ...

**MS MEMELA:** Oh. I did ...

20 **CHAIRPERSON:** The acting in the best interest of the organisation ...

**MS MEMELA:** Okay Chair.

**CHAIRPERSON:** In that connection.

**MS MEMELA:** *Ja.* Okay Chair.

**CHAIRPERSON:** Okay.

**MS MEMELA:** No. I - I ...

**CHAIRPERSON:** Yes.

**MS MEMELA:** Meant it that way.

**CHAIRPERSON:** Okay. Alright.

**MS MEMELA:** Ja.

**ADV KATE HOFMEYR:** So when it was recorded in the minutes that you reported that SAAT Management supported the Board's decision to appoint AAR, because it was justifiable.

**MS MEMELA:** Yes.

**ADV KATE HOFMEYR:** You see when I read that it suggests to me that  
10 you devaluated the reasons given by the Board and you regarded them as justifiable. Is that not the correct reading?

**MS MEMELA:** Okay Chair. Of course like it will - it will be based on the interpretation of what the reasons of the Board were at the time and of course the Board had said the risks that we had raised - that because there was lowballing in some parts of the spares and then also - I do not remember what other risks were in terms of the fact that AAR was not - did not have a footprint in Africa.

Therefore - ja, but let - there were lists that were - were listed by CFST and management. Yes. So when - I think when the -  
20 the management sat and discussed we understand that okay. I think we - we thought this could have been something that was going to be managed.

**ADV KATE HOFMEYR:** Hm.

**MS MEMELA:** Yes.

**CHAIRPERSON:** But I thought that you were saying earlier on that the



- you were all shocked at the decision taken by the management ...

**MS MEMELA:** The Board.

**CHAIRPERSON:** By the Board.

**MS MEMELA:** Yes.

**CHAIRPERSON:** I am sorry ...

**MS MEMELA:** Hm.

**CHAIRPERSON:** And my understanding is that the decision you were talking about was the decision that AAR be appointed. Was I correct in understanding your evidence like that? That the decision that shocked  
10 you was the Board's decision to appoint AAR. Was I correct understanding that?

**MS MEMELA:** That - *ja*. That - that was the Board's decision to award - or make a decision ...

**CHAIRPERSON:** Yes.

**MS MEMELA:** To award there and there ...

**CHAIRPERSON:** Yes.

**MS MEMELA:** Because usually they send - like I even said there is no legislation against this or the rule.

**CHAIRPERSON:** Yes.

20 **MS MEMELA:** But like I mean we were used to the Board ...

**CHAIRPERSON:** There was a practice?

**MS MEMELA:** Yes.

**CHAIRPERSON:** *Ja*.

**MS MEMELA:** We were used to the Board when they are not happy about a certain submission - about a recommendation. They - they will

send it back for work or maybe say approved subject to ...

**CHAIRPERSON:** Subject to, *ja*.

**MS MEMELA:** Yes - or declined.

**CHAIRPERSON:** But what - did - did you mean that you did not have - you were not shocked by the fact that the Board said the tender should go to AAR. What you were shocked about - what - what shocked you was that the Board did not say we are happy that the tender should go to AAR, but we are sending it back to management to do the formalities?

10 **MS MEMELA:** Okay Chair. I am - I am going to repeat. I said I am - we - we were shocked ...

**CHAIRPERSON:** By what?

**MS MEMELA:** That the Board had made an immediate decision to award.

**CHAIRPERSON:** *Ja*.

**MS MEMELA:** Remember the - the recommendation is made by the - the ...

**CHAIRPERSON:** Management.

**MS MEMELA:** CFST and then through management until it gets to the  
20 Board ...

**CHAIRPERSON:** Yes. Yes.

**MS MEMELA:** And - and when the CFST makes that what the - the recommendation.

**CHAIRPERSON:** Hm.

**MS MEMELA:** It is based on - it is based on the evaluation ...

**CHAIRPERSON:** *Ja.*

**MS MEMELA:** And satisfied and ...

**CHAIRPERSON:** *Ja.*

**MS MEMELA:** Yes.

**CHAIRPERSON:** Yes.

**MS MEMELA:** Yes. So when the Board made that decision we were shocked with that, because we - we - like we were not used to ...

**CHAIRPERSON:** Were you shocked by the fact that the Board made a decision that went against management's recommendation.

10 **MS MEMELA:** Yes.

**CHAIRPERSON:** Is that what shocked you?

**MS MEMELA:** Yes. We were shocked about that Chair. The fact that it was against the CFST recommendation and management.

**CHAIRPERSON:** But how ...

**MS MEMELA:** But ...

**CHAIRPERSON:** How - how would you be one of those who were shocked if at the meeting you said you - SAAT Management supported that decision?

**MS MEMELA:** No. This was not the same meeting Chair.

20 **CHAIRPERSON:** Oh.

**MS MEMELA:** Remember ...

**CHAIRPERSON:** It is not the same meeting?

**MS MEMELA:** No. I said this is the meeting.

**CHAIRPERSON:** Oh. Okay. Okay.

**MS MEMELA:** The meeting for the Board was on

**CHAIRPERSON**: Okay.

**ADV KATE HOFMEYR**: The 9<sup>th</sup>.

**MS MEMELA**: 9 May ...

**CHAIRPERSON**: No. That is - that is fine.

**MS MEMELA**: And then that one was on - was on the 15<sup>th</sup>.

**CHAIRPERSON**: I must have misunderstood.

**MS MEMELA**: Yes.

**CHAIRPERSON**: Okay. Thank you.

**MS MEMELA**: So that followed after the Board decision. So it was ...

10 **CHAIRPERSON**: Had taken place?

**MS MEMELA**: Ja.

**CHAIRPERSON**: Okay.

**MS MEMELA**: It was not something that was said ...

**CHAIRPERSON**: Okay.

**MS MEMELA**: On the same.

**CHAIRPERSON**: Alright.

**ADV KATE HOFMEYR**: So by 15 June had you satisfied yourself about the justifiability of their reasons?

**MS MEMELA**: Had I satisfied ...

20 **CHAIRPERSON**: Well the answer can only be yes I had or no I had not.

**MS MEMELA**: Okay. No. I had not Chair.

**CHAIRPERSON**: Yes. That is crisp.

**ADV KATE HOFMEYR**: Thank you. So did the minutes not correctly record then what you reported to the meeting?

**MS MEMELA:** Okay Chair. When you support it does not necessarily mean you agree ...

**CHAIRPERSON:** (Indistinct).

**MS MEMELA:** With that person. Exactly. When - when management says we support ...

**CHAIRPERSON:** Hm.

**MS MEMELA:** The Board decision, because there is nothing you can change.

**ADV KATE HOFMEYR:** Hm.

10 **MS MEMELA:** They took that decision. Their - their senior power and even if maybe we - we had shown our dissatisfaction or maybe our - our disapproval. Maybe I will be sitting here being charged for insubordination. I do not know, but I am just saying supporting does not necessarily mean you agree with how the decision has been taken. It means like you respect authority ...

**CHAIRPERSON:** Well I ...

**MS MEMELA:** But at - at the same time Chair I am not saying ...

**CHAIRPERSON:** Hm.

**MS MEMELA:** I have - I had at that time when we were saying we  
20 supported - what - satisfied ... (intervenes).

**CHAIRPERSON:** Evaluated.

**MS MEMELA:** Yes.

**CHAIRPERSON:** Ja. You had not evaluated ...

**MS MEMELA:** Yes Chair.

**CHAIRPERSON:** But you are saying that when in this meeting you said

the SAAT Management supported the Board's decision.

**MS MEMELA:** Huh-uh.

**CHAIRPERSON:** You are saying that that did not mean - you are not meaning that the SAAT Management agreed with the decision?

**MS MEMELA:** Yes Chair, because I - I think even if I had said I disagree. There was absolutely nothing that I was going to do.

**CHAIRPERSON:** Well you see I - I do not understand your evidence when you say if you say you support. You do not mean you agree. I thought if you support something. It means you agree with it. I would  
10 understand if you said - if you said management - the SAAT Management will implement the Board's decision ...

**MS MEMELA:** Hm.

**CHAIRPERSON:** Because implementing does not necessarily mean you agree with it.

**MS MEMELA:** Huh-uh.

**CHAIRPERSON:** It might just mean, you accept that there is nothing you can do, your job is now to implement, not that the decision has been made but if you say you support, that suggests to me that you are happy with the decision.

20 **MS MEMELA:** But the decision, Chair, was made on the 9<sup>th</sup> of May and this meeting was on the 15<sup>th</sup> of July and...[intervenes].

**CHAIRPERSON:** But it could have been made the year before but if you didn't agree with it you would still not want to say you support it?

**MS MEMELA:** Then the only way that I could have shown my, maybe, disagreement will be if the Board would have sent back to CFST and

then we would have stood our ground maybe and said, okay we still recommending [indistinct] base don these grounds then should the board should decide otherwise then it's up to the Board, so they took the decision then and there.

**CHAIRPERSON:** Ja, Ms Hofmeyr?

**ADV KATE HOFMEYR:** Thank you, let's move then to your role in the contract negotiations Ms Memela if we may, I understand you to have been involved in those contract negotiations, is that correct?

**MS MEMELA:** Chair, involvement versus attending the first contract  
10 negotiation where all parties, like between SAAT and AAR / JM sit  
ja...[intervenes].

**CHAIRPERSON:** So you say limited involvement?

**MS MEMELA:** Limited involvement, yes Chair.

**CHAIRPERSON:** Okay.

**MS MEMELA:** Yes because after that then the negotiation was not – I was not involved in the negotiation.

**ADV KATE HOFMEYR:** Amongst the team who were negotiating were Ms Mbeki and Mr Kenny is that correct?

**MS MEMELA:** Yes Ms Mbeki from the legal framework point of view  
20 and Mr Kenny was there to guide in terms of – it's just that I don't remember who exactly were there but was there to guide in terms of the technical side of things yes.

**ADV KATE HOFMEYR:** Ms Mbeki has provided an affidavit to the Commission and it's been included in your bundle, she - let me take you to it, it's in DD25B and it commences at page 4-6-4.

**MS MEMELA:** Yes.

**ADV KATE HOFMEYR:** So this is an affidavit of Ms Mbeki who indicates in it that she was involved in the negotiations but I'd like to pick it up at paragraph 12 of her affidavit which is at page 4-6-7.

**MS MEMELA:** Yes.

**ADV KATE HOFMEYR:** At paragraph 12 there page 4-6-7 Ms Mbeki indicates the following, and I'll read it into the record,

10                   “Given the complexity and technical nature of the component support services Advocate Memela established a team of people to take part in the review and negotiation of the said agreement and then she goes on and she says, the said team consisted of the following officials”,

                  And then there's a list of a number of officials and she concludes that paragraph to say,

                  “The SAAT team was under the leadership of Advocate Memela with the assistance of Mike Kenny in their capacities as SAAT executive and executive committee members”,

                  Do you have any reason to dispute what Ms Mbeki says there about the fact that you were leading this SAAT team?

20   **MS MEMELA:** Leading the SAAT team throughout the negotiation or what?

**ADV KATE HOFMEYR:** Yes she said you established the team and then you led the team.

**MS MEMELA:** I suspect that maybe she did not put the date but I know that as she states here, this is the team Chair that was on that



first day that I'm talking about because we had noticed that people are coming from AR where they had senior people like Vice Presidents and all that, so we attended on this one, so it was not throughout the negotiation.

**CHAIRPERSON:** Did you remain the leader of the team throughout even if you did not attend every meeting?

**MS MEMELA:** The leader how Chair, where I negotiate...[intervenes].

**CHAIRPERSON:** Here she says,

10                   “The SAAT team was under the leadership of Advocate  
                      Memela”,  
                      Is that part correct?

**MS MEMELA:** Yes and my understanding is she's talking about that first day.

**CHAIRPERSON:** At that particular meeting?

**MS MEMELA:** Yes that first day yes.

**CHAIRPERSON:** But the – she says you established a team and she gives the names of people there is that correct?

**MS MEMELA:** Yes people who will be representing certain section.

**CHAIRPERSON:** Ja over a certain period of the negotiations isn't it?

20 **MS MEMELA:** Over a certain period but for me I only participated on that first day ja.

**CHAIRPERSON:** Ja but would those people not be reporting to you over that period?

**MS MEMELA:** No, no they will not be reporting to me because they will be – for instance Wellington Niswa...[intervenes].

**CHAIRPERSON:** Who would they be reporting to about progress in the negotiations?

**MS MEMELA:** Progress, like how far is the negotiations?

**CHAIRPERSON:** Ja to say we had a meeting these people are being difficult now or this and that or anything like that?

**MS MEMELA:** There's never been that kind of progress reporting Chair, that okay they report to Nontsasa now okay this is where we are and stuff, my understanding that once the contract is being negotiated people are independent to play their role as management because all  
10 these people that we see here they were part of management except – well [indistinct] was a specialist and Stan Vosloo.

**CHAIRPERSON:** Okay, Ms Hofmeyr?

**ADV KATE HOFMEYR:** Ms Mbeki says that you were not only in attendance at the first meeting, she says you were in attendance at the second set of meetings as well, we can find that at page 4-7-0 and at paragraph 18 she says,

“I do not remember the exact date of the second set of meetings but it also took place in June 2016, it took place over two days, I do not remember receiving a meeting  
20 invitation for this meeting and it does not appear in my diary but I confirm that I did attend the meeting. I was called to the meeting by Evelyn Fallett”,

Evelyn Fallett is that SAAT representative or an AAR representative?

**MS MEMELA:** Is a SAAT representative she's actually a specialist

**ADV KATE HOFMEYR:** And she goes on and says,

“I was called to the meeting by Evelyn Fallett who said that Advocate Memela had sent her to call me. It is at this meeting that the draft component support agreement was presented to the SAAT team by the JMAAR team, if I remember well the following team members were present on the first day of that meeting”,

So that’s the second set of meetings over two days, it took place in June, does this help jog your memory?

10 **MS MEMELA:** Chair I feel that...[intervenes].

**CHAIRPERSON:** Maybe we can take note of the fact that she starts that sentence, “if I remember well”.

**MS MEMELA:** No Chair I feel that if I should have received a Rule 3.3 in this...[intervenes].

**ADV KATE HOFMEYR:** It’s been in your bundle since last week...[intervenes].

**MS MEMELA:** No, no the Rule 3.3, I’m not talking about the bundle I’m talking about the Rule 3.3 where I’m supposed to respond to – when somebody is talking about me and...[intervenes].

20 **ADV KATE HOFMEYR:** No you get a 3.3 Ms Memela when there’s a witness whose evidence is going to be presented who implicates you. This is the evidence of a witness who is talking about, not whose giving oral evidence, whose affidavit is admitted provisionally and who’s just talking about who attended meetings.

**MS MEMELA:** No but Chair, here the affidavit says I was the leader of

the negotiation and I have led the negotiation throughout, I'm not sure about that because...[intervenes].

**CHAIRPERSON:** Okay well you see there have been ...[intervenes].

**MS MEMELA:** Because I'm not sure even...[intervenes].

**CHAIRPERSON:** Hang on, hang on, Ms Memela, there have been issues where people have said the Commission is bothering them by sending them Rule 3.3 Notices when they are not implicated by witnesses but the Commission has said, you know, sometimes it's clear that somebody's just been mentioned as in not being implicated in  
10 anything but sometimes difficult to say and therefore just to be on the safe side sometimes they send. So – but it's true to say, you know, the legal team needs to take a view whether somebody's name being mentioned is sufficient to be implicated but I thought Ms Hofmeyr was making the point that the Bundle was made available to Ms Memela some time back?

**ADV KATE HOFMEYR:** Yes, so Ms Memela received the full set of her bundles when she appeared for her evidence on Friday, so this has been in there since then. The second point is that, as you've indicated Chair, all that happens in Ms Mbeki's affidavit at this point, is she's  
20 talking about who was attending meetings at what point. That's on it's face, certainly the view of the legal team was that, that did not implicate Ms Memela.

**CHAIRPERSON:** Yes.

**ADV KATE HOFMEYR:** It is arising from her evidence that there seems to be a dispute between her and Ms Mbeki but that is only

something that we learn in the course of the evidence because it is as possible that when I put to Ms Memela, did you lead it, she might have said yes, she might have confirmed having been at more than one meeting but it's in the course of the evidence that she says it was only at one meeting and then I draw her attention to the different version that Ms Mbeki has. There's no reason why Ms Memela can't tell us she disagrees or the basis for why she disagrees.

**CHAIRPERSON:** Yes.

**ADV KATE HOFMEYR:** And so I submit that we continue to look at Ms Mbeki's affidavit.

**CHAIRPERSON:** Yes, Ms Memela?

**MS MBANJWA:** Thank you Chair I just want to point out, I see that every time there is a complaint from the Witness, Ms Hofmeyr raises the point, correctly from her perspective to say, you have had this bundle since Friday but let us be realistic, there is no human person who can be able to go through each and every item of these bundles if these bundles were given to a person or on Friday and I'm not wasting time Chair, I'm just putting it on record, even myself, ever since I came in back from Cape Town I started consulting, first on the videos, and I only had three hour's sleep. Yesterday I had two hour's sleep because we are receiving...[intervenes].

**CHAIRPERSON:** Well I had, only four.

**MS MBANJWA:** Yes Chairperson, maybe you even sleep less to be honest but all I'm trying to say – I'm saying irrespective of how little we sleep, these documents remain voluminous. So it is a bit, maybe – I

understand from the position she comes from because she is not in our position. For instance, and I just also want to put it on record here, if you look at the manner in which the evidence is being presented on the first day it will go on GPU's it is left, again on the second day it goes back to the GPU's. Even for me to concretised the evidence because it is being presented in such a jumbled manner, it's going to be a problem and I'm raising these issues now so that when we complain later, we have placed them on record Chair, thank you.

**CHAIRPERSON:** Yes.

- 10 **ADV KATE HOFMEYR:** Chair Ms Memela, until Friday morning was not – her public indication was that she wasn't going to be appearing on the morning of Friday that is the background to why the bundle is given to her on Friday morning and it's since that point that there has been available access to it. I fully understand Ms Mbanjwa's point that the documents are voluminous, they are we've had to get on top of them similarly and deal with things at quite a rate as additional statements – for example, Ms Memela's cross-examination applications, responses came in, in the course of last week. I don't intend to belabour the point there are one or two aspects of Ms Mbeki's affidavit that I'd like to put
- 20 to Ms Memela, if she believes she's not in a position to answer them, she can give that answer but it's really one or two further matters, if you give me leave to so?

**CHAIRPERSON:** Okay, no that's fine.

**ADV KATE HOFMEYR:** Thank you.

**CHAIRPERSON:** You understand that Ms Memela?

**MS MEMELA:** Yes Chair I will take the...[intervenes].

**CHAIRPERSON:** If you are not able to answer, you, don't remember or you need time to refresh your memory, you know.

**MS MEMELA:** Chair I will take the question but I feel that – remember I was affirmed that this was the fact-finding mission but as we continue and with all these new affidavits coming to me and before getting the Rule 3.3 that you mentioned, that you're being the leader of the negotiation, I feel everything about this ARJM is being pointed at me, that – because, like I'm being asked about like my support for the  
10 Board, what did I think and stuff and while I am still focusing on that how do I – and then there is here that I'm leading the negotiation. So that's why I was confused that leading the negotiation, does it mean that I'm the one whose running with the negotiation discussing them with the other lawyer from the other side, or was Ms Mbeki the one who was drafting and negotiating the agreement because that was my understanding that when Gugu was brought in SAAT...[intervenes].

**CHAIRPERSON:** Well let me say something to you about the question of whether you were leading the negotiations or the team, that's what I understand Ms Mbeki's affidavit to say but if you are asked the  
20 question, were you the leader of that team, you given an answer based on your own concept of the understanding of the concept of being a leader. If you say, as far as I'm concerned I was not the leader of that team because if you look at the number of meetings that were attended, I attended less than 20% of the meetings and the people were not reporting to me. So you give your own understanding to say, I don't

know what she has in mind, namely, Ms Mbeki but as far as I'm concerned I was not the leader, this was the position.

**MS MEMELA:** Yes, because until now, Chair, I'm learning as if maybe Ms Mbeki was not independent enough to draft or negotiate or review the contract on her own and...[intervenes].

**CHAIRPERSON:** Well, if as far as you know, she was the leader of the team, then you should say, as far as I know she was the leader. If it was somebody else, you say so.

**MS MEMELA:** She was leading the negotiations from the legal point of  
10 view.

**CHAIRPERSON:** Yes.

**MS MEMELA:** And like she was taking care of the legal framework and I remember during – as I said that I was there in the first meeting, and my understanding was that the reason why it was put, like, it was for her and the lawyer from AR to work on the template of the contract that was going to be worked on going forward and then once that is cleared out, with Mike and other people that were there that will be talking about the technical/commercial part of the contract then she will continue independently with the legal team of ARJM. Ja so know it's as  
20 if now it's – I don't know, maybe I'm interpreting it wrong...[intervenes].

**CHAIRPERSON:** No, no all I'm saying is that just because somebody is saying something about you that is not true, that doesn't mean it should be a problem, you can say that's not true at least on my understanding, that's not the position this is the position as far as I'm concerned. Okay alright, let's move on.



**ADV KATE HOFMEYR:** Thank you. Ms Mbeki refers to the second day of that second set of meetings at page 4-7-3 and she indicates at paragraph 25 there, that during the contract negotiation process – this is paragraph 25, there were a lot of instances where there was ...[intervenes].

**CHAIRPERSON:** Is that 25 of her affidavit?

**ADV KATE HOFMEYR:** Indeed Chair at page 4-7-3.

**CHAIRPERSON:** Okay.

**ADV KATE HOFMEYR:** She says,

10           “there were a lot of instances where there were disagreements between the SAAT team and the JMAAR team on some issues, some of the disagreements were so bad that I was accused by the JMAAR team of deliberately delaying the conclusion of the contract and frustrating the process. They told me that I keep on raising issues and/or concerns which are already discussed and agreed to with the SAAT team. I was even reported to my superiors for allegedly frustrating the process and causing a discord among the negotiating team.

20           I do not know when, what, how or to whom I was reported. I only came to the realisation that I was reported when Ms Shabalala informed me that Advocate Memela said she must tell me to call her urgently. This happened on the 2<sup>nd</sup> day and as I stated in paragraph 20, Advocate Memela did not attend the meeting that day. Upon receiving the message

from Ms Shabalala I called Advocate Memela, during the telephone conversation/discussion, Advocate Memela told me that she'd received a complaint, that I keep on raising issues which were already discussed before I joined the team the previous day and that as a result of my conduct the discussions were taking longer than necessary.

She also told me that this concern was also raised with the then Chief Executive Officer of SAAT who was also the Acting Group Chief Executive, Mr Musa Zwane. I admitted that I  
10 indeed had been alerted by the team that a lot of the issues that I was raising were already raised, discussed and resolved the previous day",

Do you recall that conversation that Ms Mbeki said you and she had?

**MS MEMELA:** I don't remember Chair.

**ADV KATE HOFMEYR:** And she goes on and talks about the remainder of the negotiations and her role in them. She particularly exercises the points in the contract that she was fighting for, being retained and then she tells us what happened in the final sing-off of the agreement.  
20 There are just two aspects I'd like to draw your attention to there, and for that purposes you'll have to go back to page 4-7-2 at paragraph 23.

**MS MEMELA:** Page 4-7-2.

**ADV KATE HOFMEYR:** Apologies Chair I see Ms Mbanjwa would like to make a comment.

**CHAIRPERSON:** Yes, Ms Mbanjwa.

**MS MBANJWA:** Thank you Chair, it's not an objection but I just want – my apologies Chair, I'm still far. This is not an objection but because the idea is a fact finding of this Commission, I'm just drawing the attention of Ms Hofmeyr to the fact that she has read from this paragraph selectively and with your permission Chair, I just want to point out that she must read the paragraph to the end, because what has been left out is also very important and if I can just include it quickly...[intervenes].

**CHAIRPERSON:** Hang on that quite appropriate for re-examination  
10 where you say, your – she might not be an opponent in a Commission set-up but you point it out in re-examination and you direct the attention of the witness to the whole part that should have been read.

**MS MBANJWA:** Thank you Chair, I don't want to be wrong on this, I just want Chair to take it into account in conducting these proceedings. I am trying to avoid objections because it wastes time now I'm saying to my colleague, because if my colleague is going to read documents take the prejudicial part and leave out the favourable part, it means therefore, that when I re-examine I'm going to technically re-examine on every document that she has presented to this Commission.  
20 Whereas it would be very easy, if for instance, she could have included what the admission is because if one looks at that paragraph it says that Ms Memela complained about the fact that Ms Mbeki was causing frustration because she was re-visiting things that had already been done. But there's a very important caveat to that, it says,

“I admitted that indeed I have been elected by the team that a

lot of the issues I was raising were already raised, discussed and resolved the previous day',

Therefore, there will be no need for me to re-examine because the paragraph itself contains the concession.

**CHAIRPERSON:** No I understand what you say but let's try – make a note and raise it in re-examination, issues like that because the more we have an interruption to talk about them, the more the delay whereas if she ends up not covering it, I will allow you to cover that to say, there is a part where she read only a certain part and left out a certain  
10 part, that's important for the witness's evidence. So make a note and I will allow you.

**MS MBANJWA:** Chair I'm not being – this is the last statement I'm making. I am saying Chair, if the documents presented to the Commission by Ms Hofmeyr were read in their fullness, including where the fullness will reveal the fact that the documents are not blaming Ms Memela that would save time because then I would not have to re-examine on those documents, like for instance, this is a very crisp example. Here is a document where an accusation is being made against Ms Memela, but that accusation has already, in it, a concession  
20 then Ms Hofmeyr deliberately doesn't read the concession so that she takes only the accusation, which therefore means I'm going to waste time because then I must...[intervenes].

**CHAIRPERSON:** You see she might, for the question that she was posing, she will talk for herself, she might not have seen that part as particularly important but you representing the witness, might see it's

importance. So that's why I'm saying it might have not have been deliberate but it's fine she'll talk for herself, but I'm emphasising that, make a note you get a chance when you re-examine to say, let's go to that page, Ms Hofmeyr read only up to this point before you answered, here is another point and then the witness can then deal with that.

**MS MBANJWA:** Thank you for your patience.

**CHAIRPERSON:** Okay.

**ADV KATE HOFMEYR:** Chair.

**CHAIRPERSON:** Ms Hofmeyr.

- 10 **ADV KATE HOFMEYR:** The transcript will bear out that I read that last sentence of the paragraph, I was absolutely scrupulous to ensure that I read the entire paragraph 25 and I included the last sentence that Ms Mbanjwa has just said publically, I deliberately omitted, I read it out, and the transcript, when we get it tomorrow will reflect that.

**CHAIRPERSON:** Yes, thank you.

**ADV KATE HOFMEYR:** Let us then move to what she says about the aspects that she emphasised in the course of the negotiations. One of the things that Ms Mbeki was...[intervenes].

**CHAIRPERSON:** Maybe, Ms Hofmeyr, I see we're at half past three.

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

**CHAIRPERSON:** If we are not going to adjourn at four, it might well be that we should talk now or if we are going to adjourn or not. I know that it's been difficult to keep to the timeframes that we were all hoping to keep. How far are you from finishing?

**ADV KATE HOFMEYR:** I have two more pages of notes to cover.

**CHAIRPERSON:** And that should – absent questions from me and assuming Ms Memela gives crisp answers as she did...[intervenes].

**ADV KATE HOFMEYR:** Yes and there aren't objections and comments I would imagine about twenty minutes.

**CHAIRPERSON:** About twenty minutes?

**ADV KATE HOFMEYR:** Yes.

**CHAIRPERSON:** Okay.

**ADV KATE HOFMEYR:** And can I just be clear, I'm not suggesting by my answer that there shouldn't be interruptions, I'm just endeavouring  
10 to give a timeframe on the only basis I can, which is what I can control.

**CHAIRPERSON:** No, no that's fine and then once you are done, which it looks like will be around 4 o' clock.

**ADV KATE HOFMEYR:** Yes.

**CHAIRPERSON:** Have you and Ms Mbanjwa talked about what...[intervenes].

**ADV KATE HOFMEYR:** We have.

**CHAIRPERSON:** What could happen after that, subject to my approval?

**ADV KATE HOFMEYR:** Indeed, it was always subject to your approval  
20 Chair but I did confirm with Ms Mbanjwa if she and Ms Memela are in a position to stay later than four, she did indicate to me that they were, they've travelled together so that they can both remain to beyond 4 o' clock. It would be our suggestion that we do use additional time, my grave concern is that we haven't even commenced Mr Nzeko's evidence today. So my proposal would be, I complete by four, then we move to

the re-examination that Ms Mbanjwa would like to conduct and we take that as far as we can. It would also be our suggestion that we try and start a bit earlier tomorrow because it is a short day, so that we can get as far into Mr Ndzeke's evidence as possible. Those are our proposals.

**CHAIRPERSON:** Well, we can go beyond four, but unlike was it yesterday? Ja, unlike yesterday when I could have gone up to six I do not think that I could go beyond five today. But the question arises if we can only go up to five, how much can we cover?

**ADV KATE HOFMEYR:** Well, Miss Mbanjwa's indication yesterday was that  
10 she would probably need about two hours for re-examination [intervenes].

**CHAIRPERSON:** She said much more, she wanted a good day. I was the one [intervenes].

**ADV KATE HOFMEYR:** And you confined her sorry. Apologies you absolutely right, but whatever amounted time you permit it would be my suggestion that using an hour beyond 4 o'clock to make some serious headway in the re-examination would be conducive [intervenes].

**CHAIRPERSON:** Ja, no, it would be.

**ADV KATE HOFMEYR:** Mr Ndzeke does need to start tomorrow in his evidence.

20 **CHAIRPERSON:** Yes, how long is Mr Ndzeke likely to take once he has started?

**ADV KATE HOFMEYR:** You know, Mr Ndzeke we do not have a statement or affidavit from, so and we still have not got an affidavit that has been promised to us for a week from his co-director in JM Aviation.

**CHAIRPERSON:** Yes.

**ADV KATE HOFMEYR:** But I was told by my learned friend that by lunch time it should have been coming through sometime this afternoon. I do not know if it has come through yet. Based on the areas that I proposed traversing with Mr Ndzeke, I should imagine half a day would be adequate for his evidence. That is why I am particularly keen to start tomorrow and hopefully finish.

**CHAIRPERSON:** Well, if we, if Miss Mbanjwa starts all that about, we can go up to five and I agree that whatever we can use should be used. Then if we start at, I do not know if we could start at nine, but maybe we can start  
10 at half past nine. Then if it is another hour that takes to half past ten or depending when we start at let us say up to eleven. That leaves us with very little time for Mr Ndzeke before I become unavailable.

**ADV KATE HOFMEYR:** Indeed.

**ADV KATE HOFMEYR:** So I have my reservations whether we would finish with Mr Ndzeke even if we started with him, and if we will not finish, if we are unlikely to finish it may well be that an alternative arrangement should be considered because he would have to come back anyway. And then attempts will be made to make sure that on the day he comes back he finishes on that day but one can never be hundred percent sure about these  
20 things. So that is what is going on in my mind rather than start with him tomorrow and not finish.

**ADV KATE HOFMEYR:** Yes. Understood Chair, indeed. The only challenge will be that we have an absolutely full schedule next week. There will be no period within next week to slot him in.

**CHAIRPERSON:** Well, we previously talked on the basis that we would not



sit on Friday.

**ADV KATE HOFMEYR:** Correct.

**CHAIRPERSON:** There may be a possibility that maybe we could sit from sometime about maybe after lunch or thereabout, but it may be that we might not need to do that if we can find another day [intervenes].

**ADV KATE HOFMEYR:** Another day

**CHAIRPERSON:** Within Feb, when Mr Ndzeke can then come back.

**ADV KATE HOFMEYR:** Chair why do I not do this, why do we not proceed with Miss Memela. I can then have engagements with Mr Ndzeke's legal  
10 team at the conclusion of today. Because whatever happens Mr Ndzeke's not starting today and then we can come back to you with a proposal for his evidence.

**CHAIRPERSON:** Ja, okay let us do that.

**ADV KATE HOFMEYR:** So if we can then just continue to round this off. Miss Memela one of the things that Miss Mbheki says she was pushing for in the negotiations, and you will find this at page 472 at paragraph 23. Was the inclusion of a penalties clause in favour of SAAT? Now we have looked at the contract previously in the evidence and we had the evidence of Mr Human about this. That penalties clause was not ultimately incorporated in  
20 the contract. Do you know what, it is a penalty clause in favour of SAAT. There is certainly a penalties clause that if SAAT does not perform then JM or AAR have penalties levied against SAAT. But there is no concomitant penalties clause against JM or AAR. Can you help us with insight as to why that proposal of Miss Mbheki's was not carried through in the contract?

**MS MEMELA:** Proposal to which Chair?

**ADV KATE HOFMEYR:** In the course of the negotiations of the contract?

**MS MEMELA:** I am not sure Chair because my understanding is that the only time when she was asked about why was the penalty clause not in the contract. She was asked by Airbus when I was Acting the Chief Procurement Officer at SAA. And then she defended and stated like which provision, that she had, but she had never to me said Boss, this is what happened. I was raising this point. It was kicked away or something like that. So I am not aware of it.

**ADV KATE HOFMEYR:** And did you take any steps to ensure in the  
10 contract negotiations that there would be a penalty clause in favour of SAAT?

**MS MEMELA:** Me?

**ADV KATE HOFMEYR:** Yes.

**MS MEMELA:** Okay Chair, Cookie, Miss Mbheki when she negotiate and drafts and reviews contracts, she does that since like she has been, she was what, appointed specifically for that, she does that independently without me. So me taking a contract from her and checking it, like that was, that has never been a norm, like okay I must check and finalize even in her sign-off form, sometimes when she finalize a contract she takes it to certain  
20 people, not to me to sign it off, because remember now I will be, we will be doing a duplicate work. She is a lawyer, I am a lawyer, so I am yes.

**ADV KATE HOFMEYR:** So what steps did you take in the contract negotiations to make sure that SAAT's interests were protected?

**MS MEMELA:** Okay I did not negotiate the contract Chair. The contract was negotiated by Miss Cookie Mbheki for legal framework.

**ADV KATE HOFMEYR:** So you did not play a role in the negotiations?

**MS MEMELA:** I did not play a role except when that first day Chair where you said it was put on the projector and then the provisions were put down of what should be in the contract and then like all the people that she listed in her affidavit were sitting there.

We looked at the projector. It was not something that me, as her boss like would be, ja, because I know she was doing that, one thing I do not know, I do not micro manage. All the Senior Managers that reported to me were doing their job independently, except when there is something they  
10 need my support. Because my understanding she was quite strong and knowledgeable in terms of negotiating and I showed her my support from the first day when we were sitting there, it was I remember like she was supporting the view that maybe, in fact I supported her on that, the view that maybe the JV or maybe what the JM Aviation should be an annexure to the contract. And the other point that I remember that she made, was like to make sure that the low-balling that the CFST had raised in terms of like AAR. She had put or she had forced AAR to agree to a certain provision that talks to capping or putting like I mean keeping fix the price until 2018 if I remember correctly. So like those were the provisions like I mean she  
20 discussed with me and I supported her. So, I do not know maybe Miss Hofmeyr did not understand our structure and stuff that certain things does not really come to me for my finalisation because Miss Cookie Mbekhi is not a junior lawyer.

**ADV KATE HOFMEYR:** No, but she was junior to you in the structure of SAAT, is that correct?

**MS MEMELA:** She was junior to me but like I mean SAAT was heading her legal and contracts management unit. According to me as H.O.D. Remember like I actually read the portfolios that I was heading.

**ADV KATE HOFMEYR:** So she reported to you but at no point prior to this agreement being concluded did you satisfy yourself as to its contents. Is that right?

**MS MEMELA:** I am saying Chair, I mean I was I gave her the independence to negotiate because I know her when she is not happy about something she will come to me in fact for like I mean ask if she needs my support. So that  
10 is why I am saying like I am surprised with the issue of the penalties that she said she was pushing for penalties and then she was not allowed but like she is not saying by who did not allow her I am surprised because this was raised by Airbus and she and the meeting was between myself her and Airbus and she had already moved to SAA at that time.

So she never raised this as something like she was not allowed she had pushed for it in fact she defended that okay but, even if this is not there still I mean there is this provision that are protecting SAAT.

**ADV KATE HOFMEYR:** So can I just get clear on the evidence you did not satisfy yourself as to the content of the agreement before it was signed on  
20 the 7<sup>th</sup> of July 2016. Is that correct?

**MS MEMELA:** I did not check or maybe finalise the contract because it was not negotiated by me.

**ADV KATE HOFMEYR:** And do you know that Miss Mbekhi did not get to check the contract either before it was signed?

**MS MEMELA:** I do not remember that.

**ADV KATE HOFMEYR:** Her evidence at page 475 at paragraph 29 of DD25(B) was the following

**MS MEMELA:** The page?

**ADV KATE HOFMEYR:** 475 it is a few pages on in her affidavit and I pick it up at paragraph 29. She says:

10                   “On the 7<sup>th</sup> of July 2016 my plan was to arrange a meeting with the SAAT team members to go through the agreement clause by clause as I usually do. I was not aware that the agreement had already been signed until about midday on 7<sup>th</sup> July 2016 when one of the other SAAT team members informed me that the agreement had already been signed. I cannot remember whether was Mr. Vosloo or Mr. Kenny who informed me about the signing of the contract. Upon hearing that the agreement is signed I then stopped reviewing it. I did also not go ahead with the plan of arranging a meeting with the other team members to further deliberate on the agreement because the said agreement had already been signed.”

20   Who arranged for the signing of the agreement Miss Memela?

**MS MEMELA:** Chair, I would not know remember the signing of agreement share will be arranged by the person who was working on the agreement naturally. So I am not sure like who [intervenes].

**ADV KATE HOFMEYR:** So, it was not Miss Mbekhi, who could it have been?

**MS MEMELA:** No, I do not know because like I am seeing this evidence now I do not know if she said she was not the one [intervenes].

**CHAIRPERSON:** You would have expected her to have been the one.

**MS MEMELA:** She should have been the one because remember she was the one who was negotiating with the legal person from AAR so I do not understand why at what point that [intervenes].

**CHAIRPERSON:** And it seems strange that if she was the leader from the legal point of view in the negotiations of the contract it seems strange that while the leader legal team so to speak who was to advise whether the  
10 contract is ready for signing while she was reviewing looking at the contract clause by clause somebody decided it should be signed.

**MS MEMELA:** Ja

**ADV KATE HOFMEYR:** You have no knowledge about that.

**MS MEMELA:** I have no knowledge about that.

**CHAIRPERSON:** Ja okay.

**ADV KATE HOFMEYR:** She goes on in her affidavit to explain the standard practice that she follows to ensure that there is proper review when she said she had no opportunity to do that. But, I take it that your evidence says you do not know how that signing was arranged. Is that correct?

20 **MS MEMELA:** Ja, I do not know Chair.

**ADV KATE HOFMEYR:** I would like to pick up on my final point before concluding aspects [intervenes].

**CHAIRPERSON:** And that I am sorry that has to be taken to also mean that you were not at the signing of the, did not attend the signing of the agreement.

**MS MEMELA:** I do not remember Chair can we if the contract is here can I be directed to it?

**CHAIRPERSON:** I want to look at this signature page.

**ADV KATE HOFMEYR:** Yes, certainly. I just put it away, I am sorry I have, where were we? Right, we were in

**CHAIRPERSON:** The signatures are at 489 490 491 is that right, or am I in on a different contract?

**ADV KATE HOFMEYR:** There are two contracts and I just want to be sure that we are not in the wrong one. One is the Swissport and the other is the  
10 components and I literally just have it in front of me.

**CHAIRPERSON:** Oh.

**ADV KATE HOFMEYR:** Let me find it, Chair. Oh here we go, here we go, here we go. Alright sorry. Apologies. It is DD22(F) and you are not reflected on the signature page Miss Memela I will take you to it the agreement commences there at 2318

**MS MEMELA:** 2318?

**ADV KATE HOFMEYR:** 2318 and you will find a signature page at 2333.

**MS MEMELA:** Oh, which bundle?

**ADV KATE HOFMEYR:** At DD22(F).

20 **MS MEMELA:** 22(F)?

**ADV KATE HOFMEYR:** Yes.

**MS MEMELA:** Ja, page?

**ADV KATE HOFMEYR:** The signature page is two triple three 2333. There is no indication on that page that you were signatory to the agreement, do you see that?

**MS MEMELA:** I just want to go to the first

**ADV KATE HOFMEYR:** Yes, the first page is 2318.

**CHAIRPERSON:** It is interesting that there were no witnesses to the signing of this contract.

**ADV KATE HOFMEYR:** Indeed, Chair. The other thing that is noteworthy. I will take you to some of the clauses, the clauses are very oddly numbered. If you go to for example to page 2325 where I am actually going to pick it up you have got a heading there for pricing and payment sorry at 2325 you have got clause four there pricing and payment and then the first sub clause  
10 is 4.23. This is it is all over this agreement.

**CHAIRPERSON:** Oh. Yes.

**ADV KATE HOFMEYR:** Which does seem to lend some credence to the notion that this was rushed towards the end because these would have been points presumably that Miss Mbekhi would have picked up on. So it is very strangely arranged. Miss Memela I would like to take you next to 2325 because there is a particular clause there that is the last aspect I would like to deal with you in evidence.

**MS MEMELA:** Hmm.

**ADV KATE HOFMEYR:** Do you have 2325?

20 **MS MEMELA:** Sorry, 23?

**ADV KATE HOFMEYR:** 2325.

**MS MEMELA:** Oh.

**ADV KATE HOFMEYR:** Miss Memela just before we get to this clause we dealt with Mr Kenny's affidavit in the evidence of Mr Human that was an affidavit where there was an implication in respect of you, and so you



received a 3-3 notice. Mr Kenny indicated that after the contract was concluded he attended a meeting with you at which he requested to be given a copy of the full contract and you said to him he could only have the page relevant to him and he makes the allegation that you had said that was to protect him. Do you have a response to that?

**MS MEMELA:** Chair my understanding of Mr Kenny's affidavit, it was referring to the collaboration agreement. Yes that was [intervenes].

**ADV KATE HOFMEYR:** No it was referring to the components agreement but do you have a recollection of a meeting with him at which you said that  
10 he should not be given a full copy of the agreement [intervenes].

**CHAIRPERSON:** Maybe let us go to that document, I mean that is what Miss Mbanjwa and Miss Memela would like. Let us go to where he says that.

**ADV KATE HOFMEYR:** I just need to find which one it is going to be in. It is in G. It is in 22(G), ah yes.

**MS MEMELA:** 22(G)?

**ADV KATE HOFMEYR:** 22(G) and you pick it up, apologies, Mr Kenny's affidavit begins at 3150. That is where the affidavit starts and the relevant paragraph I am referring to is at page 3155. So we are in DD22 (G) and we are at page 3155. This is in Mr Kenny's affidavit. And in paragraph 23 on  
20 that page, I will just read it into the record, he says:

"At one of the Exco meetings after the agreement with AAR, JM Aviation had been signed, I asked to be provided with a copy. Miss Memela told me I could not be given a copy of the full contract and would only be given a part of it. I took issue with this and asked why

I could not be given the whole contract and Miss Memela said that it was to protect me. I did not understand what that meant at the time and I still do not understand what she was conveying. I have never seen the full contract.”

Do you have a response to that?

**MS MEMELA:** Chair, I think I may have read, oh I have not responded to this affidavit, I think.

10 **ADV KATE HOFMEYR:** No you have not provided any statement or anything but we have the opportunity now just to ask you now what your response is.

**MS MEMELA:** No, I do not remember this discussion with Mr Kenny.

**ADV KATE HOFMEYR:** Did you receive [intervenues].

**MS MEMELA:** Was it a verbal discussion, written discussion?

**ADV KATE HOFMEYR:** He says he asked to be provided with a copy [intervenues].

**CHAIRPERSON:** Ja I think he says it was at a meeting.

**MS MEMELA:** It was?

**CHAIRPERSON:** He says it was at a meeting

20 **MS MEMELA:** At a meeting

**CHAIRPERSON:** Of Exco, if I

**MS MEMELA:** At Exco?

**ADV KATE HOFMEYR:** Yes.

**CHAIRPERSON:** So it would have been verbal. Ja. He says at one of the Exco meetings after the agreement with AAR stroke JM Aviation had been

signed.

**MS MEMELA:** Chair, I am, I have raised this concern again before, I feel that I do not know, I may be wrong, the way people are writing about Nonsasa to an extent, where even Mr Human, Skalk Human, who has never set eyes on me has something to say about me. I am not sure if they are being guided or something, but like I will just like answer the part where it is not even possible that MR Kenny, remember first of all I do not manage contracts. There is no way that like he will ask me for the signed contract especially during Exco meeting that is chaired by Mr Assan Malolo Phiri, 10 who was an acting CEO who signed the contract. You understand like I mean I am not sure why he would ask me specifically for the contract instead of asking Mr Assan Malolo Phiri the signatory to the contract.

**CHAIRPERSON:** Well he may, he may have asked you because he says in another paragraph of his affidavit, paragraph 21, the page before the one where there is paragraph 23, she says you and Miss Mbheki were responsible for the legal aspects during these negotiations with Miss Mbheki taking the lead on the drafting. So she [intervenes].

**MS MEMELA:** So you see [intervenes].

**CHAIRPERSON:** Where you said Miss Mbheki was as far as you are 20 concerned supposed to be the leader of drafting maybe part of what he says here supports that.

**MS MEMELA:** Yes.

**CHAIRPERSON:** But he does say that you and Miss Mbheki were responsible for the legal aspects or during the negotiations. Maybe that is why he was asking you for a copy.

**MS MEMELA:** But Chair, Mike knows that I only managed contracts when I was holding Miss Mbheki's position. Legal and contracts manager. So there is no way he will ask me because from procurement now I was not managing any contracts, yes.

**CHAIRPERSON:** Okay.

**MS MEMELA:** That was the role of Miss Mbheki and I am saying now since Miss Mbheki, in fact Miss Mbheki was taking part in Exco when Mr Zwane had gone and acted at SAA. So I am saying with Miss Mbheki there and Mr Assan Malolo Phiri they being the signatory of the contract. Both in  
10 attendance in Exco and then he specifically asked for the copy of the contract from me. Chair no, it just does not add up, ja.

**ADV KATE HOFMEYR:** Miss Memela did you ever receive yourself a copy of the contract after it was signed?

**MS MEMELA:** I think during the time there was where we were supposed to go to U.K. and oh no no, in fact before that. When Air France took SAAT to court so we had to get a copy, it is just that I do not remember where we got the copy from, but we had to get all those copies, as much as we had to get the tender documentation from the CFST to respond to National Treasury, to respond to Miss Dudu Myeni, who was also asking questions about the  
20 award and stuff, ja.

**ADV KATE HOFMEYR:** So you do recall at some point because that litigation was actually quite shortly after the award was it not?

**MS MEMELA:** It was shortly after the award, yes.

**ADV KATE HOFMEYR:** So it would have been around the time of the conclusion of the contract then that you did get a full copy?

**MS MEMELA:** It will have been around the time when we were preparing to defend the matter in court.

**ADV KATE HOFMEYR:** Thank you.

**MS MEMELA:** Yes.

**ADV KATE HOFMEYR:** I would then like to [Intervenes].

**MS MEMELA:** Sorry Miss Hofmeyr I just, because this is written it is still about AAR and JM. Can I direct you to DD25(B).

**CHAIRPERSON:** Just repeat what you are saying? When you do that part of what you say, we cannot hear.

10 **MS MEMELA:** Exhibit DD25(D) that is my file Chair.

**CHAIRPERSON:** Yes, yes, what do you want us to look at?

**MS MEMELA:** I would like us to go to page 487 of that file.

**CHAIRPERSON:** Ja. Is that in response, to respond to a question?

**MS MEMELA:** I am trying to see what is this documentation?

**CHAIRPERSON:** Which documentation?

**MS MEMELA:** The one on page 487 Chair of DD25.

**ADV KATE HOFMEYR:** It is an annexure to Miss Mbheki's affidavit.

**MS MEMELA:** Is this part of the contract or? Let me [intervenes].

20 **ADV KATE HOFMEYR:** No it is not, Miss Mbheki explains what it is at page 469 in paragraph 17

**MS MEMELA:** four six nine?

**ADV KATE HOFMEYR:** She says in the meeting on 3 June 2016, the team discussed the binding agreement to enter into definitive documentation. The said agreement is dated 3 June 2016, for ease of reference see annexure 3.

**CHAIRPERSON:** But why do you want us to go there Miss Memela?

Because we are still with Mr Kenny's affidavit.

**MS MEMELA:** No, no, no, I was just like still, my mind is still in the AAR contract, there being signed and then I see this one.

**CHAIRPERSON:** Okay let us, Miss Hofmeyr is about to finish her questions, let your mind come back.

**MS MEMELA:** Okay, sorry Chair.

**ADV KATE HOFMEYR:** Miss Memela I wanted to draw your attention to one of the provisions of the signed agreement which you have confirmed for us you did see at a point when the litigation was being pursued by Air France,  
10 and you will find that in DD22 at page 2325.

**MS MEMELA:** Ja.

**ADV KATE HOFMEYR:** It was the one I drew your attention to a moment ago. This is a clause that we dealt with in Mr Human's evidence and the clause that is relevant is Clause 4.26 at the bottom of that page. And I would just like us to look at it because there is going to be a series of questions that flow from it so it will be useful just to have it in the front of our minds. What it says at 4.26 is:

“Prior to the commencement date JM AAR will invoice  
SAAT for the deposit.”

20 **CHAIRPERSON:** I am sorry, are you at 2325?

**ADV KATE HOFMEYR:** I am at 2 ...[intervenes]

**CHAIRPERSON:** I am sorry.

**ADV KATE HOFMEYR:** Apologies Chair

**CHAIRPERSON:** Are you at 2325?

**ADV KATE HOFMEYR:** I am at 2325 and I am reading from the last clause on that page 4.26 [Intervenes].

**CHAIRPERSON:** Okay

**ADV KATE HOFMEYR:** Apologies.

**CHAIRPERSON:** Actually, we may. Oh no, okay let us continue because I think you were close to finishing [Intervenes].

**ADV KATE HOFMEYR:** I am indeed

**CHAIRPERSON:** I am not putting pressure on you [Intervenes].

**ADV KATE HOFMEYR:** No,no,no.

10 **CHAIRPERSON:** Just that I was thinking whether there should be an adjournment but let us finish first and then we can take it from there.

**ADV KATE HOFMEYR:** I think Miss Mbanjwa would like to say something.

**CHAIRPERSON:** Miss Mbanjwa would you like to say something?

**MS MBANJWA:** No, not really. It is a personal thing Chair [Intervenes].

**CHAIRPERSON:** Oh

**MS MBANJWA:** I want to just get a quick comfort break and come back just now.

**CHAIRPERSON:** Oh okay, no. That is fine, let us do that. Ten minutes?

**ADV KATE HOFMEYR:** Yes

20 **CHAIRPERSON:** Is ten minutes fine?

**MS MBANJWA:** It is more than enough.

**CHAIRPERSON:** Okay, let us just say ten minutes. So we will resume at quarter past.

**ADV KATE HOFMEYR:** Thank you Chair

**CHAIRPERSON:** We are adjourned.

**REGISTRAR:** All rise.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** Yes Ms Hofmeyr.

**ADV KATE HOFMEYR:** Thank you Chair. We were going to look at clause 4.26 on page 2325 of Exhibit DD22F. And because it is going to frame the next set of questions, I propose just to read the clause into the record. It provides the following;

Prior to the commencement date JM/AAR will invoice SAAT for the deposit.

- 10 SAAT will pay the deposit by way of irrevocable stand by letter of credit from a bank acceptable to JM/AAR and in a form to agree to by JM/AAR.

The parties agree that;

4.26.1 JM/AAR will have the right to set off any SAAT invoices not paid by its due date against the deposit.

4.26.2 SAAT shall when necessary throughout the term of this agreement replenish the deposit to maintain the amount invoiced by JM/AAR prior to the commencement date.

- 20 4.26.3 At the time of expiration of termination of this agreement JM/AAR will arrange for the release of the deposit to the extent that SAAT has paid all outstanding invoices.

Ms Memela, you had a copy of the agreement at the time



around which it was signed and the litigation. Did you have cause to look and consider this particular clause?

**MS NONTSASA MEMELA:** No, I did not Chair. I do know that from the- that first meeting that I was referring to, the deposit was part of the condition's precedence between both parties. And there was conditions precedent for SAAT as well and as much as there was conditions precedent for the other party. So that was discussed on the first meeting.

**ADV KATE HOFMEYR:** But what was concluded was actually an arrangement whereby there will be an irrevocable standby letter of credit  
10 from a bank which would serve the purpose of the deposit. Is that not correct?

**MS NONTSASA MEMELA:** According to the contract, yes that is correct.

**ADV KATE HOFMEYR:** Yes. So, then I would like to just follow up on what happened with the payment of cash to AAR because what starts to happen in September of 2016 is that it appears that AAR starts to raise the issue of why it has not been paid a deposit. Do you recall that?

**MS NONTSASA MEMELA:** I recall Chair that they were not paid because SAAT was not in a good financial space I think so SAAT could not pay that. But I think the person who can answer that better will be the CFO of the  
20 company.

**ADV KATE HOFMEYR:** Well there is quite a bit of correspondence involving you so that is why I would like to take you to that.

**MS NONTSASA MEMELA:** Okay.

**ADV KATE HOFMEYR:** And we can commence that in your file DD25B at page 649.2.

**MS NONTSASA MEMELA:** Page?

**ADV KATE HOFMEYR:** 649.2

**MS NONTSASA MEMELA:** Ja.

**ADV KATE HOFMEYR:** Okay. So, 649.2 the first of the emails in this email chain is in the second half of that page.

**MS NONTSASA MEMELA:** Yes.

**ADV KATE HOFMEYR:** It is an email from Ms Phumeza Nhantsi, who was she?

**MS NONTSASA MEMELA:** Phumeza Nhantsi Chair is the- was the former  
10 Group Chief financial Officer of SAA.

**ADV KATE HOFMEYR:** Chair you will recall we had Ms Nhantsi give evidence in June of last year before the Commission.

**CHAIRPERSON:** I was trying to remember whether ... (intervenes)

**ADV KATE HOFMEYR:** You remember?

**CHAIRPERSON:** The name is the same.

**ADV KATE HOFMEYR:** Indeed.

**CHAIRPERSON:** Ja okay.

**ADV KATE HOFMEYR:** It is indeed. And she sends an email to Mr Michael Klein and Dev Arya and it is copied to yourself and Mr Musa Zwane. Is that  
20 correct?

**MS NONTSASA MEMELA:** She sends the email to Michael Klein being the- from what do you call this? It is the department reports to finance from SAA but just for- Treasury Department and then Mr Dev Arya- I thought I should explain since Ms Hofmeyr wanted me to explain also Phumeza Nhantsi that I

should explain others as well thereon. And then Dev Arya is the CFO- was the CFO of SAAT.

**ADV KATE HOFMEYR:** And then it is copied to yourself and Mr Zwane, is that correct?

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

**ADV KATE HOFMEYR:** And it is dated the 29<sup>th</sup> of September 2016?

**MS NONTSASA MEMELA:** Yes, that is correct.

**ADV KATE HOFMEYR:** And just to read into the record what Ms Nhantsi says on that email. She says;

10 Good day, my understanding from the discussion that I had with the ACEO- I take that to be Acting CEO – AAR now wants us to pay them 1 month deposit which is equivalent to 1 million US dollars. We can make the payment if you can facilitate the paperwork.

As I understand that it is part of their policy that we should pay a deposit which we did to the previous service provider.

And then the next email in response is from Mr Klein to Ms Nhantsi, Mr Arya and copied again to yourself and Mr Zwane. It is on the same day a little bit later. And Mr Klein says;

Dear all, please discuss with AAR the possibility to replace the cash security  
20 deposit with a bank guarantee or standby letter of credit sometime in the future. If it is not currently a clause in the agreement. It is a standard clause we have introduced into aircraft lease agreements as well.

**MS NONTSASA MEMELA:** Mm-hmm.

**ADV KATE HOFMEYR:** And then if you go back a page to page 649.1 you will see your response to that group of recipients. Could you read into the record what you said in response to Mr Klein?

**MS NONTSASA MEMELA:** From page 6.- 649.1?

**ADV KATE HOFMEYR:** Indeed.

**MS NONTSASA MEMELA:** Yes, at the bottom there.

**ADV KATE HOFMEYR:** Yes.

**MS NONTSASA MEMELA:** We will do Michael. All I remember during the negotiations we fought against this and they confirmed that this is part  
10 of their policy. Unfortunately, we could not walk away and automatically disqualify them because the deposit or lack thereof was never part of our tender requirement.

So, we can safely say that Air France one would have been a better deal as this deposit is still part of the price in the contract. We still stand to save a significant saving out of this. Thanks Michael.

**ADV KATE HOFMEYR:** Ms Memela why did you not respond to Mr Klein and say, no, no, it is not a problem. The agreement does actually only make provision for an irrevocable standby letter of credit?

**MS NONTSASA MEMELA:** Mm? Why did I not say- sorry, can you repeat  
20 that?

**ADV KATE HOFMEYR:** Because what Mr Klein is saying is he saying; we are now being asked to pay cash of 1 million US dollars and he says to you at page 649.2;

Please discuss with AAR the possibility to replace the cash security deposit with a bank guarantee or a standby letter of credit sometime in the future is it is not currently a clause in the agreement, right.

And your response to him was;

Reflecting on the negotiations and that you fought hard and ... (intervenes)

**MS NONTSASA MEMELA:** No, the first on before the negotiations say, we will do Michael.

**ADV KATE HOFMEYR:** Indeed.

**MS NONTSASA MEMELA:** Yes. Meaning we will check what he said should  
10 be checked.

**MS NONTSASA MEMELA:** Oh, so you did check, did you?

**MS NONTSASA MEMELA:** No, no, I am say- you say why did I not just- that is why I am saying Chair the response to Michael was, we will do Michael.

**CHAIRPERSON:** Yes.

**MS NONTSASA MEMELA:** And then I just went on to explain to him as I was saying it was part of the condition's precedent. I remember this because it was discussed in that meeting.

**ADV KATE HOFMEYR:** Okay.

**CHAIRPERSON:** Yes.

20 **MS NONTSASA MEMELA:** First meeting so I went just through that because he is sitting at Treasury at SAE that is why I had to explain who is who so that he understands the background.

**CHAIRPERSON:** Okay.

**MS NONTSASA MEMELA:** Yes.

**ADV KATE HOFMEYR:** Okay. Thank you. So sorry, I did misunderstand.  
So then did you go and check the agreement?

**MS NONTASASA MEMELA:** I will not remember right now. Remember ...  
(intervenes)

**CHAIRPERSON:** But you are- you ... (intervenes)

**MS NONTASASA MEMELA:** When I say ... (intervenes)

**CHAIRPERSON:** Hang on one second.

**MS NONTASASA MEMELA:** Okay Chair.

**CHAIRPERSON:** But is my understanding correct that that what you have  
10 just said is that you were saying, you will check the agreement?

**MS NONTASASA MEMELA:** I said we.

**CHAIRPERSON:** Ja we.

**MS NONTASASA MEMELA:** We will do.

**CHAIRPERSON:** Yes.

**MS NONTASASA MEMELA:** We will do. That involves the CFO ...  
(intervenes)

**CHAIRPERSON:** Checking of the agreement.

**MS NONTASASA MEMELA:** Of SAAT because he is the- no, he said we must  
check with AAR.

20 **CHAIRPERSON:** Mm.

**MS NONTASASA MEMELA:** If the replacement of ja and that is the financial-  
what, topic. Ja, so my understanding, that will be done through finance not  
me checking directly. So, I am not sure if I checked that.

**ADV KATE HOFMEYR:** Sorry, but I understood you to emphasise a moment  
ago in response that you said, we will do that.

**MS NONTSASA MEMELA:** Yes. I was reading that because you were focusing on the negotiations only. So, I am saying I did respond to Michael. Because you were saying why did I not respond and say this. So, I am saying I did say, we will do Michael.

**ADV KATE HOFMEYR:** Indeed.

**MS NONTSASA MEMELA:** Yes.

**ADV KATE HOFMEYR:** So, what did you do?

**MS NONTSASA MEMELA:** I do not remember.

**ADV KATE HOFMEYR:** You do not remember?

10 **MS NONTSASA MEMELA:** No.

**ADV KATE HOFMEYR:** Okay. Oh, there seems to be a comment.

**CHAIRPERSON:** Oh Ms Mbanjwa, you had your hand up. I did not see it.

**MS L MBANJWA:** Oh, sorry Chair.

**CHAIRPERSON:** I did not see it but okay yes.

**MS L MBANJWA:** Yes, sorry Chair that I should have waited for you. No Chair, I am just correcting. What I think is going to confuse Ms Memela. What Ms Hofmeyr started by doing was to read from volume DD22 2325 and that is the agreement. So, she directed our attention to clause 4.26 which is already an agreement that is there. And that agreement does have a clause

20 that says;

prior to the commencement date JM/AAR will invoice SAAT for the deposit. SAAT will pay the deposit by way of an irrevocable standby letter of credit from a bank acceptable to JM/AAR and in a form agreed to by JM/AAR.

So that clause is there. Now this other document which is Exhibit DD25B Ms Memela's bundle if I could call it that. There is that letter in ... (intervenes)

**CHAIRPERSON:** Next time you check just check and stop speaking and come back to the mic and speak. Because when they transcribe there will be a lot of inaudible for during the time when you were looking at the file.

**MS L MBANJWA:** Okay.

**CHAIRPERSON:** So then not everything you say will be captured in terms of the transcript.

10 **MS L MBANJWA:** Thank you Chair.

**CHAIRPERSON:** Okay alright.

**MS L MBANJWA:** I can continue.

**CHAIRPERSON:** Continue ja.

**MS L MBANJWA:** Then in this bundle DD25 page 649.2 there is that email from Michael Klein dated the 29 September which says; please discuss with AAR the possibility to replace the cash security deposit with a bank guarantee or standby letter of credit sometime.

20 So, what I am trying to point out is that that clause for 4.26 already provides for substitution of a cash security deposit with a bank guarantee or a standby letter of credit. So, why I am scared that Ms Memela is being asked to answer is because what she- what Ms Hofmeyr is saying she should have checked is something which is already in that agreement. It is there. I just do not know why the parties had this engagement. Maybe the party you asked was not aware of the provisions of this contract.

**CHAIRPERSON:** Yes. I think let us leave Ms Hofmeyr to ... (intervenes)



**MS L MBANJWA:** Thank you Chair.

**CHAIRPERSON:** Conduct the questioning. Ja okay alright.

**ADV KATE HOFMEYR:** So, Ms Memela I understand your evidence to be you do not recall what you did to follow it up. Is that right?

**MS NONTSASA MEMELA:** I do not recall what I did to follow that up but I do know that it is finance that is supposed to do- dealing with this thing which is my understanding is that the reason why at the first place Ms Pumaza Nhantsi was involved. She was the group Chief Financial Officer whom is the one who actually approves from Treasury what should be paid  
10 to which supplier.

**CHAIRPERSON:** Mm-hmm.

**ADV KATE HOFMEYR:** So, at no point after these email in September did- well let me ask it differently. Did you at any point after these emails in September of 2016 go and get the contract and looked for the provisions in relation to the deposit?

**MS NONTSASA MEMELA:** I do not remember Chair.

**ADV KATE HOFMEYR:** Well let us go to what then happens because there is a jump in time to about April 2017 in the correspondence that we have in relation to this matter. And you will find that in your bundle DD25B.

20 **MS NONTSASA MEMELA:** Mm-hmm.

**ADV KATE HOFMEYR:** At page 650.

**MS NONTSASA MEMELA:** Ja.

**ADV KATE HOFMEYR:** No at 650 there is an email there from Mogotso Masese, who is that?

**CHAIRPERSON:** I am sorry, at what page?

**ADV KATE HOFMEYR:** Apologies Chair. We are at 650.

**CHAIRPERSON:** Okay.

**ADV KATE HOFMEYR:** And I am starting at the bottom of the page to follow the chronology.

**MS NONTSASA MEMELA:** Chair can we before we get to Makgotso, start from the email from AAR right before Makgotso?

**ADV KATE HOFMEYR:** Oh, over the previous page. Yes, certainly let us start at 651.

**MS NONTSASA MEMELA:** Yes. There is that email Chair where Makgotso  
10 then is I guess he is following up on.

**CHAIRPERSON:** Oh okay.

**MS NONTSASA MEMELA:** The email is coming from Mr Mathew Dobbs from AAR.

**CHAIRPERSON:** Mm-hmm.

**MS NONTSASA MEMELA:** Returned to Makgotso Mosese. Ms Hofmeyr asked me who is Makgotso. Makgotso is Management Accountant of SAAT form finance department.

Dear Makgotso, hope you are well. In attachment you will find the statement of account. We are 3 invoices overdue, would you please have a look and  
20 let me know if you need additional info from us.

In addition, you will find the late fee calculation sheet. I remain at your disposal for any additional info you need.

And then Makgotso responds adding Wellington who was the Business Analyst ... (intervenes)

**ADV KATE HOFMEYR:** Ms Memela just to interject there, I do not think it is the response to Mr Dobbs. I think what Makgotso Mosese does then is- it is an internal correspondence. Is that right?

**MS NONTASASA MEMELA:** Yes. That is why I said he- she followed up or maybe sent it to the internal people.

**ADV KATE HOFMEYR:** Yes.

**MS NONTASASA MEMELA:** Based on Mr Dobbs email.

**ADV KATE HOFMEYR:** Yes, and what does she say?

**MS NONTASASA MEMELA:** She is writing to Wellington Nyuswa from finance  
10 as well, he was the manger there.

Hi Wellington, AAR is enquiring about the security deposit invoice that we were contractually suppose to pay. The payment never happened.

Wellington, I believe the expense authorisation was last with you. I do not quite remember why the payment was never made but I think it had something to do with Treasury.

Please remind of why we never made this payment so that I can give AAR an appropriate response.

And then Dev Arya the Chief Financial Officer response on the same date ... (intervenes)

20 **ADV KATE HOFMEYR:** And Ms Memela he now includes you in the response. Is that right?

**MS NONTASASA MEMELA:** He includes me in the response and then he adds Bongile Mtembo.

Hi Makgotso, please refer the query to Nontsasa and she will respond directly.

**ADV KATE HOFMEYR:** And then your response is at the top of the page.

What did you say?

**MS NONTSASA MEMELA:** My response at the top of the page.

Dear Makgotso, according to the contract we have with AAR we are actually supposed to have made a payment for security deposit upfront before they ever started providing services for us. That was conditions precedent.

What happened then, we negotiated with them to pay one month upfront instead of the whole three months security deposit. We again negotiated with them to only charge the remaining two months by including it to the

10 normal invoice and spread it over six months.

This exercise was supposed to have happened two months ago already. I am not sure why they are not paid.

**ADV KATE HOFMEYR:** Ms Memela what I am interested in there is your introductory words. According to the contract we have with AAR.

**MS NONTSASA MEMELA:** Mm-hmm.

**ADV KATE HOFMEYR:** We were actually supposed to have made a payment for security deposit upfront.

**MS NONTSASA MEMELA:** Mm-hmm.

**ADV KATE HOFMEYR:** Before they even started providing services for us.

20 **MS NONTSASA MEMELA:** Ja.

**ADV KATE HOFMEYR:** That is not what the contract provides.

**MS NONTSASA MEMELA:** On the condition's precedence Chair- that is why I say the discussion was that we- SAAT will pay three months upfront but through the negotiations they were able to agree on certain changes as I just stated in my email.

**ADV KATE HOFMEYR:** Yes. Why would you say that the contract that was concluded with AAR required a payment of a deposit upfront when that is not what the contract provides.

**MS NONTASASA MEMELA:** Okay. Can we go to- Chair before I answer this question because I just want to check what is in the condition's precedence? I will direct you just now.

**CHAIRPERSON:** Okay.

**MS NONTASASA MEMELA:** Okay Chair the- page 2327 at DD22F of Mr Human.

10 **CHAIRPERSON:** Exhibit DD25.

**MS NONTASASA MEMELA:** 22F.

**CHAIRPERSON:** Is that what is written on the spine?

**MS NONTASASA MEMELA:** Mr Human.

**CHAIRPERSON:** Oh.

**MS NONTASASA MEMELA:** Yes Chair.

**CHAIRPERSON:** Okay.

**MS NONTASASA MEMELA:** On the contract of AAR.

**CHAIRPERSON:** 22F?

**MS NONTASASA MEMELA:** 22F.

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

**CHAIRPERSON:** Ja okay.

**MS NONTASASA MEMELA:** Yes.

**CHAIRPERSON:** Yes, you- what is the page number?

**MS NONTASASA MEMELA:** The page number is 2327.

**CHAIRPERSON:** Okay 2327.

**MS NONTSASA MEMELA:** Yes Chair.

**CHAIRPERSON:** Okay.

**MS NONTSASA MEMELA:** It says JM AAR obligation to provide the services to SAAT is conditional upon fulfilment and delivery to JM AAR of the following conditions precedent.

6.23.1 Payment of the deposit.

And then it states other conditions precedent. I am trying to remember where was the three months because I remember there was a discussion of three months.

10 **CHAIRPERSON:** And if there was three months, what was going to be your answer?

**MS NONTSASA MEMELA:** Okay the question from Ms Hofmeyr was that, why did I say it was three months when the contract does not say that.

**ADV KATE HOFMEYR:** No, that was not the question.

**MS NONTSASA MEMELA:** Oh okay.

**ADV KATE HOFMEYR:** The question was why did you say according to the contract.

**MS NONTSASA MEMELA:** Mm-hmm.

20 **ADV KATE HOFMEYR:** You had to make payment of a security deposit when all that the contract required was a standby letter from the bank?

**MS NONTSASA MEMELA:** Okay. Chair can I read again and explain my interpretation?

**CHAIRPERSON:** Ja.

**MS NONTSASA MEMELA:** According to the contract we have with AAR we were actually supposed ... (intervenes)

**CHAIRPERSON:** Where are you reading from?

**MS NONTSASA MEMELA:** I am reading the same email that Ms Hofmeyr is reading.

**CHAIRPERSON:** Oh okay, ja.

**MS NONTSASA MEMELA:** According to the contract we have with AAR we are actually supposed to have made a payment for security deposit upfront before they ever started providing services for us. What happened then, we negotiated with them to pay one month upfront instead of the whole three months security deposit.

10                    So, the negotiation happened before the contract was concluded.

**ADV KATE HOFMEYR:** Ms Memela we are at cross purposes. What I am interested in is the contract clause 4.26 that we looked at does not require any money to be paid by SAAT to AAR.

**MS NONTSASA MEMELA:** Mm?

**ADV KATE HOFMEYR:** What it requires is an irrevocable standby letter of credit from a bank in respect of which drawdowns can be made. But rather than saying that, Ms Memela, in your response to the queries from finance, you said;

According to the contract we have with AAR we were actually supposed to  
20    have made a payment for security deposit upfront before they even started providing services for us.

I understand the negotiations is about whether it is one month or three months but the point I am interested in is why would you say that it is necessary that a payment be made for the security deposit ... (intervenes)

**MS NONTSASA MEMELA:** Okay.

**ADV KATE HOFMEYR:** When all that the agreement- if I could finish my question.

**MS NONTASASA MEMELA:** Mm.

**ADV KATE HOFMEYR:** When all that the agreement required was a standby letter of credit to be provided.

**MS NONTASASA MEMELA:** But you are reading from pricing and payment versus the deposit. The deposit Chair was the payment that was going to be made upfront.

**CHAIRPERSON:** Where in the agreement does it say there needed to be a  
10 payment of ... (intervenes)

**MS NONTASASA MEMELA:** The deposit.

**CHAIRPERSON:** A deposit?

**MS NONTASASA MEMELA:** That is why Chair I had taken you to the conditions precedent page 2327 of ... (intervenes)

**CHAIRPERSON:** Page 2327.

**MS NONTASASA MEMELA:** Of 22- of Exhibit 22F of Mr Human.

**CHAIRPERSON:** I am sorry. 2327 of 22F.

**MS NONTASASA MEMELA:** Of 22F, yes.

**CHAIRPERSON:** Ja.

20 **MS NONTASASA MEMELA:** Yes Chair.

**CHAIRPERSON:** 2327, I am there.

**MS NONTASASA MEMELA:** Yes, and then there is provision 6 that talks to conditions precedent and conditions subsequent.

**CHAIRPERSON:** You are referring to 6.23.1 payment of the deposit.

**MS NONTASASA MEMELA:** Yes chair.



**CHAIRPERSON:** Okay.

**MS NONTASASA MEMELA:** So, Ms Hofmeyr is mixing these provisions. The one in 4- he is talking about pricing and payment.

**ADV KATE HOFMEYR:** Yes, let us ... (intervenes)

**MS NONTASASA MEMELA:** Towards the contract.

**ADV KATE HOFMEYR:** Look at what ... (intervenes)

**MS NONTASASA MEMELA:** And I am referring- in my email it is referring to the deposit that SAAT had taken time to pay to AAR. It is not referring to pricing and payment.

10 **CHAIRPERSON:** But go to clause 4.26 Ms Memela at page 2325.

**MS NONTASASA MEMELA:** Yes.

**CHAIRPERSON:** It says; prior to the commencement date JM/AAR will invoice SAAT for the deposit. And then it says ... (intervenes)

**MS NONTASASA MEMELA:** Where are you reading Chair?

**CHAIRPERSON:** Clause 4.26 at page 2325 same bundle.

**MS NONTASASA MEMELA:** Yes. 33?

**CHAIRPERSON:** 2325.

**MS NONTASASA MEMELA:** 2325.

**CHAIRPERSON:** Ja.

20 **MS NONTASASA MEMELA:** Yes sir.

**CHAIRPERSON:** Okay. The clause is the last clause on the page 4.26.

**MS NONTASASA MEMELA:** Mm-hmm.

**CHAIRPERSON:** It says;

Prior to the commencement date JM/AAR will invoice SAAT for the deposit.

**MS NONTASASA MEMELA:** Mm-hmm.

**CHAIRPERSON:** Then it says;

SAAT will pay the deposit by way of an irrevocable standby letter of credit from a bank acceptable to JM/AAR.

**MS NONTSASA MEMELA:** Yes.

**CHAIRPERSON:** And in a form agreed to by JM/AAR.

**MS NONTSASA MEMELA:** Yes.

**CHAIRPERSON:** So, this does not mean as I see it that cash was required to be paid.

**MS NONTSASA MEMELA:** No I- yes Chair.

10 **CHAIRPERSON:** The submission of a standby letter of credit from a bank acceptable to JM/AAR would be regarded as that deposit.

**MS NONTSASA MEMELA:** Yes Chair. But what I was explaining to the finance team was that before the contract was concluded the AAR had put on the negotiation table on that first day that we were supposed to have made a payment for security deposit upfront and they said that was their policy when we stood up to that. I think there is somewhere where I am actually explaining. I think it is in the- where I am explaining to Michael Klein ... (intervenes)

**CHAIRPERSON:** But do you accept now having looked at clause 4.26 even  
20 having regard to the condition's precedent clause 6.

**MS NONTSASA MEMELA:** Mm.

**CHAIRPERSON:** That in terms of the agreement SAAT was not required to pay cash so to speak? It needed to simply provide a standby letter of credit from a bank acceptable to JM/AAR.

**MS NONTSASA MEMELA:** Chair where I am responding that I am not sure why they were not- they are not paid. I was responding to Makgotso's email to Wellington where she is saying;

Wellington, I believe the expense authorisation was last with you. I do not quite remember why the payment was never made but I think it has- it had something to do with Treasury.

**CHAIRPERSON:** But that is the point that MS Hofmeyr is pursuing to say, why is anybody talking about as I understand what is being said in the emails, payment as if it is payment of cash. I am saying cash including  
10 electronic transfers whereas what is all that SAAT was obliged to do.

**MS NONTSASA MEMELA:** Mm-hmm.

**CHAIRPERSON:** And all that JM/AAR were entitled to was simply a standby letter of credit from a bank that was acceptable to them.

**MS NONTSASA MEMELA:** Okay Chair I do not remember but my understanding is that finance would have the copy of the contract to understand what are the terms of payment.

**CHAIRPERSON:** Yes, but what I am asking is whether- okay no, maybe not now.

**MS NONTSASA MEMELA:** Okay.

20 **CHAIRPERSON:** Do you accept that that is – what I have just said is what the agreement required?

**MS MEMELA:** Yes. Was required yes.

**CHAIRPERSON:** You accept that. Have that always been your understanding or was your understanding at some stage different?

**MS MEMELA:** As I had said Chair that like the last time I had talked

about this contract the first time it was that first day when we were negotiating and I remember like the discussion around conditions precedents.

**CHAIRPERSON:** Yes but...

**MS MEMELA:** it took long yes.

**CHAIRPERSON:** I am not talking about before the conclusion of contract.

**MS MEMELA:** Oh okay.

**CHAIRPERSON:** After the contract has been concluded had your  
10 understanding been different in regard to SAAT's obligations about the deposit?

**MS MEMELA:** After the contract had been concluded Chair I doubt that I had gone back to the contract except the time when we were preparing to go to defence such at court.

**CHAIRPERSON:** Yes.

**MS MEMELA:** Yes.

**CHAIRPERSON:** So you are not sure what you may...

**MS MEMELA:** I am not sure.

**CHAIRPERSON:** Or you may have not have known at the time.

20 **MS MEMELA:** Yes Chair.

**CHAIRPERSON:** Okay alright. Ms Hofmeyr I think the hand has been cleared.

**ADV KATE HOFMEYR:** Thank you.

**CHAIRPERSON:** It is not cleared? Okay Ms Mbanjwa.

**ADV KATE HOFMEYR:** Chair just before I hand over to Ms Mbanjwa. I

would just like to raise a caution.

**CHAIRPERSON:** Yes.

**ADV KATE HOFMEYR:** What would diminish the weight of Ms Memela's evidence after this point is if in any comment or objection that Ms Mbanjwa raises she effectively leads Ms Memela to an answer and it is just something that I raise because it ultimately has an impact on the weight that is afforded to Ms Memela so I would just suggest to my learned friend that she not lead Ms Memela in any question that she now or comment she wants to raise.

10 **CHAIRPERSON:** Ja.

**ADV LINDELWA MBANJWA:** Thank you Chair.

**CHAIRPERSON:** Hm.

**ADV LINDELWA MBANJWA:** The reason why I am raising a hand is because I believe [indistinct] Ms Hofmeyr and Ms Memela I am not going to raise it now I am just noting it because when I re-examine I will re-examine at exactly this point. And where is that error? The error is the fact that what is happening is two separate issues are being conflated. One is a condition precedent which is either a letter of guarantee which would be a deposit that stays there. And then when  
20 the expenses come they would then be debited against that account and then this is being conflated with the fact that insofar as the deposit is concerned a letter of guarantee would be sufficient. But what the rest of the emails talk about? They have moved away from the letter of guarantee. They are now talking about expenses that have already been incurred.

**CHAIRPERSON:** I think ...

**ADV LINDELWA MBANJWA:** But I will clarify that.

**CHAIRPERSON:** I think Ms Mbanjwa that is the kind of thing Ms Hofmeyr was talking about. That it – it – you – you raise an issue which may be seen as explaining to Ms Memela. You might not be intending to do that but she may have that benefit in answering. So maybe because it is important that her evidence be given the weight that it deserves. Maybe keep it for your re-examination and let her as – I mean answer to the best of her ability. Nobody is suggesting that  
10 you are doing anything deliberately. But sometimes when one is trying to raise points this effect could arise.

**ADV LINDELWA MBANJWA:** But Your Worship – but Mr Chair what I just want to point out the way I understand proceedings of any nature. If you are representing a party and a question that is confusing is directed at the party you can stand...

**CHAIRPERSON:** No, no, no

**ADV LINDELWA MBANJWA:** Stand up and say the question is confusing. I do not think Chair the test is the test of what Ms Hofmeyr with due respect has said. She said if I am standing up to point out  
20 that she herself is asking a confusing question that would then mean at the end of the day when evidence or credibility of that witness is being judged it will be against her. That is not the test. The test would be was the question confusing? Because if the question was confusing then it means we are in the right.

**CHAIRPERSON:** No, no, no if the – if you believe the question is

confusing you are – it is legitimate for you to raise that. But even from your own explanation it seemed to confirm my own understanding which was that I certainly did not see it as confusing. That does not mean you did not see it as confusing. You may have seen it as confusing. But...

**ADV LINDELWA MBANJWA:** No thank you Chair I thank you for your patience. But I will take it up in re-examination.

**CHAIRPERSON:** Ja okay alright. Yes okay.

**ADV LINDELWA MBANJWA:** Thank you Chair.

- 10 **ADV KATE HOFMEYR:** Chair Ms Mbanjwa in her comments a moment ago and seeking to clarify the confusion made a statement that these invoices were related to expenses. That is not the case. And the reason for that is because the way that the deposit worked under the agreement I will take you to the provision now. I just have to find it again. Was as follows. You find it at the agreement it is tucked away this is a very complex agreement. But it is at page 2335 of DD22F.

**CHAIRPERSON:** At 2235 yes.

**ADV KATE HOFMEYR:** Yes. You see that is where you find the definition of deposit.

- 20 **CHAIRPERSON:** Hm.

**ADV KATE HOFMEYR:** You will see against 3 it says:

“Deposit equal to three months revenue to be reviewed and adjusted annually in line with fleet growth and annual escalation.”

**CHAIRPERSON:** Hm.

**ADV KATE HOFMEYR:** So Chair the whole structure...

**MS MEMELA:** Chair. Sorry where are you reading Ma'am?

**ADV KATE HOFMEYR:** Oh sorry 2335.

**MS MEMELA:** 2335.

**ADV KATE HOFMEYR:** It is the part of the agreement that gives the definition of deposit and it is the place I think you were looking for earlier Ms Memela because it refers to three months.

10                   “The deposit is equal to three months revenue to be  
reviewed and adjusted annually in line with fleet  
growth and annual escalation.”

So what happens is when you read the conditions precedent Clause 4.26 and the definition. And this is played out in the invoices that then come from AAR. So I will go to the facts in a moment. It is a requirement of this agreement and Ms Memela I am putting this to you so that if you have a different understanding you can clarify that for the commission.

**MS MEMELA:** Where are you – you are still on 2335?

20                   **ADV KATE HOFMEYR:** No I am now drawing the condition precedent, the definition of deposit and Clause 4.26 together. Because you have to understand the agreement in its totality. And if you have a different understanding.

**CHAIRPERSON:** Hang on. Ms Memela.

**MS MEMELA:** Chair I am just saying.

**CHAIRPERSON:** You getting confused.

**MS MEMELA:** I am not getting confused I am just saying maybe it will



brush my ego a bit if Ms Hofmeyr would say, okay the three months deposit that you were referring to on your email I am sure this is the one.

**CHAIRPERSON:** But she just said...

**MS MEMELA:** No but she did not say it the way I want her to say it.

**CHAIRPERSON:** No but she is on a certain point. She is on a certain point. She is on a certain point.

**MS MEMELA:** Because I said it and I now...

**CHAIRPERSON:** Hang on, hang on, hang on Ms Memela. She is on a  
10 certain point that she regards as relevant for now but she realises that  
it refers to three months and remembers what you said earlier on.

**MS MEMELA:** Wow.

**CHAIRPERSON:** And says in passing because she is on a certain point  
maybe this is the clause you had in mind. That is what she said.

**MS MEMELA:** So – so ...

**CHAIRPERSON:** What did you want her to say?

**MS MEMELA:** No, no Chair I am – I am just – you know.

**CHAIRPERSON:** Okay. Alright.

**MS MEMELA:** I do not know how to explain it.

20 **CHAIRPERSON:** Okay no that is fine.

**MS MEMELA:** Just – ja – let me leave it.

**CHAIRPERSON:** Okay no that is fine.

**MS MEMELA:** But I am just – I was just.

**CHAIRPERSON:** Ms Hofmeyr.

**MS MEMELA:** I was just hoping that she would have said...

**CHAIRPERSON:** Continue.

**MS MEMELA:** You know. This is what you are talking about.

**CHAIRPERSON:** Okay she is on a certain point.

**MS MEMELA:** Now I understand.

**CHAIRPERSON:** No, no, she is on a certain point.

**MS MEMELA:** Where you are coming from?

**CHAIRPERSON:** She is on a certain point. She might or might not come back to that point but she is on a certain point that she is busy with. Ms Hofmeyr.

10 **ADV KATE HOFMEYR:** Chair what I would like to do is explain what the understanding of the conspectus of this contract is so that Ms Memela can offer a response. The contract works as follows as we read it. It is a condition precedent of the contract that a deposit be paid. It is then provided in Clause 4.26 at page 2325 how that deposit is going to be paid. And it is going to be paid prior to the commencement date. So it is consistent with the conditions precedent provision. And it says:

20                   And when you go to the definitions for what the prior to the commencement date JM/AAR will invoice SAAT for the deposit and SAAT will pay the deposit by way of irrevocable standby letter of credit from a bank acceptable to JM/AAR and in a form agreed to by JM/AAR.”

t deposit will comprise you are told that it will be calculated on the basis of three months revenue and it will be escal – reviewed and

adjusted annually in line with fleet growth and annual escalation which in the conspectus of the contract makes absolute sense because it is standing there as a guarantee against default and late payments by SAAT. That means annually it must be reviewed because over the five years of the contract it may well have to be increased to provide the same level of security against late payment by SAAT. Ms Memela that is what we understand the agreement to mean and I would like to have your comment if you understand it in any different way?

**MS MEMELA:** I have not comment Chair.

- 10 **ADV KATE HOFMEYR:** And then just to confirm I said I would go to the facts because that is precisely how AAR invoiced for it albeit that they were now wanting cash. They did not want a standby letter of credit anymore. You will find that at DD22F, is it? F and that is at page 2403.

**CHAIRPERSON:** 2203?

**ADV KATE HOFMEYR:** 2403 Chair.

**CHAIRPERSON:** 2403.

**MS MEMELA:** 2403.

**ADV KATE HOFMEYR:** Yes.

- 20 **CHAIRPERSON:** Yes.

**ADV KATE HOFMEYR:** This is the invoice that AAR sent to South African Airways technical. And it is just around the time of this communication in 2017 because it is dated the 18 April 2017. And you will see that the total amount of this invoice is 4 382 224 Dollars and 71 cents. And the description that is given of it is security deposit – 3

month minimum flight hour billing April 2017 minimum FH billing and the indication is that the monthly billing was US Dollars 1 460 741.57 times 3. That is how they calculate the three months that they are now requiring be paid. So back to the questions Ms Memela. What then happens is in May there is a follow up. Apologies I need to have – ja the DD22G in front of me. The challenge that SAAT was facing at that moment was a cash flow problem. And that is evidenced from the communications that we will go to next. And Ms Memela what I want to put to you for your comment is the following. The difference for SAAT  
10 between a standby letter of credit from a bank and actually paying money is that – that has an immediate impact on cash flow. Do you accept that?

**MS MEMELA:** Okay Chair that would be answered by the financier that made this payment.

**CHAIRPERSON:** Well are you sure that it is something you cannot answer because it seems to me that it would be quite logical that if you pay somebody with cash logically after paying somebody with cash you are left with less cash. Your balance goes down and if your – you or your company is going through difficult financial times you may be  
20 needing the cash. Are you sure it is something you cannot answer?

**MS MEMELA:** No Chair I – I am not trying not to answer anything but I just feel that maybe if I was the one who was approving the payment then like it will have been logical for me to answer. But

**CHAIRPERSON:** Yes.

**MS MEMELA:** Then I would answer in a general statement that of

course that would – what it means.

**CHAIRPERSON:** Yes.

**MS MEMELA:** To a lay person who does not have a financial background.

**CHAIRPERSON:** Ms Mbangwa.

**ADV LINDELWA MBANJWA:** Thank you Chair. The question is unfair to Ms Memela because the premise is incorrect. If a person says provide a letter of guarantee of credit it does not necessarily mean that that letter of guarantee of credit is not under pinned by cash. Take for  
10 instance my example I am going to give. I work as a conveyancer. If a client is buying property and then before the transfer can take place the seller of the property is going to want guarantees that on the day of the transaction of the sale.

**CHAIRPERSON:** I think.

**ADV LINDELWA MBANJWA:** Do you want to say something?

**CHAIRPERSON:** I think you can deal with it in re-examination.

**ADV LINDELWA MBANJWA:** Thank you as long as it is accepted it is unfair for her. Thank you.

**ADV KATE HOFMEYR:** Let us go to DD22G to pick up where finance  
20 starts to raise with you their concern about the cash position.

**CHAIRPERSON:** We – we are at five o'clock.

**ADV KATE HOFMEYR:** Right.

**CHAIRPERSON:** I would prefer that we adjourn when you are done but we – we are at five o'clock and maybe – maybe we should adjourn and – and you – you finish tomorrow morning.

**ADV KATE HOFMEYR:** Chair. I think it may be safer because any estimation of time that I give you.

**CHAIRPERSON:** Ja is difficult.

**ADV KATE HOFMEYR:** It is unrealistic.

**CHAIRPERSON:** Ja.

**ADV KATE HOFMEYR:** So let – this is an aspect to conclude the payment.

**CHAIRPERSON:** Yes.

**ADV KATE HOFMEYR:** And then there will be a few concluding  
10 aspects.

**CHAIRPERSON:** Ja.

**ADV KATE HOFMEYR:** So we should just do it tomorrow if that suits.

**CHAIRPERSON:** Yes, yes. But of course we have to start looking – we should talk about what arrangements can be done with regard to Mr Ndzeko.

**ADV KATE HOFMEYR:** Yes. Chair what I...

**CHAIRPERSON:** Hm.

**ADV KATE HOFMEYR:** Apologies Chair.

**CHAIRPERSON:** Because I – I think if we are not going to finish with  
20 him if we will be able to start and not finish with him and of course we should be able to start. But if we are going to be able to start and not finish with him it may be that we should just arrange another date

**ADV KATE HOFMEYR:** Indeed.

**CHAIRPERSON:** When he can come and we deal with his evidence.

**ADV KATE HOFMEYR:** Chair I did have a brief opportunity to speak to

his legal representatives over the break. They indicated to me that they may have a proposal that will facilitate his evidence. I think the chances are extremely likely – unlikely that we will start Mr Ndzeke tomorrow.

**CHAIRPERSON:** Yes.

**ADV KATE HOFMEYR:** Especially because of the time that is indicated and your limitations tomorrow for how long we can sit.

**CHAIRPERSON:** Ja.

**ADV KATE HOFMEYR:** So it would be my proposal that I conclude  
10 briefly in the morning. We hand over for the re-examination and then I will have discussions with the legal representatives of Mr Ndzeke immediately after this hearing adjourns and then I can come back to you with proposals for when he may be able to return.

**CHAIRPERSON:** Ja.

**ADV KATE HOFMEYR:** Of course that will have to fit in with the schedule.

**CHAIRPERSON:** Ja.

**ADV KATE HOFMEYR:** But we will be able to discuss that.

**CHAIRPERSON:** Ja no that is fine. Ms Mbanjwa it seems that we  
20 should adjourn for today. Have you got anything to say about that?

**ADV LINDELWA MBANJWA:** No Chair I quite understand that we are in your hands. I just wanted to voice a difficulty I may have.

**CHAIRPERSON:** Hm.

**ADV LINDELWA MBANJWA:** After tomorrow Chair.

**CHAIRPERSON:** Hm.

**ADV LINDELWA MBANJWA:** I have a part heard trial in the Magistrates Court. Unfortunately on Thursday I have to attend to that part heard trial so I am just saying I do not know what arrangements but I do not want to inconvenience the commission by just jumping.

**CHAIRPERSON:** Ja. Yes.

**ADV LINDELWA MBANJWA:** This thing on the commission tomorrow.

**CHAIRPERSON:** Ja well you – tomorrow we will not sit the whole day because I will have to leave tomorrow after lunch. It may well be I am not sure about – it may well be that we – we can only go up to one or it  
10 may be before one. Maybe half past twelve I am not sure. So – and on Thursday we will not sit because I will not be available. So we will use the time tomorrow that is available and if we do not finish – I hope we finish but if we do not finish then we will arrange for some other time. But I am hoping that we can finish but it has not been easy to estimate time. So – so if your concern was about Thursday that should not be a problem.

**ADV LINDELWA MBANJWA:** Thank you Chair.

**CHAIRPERSON:** Ja. Ms Memela you understand you – you are part of the agreement that tomorrow you are still available?

20 **MS MEMELA:** Chair I was just going to raise something which I am sure I could have raised it through my lawyer. I was going to ask because Ms Hofmeyr as much as she thinks I am the one who actually delays these – once she has given tomorrow morning I think we will take the whole day again. So I wanted to check if I cannot give crisp answers and then we are done. I will not take long so that we know



that tomorrow we start with...

**CHAIRPERSON:** We – we can do with a firm undertaking to give crisp answers Ms Memela.

**MS MEMELA:** I – I undertake Chair.

**CHAIRPERSON:** Ja we will see. The – the – if you give crisp answers it will help.

**MS MEMELA:** I will do Chair.

**CHAIRPERSON:** Ja it will help. Okay I think we will have to adjourn and – and I think we must start at ten.

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

**CHAIRPERSON:** Ja. Ja. Okay we will adjourn then and tomorrow we will start at ten. We adjourn.

**REGISTRAR:** All rise.

**INQUIRY ADJOURNS TO 12 FEBRUARY 2020**