

**COMMISSION OF INQUIRY INTO STATE CAPTURE**

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**25 FEBRUARY 2020**

**DAY 218**

**FINAL**

20

**PROCEEDINGS RESUME ON 25 FEBRUARY 2020**

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

**ADV THANDI NORMAN SC:** Good morning Mr Chairman.

**CHAIRPERSON:** Yes are you ready?

**ADV THANDI NORMAN SC:** Yes we are ready thank you Chair.

**CHAIRPERSON:** Yes.

**ADV THANDI NORMAN SC:** Chair before we commence may the legal representatives that present the various parties place themselves on record

10 **CHAIRPERSON:** Maybe at this stage ...(intervenes).

**ADV THANDI NORMAN SC:** After we have started.

**CHAIRPERSON:** Only those who may be representing the current witness or those who may be implicated by her. Those representatives who represent persons who may be implicated by the next witness maybe when we start ...(intervenes).

**ADV THANDI NORMAN SC:** Maybe we will do it.

**CHAIRPERSON:** With the next witness then they can place themselves on record.

**ADV THANDI NORMAN SC:** We will do that. We will do it that way  
20 Chair.

**CHAIRPERSON:** *Ja.*

**ADV THANDI NORMAN SC:** This witness does not implicate anyone  
thank you.

**CHAIRPERSON:** *Ja.*

**ADV THANDI NORMAN SC:** Except ...(indistinct).

**CHAIRPERSON:** Okay.

**ADV THANDI NORMAN SC:** Thank you. Chair in opening we just wish to place on record that today we continuing with the SABC – with evidence that relates to the SABC. Chair would recall that on the last occasion Chair had directed that the MultiChoice contract between – the contract between MultiChoice and SABC was of a matter of public importance and that it had to be investigated. The evidence that we will be leading today and possibly tomorrow we relate to that contract. Chair there has been various court judgments that deal with what we

10 referred to in the previous – on the previous occasion as the Digital Migration Policy, the various amendments to that policy. And a bundle has been placed – has been sub – placed before – the Registrar will hand it up which is Exhibit CC44. That bundle Chair is – consists of all the judgments that relates to the matter that we will dealing with going forward. Chair the first judgment just in summary – the eTV judgment that appears on pages 1 to 25 of that judgment that was the judgment that was handed down by Justice Pretorius.

**CHAIRPERSON:** Maybe let us quickly admit this?

**ADV THANDI NORMAN SC:** As Exhibit 44.

20 **CHAIRPERSON:** *Ja.*

**ADV THANDI NORMAN SC:** May it then be admitted Chair as Exhibit 44?

**CHAIRPERSON:** *Ja.*

**ADV THANDI NORMAN SC:** It is called the Digital Migration Judgment bundle.

**CHAIRPERSON:** The file containing various judgments starting with the South African High Court Judgment in the matter of eTV PTY Limited versus Minister of Communications and Others – case number 34694/2012 and other judgments in that file.

**ADV THANDI NORMAN SC:** Thank you Chair.

**CHAIRPERSON:** Will be admitted and marked as Exhibit CC44.

**ADV THANDI NORMAN SC:** Thank you Chair. Thank you. The first judgment Chair dealt with the issue of whether the Minister which in this case the Minister had decided that Sentech was going to be  
10 responsible for the STB Control Systems and when that happened then eTV took that decision to court and the court found that the Minister had no right to prescribe to ...(intervenes).

**CHAIRPERSON:** Maybe just to ensure that everybody is on the same page as all of us because it has been quite some time that evidence was led relating to Digital Migration .....(intervenes).

**ADV THANDI NORMAN SC:** Yes.

**CHAIRPERSON:** Maybe you could just take one minute or so to remind everybody what Digital Migration is all about so that they can follow.

**ADV THANDI NORMAN SC:** Yes Chair. Chair the Digital Migration  
20 related to the policies – the first policy on this issue was passed in 2008 by Minister Matsepe Casaburri which related to the Free to Air televisions like your eTV, SABC which were using analogue technology. By June 2015 the International Unions – International Telecommunications Unions had announced that the date for migration from analogue to digital had to be June 2015. And it was a result of

that that then there was the rush then to amend the policies in order to fit in and make sure that by the time that deadline comes about then there is digitisation of the analogue technology system. Now in order to do that then it was necessary therefore that Set Top boxes be secured because in order to change the signal or convert the signal – the analogue signal to digital one needed those Set Top boxes. And we had heard the evidence of Mr Roy Kruger, the evidence of Mr Strachan and the evidence of Mr Jansen Van Vuuren on why – how many Set Top boxes were – would be required by the country. At the time they were

10 talking about 5 million of those for the persons who were indigent who could not afford to pay for that and those were going to be subsidised. And as a result of that then there were certain amendments to the policy which were affected by the various Ministers. But what Minister Dina Pule did on the 10<sup>th</sup> of May 2012 she made a decision that Sentech was going to be responsible for the control system and that is the decision that eTV took to court and that is the judgment in case number 34694 of 2012. And the court agreed with eTV and found that the Minister had no powers.

**CHAIRPERSON:** And that is the judgment by Pretorius BC.

20 **ADV THANDI NORMAN SC:** AJ.

**CHAIRPERSON:** Acting Judge *ja*.

**ADV THANDI NORMAN SC:** That is correct, yes.

**CHAIRPERSON:** Yes.

**ADV THANDI NORMAN SC:** And the court found that the Minister had no right to prescribe to Free to Air broadcasters who should manage

the Set Top boxes and found that ICASA had the power of regulation in that regard. And then the next judgment would also involve ...(intervenes).

**CHAIRPERSON:** Apart from what appears to have been simply a question of law.

**ADV THANDI NORMAN SC:** Yes Chair.

**CHAIRPERSON:** Were there any important findings that ...(intervenes).

**ADV THANDI NORMAN SC:** Yes.

**CHAIRPERSON:** Of a factual nature?

10 **ADV THANDI NORMAN SC:** No not in that case.

**CHAIRPERSON:** Nothing.

**ADV THANDI NORMAN SC:** Not in that case.

**CHAIRPERSON:** Okay.

**ADV THANDI NORMAN SC:** Thank you Chair. And then eTV again brought another litigation against the Minister of Communications. Chair will find that at – from page 26.

**CHAIRPERSON:** Yes.

**ADV THANDI NORMAN SC:** This was the judgment before ...(intervenes).

20 **CHAIRPERSON:** And this is case number 26166/2015?

**ADV THANDI NORMAN SC:** That is correct Chair.

**CHAIRPERSON:** Yes.

**ADV THANDI NORMAN SC:** In that case the judgment of Prinsloo J Chair I observed last night that unfortunately the copy that has been placed in the file in the bundle is incomplete. I beg leave Chair to

make a – submit a full set if Chair's is also incomplete during the tea break – we have it.

**CHAIRPERSON:** Yes no that is fine.

**ADV THANDI NORMAN SC:** But apparently when they were ... (intervenes).

**CHAIRPERSON:** I have not checked whether it is complete or not.

**ADV THANDI NORMAN SC:** Yes.

**CHAIRPERSON:** *Ja.*

**ADV THANDI NORMAN SC:** Thank you Chair that will be rectified  
10 during the tea break.

**CHAIRPERSON:** Okay.

**ADV THANDI NORMAN SC:** In that judgment Chair the – what eTV was challenging were certain amendments to the Broadcasting Digital Migration Policy which we effected and implements around 18 March 2015. Now this was after the Portfolio of Telecommunications had been split into two. One had the Minister of Communications and also one had the Minister of Telecommunications and Postal Services. The proclamation that is relevant is the one who published on the 15<sup>th</sup> of July 2014 and then there was another proclamation which was  
20 published on the 2<sup>nd</sup> of December 2014 and the – that dealt with the power to make broadcasting policy in terms of Section 3 of the Electronic Communications Act which transferred that power from the Minister of Telecommunications to the Minister of Communications. This is the policy that deals with the Digital Migration Process. The issue that was before court was that he amendment of March 2015

stipulated that the subsidised STB's will not have capabilities to encrypt broadcast signals. And Chair would recall how Mr Roy Kruger had described the encryption and the non-encryption. They had – he had emphasised that the reason for encryption which was in 2008 policy was to make sure that there is no – prevents against theft. It also prevents against hacking either from outside the country or for other countries so that they cannot simply tap onto the systems within the country. And eTV on the other hand wanted the subsidised STB to be fitted with an encryption facility because eTV wanted to broadcast the encrypted signal as a Free to Air broadcaster. The complaint that was brought on review was that the amendment was not preceded by a consultation process and therefor it was unlawful and should be set aside. Prinsloo J found that the amendment was not all ...(indistinct) and he rejected the arguments by eTV. And as a result of that he then dismissed the application – the review application. Once that happened then eTV took the matter to the Supreme Court of Appeal and appealed that decision of Prinsloo J and Chair would find that the Supreme Court of Appeal decision at pages – starting from page 85 of that – of bundle CC44 and that case is reported as eTV PTY LTD versus Minister of Communications 1039/2015 (2016) ZASCA 85 31 May 2016.

**CHAIRPERSON:** It looks like there are about what four or five appellants.

**ADV THANDI NORMAN SC:** Yes.

**ME KHUMALO:** eTV PTY Limited and others.

**ADV THANDI NORMAN SC:** And others.



**CHAIRPERSON:** Versus Minister of Communications and Others.

**ADV THANDI NORMAN SC:** That is correct Chair.

**CHAIRPERSON:** Yes okay.

**ADV THANDI NORMAN SC:** Yes thank you.

**CHAIRPERSON:** H'mm. Yes.

**ADV THANDI NORMAN SC:** Thank you Chair. And in this one Supreme Court of Appeal ...(intervenes).

**CHAIRPERSON:** And the judgments is written by Lewis JA?

**ADV THANDI NORMAN SC:** That is correct and it was unanimous  
10 Lewis and Salduiker J, Swain J and Mgha A and Baartman AJA. What the court found was that when the Minister consulted or went about the consultation process the court was of the view that the Minister – no sorry, sorry. The Minister was – the encryption amendment that the Minister had implemented was ultra-virus and it was invalid. And in other words the court found in favour of eTV that the Minister had no powers to make the amendment in the manner in which she did. And there they – the court does deal with the various amendments throughout from 2008. But at paragraph 66 the court made the following finding:

20 “In my view Minister Muthambi has issued an edict he has decreed that the subsidised ST boxes shall not encryption capability – shall not have encryption capability. USASA has said nothing on this score it cannot make a financial decision that is not consonant with the policy. The Minister's decision

does purport to bind and that is borne out by the statements in the answering affidavit that say that government will not bear the costs of encryption and that if eTV wishes to broadcast an encrypted signal it must provide the ST boxes to consumers at its cost. That as has already been said makes it commercially impossible for eTV to encrypt its broadcast signals despite the statements in clause 5.1.2C that it is free to do so. In my view Minister Muthambi did purport to issue a binding direction which she was not entitled or empowered to do. For this reason too the encryption amendment is invalid.”

And then in that case then eTV was successful and as soon as that happened then the Electronic Media Network Minister of Communications and the SABC took the matter to the Constitutional Court. Chair will find that judgment at page 114 and Chair was part of the bench.

**CHAIRPERSON:** Yes.

**ADV THANDI NORMAN SC:** In that matter. Yes. The issue there revolved ...(intervenes).

**CHAIRPERSON:** And that is under case number.

**ADV THANDI NORMAN SC:** Under ...(intervenes).

**CHAIRPERSON:** CCT14G.

**ADV THANDI NORMAN SC:** Of 16 yes.

**CHAIRPERSON:** /2016 I see there is 141/2016 and 145/2-16 as well.

**ADV THANDI NORMAN SC:** Thank you Chair. And it is ...(intervenes).

**CHAIRPERSON:** Yes.

**ADV THANDI NORMAN SC:** And it is reported as Electronic Media Network Limited and Others versus eTV Limited and Others 2017 ZA66/17.

**CHAIRPERSON:** Yes.

**ADV THANDI NORMAN SC:** The issue there revolved on the – in fact they appealed the judgment on the basis that the Minister was well within her rights to amend the policy in the manner in which she did.  
10 But in that judgment there are findings that have – that are factual in nature and also findings that we wish to deal with going forward as the Commission because the Constitutional Court made the findings and I would like to with your leave Chair to just deal with them quickly because the court dealt with that at page 140 and the court made these findings and the title – sub-title is the Effect of the Minister’s Selective Consultation. So that relates to the process that was followed by the Minister. Paragraph ...(intervenes).

**CHAIRPERSON:** Maybe before we proceed.

**ADV THANDI NORMAN SC:** Yes Chair.

20 **CHAIRPERSON:** We need to – you need to say that there were two judgments.

**ADV THANDI NORMAN SC:** Oh yes Chair.

**CHAIRPERSON:** In the Constitutional Court.

**ADV THANDI NORMAN SC:** Yes I ...(intervenes).

**CHAIRPERSON:** One being the majority judgment, 1, 2, 3, 4, 5.

**ADV THANDI NORMAN SC:** And the one of Freeman J and Company Chair.

**CHAIRPERSON:** Yes.

**ADV THANDI NORMAN SC:** Yes Chair.

**CHAIRPERSON:** The majority one was written by the Chief Justice.

**ADV THANDI NORMAN SC:** Yes.

**CHAIRPERSON:** And then there was the Minority one but now I have not looked at – now I cannot remember whether .....(intervenes).

**ADV THANDI NORMAN SC:** There is another.

10 **CHAIRPERSON:** Whether it is a concurrence or a descent.

**ADV THANDI NORMAN SC:** It is a descent DCJ.

**CHAIRPERSON:** Is it descent so ...(intervenes).

**ADV THANDI NORMAN SC:** I was going to deal with it in my address to you.

**CHAIRPERSON:** Yes, no that is fine.

**ADV THANDI NORMAN SC:** Yes.

**CHAIRPERSON:** So it is important to say it was a split.

**ADV THANDI NORMAN SC:** Yes decision.

**CHAIRPERSON:** Decision.

20 **ADV THANDI NORMAN SC:** Yes. In fact ...(intervenes).

**CHAIRPERSON:** And the margin was quite narrow.

**ADV THANDI NORMAN SC:** Yes.

**CHAIRPERSON:** A 54. *Ja*.

**ADV THANDI NORMAN SC:** That is correct.

**CHAIRPERSON:** Okay alright.

**ADV THANDI NORMAN SC:** Yes thank you Chair. I was going to deal with and ...(intervenes).

**CHAIRPERSON:** I am just mentioning that because ...(intervenes).

**ADV THANDI NORMAN SC:** It is important *ja*.

**CHAIRPERSON:** The court of first instance found one way.

**ADV THANDI NORMAN SC:** Yes.

**CHAIRPERSON:** And the Supreme Court of Appeal found differently.

**ADV THANDI NORMAN SC:** Yes.

**CHAIRPERSON:** And then it went to the Constitutional Court and then  
10 there was quite a ...(intervenes).

**ADV THANDI NORMAN SC:** A split.

**CHAIRPERSON:** A sharp split.

**ADV THANDI NORMAN SC:** Yes.

**CHAIRPERSON:** *Ja*.

**ADV THANDI NORMAN SC:** Thank you Chair. Chair in the majority if I  
may put it – yes it is the majority. The majority found that the decision  
of the Minister was rational and it was valid. And then the court again  
re-emphasised the principle of separation of powers but what the court  
made – the findings that the court made – paragraph 59 at page 140  
20 the court stated the following without reading the entire paragraph.  
Chair if you may permit?

“The Minister solicited the views of some undisclosed  
persons. In the policy development process the  
Minister may if she so wishes consult some  
interested persons or experts on broadcasting digital

migration policy. Broadly speaking the Minister may seek more enlightenment on any aspect of the policy formulation exercise beyond the parameters of the prescribed consultation process. The legislation neither forbids nor regulates ...(indistinct) for clarification or additional information from whomsoever it might be beneficially sourced. This is so because some latitude or a reasonable measure of flexibility ought to be allowed in the exercise of executive authority without effectively undermining the values of openness and accountability and this extends to the development of policy although she was under no obligation to consult.”

But then the court continues at paragraph 60:

“Although the Minister’s consultation of some undisclosed stakeholders potentially taints the process in some way it does invalidate the policy. It needs to be reiterated that it is so ...(intervenes).”

**CHAIRPERSON:** I do not know whether you read?

20 **ADV THANDI NORMAN SC:** Yes.

**CHAIRPERSON:** It does not or does – or it does but it says it does not.

**ADV THANDI NORMAN SC:** It does not invalidate the policy. Yes Chair. Oh did I miss out the not Chair? I beg your pardon.

**CHAIRPERSON:** In my ears it sounded like it.

**ADV THANDI NORMAN SC:** It does.

**CHAIRPERSON:** Does.

**ADV THANDI NORMAN SC:** I beg your pardon Chair.

**CHAIRPERSON:** Ja.

**ADV THANDI NORMAN SC:** Yes.

“It does not invalidate the policy.”

The paragraph that I wish to draw your attention to Chair is paragraph 61 at page 141. The court says:

10 “Have made those findings that – but this does not  
mean that a blind eye is to be turned to her consent  
evoking evasive and suspicious responses or lack  
thereof to pertinent questions raised by eTV for we  
live in a constitutional democracy whose foundational  
values include openness and accountability. It is  
thus inappropriate for the Minister to not have  
volunteered the identities of those she consulted with  
and what the consultation was about as if she was  
not entitled to solicit enlightenment or did so in  
pursuit of an illegitimate agenda. This conduct must  
be frowned upon and discouraged. It does not  
20 however constitute the necessary and unavoidable  
constitutional basis for judicial intrusion.”

Then the majority found that the policy did not interfere with the policy – did not set it aside.

**CHAIRPERSON:** You did not read the whole of paragraph 60 but I think it might be convenient to read it too. I see some ...(intervenes).

**ADV THANDI NORMAN SC:** Oh up to the end?

**CHAIRPERSON:** Statements – yes.

**ADV THANDI NORMAN SC:** Alright.

**CHAIRPERSON:** Which appear to be important.

**ADV THANDI NORMAN SC:** Thank you Chair.

**CHAIRPERSON:** By the court *ja*.

**ADV THANDI NORMAN SC:** Thank you. Paragraph 60 again:

10                   “Although the Minister’s consultation of some  
undisclosed stakeholders potentially taints the  
process in some way it does not invalidate the policy.  
It needs to be reiterated that it is so because she is  
free from any constitutional constraints in the  
information gathering exercise for the purpose of  
policy formulation. Her disclosure or non-disclosure  
does not necessarily undermine any broadcaster or  
interested persons rights. eTV could have but chose  
not to pursue readily available openness and  
accountability enforcing mechanisms to achieve that  
objective. More would be required to conclude that  
20                   the only reasonable inference to draw from the  
Minister’s ill-advised an unfortunate non-disclosure  
is that her consultation of some interested persons  
necessarily redundant to the advantage of those who  
were consulted at the expense of the un-consulted.  
Her consultations with some stakeholders did not



without more gave eTV the right to also be consulted considering the opportunity it also had to oppose any change to the Carrim proposal.”

**CHAIRPERSON:** Yes.

**ADV THANDI NORMAN SC:** Thank you Chair. And in the end then the court – the majority found that the Minister was well within her rights to amend the policy. Then Chair the dissenting Judgment is that which was penned by Justices Froneman and Justice Cameron.

**CHAIRPERSON:** Yes.

- 10 **ADV THANDI NORMAN SC:** They also frowned upon the fact that the Minister’s consultation process involved persons that were not mentioned and they found that her decision in fact on the encryption issue they found that it was irrational and then they proposed that they would have upheld – they would have dismissed the appeal on that basis. But what they say if I may just direct Chair to paragraph 157 of that judgment which will be at page – I will give you the page now Chair.

**CHAIRPERSON:** 175.

- ADV THANDI NORMAN SC:** Which – 175 that is correct. What the  
20 Justices said there is:

“That the Minister does not tell us why further consultation was necessary nor who she consulted with. In this she failed to adhere to fundamental constitutional values of accountability, responsiveness and openness and for each she

offers no explanation. She does not seek to explain why this is not an instance that opens the door to secret lobbying and influence peddling. No explanation, no reason, unreason, arbitrariness, irrationality.”

That those findings coupled together with the ones of the majority judgment are the findings that we are going to touch upon. But then without finishing that aspect Justice Japhta also penned a concurring judgment where he was satisfied that there was proper  
 10 consultation and he was proper – also satisfied and supported the majority judgment. And he made one – I beg your pardon Chair if I may just take you to one – at paragraphs 202 and 203 of that judgment. Justice Japhta stated at paragraph – if I may start at paragraph 200 Chair that appears at page 187?

“Here it is not disputed that Minister Muthambi sought to achieve two purposes through the impugned amendment. The first was to secure the Set Top boxes and the second one was to save costs. The question that arises for determination is  
 20 whether there was a rational connection between the amendment and the object of saving costs. The question of security is not disputed. It cannot be again said 201 that the decryption capability would increase costs of producing the Set Top boxes. Even eTV are said that if it were to produce Set Top boxes

on its own the costs would be prohibitively high hence it was in favour of the decryption capability being added to the Set Top boxes subsidised by government. It was submitted that eTV was willing to cover the additional costs and refund the government later. It follows that excluding the decryption capability from the Set Top boxes would save costs. Accordingly there is a rational connection between the amendment and the objective of saving costs.

10 But eTV contends that its offer to cover the additional costs and refund government later bears a rational relation to the purpose of saving costs. It is not clear to me how a policy that says government will pay for the additional costs during the production of the Set Top boxes only to be refunded later would be saving costs. It seems to me that such a policy would be requiring government to advance money to eTV on the promise of a refund later.”

And he supported in paragraph for these reasons in paragraph

20 210:

“I support the order proposed in the first judgment.”

Then the last judgment that appears in your bundle Chair is the judgment of SOS, Support Public Broadcasting Coalition and Others versus South African Broadcasting Corporation Limited and Others. Just – madam Justice Kathree Setilwane was the Scribe and the – it is

an unanimous judgment and it dealt with ...(intervenes).

**CHAIRPERSON:** And it was in the Constitutional Court as well.

**ADV THANDI NORMAN SC:** It was a Constitutional Court Judgment.

That is correct Chair.

**CHAIRPERSON:** Maybe it is the only one where eTV does not seem to feature?

**ADV THANDI NORMAN SC:** Yes it appears to be the only one Chair.

**CHAIRPERSON:** *Ja.*

**ADV THANDI NORMAN SC:** Because this one is really a matter – it  
10 was – it dealt with whether or not the Competition Commission had  
powers to – for instance to subpoena witnesses in the light of an order  
that was made in – on the 24<sup>th</sup> of June 2016 where the Competition  
Appeal Court had set aside the tribunal's decision that the conclusion  
of the agreement between MultiChoice and the SABC did not give rise  
to a notifiable measure and referred the transaction to the Commission.  
Then there was – then what MultiChoice and the SABC did they  
submitted certain information to the Commission but that information  
was found that it was not sufficient and their defence was that look this  
is all we have either some information does not exist or it never existed  
20 or it could no longer be traced. Then what the Commission then  
intended to do it asked the tribunal to issue a directive where the  
tribunal would say that the Commission is entitled to conduct  
interrogations of the Board Members of the various entities or any other  
executives as they deemed fit. And then SABC and MultiChoice  
objected to that and they said the tribunal had no jurisdiction to

entertain the Commission's request and then the tribunal on that basis it refused to do so. Then the matter came then before the Competition Appeal Court which handed down its judgment in that matter. And then the Competition Tribunal – Appeal Court I beg your pardon found that the – that is the June 2016 order which I have already referred to did not and cannot be read to give the Commission powers that would go beyond the documentation that was given to it. And there it says its powers were expressly confined the course of the inquiry to be conducted by the Commission exclusively to documentation as set out

10 in the order. And that is the order that was then set aside on appeal by the Constitutional Court on the basis that the Commission does have powers to use – the term that the court used – to use it is – if I may just take the Chair to paragraph 227 of the Order?

“Where the court found that Leave to Appeal is granted. The appeal is upheld and the Competition Appeal Court's Order of 28 April 2017 is set aside and replaced with the following. It is declared that the Order handed down by the Competition Appeal Court on 24 June 2016 does not preclude the Competition Commission from exercising its

20 non-cohesive and cohesive investigative powers in terms of Part B of Chapter 5 of the Competition Act for purposes of discharging its obligations under paragraph 3 of the June 2016 Order.”

And then further orders then were directions by the court as to by when the reports were to be filed.

**CHAIRPERSON:** And the Order is in paragraph 90 of that Judgment.

**ADV THANDI NORMAN SC:** Yes thank you Chair.

**CHAIRPERSON:** Yes.

**ADV THANDI NORMAN SC:** Thank you Chair. Thank you Chair with that Chair then we wish to place on record that the witness that we are going to call now is going to be answering the question that could not be answered before the Constitutional Court as to who are the persons that the Minister consulted.

**CHAIRPERSON:** Yes Minister Muthambi.

10 **ADV THANDI NORMAN SC:** That is Minister Muthambi.

**CHAIRPERSON:** Yes.

**ADV THANDI NORMAN SC:** Who are those persons?

**CHAIRPERSON:** Yes.

**ADV THANDI NORMAN SC:** We start off by making reference to e-mails.

**CHAIRPERSON:** That is now – she had consulted certain people.

**ADV THANDI NORMAN SC:** Yes.

**CHAIRPERSON:** In a way that appears to have been secretive.

**ADV THANDI NORMAN SC:** Yes because she did not disclose.

20 **CHAIRPERSON:** She did not disclose the identities of those people.

**ADV THANDI NORMAN SC:** Yes Chair.

**CHAIRPERSON:** Right throughout up to the Constitutional Court.

**ADV THANDI NORMAN SC:** Thank you Chair. Yes.

**CHAIRPERSON:** Yes okay.

**ADV THANDI NORMAN SC:** Yes thank you Chair. And what the

investigators have done was to go back to the – Chair would recall that on the 28<sup>th</sup> of September 2018 Chair made a ruling on the HDD which is normally called the Gupta Leaks.

**CHAIRPERSON:** Yes.

**ADV THANDI NORMAN SC:** That whatever evidence we tender it will be admissible provisionally until such time that there is reason to authenticate or – if it is – if that evidence is challenged. We are comfortable Chair in placing before you Exhibit CC46.

**CHAIRPERSON:** Yes.

10 **ADV THANDI NORMAN SC:** That Exhibit Chair 46 it is on the bench.

**CHAIRPERSON:** *Ja* I have got it here.

**ADV THANDI NORMAN SC:** Thank you Chair. Chair that Exhibit consists of two statements.

**CHAIRPERSON:** H'mm.

**ADV THANDI NORMAN SC:** Affidavits. I beg your pardon. The first affidavit which is marked Exhibit CC46.1 is that of Cecil – Professor Cecil Petrus Lawrence and he is the person that has authenticated these e-mails and ...(intervenes).

**CHAIRPERSON:** Yes.

20 **ADV THANDI NORMAN SC:** With the leave of the Chair he will be called in due course Chair, but he was not available yesterday ...(intervenes).

**CHAIRPERSON:** *Ja*.

**ADV THANDI NORMAN SC:** And we will lead his evidence some other time ...(intervenes).

**CHAIRPERSON:** *Ja.*

**ADV THANDI NORMAN SC:** But with your leave Chair there is also another statement which appears at – under the divider marked 46.2. That is the statement of Ms Thobekile Harriet Khumalo. She is present here this morning Chair.

**CHAIRPERSON:** Yes.

**ADV THANDI NORMAN SC:** May I ask that that Exhibit CC46 Chair be admitted before the evidence of the witness is led?

**CHAIRPERSON:** Let us just make sure that everybody understands  
10 what ...(intervenes).

**ADV THANDI NORMAN SC:** The ruling was?

**CHAIRPERSON:** What – well no. What this contains.

**ADV THANDI NORMAN SC:** Oh.

**CHAIRPERSON:** This file contains.

**ADV THANDI NORMAN SC:** Oh yes.

**CHAIRPERSON:** Now you referred to the Gupta e-mails – the hard drive.

**ADV THANDI NORMAN SC:** Yes.

**CHAIRPERSON:** This file contains certain statements as well as e-  
20 mails that have been obtained from the hard drive. Is that right?

**ADV THANDI NORMAN SC:** That is correct Chair.

**CHAIRPERSON:** That are relevant to the question of the identities of the persons that Minister Muthambi consulted ...(intervenes).

**ADV THANDI NORMAN SC:** Yes.

**CHAIRPERSON:** In relation to making the amendment to the policy.



**ADV THANDI NORMAN SC:** Yes.

**CHAIRPERSON:** The persons that she did not disclose at the time of the litigation.

**ADV THANDI NORMAN SC:** That is correct Chair.

**CHAIRPERSON:** *Ja.*

**ADV THANDI NORMAN SC:** Yes. Thank you.

**CHAIRPERSON:** Okay. Alright.

**ADV THANDI NORMAN SC:** Thank you.

**CHAIRPERSON:** Okay. So you are starting with Ms Khumalo?

10 **ADV THANDI NORMAN SC:** That is correct Chair.

**CHAIRPERSON:** Okay. Alright. The file containing the affidavit of Mr Cecil Petrus Lawrence and annexures thereto as well as the affidavit of Ms Thobekile Harriet Khumalo – are there annexures to her affidavit?

**ADV THANDI NORMAN SC:** Yes Chair.

**CHAIRPERSON:** And annexures to her affidavit will be admitted and marked as Exhibit CC46.

**ADV THANDI NORMAN SC:** Yes. Thank you Chair.

20 **CHAIRPERSON:** One will be – 46.1 will be the affidavit of Mr Cecil Petrus Lawrence and annexures thereto and 46.2 will be the affidavit of Ms Thobekile Khumalo and annexures thereto.

**ADV THANDI NORMAN SC:** As Chair pleases.

**CHAIRPERSON:** Okay.

**ADV THANDI NORMAN SC:** Thank you Chair.

**CHAIRPERSON:** So I think the spine of the lever arch must reflect

...(intervenes).

**ADV THANDI NORMAN SC:** Her name.

**CHAIRPERSON:** 46. – that it contains Exhibit CC46.1 and Exhibit four – CC46.2.

**ADV THANDI NORMAN SC:** Yes. Thank you Chair.

**CHAIRPERSON:** Okay.

**ADV THANDI NORMAN SC:** That will be done. Thank you Chair.  
Chair may the witness be sworn in.

**CHAIRPERSON:** Yes. Please administer the oath or affirmation to the  
10 witness.

**REGISTRAR:** Please state your full names for the record.

**MS KHUMALO:** Thobekile Harriet Khumalo.

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

**MS KHUMALO:** No.

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

**MS KHUMALO:** Yes.

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

**MS KHUMALO:** So help me God.

**ADV THANDI NORMAN SC:** Thank you Chair. Thank you.

**CHAIRPERSON:** Yes. You may go ahead.

**ADV THANDI NORMAN SC:** Thank you Chair. Ms Khumalo, there is a  
file marked 46 in front of you on your left-hand side or is it the one that

you have opened already?

**MS KHUMALO:** *Ja*. It is the one.

**ADV THANDI NORMAN SC:** Oh yes. Thank you. Alright. Is that your affidavit and if you look at that it has three pages and the – on the third page there is a signature. Is that your signature that appears there?

**MS KHUMALO:** Yes. It is.

**ADV THANDI NORMAN SC:** And when did when did you depose to that ...*(intervenes)*?

**CHAIRPERSON:** Ms Khumalo, you will have to raise your voice please.

10 **MS KHUMALO:** Oh. Okay.

**ADV THANDI NORMAN SC:** Thank you.

**MS KHUMALO:** Am I loud now?

**CHAIRPERSON:** Still very ...*(intervenes)*.

**MS KHUMALO:** Still?

**CHAIRPERSON:** Very, very soft.

**MS KHUMALO:** Okay.

**CHAIRPERSON:** You will have to shout.

**MS KHUMALO:** I have to shout? Okay. I will shout.

**ADV THANDI NORMAN SC:** Thank you.

20 **MS KHUMALO:** Yes. It is ...*(intervenes)*.

**CHAIRPERSON:** I do not know whether ...*(intervenes)*.

**ADV THANDI NORMAN SC:** Maybe you should ...*(intervenes)*.

**CHAIRPERSON:** You can – there is still room for you to bring the mic a little closer or not. If there is just – *ja, ja*. Okay. Alright.

**ADV THANDI NORMAN SC:** Thank you.

**CHAIRPERSON:** Ms Norman, I see ...(intervenes).

**ADV THANDI NORMAN SC:** Thank you Chair.

**CHAIRPERSON:** That the pagination in this file is not continuous from beginning to end.

**ADV THANDI NORMAN SC:** Yes Chair.

**CHAIRPERSON:** If the - if the affidavits are in the same file. It is better that ...(intervenes).

**ADV THANDI NORMAN SC:** It be continuous.

**CHAIRPERSON:** It be continuous rather than starting a new  
10 ...(intervenes).

**ADV THANDI NORMAN SC:** Pagination.

**CHAIRPERSON:** Page – *ja*. Pagination somewhere in the middle. So if that ...(intervenes).

**ADV THANDI NORMAN SC:** Yes.

**CHAIRPERSON:** Can be done. That should be done ...(intervenes).

**ADV THANDI NORMAN SC:** Yes Chair.

**CHAIRPERSON:** But if it is going to be problematic then maybe what needs to be done is ...(intervenes).

**ADV THANDI NORMAN SC:** Maybe to separate it from there.

20 **CHAIRPERSON:** *Ja*. Either separate – well we have now admitted it as together.

**ADV THANDI NORMAN SC:** Yes.

**CHAIRPERSON:** So maybe you can do an index that makes it clear that there are two sections in the file.

**ADV THANDI NORMAN SC:** In the file.

**CHAIRPERSON:** One section maybe you can call it A. The affidavit of Mr Lawrence and annexures.

**ADV THANDI NORMAN SC:** Yes Chair.

**CHAIRPERSON:** And it should be paginated from page 1 up to – maybe page A1 up to whatever ...(intervenes).

**ADV THANDI NORMAN SC:** Yes.

**CHAIRPERSON:** And then the second section is the section that contains Ms Khumalo's affidavit and annexures and then it would be under B or something.

10 **ADV THANDI NORMAN SC:** Yes. Thank you Chair.

**CHAIRPERSON:** If it starts from one, but then it is under B.

**ADV THANDI NORMAN SC:** Yes.

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

**ADV THANDI NORMAN SC:** We will do that Chair.

**CHAIRPERSON:** Ja. Okay.

**ADV THANDI NORMAN SC:** Thank you. Thank you Chair ...(indistinct). Sorry. If you go to page 3. Did you – is that your signature?

**MS KHUMALO:** Yes. It is.

20 **ADV THANDI NORMAN SC:** Thank you. When did you depose to that affidavit? There is a date below that.

**MS KHUMALO:** It was yesterday.

**ADV THANDI NORMAN SC:** Yes.

**MS KHUMALO:** I think yesterday was the 24<sup>th</sup>.

**ADV THANDI NORMAN SC:** Yes.

**MS KHUMALO:** Yes.

**ADV THANDI NORMAN SC:** And the contents of that affidavit are they true and correct?

**MS KHUMALO:** Yes. They are Chair.

**ADV THANDI NORMAN SC:** Yes. Thank you. Ms Khumalo, where are you employed?

**MS KHUMALO:** At the SABC.

**ADV THANDI NORMAN SC:** You are employed as what?

**MS KHUMALO:** Now as a Manager Operations. Previously I was the  
10 Personal Assistant to the COO.

**ADV THANDI NORMAN SC:** And who was the CoO?

**MS KHUMALO:** By then it was Mr Hlaudi Motsoeneng.

**ADV THANDI NORMAN SC:** Okay. How long were you ...(intervenes)?

**CHAIRPERSON:** Hang on.

**ADV THANDI NORMAN SC:** Sorry. Are you still ...(intervenes)?

**CHAIRPERSON:** Is that the best you can do?

**MS KHUMALO:** I will shout.

**ADV THANDI NORMAN SC:** Maybe she ...(intervenes).

**CHAIRPERSON:** You would rather shout, because it is difficult to hear  
20 certainly ...(intervenes).

**ADV THANDI NORMAN SC:** Yes.

**CHAIRPERSON:** From where I am.

**MS KHUMALO:** Oh.

**ADV THANDI NORMAN SC:** No. Thank you.

**CHAIRPERSON:** Ja. Okay.

**ADV THANDI NORMAN SC:** And also when you are answering please face the Chairperson ...(intervenes).

**MS KHUMALO:** Oh. Okay.

**ADV THANDI NORMAN SC:** Because that is one of the – because you ...(intervenes).

**CHAIRPERSON:** Maybe that will improve.

**ADV THANDI NORMAN SC:** Yes. That will definitely.

**MS KHUMALO:** Okay.

**ADV THANDI NORMAN SC:** Yes. Thank you ...(intervenes).

10 **CHAIRPERSON:** Okay.

**ADV THANDI NORMAN SC:** Because you are addressing the Chair. Not me.

**MS KHUMALO:** Okay.

**ADV THANDI NORMAN SC:** Thank you.

**MS KHUMALO:** I will try.

**ADV THANDI NORMAN SC:** Alright. Thank you very much. So I am sorry. The question was for how long were you a Personal Assistant to Mr Motsoeneng?

**MS KHUMALO:** From 2011 until he left the organisation.

20 **ADV THANDI NORMAN SC:** Yes.

**MS KHUMALO:** So I think he left the organisation in 2016. If I am not mistaken.

**ADV THANDI NORMAN SC:** Yes.

**MS KHUMALO:** Yes.

**ADV THANDI NORMAN SC:** And then when he left did you continue in

the position of being a Personal Assistant to ...(intervenes).

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

**ADV THANDI NORMAN SC:** To another COO?

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

**ADV THANDI NORMAN SC:** Okay. Where did you move?

**MS KHUMALO:** I moved to Manager Operations within the Regions.

**ADV THANDI NORMAN SC:** Yes.

**MS KHUMALO:** Provinces now called. Yes.

**CHAIRPERSON:** So throughout the time that – from 2011 to the time

10 that Mr Motsoeneng ...(intervenes).

**MS KHUMALO:** From 2011 yes.

**CHAIRPERSON:** Left.

**MS KHUMALO:** Yes.

**CHAIRPERSON:** You were his personal assistant?

**MS KHUMALO:** Yes. I was.

**CHAIRPERSON:** Okay.

**ADV THANDI NORMAN SC:** Yes. Thank you. Is it correct that you were approached by the investigators of the Commission?

**MS KHUMALO:** Yes. It is correct.

20 **ADV THANDI NORMAN SC:** And they requested ...(intervenes).

**CHAIRPERSON:** Maybe before that Ms Norman.

**ADV THANDI NORMAN SC:** Oh. Yes.

**CHAIRPERSON:** We all have an idea of what a Personal Assistant does, but just reiterate what your duties were generally speaking as Mr Motsoeneng's PA.



**MS KHUMALO:** Okay. On a normal business day. It will like assisting him in the office. Taking calls, screening the e-mails. If e-mails need attention, his attention I will just print them and make sure that he received them and welcoming visitors in the office and doing his appointment.

Make sure that he attends those appointments and when he is leaving the office probably he has got meetings outside. Making sure that he gets there and – *ja*. That was normally what ...(intervenes).

**CHAIRPERSON:** That – those were you duties ...(intervenes).

10 **MS KHUMALO:** *Ja*.

**CHAIRPERSON:** Generally speaking?

**MS KHUMALO:** Generally, yes.

**CHAIRPERSON:** Okay. Alright.

**ADV THANDI NORMAN SC:** And then when you say you would look at the e-mails. Where would you look at the e-mails from? From whose office?

**MS KHUMALO:** From my laptop.

**ADV THANDI NORMAN SC:** Yes.

**MS KHUMALO:** Yes.

20 **ADV THANDI NORMAN SC:** Now these e-mails would they be for your own personal – were they for you personally or were they for the COO, Mr Motsoeneng, that you received on your e-mail?

**MS KHUMALO:** No. It was for Mr Motsoeneng.

**ADV THANDI NORMAN SC:** And it was used as an official e-mail for the COO?

**MS KHUMALO:** Yes. Yes.

**ADV THANDI NORMAN SC:** Yes. Then you have in paragraph 4 and maybe I should get started with us. You have just started – you stated your qualifications. Could you just do that? Sorry. I omitted that.

**MS KHUMALO:** I have got a Bachelor Degree in Ministry obtained in Christian Family Church and then I have got a Diploma in Personal Assistant. I received it from Quest Computer School and I have matriculated in 2002 in Asamaloka Secondary School.

**ADV THANDI NORMAN SC:** Yes and you have already dealt with what  
10 you were doing at the time when you were employed in 2006.

**MS KHUMALO:** Yes.

**ADV THANDI NORMAN SC:** Now could you then tell the Chairperson about your interaction with the investigators of the Commission. That they approached you and what happened?

**MS KHUMALO:** Okay. They approached me yesterday and there was an e-mail that they have received. So that e-mail it was sent by the former Minister Faith Muthambi and it was – I think it was addressed to Ellen Tshabalala and I was copied on that e-mail.

**ADV THANDI NORMAN SC:** Yes. Now I am going to just take an  
20 exhibit that appears – which you have attached to your statement.

**MS KHUMALO:** Okay.

**ADV THANDI NORMAN SC:** Sorry. If you go to page 10 of that document which is the very last page.

**MS KHUMALO:** Okay. I am there.

**ADV THANDI NORMAN SC:** Thank you. Could you just read what that

says please?

**CHAIRPERSON:** Well let us hear what it is first from whom to whom ... (intervenes).

**ADV THANDI NORMAN SC:** Yes.

**CHAIRPERSON:** And then she can read.

**ADV THANDI NORMAN SC:** Ja.

**CHAIRPERSON:** It is an e-mail.

**ADV THANDI NORMAN SC:** Yes.

**CHAIRPERSON:** Is it not?

10 **MS KHUMALO:** Yes. It is an e-mail.

**CHAIRPERSON:** It is an e-mail. What is the date of the e-mail?

**MS KHUMALO:** The date of the e-mail is 8 August 2014.

**CHAIRPERSON:** From whom was it and to whom was it addressed?

**MS KHUMALO:** It was from Ellen Tshabalala and to Faith Muthambi and I was cc'd in that e-mail which is khumaloth@sabc.co.za and there is another person that was copied in that e-mail is Ashu. So I do not know who that person is.

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

**ADV THANDI NORMAN SC:** Yes.

20 **CHAIRPERSON:** And Ms Ellen Tshabalala what was she at the time. Do you know?

**MS KHUMALO:** I think it – because it was 2014. So I think she was still the Chair – the SABC Chairperson.

**CHAIRPERSON:** Chairperson of the Board?

**MS KHUMALO:** Of the Board, yes.

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

**ADV THANDI NORMAN SC:** Thank you.

**CHAIRPERSON:** Please read the e-mail then.

**MS KHUMALO:** “Honourable Minister Muthambi, sincerely  
apology for my late response. My e-mail has been  
disabled for the last four days. Thanks for the  
proposed proclamation. Regards, Zandile.”

**ADV THANDI NORMAN SC:** Yes. Thank you and if you go back then. I  
would like you to take Chair ...(intervenes).

10 **CHAIRPERSON:** I am sorry.

**ADV THANDI NORMAN SC:** Sorry.

**CHAIRPERSON:** The reference to Zandile. Who ...(intervenes)?

**MS KHUMALO:** It is ...(intervenes).

**CHAIRPERSON:** Who is that referring to?

**MS KHUMALO:** It is Ellen.

**CHAIRPERSON:** It is Ms Tshabalala?

**MS KHUMALO:** Ja. Ms Tshabalala. Yes.

**CHAIRPERSON:** Okay.

**MS KHUMALO:** Another name for her was Zandile.

20 **CHAIRPERSON:** Okay. Alright.

**ADV THANDI NORMAN SC:** Yes.

**MS KHUMALO:** Ja.

**ADV THANDI NORMAN SC:** Thank you Chair and below that where she  
has signed – sorry. There is something that – could you just read  
everything that is below that?

**MS KHUMALO:** Okay.

**ADV THANDI NORMAN SC:** That is below the name Zandile.

**MS KHUMALO:** Okay. Sent by my iPad.

**ADV THANDI NORMAN SC:** No. Sent from ...(intervenes).

**MS KHUMALO:** Sent from my iPad.

**ADV THANDI NORMAN SC:** Yes.

**MS KHUMALO:** And then it is:

10                    “On August 1, 2014 at 11:29 am. Faith Muthambi,  
                         vote. See proposed proclamation. The President  
                         must sign. Final proclamation. 1 August 2014.  
                         Sent from my iPad.”

**ADV THANDI NORMAN SC:** Yes. Thank you.

**CHAIRPERSON:** Who is speaking there?

**MS KHUMALO:** It is Faith Muthambi.

**CHAIRPERSON:** It is Ms Faith Muthambi?

**MS KHUMALO:** Yes.

**ADV THANDI NORMAN SC:** Yes.

**CHAIRPERSON:** Oh. Okay.

20                    **ADV THANDI NORMAN SC:** Do you know what position she held at the  
                         time, Ms Muthambi?

**MS KHUMALO:** She was the Minister of Communications.

**ADV THANDI NORMAN SC:** Yes. Thank you.

**CHAIRPERSON:** Yes. Is that still addressed to the same people as the  
– who is that addressed to those comments that she is making there.  
Do you know?

**MS KHUMALO:** Chair ...(intervenes).

**CHAIRPERSON:** Where she says see proposed proclamation. The President must sign.

**MS KHUMALO:** Yes. I see that. I think she – because Ellen has responded. So ...(intervenes).

**CHAIRPERSON:** Ms Tshabalala.

**MS KHUMALO:** Yes. Ms Tshabalala has responded. So I am thinking it is the same person that I was addressed.

**CHAIRPERSON:** Yes.

10 **MS KHUMALO:** So I think everybody was there in the e-mail. So Ms Tshabalala she just responded to everyone.

**ADV THANDI NORMAN SC:** Yes.

**CHAIRPERSON:** Yes.

**ADV THANDI NORMAN SC:** It appears Chair the question – your question Chair is answered at page 5.

**CHAIRPERSON:** Oh.

**ADV THANDI NORMAN SC:** If I may just take the witness to page 5.

**CHAIRPERSON:** Oh. Before you do so.

**ADV THANDI NORMAN SC:** Yes.

20 **CHAIRPERSON:** I think we need just for the sake of completeness. The e-mail that you read earlier on Ms Khumalo that is from the person referred to as Zandile – who you said was Ms Tshabalala addressed to Honourable Minister Muthambi. Will you please just read everybody who was - who was copied including their e-mail addresses?

**MS KHUMALO:** Okay. I will do that. It is from Ellen Tshabalala. Her

e-mail address is ellen@fortuneholdings.co.za. She sent it to Faith Muthambi. Her e-mail address is faith.muthambi@gmail.com and then cc'd khumaloth@sabc.co.za. So that is me.

**CHAIRPERSON:** That is yourself?

**MS KHUMALO:** Yes and then another person that was copied is Ashu. The e-mail address is ashu@sahara.co.za.

**CHAIRPERSON:** Thank you.

**ADV THANDI NORMAN SC:** Yes. Thank you Chair. Thank you. May I take the witness to page 5?

10 **CHAIRPERSON:** Yes.

**ADV THANDI NORMAN SC:** Thank you. Are you there Ms Khumalo?

**MS KHUMALO:** Yes. I am.

**ADV THANDI NORMAN SC:** Thank you. What is that? Is that another e-mail?

**MS KHUMALO:** Yes. This is another e-mail.

**ADV THANDI NORMAN SC:** Yes. When – could you just – what – when was it sent? What is the subject, the date, from, to? Could you just follow it through as – read out to the Chairperson?

**MS KHUMALO:** The subject is: Final Proclamation, 01 August 2014.

20 The date is Friday, 01 August 2014 and the time was 11:29 and from Faith Muthambi to khumaloth@sabc.co.za. That is me and to Ashu and cc'd Ellen Tshabalala.

**ADV THANDI NORMAN SC:** Could you ...(intervenes)?

**CHAIRPERSON:** Read the e-mail address for Ashu.

**MS KHUMALO:** The e-mail address for Ashu is ashu@sahara.co.za.

**ADV THANDI NORMAN SC:** Yes.

**CHAIRPERSON:** Thank you.

**MS KHUMALO:** And then there was an attachment to it. The attachment is – the name of the attachment is: Final Proclamation 01 August 2014 and then the contents of the e-mail says:

“See proposed proclamation. The President must sign. Sent from my iPad.”

**CHAIRPERSON:** H’mmm.

**ADV THANDI NORMAN SC:** Thank you.

10 **CHAIRPERSON:** Yes.

**ADV THANDI NORMAN SC:** Now let us look at what attachments were there. Are they attached to the e-mail that is before you now?

**MS KHUMALO:** Yes.

**ADV THANDI NORMAN SC:** Yes.

**MS KHUMALO:** It is the attachment.

**ADV THANDI NORMAN SC:** Could you just tell the Chair what those attachments were starting with one that appears at page 6? What was that?

20 **MS KHUMALO:** It is proclamation by President of the Republic of South Africa.

**CHAIRPERSON:** This is at page 6?

**ADV THANDI NORMAN SC:** That – it is at page 6 of the bundle. Thank you Chair.

**CHAIRPERSON:** Yes.

**ADV THANDI NORMAN SC:** Could you just read the title?



**MS KHUMALO:** “Transfer of administration and power of function instructed by legislation to certain Cabinet Members in terms of Section 97 of the Constitution.”

**ADV THANDI NORMAN SC:** Yes and if I may just read the next paragraph. It says:

10 “In terms of Section 97 of the Constitution of the Republic of South Africa 1996. I hereby transfer the powers, functions and duties entrusted by the specified legislation and all amendments thereto to the specified Cabinet Member as set out in the Schedule in English and ... with effect from the date of publication of this proclamation in the Gazette given under my hand and the seal of the Republic of South Africa at – this day of 2014. President by the order of President in Cabinet. Minister of the Cabinet.”

That document is a draft. It appears to be a draft. It is not signed. Am I correct?

20 **MS KHUMALO:** No. It is not signed.

**ADV THANDI NORMAN SC:** Thank you and then the next document that appears at page 7 was that also one of the attachments that you have received?

**MS KHUMALO:** Yes. It is.

**ADV THANDI NORMAN SC:** Yes. Could you just tell the Chair what is

written on that one?

**MS KHUMALO:** It is written Schedule.

**ADV THANDI NORMAN SC:** Schedule.

**MS KHUMALO:** Schedule ...(intervenes).

**ADV THANDI NORMAN SC:** Yes.

**MS KHUMALO:** And to the extent stated below.

10                   “The administration and the powers of a function  
                      instructed by the legislation mentioned in Column 1  
                      of the table below to a Cabinet Member as  
                      Executive Authority of that Department mentioned in  
                      Column 2 of the table are transferred to the Cabinet  
                      Members mentioned in Column 3 of the table.”

**ADV THANDI NORMAN SC:** Yes.

**MS KHUMALO:** 1.1.

**ADV THANDI NORMAN SC:** Yes.

**MS KHUMALO:** “Communication related and the legislation.”

20                   **ADV THANDI NORMAN SC:** Yes and then you have got three columns.  
                      The first column deals with legislation. The second it deals with the  
                      previous Cabinet Member and then the third column with the Minister -  
                      the new Cabinet Member.

**MS KHUMALO:** Yes. It is correct.

**ADV THANDI NORMAN C:** Yes and that document is three pages. On  
the third page you also have ...(intervenes).

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

**ADV THANDI NORMAN SC:** Sorry.

**CHAIRPERSON:** Before that Ms Norman just to ...(intervenes).

**ADV THANDI NORMAN SC:** Yes Chair.

**CHAIRPERSON:** Make sure that the transcript will - whoever reads will understand. There are three columns on the Schedule that the witness says was an annexure to the e-mail that she has read.

**ADV THANDI NORMAN SC:** Yes Chair.

**CHAIRPERSON:** Column 1 is written legislation. Column 2 is written previous Cabinet Minister. Column 3 says new Cabinet Minister. Maybe for – maybe it is convenient to say now – Ms Norman to say.

10 **ADV THANDI NORMAN SC:** Yes.

**CHAIRPERSON:** On Column 1 before legislation it reads: Electronic Communication Act 2005 Act 36 of 2005 and then under Column 2 immediately below previous Cabinet Minister it is written Minister of Telecommunications and Postal Services and under Column 3 immediately below the reference to new Cabinet Minister it says Minister of Communications.

**ADV THANDI NORMAN SC:** Yes.

**CHAIRPERSON:** *Ja.*

**ADV THANDI NORMAN SC:** Thank you Chair.

20 **CHAIRPERSON:** Yes.

**ADV THANDI NORMAN SC:** Thank you.

**CHAIRPERSON:** You can continue.

**ADV THANDI NORMAN SC:** Chair we are going to expand slightly on this when the next witness testifies ...(intervenes).

**CHAIRPERSON:** That is fine.

**ADV THANDI NORMAN SC:** Because he will deal with the policy issues. Thank you.

**CHAIRPERSON:** Yes.

**ADV THANDI NORMAN SC:** Thank you Chair.

**CHAIRPERSON:** But you had – you wanted to refer to the last page.

**ADV THANDI NORMAN SC:** Yes. Thank you Chair. Then the last page of that was that also a part of the attachment?

**MS KHUMALO:** Yes. It was.

**ADV THANDI NORMAN SC:** Yes and that page deals with – it has  
10 ...(indistinct) Act in the first column and it has the previous Minister,  
because it is the same table. It would be Minister of  
Telecommunications ...(intervenes).

**MS KHUMALO:** H'mm.

**ADV THANDI NORMAN SC:** And Postal and then because this was a  
proposed transfer of powers, as it says, then the new Cabinet Member  
...(intervenes).

**MS KHUMALO:** H'mm.

**ADV THANDI NORMAN SC:** Under Column 3 would be Minister of  
Communications.

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

**ADV THANDI NORMAN SC:** Thank you and then you also have below  
that the Broadband Infraco Act of 2007 which would have been previous  
Cabinet Member. Minister of Public Enterprises and then new Cabinet  
Member in Column 3. Minister of Telecommunications and Postal  
Services.

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

**ADV THANDI NORMAN SC:** Thank you. Now when you received these e-mails what did you do with them?

**MS KHUMALO:** I normally print them. All the e-mails that I receive. I normally print them and put it in a folder and make sure that Mr Motsoeneng gets it.

**ADV THANDI NORMAN SC:** Yes and do you know the reason why or did Mr Motsoeneng have a separate e-mail address that he was using which you were also managing for him?

10 **MS KHUMALO:** Yes. His e-mail address.

**ADV THANDI NORMAN SC:** He had his own e-mail address as well?

**MS KHUMALO:** He had an e-mail address. Yes.

**ADV THANDI NORMAN SC:** Yes. Thank you. Now when you received these e-mails if now somebody were to go to your computer today.

**MS KHUMALO:** H'mm.

**ADV THANDI NORMAN SC:** Would that person find these e-mails?

**MS KHUMALO:** Yes sir.

**ADV THANDI NORMAN SC:** Yes and is it correct that the investigators have also e-mailed your computer?

20 **MS KHUMALO:** Yes.

**ADV THANDI NORMAN SC:** So everything that you have placed before the Commission now

**MS KHUMALO:** In my e-mail.

**ADV THANDI NORMAN SC:** It is – it still exists ...(intervenes).

**MS KHUMALO:** Yes.

**ADV THANDI NORMAN SC:** On your e-mail. Thank you and you confirm that these e-mails are authentic?

**MS KHUMALO:** Yes Chair.

**ADV THANDI NORMAN SC:** And you have not tampered with them in any way?

**MS KHUMALO:** No.

**ADV THANDI NORMAN SC:** Yes. Thank you. Thank you Chair. That is the evidence from this witness.

**CHAIRPERSON:** Thank you very much Ms Khumalo. You are excused.

10 **MS KHUMALO:** Alright then. Thank you.

**ADV THANDI NORMAN SC:** Thank you. Thank you Chair. Chair may – thank you. The next witness Chair is Mr Yunus Carrim.

**CHAIRPERSON:** I am happy that somebody has – seems to have picked up the misspelling was ...(intervenes).

**ADV THANDI NORMAN SC:** That was there. Yes Chair.

**CHAIRPERSON:** Ja. Ja.

**ADV THANDI NORMAN SC:** It was corrected yesterday. Thank you.

**CHAIRPERSON:** Ja. Well I think I was too quick to ...(intervenes).

**ADV THANDI NORMAN SC:** To praise us Chair?

20 **CHAIRPERSON:** Yes.

**ADV THANDI NORMAN SC:** Oh.

**CHAIRPERSON:** Because I see that one was corrected and another one was not corrected.

**ADV THANDI NORMAN SC:** I apologise for that Chair.

**CHAIRPERSON:** If you look at the ...(intervenes).

**ADV THANDI NORMAN SC:** The first page.

**CHAIRPERSON:** Spelling of his name on the first page of his affidavit and you look on the cover – on the spine. It is different as well as on the first page in the file. At least with mine. I do not know whether it is ...(intervenes).

**ADV THANDI NORMAN SC:** Yes.

**CHAIRPERSON:** The same as yours. I hope that his one is correct, because he will think that how can you people get ...(intervenes).

**ADV THANDI NORMAN SC:** Get it that wrong.

10 **CHAIRPERSON:** His name wrong.

**ADV THANDI NORMAN SC:** Well I – we will apologise for that Chair.

**CHAIRPERSON:** You see before the S it is U not I.

**ADV THANDI NORMAN SC:** Yes ...(intervenes).

**CHAIRPERSON:** *Ja*.

**ADV THANDI NORMAN SC:** And that is the mistake they made. In fact we had alerted the Team that bundles to this and because the first page was corrected. I assume that everything was corrected, because it ...(intervenes).

20 **CHAIRPERSON:** *Ja*. No. It was – Mr Carrim I hope that on your file on the outside they have spelt your name correctly, because on mine they did not.

**MR CARRIM:** Judge Zondo, good morning to you and to the others here.

**CHAIRPERSON:** Yes. Good morning.

**MR CARRIM:** It is not. Though it does not matter to me particularly.

**CHAIRPERSON:** It is not a big deal?

**MR CARRIM:** As you well know my mother who is very conservative  
...(intervenes).

**CHAIRPERSON:** *Ja.*

**MR CARRIM:** And has very limited formal education I teasingly say  
was very gender sensitive ...(intervenes).

**CHAIRPERSON:** *Ja.*

**MR CARRIM:** Because Eunice could be E-u-n-i-c-e.

**CHAIRPERSON:** Yes.

10 **MR CARRIM:** Which is a female name.

**CHAIRPERSON:** *Ja.*

**MR CARRIM:** And that is how I am often spelt. So Y-u-n-i-s is not so  
bad.

**CHAIRPERSON:** Oh.

**ADV THANDI NORMAN SC:** I thank you.

**CHAIRPERSON:** No.

**ADV THANDI NORMAN SC:** Thank you.

**CHAIRPERSON:** Thank you Mr Carrim.

20 **ADV THANDI NORMAN SC:** Thank you very much Chair. Chair the  
...(intervenes).

**CHAIRPERSON:** But do get it sorted out later.

**ADV THANDI NORMAN SC:** We will.

**CHAIRPERSON:** *Ja.*

**ADV THANDI NORMAN SC:** It will done now Chair.

**CHAIRPERSON:** Yes. Okay.



**ADV THANDI NORMAN SC:** In this – before we adjourn for the day.

**CHAIRPERSON:** Okay.

**ADV THANDI NORMAN SC:** Thank you. Chair, before you Chair you have Exhibit CC41 which is the statement together with the annexures of the – attached to the affidavit of Mr Yunus Carrim and may that Chair be admitted as Exhibit CC41.

**CHAIRPERSON:** The affidavit of Mr Yunus Carrim and annexures thereto will be admitted and marked as Exhibit CC41.

**ADV THANDI NORMAN SC:** Thank you.

10 **CHAIRPERSON:** *Ja.*

**ADV THANDI NORMAN SC:** Chair, the witness will affirm instead of taking the oath.

**CHAIRPERSON:** Yes. Please administer affirmation.

**REGISTRAR:** Please state your full names for the record.

**MR CARRIM:** Yunus Ismail Carrim.

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

**MR CARRIM:** No.

20 **REGISTRAR:** Do you solemnly affirm that the evidence you give shall be the truth, the whole truth and nothing but the truth? If so please raise your right hand and say I truly affirm.

**MR CARRIM:** I truly affirm

**CHAIRPERSON:** Thank you very much Mr Carrim. We have already greeted.

**ADV THANDI NORMAN SC:** Yes.

**CHAIRPERSON:** Thank you.

**ADV THANDI NORMAN SC:** Thank you Chair.

**CHAIRPERSON:** You may proceed Ms Norman.

**ADV THANDI NORMAN SC:** Chair, I have just been reminded that Counsel for Mr Carrim have not placed themselves on record ... (intervenes).

**CHAIRPERSON:** Oh, yes. Let ... (intervenes).

**ADV THANDI NORMAN SC:** And all the other Counsel.

**CHAIRPERSON:** Yes.

**ADV THANDI NORMAN SC:** May I just step back a while  
10 ... (intervenes).

**CHAIRPERSON:** Yes.

**ADV THANDI NORMAN SC:** For them to place themselves on record.  
Thank you Chair.

**CHAIRPERSON:** Counsel for Mr Carrim please come forward and place yourself on record and then other Counsel who represents parties who may be implicated by his evidence who are here will then follow and place themselves on record as well. Yes.

**ADV PETER HARRIS:** Thank you Chairman. My name is Peter Harris of Harris Nupen Molebatsi Attorneys.

20 **CHAIRPERSON:** Yes.

**ADV PETER HARRIS:** And assisted by Tshegofatso Monnana and Tebogo Tsoane.

**CHAIRPERSON:** Thank you very much.

**ADV PETER HARRIS:** Thank you Chair.

**CHAIRPERSON:** Thank you. You confirm that you represent

Mr Carrim.

**ADV PETER HARRIS:** I do indeed Chair.

**CHAIRPERSON:** Yes. Thank you.

**ADV MCGREGOR KUFA:** As it pleases this honourable Commission, I appear on behalf of Mr Claude Motsoeneng, my name McGregor Kufa, with me assisting me is my junior Moroko Rombeni.

**CHAIRPERSON:** Thank you.

**ADV MOROKO ROMBENI:** I am Advocate Moroko Rombeni, I am appearing on behalf of Mr Motsoeneng instructed by Machaba  
10 Attorneys.

**CHAIRPERSON:** Thank you.

**ADV FRANCIS HATTINGH:** Morning Chair, I am Francis Hattingh I appear on behalf of MultiChoice with – I am instructed by Weber Wentzel Attorneys. I am here on a watching brief and I tender my apologies for my two leaders missing, Ms ...(indistinct) and Mr Trenworth.

**CHAIRPERSON:** Thank you very much. Ms Norman they all may have spoken very fast when they gave their names, I don't know if the transcribers would have got that, so it may be that somebody can just  
20 write the names down and pass on to the transcribers because they might not also have got their spellings correct.

**ADV THANDI NORMAN SC:** Thank you Chair, that is being attended to, thank you Chair.

**CHAIRPERSON:** Alright.

**ADV THANDI NORMAN SC:** Thank you. Mr Carrim in front of you,

you have a file that on the spine is marked Exhibit CC41, do you have it?

**MR CARRIM:** Yes I do.

**ADV THANDI NORMAN SC:** Yes, if you open that file it has on the very first page it says submissions of Mr Yunus Carrim to the Judicial Commission of Inquiry dated 30 January 2020 and it follows up by an index, do you see that?

**MR CARRIM:** Yes, yes I do.

**ADV THANDI NORMAN SC:** Thank you, but at page 4 it is an affidavit  
10 and that affidavit goes up to page 80.

**MR CARRIM:** Yes.

**ADV THANDI NORMAN SC:** At page 80 there is a signature, is that your signature?

**MR CARRIM:** Yes indeed.

**ADV THANDI NORMAN SC:** It is, thank you. And when did you depose to that affidavit?

**MR CARRIM:** Well on the 30<sup>th</sup> of January if I am correct.

**ADV THANDI NORMAN SC:** Yes, and the contents of that affidavit true and correct?

20 **MR CARRIM:** Yes.

**ADV THANDI NORMAN SC:** Thank you. And this morning we were furnished with another supplementary affidavit from you. Chair if I may hand up it doesn't form part of the bundle, it was handed up this morning and could you just explain to the Chair the purpose of that supplementary affidavit.

**MR CARRIM:** Yes, I don't have the copy before me but basically it is a reference to paragraph .....(intervenes).

**CHAIRPERSON:** They will give it to you just now, give the witness first.

**MR CARRIM:** Yes Judge, I will actually more or less read it if you like, obviously I refer to who I am, an adult male serving in the National Council of Provinces currently as the Chairperson on the Select Committee on Finance and obviously I confirm that this is to the best of my ability true and correct. Now there is just minor things, the first one  
10 is 3.1, the word is missing, so the sentence paragraph 174 should now read Chairperson:

“As far as I can recall the first SABC Board Meeting where digital migration was discussed Mr Motsoeneng was the only person (that was left out) was the only person who opposed STB control.”

So the words missing there were “was the only person”, for which I apologise, that was my draft, I apologise for that. At paragraph 225 I picked this up only yesterday and so I approached the Commission if I could insert these words, at paragraph 225 the last  
20 sentence should read as follows:

“And if I refer the Commission to paragraphs 105 and 162 of these affidavit amongst other paragraphs which deal with the issues regarding how Naspers sought to influence government policy on digital migration.”

This is a direct response to the question of the Commission:

“Do you have any direct evidence of collusion and corruption?”

To which I replied:

“Not direct evidence though Mr Agrizzi was able to provide it but if you refer to those specific paragraphs amongst others what is very clear, and the Commission must decide on this, that what happened either was or bordered on being corrupt.”

And then in respect of the relevant affidavit, paragraph 272  
10 quotes from a reply that I made in reply to Mr Nono Letele, the Chairperson of the MultiChoice Board, and although I refer to the letter in paragraph 272, and I have referred it to the Peter Harris office, they mistakenly forgot to forward that annexure and when I picked it up on Sunday they arranged for the annexure to be attached, but in paragraph 272 the annexure is referred to, the paragraph is extracted from it, and all the annexure does now is confirm that I have written such a .....(intervenes).

**ADV THANDI NORMAN SC:** Although it is not numbered, but the first page is your signature.

20 **MR CARRIM:** Yes, yes.

**ADV THANDI NORMAN SC:** Yes, and that was commissioned when – this morning, on 25<sup>th</sup>?

**MR CARRIM:** Yes, yes.

**ADV THANDI NORMAN SC:** Yes, thank you. Thank you Chair.  
Chair this will be placed properly during the tea break so as to follow

the sequence in the bundle.

**CHAIRPERSON:** It will be placed at the end of CC41.

**ADV THANDI NORMAN SC:** At the end of CC41, yes.

**CHAIRPERSON:** So CC41 will then contain not only Mr Yunus Carrim's main affidavit and annexures but also a supplementary affidavit.

**ADV THANDI NORMAN SC:** Thank you Chair.

**CHAIRPERSON:** Okay.

**ADV THANDI NORMAN SC:** Thank you Chair. Mr Carrim could you  
10 just place before the Chairperson your qualifications please?

**MR CARRIM:** Well I have an MA in Sociology for what that's worth and an International Diploma in Journalism but I suppose relevance is that I have been an political activist since 1971, I got to Parliament in 1994 and I remained there though now in the National Council of Provinces and the matters before this Commission relate to a brief period of 10 months when I was Minister of Communications.

**ADV THANDI NORMAN SC:** And what was that period?

**MR CARRIM:** If I remember correctly 10<sup>th</sup> of July 2013 to around the 25<sup>th</sup> of May 2014 when the President announced his new Cabinet.

20 **ADV THANDI NORMAN SC:** Yes. In your paragraph from pages 1 right up to page around page 30 you deal with the evolution of the digital migration policy under various Ministers but in – the Commission has heard – has received that evidence from Mr Roy Kruger, Mr Jansen van Vuuren but largely from Mr Roy Kruger who was in charge of implementing that policy.

Do you know Mr Roy Kruger?

**MR CARRIM:** Yes in fact he was appointed as the advisor to Minister Dina Pule and he is an expert on digital migration and he was brought in as I recall because of his expertise, the private sector had nominated him and my predecessor had him there and I kept him on.

**ADV THANDI NORMAN SC:** Yes, and who was your advisor at the time when you were Minister of Communications?

**MR CARRIM:** It was Joan Juagga whom I appointed and Mr David Nidrey whom I also appointed. Mr Kruger was there already as I  
10 explained.

**ADV THANDI NORMAN SC:** Yes without then rehashing all the evidence that Mr Roy Kruger has placed before the Commission I would just like you in a very brief way to identify the differences between the amendments that were effected during your period and those that were effected during the time of Ms Muthambi and how those differed and how they in your own eyes affected the implementation of the policy as a whole.

**MR CARRIM:** Yes, well I can't recall everything I had said Judge in the .....(intervenes).

20 **CHAIRPERSON:** Yes, you can look at your affidavit if that will refresh your memory.

**ADV THANDI NORMAN SC:** Yes.

**MR CARRIM:** Alright.

**CHAIRPERSON:** Yes.

**ADV THANDI NORMAN SC:** Okay.



**MR CARRIM:** But basically to summary it I think while the affidavit that I have submitted deals with the technical issues of what digital migration is and what sector control is and why it is so important to diversification of the paid TV Sector Mr Kruger and presumably Mr Garth Stracken from the South African Bureau of Standards had set out the technical issues, but embedded in the first 30 pages or so are the political issues as well and I will focus on that rather than the technical issues.

So in 2008 the then Minister, Minister Ivy Matsepe-Casaburri,  
 10 through Cabinet introduced the digital migration policy. It was very clear and explicit and I explain in my affidavit further how that she and Cabinet felt that there should be encryption or call it sector box control, the term we used in the period I was the Minister, so she thought it was crucial to have sector box control for a variety ...(indistinct) until Minister Pule in 2012 tweaked the policy. What she did was remove the reference to the term encryption which the experts tell me is a form of STB control, but she didn't withdraw control itself, because to have to do that in any event you would have to go to the South African Bureau of Standards and change the standard which provided for  
 20 control.

It would take anything between 34 week and 17 months to change that, so she left that term there, so when I got there STB control was still the policy and indeed at the ANC Mangaung Conference, as I explain in the affidavit, there was a strong emphasis on the importance to ensure competition in the paid TV Sector, which at

that time was dominated 98% by MultiChoice/Naspers and it was felt it was important to bring in black, particularly African new entrants and the way to do that was to have a control system so that new entrants can get in, in a way that government has done in various forms of industrial development initiatives, in the automotive industry and so on. I explained why the Department of Trade and Industry was so strongly for STB control.

So basically when I got there as I explained the environment was to put it mildly, very toxic. Within the Department of  
 10 Communications there were various fractions and factions regrettably but within the industry too, and we had the ITU, United Nations International Telecommunications Union deadline of June 17, 2015 by which time we should have completed the digital migration process, and in fact it was meant to have been finished when Cabinet opted for it in 2008 three years hence which mean 2011, and have in mind that 2014 elections were looming I thought that this administration of government should complete the process, meet the ITU deadline, finalise the policies and so the new incoming executive could just implement it.

So there were those pressing deadlines, but having acquainted  
 20 myself with the issues it became very clear to me that there was no prospect of the parties themselves meeting the broadcasters concerned or the manufacturers concerned and therefore a facilitation process to seek some consensus, some give and take. Sorry Chair?

**CHAIRPERSON:** Yes, before you proceed can we go back to volume 8 when Cabinet adopted the policy as formulated by the then Minister of

Communication, Dr Ivy Matsepe-Casaburri, do you know whether the ruling party had already adopted a position or policy position or not yet, it was to do that later?

**MR CARRIM:** It is a very good question which I haven't thought about before, I can't answer that, but I can certainly assure you Judge, and I have set it out, that the issue of competition in the paid TV Sector was set out very explicitly in the 2012 December ANC conference. What was not set out was the form through which you should secure this competition.

10 **CHAIRPERSON:** Yes.

**MR CARRIM:** And allow for African entrants into a very monopolised sector.

**CHAIRPERSON:** Yes.

**MR CARRIM:** And what we had at our available disposal was STB control, there was no other option and so we used that, if there was some other technology or some other option to diversify, in fact the ANC resolution as I recall it says attempts to diversify and encourage competition in the paid TV Sector, those are not exact words, I can refer to them if I have to, but it is there in the affidavit, have failed so  
20 far and more has to be done.

So what is certainly clear is by December 2012 the ANC held to the view that you must have competition, subsequently before I went to Cabinet there would have been at least five or six meetings with the NEC Committee on communications where I took the proposal we had

after all those consultations and said to the NEC sub-committee the facilitation process has failed .....(intervenes).

**CHAIRPERSON:** Yes, before you focus on that I want to go back also to what you found when you were appointed as Minister.

**MR CARRIM:** Yes.

**CHAIRPERSON:** You have told me already that your predecessor had made some changes as I understand the position.

**MR CARRIM:** Yes.

**CHAIRPERSON:** As I understand it what the policy position was then  
10 after she made those changes differed from the position that had been approved by Cabinet in 2008, is that right? Am I right that differed or not really?

**MR CARRIM:** Well as I said it was a tweaking and .....(intervenes).

**CHAIRPERSON:** Yes, not in substance, it was not a change in substance?

**MR CARRIM:** No the idea of sector box control was retained.

**CHAIRPERSON:** Yes.

**MR CARRIM:** The word if I recall correctly, and it is in my text and if you like I can refer to it, they dropped the word encryption but the  
20 terms STB control was maintained.

**CHAIRPERSON:** Yes.

**MR CARRIM:** I should also say in fairness to my predecessor that in her budget speech around March/April of 2013, about three months before I became the Minister, she had hinted that she was going to review the mandatory nature of STB control, but as it happened she

didn't do anything subsequently so when I got there STB control was still very much the policy.

**CHAIRPERSON:** And that was in line with the 2008 decision?

**MR CARRIM:** Yes.

**CHAIRPERSON:** It was not inconsistent with it?

**MR CARRIM:** No, it was tweaked.

**CHAIRPERSON:** Yes.

**MR CARRIM:** Moreover there was in September 2012, I think the 14<sup>th</sup> of September, my text will have the correct date, what was passed was  
10 the STB Manufacturing development policy. The ...(indistinct) of Trade and Industry set out why it was important to the growth of the local electronics industry and the creation of some date predicted whether that's feasible or practicable I don't know, 23 500 jobs had surfaced, that we would use the digital migration process because of its sweeping nature, it was going to transform the entire broadcasting industry.

It is part also, you see Judge you can't reduce the matter as I insist in the affidavit and as the Department insisted when I was there, you can't reduce it simply to a broadcasting matter, it was going to transform the broadcasting landscape but even more it was closely  
20 linked to the overall economic transformation of South Africa, including crucially its de-rationalisation, so if you look at our broad socio-development goals and the Department of Trade & Industry if you like, and you can call the officials if you care to, or have the time to, were always breathing down our neck not to forego control, so in short there was no substantial change when I got there that required us at the time

as a collective to forego control, if anything the Department of Trade & Energy said just move they said, just move on this and as I said Judge we tried to strike a balance between the two sides, and we brought in independent facilitators and they failed.

**ADV THANDI NORMAN SC:** Thank you, Chair .....(intervenes).

**CHAIRPERSON:** Okay, maybe that is the right time to take the tea break.

**ADV THANDI NORMAN SC:** Yes, thank you Chair.

**CHAIRPERSON:** And therefore you may continue.

10 **MR CARRIM:** Thank you very much.

**CHAIRPERSON:** Okay, we will take the short adjournment and we will resume at 11:35.

**ADV THANDI NORMAN SC:** Thank you Chair.

**CHAIRPERSON:** We adjourn.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** Okay let us proceed.

20 **ADV THANDI NORMAN SC:** Thank you Chair. Thank you. Yes, Mr Carrim when you were answering the questions to the Chairperson you highlighted the difficulties with the parties not agreeing and in paragraph 24 of your statement you deal with some of the – what we would look at – think it was a simple issue but we that the parties would disagree on the terms control conditional access and encryption. Could you just tell the Chair, because your, the proposed policy on your part was dealing with conditional access, am I correct?

**MR CARRIM:** Well, as we held the term SDB Control, now if you talk to Mr Kruger and others, Mr Mohapi and others who served at that time as the head CEO of Sentech, excuse me, their view was that you could have a variety of types of control. One of which is encryption, another sometimes interchangeably used with the term encryption, was conditional access, that ultimately the government was not so concerned about the form of SDB Control use. That is a technological issue. What we were concerned to do was to achieve the goals, and I have set it out in the affidavit, and there is about 16 goals that we sought to achieve and

10 they revolved around the issues I raised earlier around diversification, de-racialization, transformation.

So, what I must also say Judge, even the experts could not agree on the terms SDB Control, the term encryption and conditional access. Some of the experts held to the view that there are very specific and distinct meanings. Others however said they are interchangeable, so even after the facilitation process, though the facilitation process sought to arrive at a definition, the different experts, including the same expert would use the term interchangeably. We are politicians' Judge. We are not technical experts, and I have explained, I have got no broadcasting

20 engineering experience. What we wanted was the policy. We are politicians.

How you achieve this, is something the technical experts and may I say Judge, I should have said this at the outset, I was very honoured and privileged to work with a wonderful team. And it is a matter of deep regret to me, and I would like to acknowledge then that all the

hard work they put in has come to nought. Mr Mohapi is utterly brilliant, he makes this country proud. Mr Kruger who is a super-rich person as I understood it, he had retired, decided to come and serve Government, from the private sector. Mr Nidri who served the public movement, the movement. Came and offered his services.

The DG, Wanda Glangamandla and others, they, it is a deep, it is a matter of deep regret to me that all the work they put in has come to nought. So I may I just say that on the terms, we thought it is best to use the term SDB Control because it avoided the different parties deliberately  
10   distorting the policy.

**ADV THANDI NORMAN SC:** Yes, thank you.

**MR CARRIM:** And that is advice I got from Mr Kruger and Mohapi and others, as I recall it.

**ADV THANDI NORMAN SC:** Yes.

**CHAIRPERSON:** So would it be correct to say that from Governments point of view, as long as you had control, that enable you to achieve the goals that you sought to achieve. It did not matter what the form of that control was, is that correct?

**MR CARRIM:** If I am correct, and again may I stress, I am no lawyer, the  
20   advice we got within the Departments lawyers and perhaps outsiders was that the eTV Court judgment precluded the Minister from deciding on what form the control should take and we did not want to undermine the 2012 Court Judgment that Advocate Norman referred to.

**CHAIRPERSON:** Yes, yes.

**MR CARRIM:** Moreover, there were people threatening us on both sides.



eTV and them wanted control set if you drop control, we will take you to Court, led by MultiChoice. MultiChoice, SABC and NAMEC – The National Association of Manufacturers in Electronic Components, said if you go ahead with control, we will take you to Court.

So to avoid Court action from both sides we evolved a policy that said, those who want to use control, they can use it, but they will have to pay appropriately for the extra, at that stage equivalent of 18 to 20 Rands on the SDB Control System. They will have to pay for it. Not 20 Rands, as eTV hinted in one of its Court representations, but far more.

10 Interestingly Chairperson, a Minister advised me, who is far more accomplished in the Economics sphere, why do you not take the money you will secure as a profit on putting in the SDB Control and give it to SABC which needs the money.

So that is what we intended, that is what we started to do with National Treasury. We started engaging with them to say, the profits we get from the use of the Control System which bordered on 20 Rand, and which was negligible given the overall cost of the SDB and given the dividends that will come to Government. Government invests over 7 billion, according to the DTI, in areas like automation and mining and so  
20 on. It puts money in because you derive from its revenue. So, in short, we were not doing anything which was specifically different from the DTI approved – Cabinet approved Industrial Policy Development Incentives. We do it all the time, we provide tax incentives. So, in short, I will stop there.

**CHAIRPERSON:** Yes, yes.

**MR CARRIM**: May I suggest Chairperson, I am going on for too long, you obviously free to tell me Mr Carrim, ...(intervenes).

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

**MR CARRIM**: You know we are politicians; we can keep you here, ...(intervenes).

**CHAIRPERSON**: No no I understand.

**MR CARRIM**: Regrettably that is our vocation. You are Judges and lawyers and you want to be precise well I am not a lawyer I am afraid, and I am what I am.

10 **CHAIRPERSON**: Well I can tell you that lawyers are accused of being long-winded too. Okay, Ms Norman?

**ADV THANDI NORMAN SC**: Yes, yes, thank you Chair. Thank you, and you have highlighted – you have dealt – you have touched on the SABS standards, but how were you and when you were proposing the amendments to the policy, how – what mechanisms did you at least put in place to make sure that whatever Set Top Boxes find their way within the country, they would have at least been manufactured within the country, and if not what benefits would the local manufacturers derive from Set Top Boxes that were not manufactured within the country?

20 **MR CARRIM**: Well Chairperson, it was the usual story, and perhaps to get somebody senior, who was in DTI at the time will be more helpful to the Commission for a more technically and economically sound answer, but as I understood it we first and foremost felt, if Government is investing to give Set Top Boxes to 5.2 billion people who are indigent, who are earning below a certain ...(intervenes).

**CHAIRPERSON:** Was that million or rather billion?

**ADV THANDI NORMAN SC:** *Ja.*

**MR CARRIM:** Sorry, it is 5.2 million, sorry.

**CHAIRPERSON:** *Ja.*

**ADV THANDI NORMAN SC:** Yes.

**MR CARRIM:** Right and the amount would run into billions, we felt that we have to protect our investment and part of that amongst 7 or 8 reasons, for the control system was to encourage the growth of the electronic industry in our country. We also introduced control, taking into  
10 account WTO restrictions to prevent our market from being flooded with cheap imports that will not function properly.

Experts drew to my attention and may I say Chairperson, I have had the privileges under Apartheid of Education and I have for what it is worth, a Master's Degree in Sociology and an International Diploma in Journalism. So, I have privileges that perhaps some other Ministers in our Cabinet did not have. So, I am a journalist, I read on my own, a considerable amount, because I felt I should not become beholden to technical experts. So I did a lot of reading too, and it seemed to be reasonable what they were saying, that these cheap Set Top Boxes that  
20 have no Control System, were used in Mauritius and I Googled it myself and I found that they were dysfunctional there.

And we were concerned that some of them were already circulating inside the country, and it was alleged that some 70 000 of them or there, that number were hold up in the Richards Bay port. They were meant to be brought in but because they did not meet the South

African Bureau of Standards, they were not allowed to be brought in. Secondly, as I explain in the affidavit, for you to change the SABC Standard, and Chairperson you will find annexures to that effect, even including a letter.

The South African Bureau of Standards said that the minimum it will take, it is their letter Chairperson, the minimum it will take is 34 weeks to get agreement. And that is of course only if there is consensus amongst those ferociously opposed to control and those ferociously supporting control. They said the last time they changed the standard –

10 SABS standard, it took 16 to 17 months and given the very limited prospects at arriving at consensus on the standard, they could not see it happening any sooner.

So because the ITU deadline was looming, the term of the Parliament and Government were ending around April/May 2014, we decided to retain the standard, which is what the previous Minister, even though she might have been edging towards dealing with reviewing SDB Control, could not move, she was stuck with it, because she knew presumably, I cannot speak for her, it would take a very long time to change.

20 **ADV THANDI NORMAN SC:** Yes and whilst you interact again consulting various stakeholders on the measures that you just eluded to, ICASA – you would have kept ICASA on Board and I see you have attached annexure 2 is which is a letter from ICASA which was saying to you, the measures that you were proposing to make the Set Top Box control non mandatory while you are setting the Government response which is to

protect its investment in subsidised Set Top Box's being the wisdom of Solomon to an intractable matter on which all stakeholders are unlikely to agree. That appears Chair at page 87. So, I would imagine when the ... (intervenes).

**CHAIRPERSON:** Hang on one moment you have started by reading before you could tell us where to turn to.

**ADV THANDI NORMAN SC:** I beg your pardon Chair page 87.

**CHAIRPERSON:** Page 87.

**ADV THANDI NORMAN SC:** Yes, yes. That is a letter from ICASA which  
10 was addressed to Mr Carrim.

**MR CARRIM:** Yes, well firstly perhaps I should just quickly explain what was the policy we adopted; there was those that were aggressively opposed to control, going to Court they said, there were those who for control and said if you change the policy we are going to take it to Court. So we said fine, what we going to then do is make SDB control the choice of whether you want to use control or you do not want to non-mandate, so those who want to use it they can do so but they will have to pay for it, and those who do not want to use it are free not to use it and they can decide later down the road as technology evolves whether they need it or  
20 not. So, we then said however, to protect the manufacturing industry to meet the requirements of Department of Trade and Industry to meet a whole number of goals and is another 14 goals we set out and it is set out in the affidavit.

We will say that the Set Top Box will have a control mechanism for an extra 20 rounds at the time, it is about 2 US Dollars if I am correct

and those who want to use it they pay, those who do not want to use it do not have to pay. So, the decision if whether you want to use it or not is yours. But the manufacturing and the other needs or goals of the Set Top Box policy control policy from 2008 onwards including during the time of Mr Phule would be respected and it will be represented in the manufacturing part of it having the SDB controlling any case.

Judge, about a year before I got appointed the Department advertised for a tender and it was on the basis of a Control System and it we had foregone the Control System we could also have been taken to  
 10 Court by the manufacturers who had invested hundreds of thousands of Rands in the process of getting ready for a SDB which would have a Control System they invested that money and the South African Communications Forum which is yet another organization representing very powerful African entrepreneurs hinted to us or at least informally that there are people who are affiliated to them will take us to Court because they tendered for a SDB Control System, Minister, if you drop it then we are going to take you to Court. So, to manage all of this Judge it is not rocket science as a Judge you would probably if I may presume to say arrive at the same thing, you saying no control you saying control,  
 20 fine you can each decide, but we have to protect Government's interest and our investment and our manufacturing industry and for what it is worth may I repeat the September 2014 Industrial Development Policy in the electronics industry which was gazetted, approved by Cabinet was to create at least 23500 jobs.

So, yes we had to protect it and ICASA goes on to say if I may

point out Chairperson, that so we urge you to proceed with the amendments but they also say we believe the measures are reasonable and fair and should survive legal challenge. Indeed, we got at least two opinions, one internal one external that said that the policy we adopted on the 4<sup>th</sup> of December 2013 was legally tenable. May I also say Judge, what I find quite offensive and what partly drives this affidavit unapologetically was it got personalized to me personally.

I was targeted by MultiChoice as I say later in an advert that goes to the extreme extent of saying several newspapers, Sunday  
 10 newspapers – I think all the Sunday, City Press, Sunday Times they put an advert in to say something to this effect I do not remember the exact words but they in the text that your policies like it is mine. Your policies, Minister, represent the narrow commercial interest implying eTV obviously and they do not represent the interest of our nation Chairperson, notice your as if I a marginal Minister as if I a Non-MEC Member never mind I have been around since 1971, I could as I have replied to Mr Andre Pierre Du Plessis said in the Daily Maverick response to his Daily Maverick piece I said you know it is almost implying that the Cabinet were sheep that I was some sort of shepherd, that I am marginal Minister a newly  
 20 appointed Minister not in the MEC could shepherd the likes of, can you – can you imagine Chairperson, Naledi Pando, Trevor Manual, Aron Motsoledi, being shepherded by me?

It is my policy, it is not mine it was there since 2008, it was confirmed by the ANC, the MEC Committee up till eighteen months ago Mr Jackson Mthembu was chairing the MEC communications repeated that

STB control remains the ANC policy as far as I know it still is. So, it ridges to me. Secondly, it is we are representing our nation, so it is strange. I am an elected public representative, I am in Government I have been there since 1971 and now you take their representative not the Government our nation and your policies, you getting very personalized around me, so that explains my letters of 14<sup>th</sup> February to Mr Nonothele.

**CHAIRPERSON:** Yes.

**ADV THANDI NORMAN SC:** Yes, thank you. And then you deal of having outlined the STB control and the workings and everything that is  
10 around that is you have testified now. Then you deal with subheading entitled How NASFIS sought to influence Government policy on digital migration you will find that at page starting from page at the end of page 31 to 32 of your affidavit ...(disturbance in recording).

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** Okay, let us continue.

**ADV THANDI NORMAN SC:** Yes. Thank you, Chair. Mr Carrim we are still dealing with your sub heading that appears at the end of page 31. Could you just tell the Chair what you mean by the influence that you  
20 allude to in that paragraph – in those paragraphs?

**MR CARRIM:** Firstly, we have to understand as I see it on page 32 paragraphs 103, I set out there the absolute dominance of Naspers. Chairperson, at the time that I was serving this particular role, Naspers and MultiChoice were – Naspers is a holding company, MultiChoice was its subsidiary and as I remember it apart from Tencent the investment by



Naspers in the Chinese internet company, MultiChoice was the big money spinner. It had 98% of paid TV. So that is why I refer to Naspers/MultiChoice in the affidavit because MultiChoice could not have done many of the things it did were it not part of this powerful, at that time, third largest media company in the world. And so that is why I say Naspers/MultiChoice.

Secondly, the need for competition was because we were tackling and we continued to do monopolies. In the mining sector we have transformation charges. In the banking sector, in the auditing  
 10 profession, it is perfectly reasonable for the average Minister or political activist to also want to secure some degree of diversification in the paid TV Sector. Moreover, if you have competition, you reduce the cost of watching paid TV. Who watches paid TV if not the elites? Furthermore, the SABC is a public broadcaster. It was providing a 24-hour channel a news channel on a paid TV service. And if we got digital migration going then it should also become available as SABC itself said to free to air, anybody can watch it even if they do not have a paid TV service.

So, from 103 onwards what we do is focus on the power of Naspers. It was obviously launched more than a century ago as the  
 20 mouthpiece of the National Party at the time. And we say here that it was the only interesting media group that refused to appear before the TRC.

Thirdly, it dominated the combined presence of all other – all of its competitors. In fact, these facts I got by Mr Nidri, he was my – one of my two advisors at the time, and it is drawn from a book or a publication of some sort by Professor Eli Noam of the University of Columbia who

said in his book, who owns the world's media, media concentration and ownership around the world. That Naspers own media 24 was extremely powerful. In fact, at the time the Professor I gather said that South Africa is the fifth most concentrated media market in the world.

And then I sight examples of it right that Naspers was one of 20 South African companies, that is 103.4 Chairperson, listed in the Forbes 2000 Global Companies. South Africa was in the world's Top-5 most concentrated markets Chairperson. Media24 accounted for more than 60% of the daily papers more than 50% of the weeklies more than 70% of the magazines. Accounted for nearly half of all of the community newspapers. So, they would buy up knock and drop news paper and control it. So that was the ...(indistinct) modeling if it is the correct word. And it also had – I go on to say 1.360 Chairperson, a monopoly in terrestrial and subscription TV.

**ADV THANDI NORMAN SC:** Yes.

**MR CARRIM:** More than 98% of direct satellite subscriptions and it controlled the largest internet company through MWEB.

**ADV THANDI NORMAN SC:** Thank you. And you refer from paragraph 105 onwards to the SABC MultiChoice agreement and I see you have used the term there, controversial. In fact, in the SOS judgment that I referred the Chair to in the morning written by Justice Kathree-Setiloane Judgment of the Common Court, she uses the very term of controversial, the controversial agreement. What were – when you – it was signed before your time?

**MR CARRIM:** Yes.

**ADV THANDI NORMAN SC:** Yes. That is a few days before you are appointed for.

**MR CARRIM:** On the 3<sup>rd</sup> Judge.

**ADV THANDI NORMAN SC:** Yes.

**MR CARRIM:** And I think I was appointed on the 10<sup>th</sup>.

**ADV THANDI NORMAN SC:** On the 10<sup>th</sup>.

**MR CARRIM:** A week before.

**ADV THANDI NORMAN SC:** Yes. And you list there the terms that you felt there were sort of crippling the SABC in a way. Could you just briefly  
10 tell the Chair what you felt the effects of the agreement were on the SABC?

**MR CARRIM:** Okay. So firstly, from what I can tell Chairperson at the time subsequently Ms Theresa Geldenhuys submitted an affidavit to which she attached Minutes of Board Meetings, SABC Board and SABC Board Committee meetings. I have been through them since Friday night when I received them and I am not sure whether it has been tabled here yet.

**ADV THANDI NORMAN SC:** Chair yes, we are going to refer to them. She – Ms Theresa Geldenhuys is one of the implicated persons. In fact, she responds to a statement made by Mr Carrim that they were from time  
20 to time asked to change the minutes. So, in response to that she filed an affidavit and she attached various sets of minutes. Thank you.

**CHAIRPERSON:** Okay.

**ADV THANDI NORMAN SC:** That is the context.

**CHAIRPERSON:** Okay.

**MR CARRIM:** So, I have looked at those minutes since Friday night and

as boring as they were, I cannot find anything. They go up to I think 2015 in a Board Meeting where the decision to have this agreement with MultiChoice was adopted. So, the first point is it was never it seems to me unless evidence surfaces Advocate Norman ever adopted by a Board Meeting until very late, about 14 months later. I gather from the media that by a vote of eight to six the subsequent Boards, some 14 months after the 3<sup>rd</sup> of July signed – agreed to the MultiChoice agreement.

May I also take this opportunity as I should have done at the outset Chairperson to say that I did not write in my affidavit in paragraph,  
 10 I think it is 179, that Ms Geldenhuys told me personally that at times she was under pressure to change the minutes. I said she had said that as well as some Board Members. And I want to stress that she most certainly did not tell me and to the extend I formulated that clumsily, I regret it. I have no intention of impugning her integrity. So, she certainly did not tell me.

But it is certainly not true where she says, in fact, she says I quote her, "I have never had a conversation with Mr Carrim". That is not tenable because I went repeatably to the SABC HQ at Board Meetings there and I did have exchanges mostly around pleasantries. What I do  
 20 recall unless I have got it wrong, she seemed at times to be extremely stressed. Why she was stressed I cannot say for sure. But at some stage it seemed to me it was around the time that there was Ms Lulama Mokhobo the Group Executive on the one side and there was Ms Sandile Tshabalala the Board chair and Mr Motsoeneng the Acting CEO on the other side. It seemed to revolve around Ms Lulama's departure, that is

what it seemed to me. And it seemed to be the tensions within the SABC Board but certainly she never told me.

Now where did I get this from? From people within the Department. I have since tried to ask them to send you an affidavit in that regard. At this stage people are feeling ill at ease, let us put it that way. May I also take this opportunity Chairperson if I may to say, quite a few people who know a lot about what happened during my tenure there said, Mr Carrim or they still call you Minister Chairperson although you may not – it is a democracy. Once you are not reappointed or fired you  
 10 are no more a Minister. I am not a traditional leader; they are not Ministers for life. But including the SAPS personnel says, hello Minister. I have to remind him I am not a Minister, that is ancient history.

So, they say, Minister we totally agree with you. We are very glad you are going forward. But please we cannot appear there. So, I probe them and they will say, no we are still in the public sector and we do not know what will happen at the top. Secondly, they say, I am not in the public sector where they not but I work with the public sector or want to come back to the Department so I cannot volunteer my name. So, I commit that I will find out if I can find you a person but take it that she  
 20 did not tell me because that is a fact.

May I also say this because it has been something that I said in the outset of my affidavit because it is now removed from that first half of my affidavit to the second. I would just like to read to you because I think it is important Chairperson if you feel I am being irrelevant then obviously you are in charge.

**CHAIRPERSON:** *Ja.*

**MR CARRIM:** You tell me no.

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

**MR CARRIM:** So, I would like to read this because it comes from the bottom of my heart really.

**CHAIRPERSON:** Yes.

**MR CARRIM:** And I think it is important as a politician as if you like many will call me a veteran. 50 years now since I first became political active in high school.

10 **CHAIRPERSON:** Yes.

**MR CARRIM:** I say in clause 5 ...(intervenes).

**ADV THANDI NORMAN SC:** May I ask where you are reading from?

**MR CARRIM:** Clause 5 ...(intervenes).

**CHAIRPERSON:** Paragraph.

**MR CARRIM:** Or paragraph 5 or page 4.

**CHAIRPERSON:** Paragraph 5.

**ADV THANDI NORMAN SC:** Oh, right at the beginning.

**CHAIRPERSON:** Of your affidavit.

**MR CARRIM:** I am going to say this at the outset Chairperson.

20 **CHAIRPERSON:** Yes.

**ADV THANDI NORMAN SC:** Yes.

**MR CARRIM:** But I am not seeking to distract from the question. I know it full well.

**CHAIRPERSON:** Yes.

**MR CARRIM:** And I will come – and you will make sure that I do.

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

**ADV THANDI NORMAN SC:** Yes.

**MR CARRIM:** But I do feel that I should say it before it escapes me.

**CHAIRPERSON:** Yes.

**MR CARRIM:** I say there; I fully support the traditional:

“Commission of Inquiry into allegations in State Capture, corruption and fraud in the public sector including Organs of the State. And commend the work that it is doing. I confirm my cooperation with the Commission.

- 10            6. I did not approach the Commission with any complaints about my experience as a Minister nor did I nudge anybody to do so. It was the Commission that approached me for cooperation. I was in fact asked by a few Ministers, senior members of the ANC and Alliance leaders and others to approach the Commission about my experience as a Minister. But I did not want to as I felt that the Commission has enough on its plate. I also felt that my experience was far overshadowed Chairperson but – by that a former
- 20            Deputy Minister Jonas, Minister Gordhan, Former Ministers Ramatlhodi, Hogan and others as well as Senior Civil servants such as Mr Maseko and Ms Williams. Besides I did not want it to seem as if I am some sort of “cry baby” running to the Commission to try to settle political scores because I was not

reappointed as a Minister after the May 2014 elections. Anyway, in some circles, political circles there is a sense that those former Ministers and others were removed from positions or not reappointed approached the Commission to settle political scores.”

And elsewhere in the affidavit you will see I respond to that. I knew it was alluding. I was 100% sure. I have told people publicly so I will say it here. I thought I was going to be moved as Minister of Communications and put in a so called safe like Deputy Minister of Arts  
10 and Culture or Deputy Minister of Science and Technology under powerful MEC Minister. So, I am not a problem.

**ADV THANDI NORMAN SC:** Yes.

**MR CARRIM:** So, what surprised me was that they removed all together the Executives. But that I was removed as a Minister ...(intervenes).

**ADV THANDI NORMAN SC:** Sorry, maybe at that point.

**MR CARRIM:** *Ja.*

**ADV THANDI NORMAN SC:** Could you just tell the Chair how you got to know that you were going to be removed as a Minister?

**MR CARRIM:** Well this is a subject of a novel. I once said to somebody,  
20 a journalist, if you write this story of Set Top Box control over the 10 years or so as a non-fiction Chairperson, your editor and publisher will say, no, no, this is fiction. We have got some very colorful characters here, very interesting and some of the e-mails that will presumably be adjudicated on for their authenticity which will come to you presumably also convey that.



So very shortly after the December 4<sup>th</sup>, 2013, I do not have it exactly clear Chairperson, it is a bit hazy because so much happened in the 10 months. So, I think it was around the 22<sup>nd</sup> of December, I went on leave by 24<sup>th</sup>. The first tend to come from the private sector from a person I think was sympathetic to control. He said, Minister we hear you are being removed. So, I said, whatever happens, happens. You are all being removed in April 2014. I understood the election will take place then. But it goes on in ...(intervenes).

**CHAIRPERSON:** This is December 2013?

10 **MR CARRIM:** Yes, yes, two weeks after the Cabinet adopted that ANC policy and ...(intervenes).

**CHAIRPERSON:** Yes.

**MR CARRIM:** So then going into January I happened to end up in Davos because theme for that year January 2014 was something to do with the 4<sup>th</sup> industrial revolution. So, the President asked me as the Minister of Communications to go. So, when I get there, there is about three or four Senior African Businesspeople who in different ways approached me. One of them certainly saying he thinks the policy is fantastic. He has been in the broadcasting sector – I will not bore you with that. Another  
20 came to me and said, you are going to be in trouble or was very sympathetic to the policy. They are going to remove you and you know who you are taking on, the third largest media industry in the world. And they refer to persons so we're not here. Well there is nothing to hide you are taking on Koos Bekker. Do you know what you are doing? Well that was a repeated theme after that right.

So, in the months ahead one or two of the participants in the facilitation forum were meant to come to a Committee Meeting of the facilitation forum, I think around the 30<sup>th</sup> of January 2014, when initially said they will come. Then told me they are withdrawing. So, I asked them, why would you initially say you are coming and now withdrawing? They said they were told by the SABC that this Minister is on his way out. Do not bother with him and his policy as if it is mine once again.

Also, there is nothing to hide because Mr Motsoeneng is the colorful character you and the country know him as. He seemed to be  
 10 telling people very shortly after Cabinet decision. Look he said to paraphrase, obviously I do not know the precise words and that it was conveyed to me by others and not one person, more. Look then he said, do not worry about this Minister. I got rid says Mr Motsoeneng I am told, of an entire Board. This Minister I will get rid of him.

Secondly, well look there were people who rang me including journalist who were picking up that I am on my way out. Now some of these journalists cover the artificially intelligence for IR within the broadcasting sector and for some reason or the other they were very sympathetic to the policy we adopted. So, they might have given this an  
 20 inflection, it might have been tendentious reading but they kept asking me, are you out?

Then I approached a very Senior African Businessperson and said, look, firstly I am being accused of being corrupt – which I would really like this Commission to challenge me on. If that is what you want to do, I will address it. I really because that is the main thing that upsets

me. And I want you to go out and see whether I am taking any money from eTV.

Secondly, can you try take the Black Business Council and AFCOC also came out in support of the policy. South African Communications Forum representing Astrata of African Entrepreneurs came out and supported the policy. It is just NAMAC and one wing of NAMAC as you will see later in my affidavit that said no to control and they were closely linked to MultiChoice. And hopefully there are e-mails that will confirm what I am saying.

10           So, what I am saying in short is there was a buzz in the sector. And some of these journalists were saying but they just appointed you. I never admitted to any journalist that I was on my way out. I was not 100% sure myself and it was only it was announced or at least I was – you know how it works. The President lets you know or at least the Secretary General at the ANC does after President is sworn in, it is about late that evening and then through the night and you must have read the buzz and so I went to sleep. Because quite frankly if I am going to get appointed, my phone is on, somebody will ring me. And if I am not, so what? I am not entitled to it. So, I think that there is a lot more I could  
20 say but a lot is in my affidavit. If you want to question me specifically on that matter, please do.

**ADV THANDI NORMAN SC:** Yes.

**MR CARRIM:** But it was clear I was on my out.

**CHAIRPERSON:** Mm.

**ADV THANDI NORMAN SC:** Yes. But there ...(intervenes).

**MR CARRIM:** And I have no regrets Chairperson.

**CHAIRPERSON:** Yes.

**MR CARRIM:** I tell you no regrets. I will do exactly what I did because I am answerable to collective.

**CHAIRPERSON:** Yes.

**MR CARRIM:** And even if I knew. Even if the powers that be said to me, Minister is you go ahead, we will fire you. I would have said, I can do nothing about it. It is your decision whoever the power may be.

**CHAIRPERSON:** Mm.

- 10 **MR CARRIM:** May I also say, I got this businessman. He went around, he came back to me as I recall it and said, you know Yunus or he called me Minister obviously – Minister, I remember where we met at a hotel Intercontinental just opposite where the O.R. Tambo Airport. He said to me two things. One, in a cryptic way – he is a very decent very nice very balanced person, big businessperson. He said to me, firstly, I agree with your policy. He used a wonderful term as I recall it. He said, you cannot have a dual system. Some would Set Top Box or decoders and others no. And I think he like many people thought, why should the average person in Guguletu or Soweto or Vulindlela not watch soccer matches. They
- 20 have to pay for it. So that was what riled him and many other people.

Secondly, he said to me, Minister the very people that you are fighting for are stabbing you in the back. I think he implied, he never used his words, SABC. Thirdly he said to me, Minister the consequences are going to be quite bad for you or something like that to which I laughed and said, you mean I am going to be fired because I picked it up.

He did not admit to that but that I do know is that it was pleased to be well known that I am on my way out. Including in the City Press somebody see I am wonderful at that time. Media officer I think draw to my attention there was a speculation I am on my way out and two or three other people.

**ADV THANDI NORMAN SC:** Yes.

**CHAIRPERSON:** Well two things. You said that one of the reasons that not made you come forward earlier was that you did not want anybody to think you were coming forward to the Commission to settle political  
10 scores.

**MR CARRIM:** Yes.

**CHAIRPERSON:** Now I think that it is a pity that that kind of argument should be given any credence because some of the people who would be saying that would be people who have problems with the existence of this Commission. They would be using those arguments to discourage people who have something to contribute to this Commission from coming forward. And some of them I have no doubt would be people who would like this Commission not to be there because they do not know whether it will end up breaching their territory.

20           So that is just what I want to say that there are people who would be discouraging – they have been discouraging people from coming forward for their own reasons. And we have got to try and just do the right thing. I appreciate the challenges that some of the people face for example those who might feel that they would be – their safety would be under threat or even their lives would be under threat because of what

they know. We continue to just ask people who can come forward to come forward. The less this Commission knows the better for certain people.

But also it means that if we do not get to know certain things which did happen and which are known to certain people, it means we may be hampered when we come to say what kind of recommendation should we put up to make sure that whatever may have happened, never happens again. And of course, some of the people who may have been involved in some of the things that we are looking into might not want that  
10 door to be closed. Because they might want to come back and continue.

But I appreciate that you are here now and that you are able to make whatever contribution. I just wanted to say that we just have to be alive to the fact that some of the people who spread that kind of argument are people who do not want the Commission to succeed. They do not want people to come and share with information, knowledge that they have about things that are really important for the Commission. But thank you.

**MR CARRIM:** Chairperson, can I just say one quick thing?

**CHAIRPERSON:** Yes.

20 **MR CARRIM:** Firstly, I am acutely aware of the challenges that the Commission faces. Partly they were to be expected. But I only want to say one thing to add to what you have just said. It is not only people who have something to fear from this Commission who feel that this is not the forum to deal with the issues. There are people who share your values, if I may say so, who also feel while they are very good people in my

movement – our movement, they do unfortunately also feel whatever issues you have, the more you go there the more you reproduce this. And it damages the economy, it damages our image, it demoralizes people and the Commission has gone so far, they made the point. And so are also good people so to speak of nothing to fear from you Commission Chairperson.

**CHAIRPERSON:** Yes.

**MR CARRIM:** They also feel the same way.

**CHAIRPERSON:** Yes. No, no, I think over the time that the Commission  
 10 has been sitting I have gained the impression that there may be people who are not coming forward to the Commission despite the fact they have got knowledge of certain things and maybe have a contribution to make to the Commission. But decide or prefer not to come forward not because they have been involved themselves in anything of a corrupt nature but maybe because they take the view that some of these things that they know about should be dealt with in elsewhere.

Now as you say some of those people may be good people who have got nothing to hide and so on. My response to that kind of argument is simply that it is a pity that they have that view because I believe that  
 20 this forum is a very important forum. Maybe it might not be the best forum but a very important forum that has the opportunity of coming up with measures that are aimed at ensuring that we fix a lot of things that it is looking at. And we would like to have had everybody that shares the values that we share, come onboard and say, the country first. Let us put the country first. Because in this forum nobody is prevented from coming

but maybe another forum that some of them may be looking at it is not everybody who can go maybe it is certain groups and so.

But this one is open, it is for all South Africans to come forward and make a contribution to say whatever it is that we may have gone through in our country, what do we do, what contributions do we make that might find their way to the recommendations of the Commission to the President to say to avoid this in the future, measures A, B, C, D should be put in place. But I think the point you make is an important one that not everybody who is staying away is staying away because they  
10 have been involved in wrong things. Okay, thank you.

**ADV THANDI NORMAN SC:** Thank you Chair. Let us just finish this part that you started on Mr Carrim about the – about your appointment and you not being appointed to the position. Could you just tell briefly the process that was followed when you were informed that you were not going to be appointed. You said you heard rumors that you are not going to come. Did you at any point say, look let me just find out from the President because it is the only person that appointed me?

**MR CARRIM:** I yes, no ...(intervenes).

**ADV THANDI NORMAN SC:** Did you take the trouble of saying, look  
20 these rumors, what do you think am I fit to continue

**MR CARRIM:** No, that is not me Chairperson. Chairperson can I just say I am no hero. I am just an ordinary activist.

**CHAIRPERSON:** Yes.

**MR CARRIM:** I guard because of accidents of history.

**CHAIRPERSON:** Yes.



**MR CARRIM:** It could have been anybody else.

**CHAIRPERSON:** Yes.

**MR CARRIM:** Deployed in various roles, okay.

**CHAIRPERSON:** Yes.

**MR CARRIM:** So, I would not do that. It is demeaning to me.

**CHAIRPERSON:** Ja.

**MR CARRIM:** I am not entitled to any position. I never asked the President ever. Yes, I know people do go to him to whinge whatever or to feel bad, they worked and they do not know why they were removed. You  
10 never know. The way it works, I do not want to belabor this meeting.

**CHAIRPERSON:** Yes.

**MR CARRIM:** But I think you have some sense. You do not know whether you are being appointed or not. The rumor start flying around. In my case it is so absurd, I have referred to it elsewhere in the affidavit. I mean a person – well let us leave that we come to that. There is a – I think you will come to it. There is the Clarissa Mack exchange, MultiChoice's Regulatory Affairs person two months before, I did not know about that affidavit, two months before the President announces at Cabinet she knows. Not just that I am out but Ms Muthambi is going to  
20 replace me. How does she know two months ahead, MultiChoice does? Two?

**CHAIRPERSON:** Yes.

**MR CARRIM:** Mr Koos Bekker no less in March 2014 issues a memorandum where he hints that you know he says I am in the power of eTV which is very offensive and you can question me on that. But –

and he says I am temperamentally unsuited. That is his absolute right Chairperson it is his right. He can say I am stupid. He can say I am not cut out for this job. I am too left wing or whatever. But then you know he sort of says he is on his way out but you never know but we will come to that.

**CHAIRPERSON:** Ha.

**MR CARRIM:** But there are some bizarre things like two weeks before the appointment there is a party that Mr Motsoeneng, Mr Calvo Movella and they have in Sandton to celebrate. But Carrim is out. Jackson  
10 Mthembu is not replacing him and frankly Muthambi is going to be Minister. How would they know? It was circulating Chairperson. So I was cool with it. I would like to have finished the work because I had a wonderful team. It was a disappointment to them. But no I could never. And secondly you are not entitled to it Chairperson. What I do say since 2000 – 1999 when I first found out how it works I think there is no harm in a President once you appoint the Cabinet, you know you are not being appointed because you do not get the call.

**CHAIRPERSON:** H'mm.

**MR CARRIM:** Secondly I think it is reasonable for a President to call  
20 those people he has not appointed – it is always a he in this case that is why he. I said to them, thanks for your work. He does not have to explain why, he is not obliged to but say look you know I wish you well.

**CHAIRPERSON:** H'mm.

**MR CARRIM:** You know or if you have not performed call you in you must learn and grow. And say I took you out for the following reasons.

Not he is obliged. In this country it does not happen. I imagine it does not happen in other countries too but for us we are not a normal capitalist society if I may use that word. We are if you like a social democracy. The ANC claims we are a National Democratic Movement. We claim to be more human than humane than other parties. So I would imagine it is fine but as far as I am concerned, no I will never do that and I am cool. It is the President's right. It is the office bearers of the ANC's right because he confers with them. No I am not entitled to anything.

10 **ADV THANDI NORMAN SC:** Yes.

**CHAIRPERSON:** *Ja.*

**ADV THANDI NORMAN SC:** You deal with those aspects.

**MR CARRIM:** Later.

**ADV THANDI NORMAN SC:** On paragraph 155 but you have touched on them now. We will not repeat them.

**CHAIRPERSON:** Yes quite.

**ADV THANDI NORMAN SC:** Yes. But then in paragraphs 115 from 105 actually that is where we are dealing with the MultiChoice Agreement.

**MR CARRIM:** That is right.

20 **ADV THANDI NORMAN SC:** But you have made reference to a statement that Mr Obbit Maguvhe had made.

**CHAIRPERSON:** Yes.

**ADV THANDI NORMAN SC:** In paragraph 116. This is where you are dealing with how much they – SABC liked MultiChoice and you quoted what he said at a certain gathering at paragraph 116 there.

**MR CARRIM:** Yes.

**ADV THANDI NORMAN SC:** But what I want to alert the Chair to is that attached to the bundle Chair there is – from pages 207 onwards there is an affidavit ...(intervenes).

**CHAIRPERSON:** 2?

**ADV THANDI NORMAN SC:** 207.

**CHAIRPERSON:** 207.

**ADV THANDI NORMAN SC:** 207 Yes Chair. There is an affidavit of Mr Maguvhe I think it is Professor Maguvhe where he responds to what you  
10 state in that paragraph.

**CHAIRPERSON:** Well Mr Carrim must – we must know what he states before we go to ...(intervenes).

**ADV THANDI NORMAN SC:** Yes, yes.

**CHAIRPERSON:** Professor Maguvhe.

**ADV THANDI NORMAN SC:** Yes. But – at paragraph 116 what do you say there about Mr Maguvhe Mr Carrim?

**MR CARRIM:** Do you want me to read that?

**ADV THANDI NORMAN SC:** Yes.

**MR CARRIM:** Okay. So it reads: Chairperson in an article dated 29  
20 May 2015 Ammu Bongani stated that at the launch of the SABC in court channel the chairperson of the SABC Board Mr Obbit Maguvhe I think he is Professor sorry proposed a marriage between the Public Broadcaster and MultiChoice. A copy of the article is that hereto is Annexure 5. The Chairperson is quoted as saying – I am referring to Mr Maguvhe now – Professor Maguvhe these are his words I quote.

“Actually for me I would not have preferred it to just be a partnership. Actually it should be a marriage. You can be our bride and we will be the bridegroom. We love so much MultiChoice we want to enter into a marriage.”

**ADV THANDI NORMAN SC:** Yes. And his response .....(intervenes).

**CHAIRPERSON:** Yes.

**ADV THANDI NORMAN SC:** His response appears at page 207. If I may Chair just to indicate that the investigators had made available  
10 recordings of that meeting to a full recording was given to Professor Maguvhe.

**CHAIRPERSON:** Yes.

**ADV THANDI NORMAN SC:** So it does not seem to be really an issue but he has asked that this be placed before you so that it is read whatever he said there is viewed in context. That he says: “I have since learnt”

Paragraph 11 at page 209.

20 “With the assistance of the investigators of the Commission that the Ammu Bongani article quoted from a speech which I gave at the launch of the Encore Channel the full recording of my speech is available from this link as provided to me by the investigators of the Commission. Regarding marriage between the SABC and MultiChoice per paragraph 116 of the affidavit deposed to by Mr

Yunus Carrim I do not think it is an institution to break the laws of our country. I could have used it as a metaphor to mean that the partnership grows from strength to strength. There is nothing untoward from my side which I used that phrase for if it is found in the records.”

You have also given a – that – am I correct? You were told about that response?

**MR CARRIM:** I was told about it. *Ja* I received obviously Chairperson  
10 this.

**ADV THANDI NORMAN SC:** Yes.

**MR CARRIM:** File only when I sat here.

**CHAIRPERSON:** Yes.

**MR CARRIM:** But as I explained to the Commission prior to this I was merely quoting an article in the newspaper

**CHAIRPERSON:** Yes, *ja*.

**MR CARRIM:** And secondly I was merely trying to convey that in effect the MultiChoice SABC agreement was almost if you like a merger and for what it is worth as Ms Norman will show later the Competition  
20 Commission found it to be a notifiable merger and explains that by dropping encryption many of the best of MultiChoice in effect the SABC and MultiChoice had a huge negative impact on the market and what I imagined they were saying if you look at the text is that it inhibited new entrants. But I should explain Chairperson if you look from paragraph  
105 onwards I deal with the fact that at the time that I became the

Minister there was an interim Board. And this Zandile Ellen Tshabalala was the Chairperson of that Board. And on the 26<sup>th</sup> of July she wrote me a letter signed by her which is attached as an annexure to say that the SABC supports STB Control. And on the 12<sup>th</sup> of August she wrote me a letter again completely rescinding the earlier letter and she says we are now not supporting Control. In the earlier letter of the 26<sup>th</sup> of July she attaches a memorandum. If I recall correctly the memorandum has the signatures of Ms Mokhobo, Mr Sipho Masinga the Head of Technology and indeed surprisingly Mr Motsoeneng. The memorandum

10 is making a case for STB Control. Then we have a further letter on the 12 August where she says we are not in support of Control and she attaches a memorandum to explain it. This memorandum is not signed by Lulama Makhobo. It is not signed by Sipho Masinga who is in charge of technology, he is the GE of Technology and it has a signature if I recall of Mr Motsoeneng and Mr Tiaan Olivier. Now I also submit in my affidavit Chairperson that when Ms Zandile Tshabalala, Ms Makhobo and Mr Motsoeneng appeared at the Round Table Facilitation Process they – the first meeting said they do not have a position STB Control which was puzzling because the position was there since 2008. And

20 they would come back with their position which they did. The position they came with I think it was presented mainly by Mr Olivier at the second meeting by the SABC of the Facilitation Process. I was there as an observer. I did not participate apart from preliminary remarks at the first Facilitation and I did not attend all the meetings but I was there where they came and presented an argument that they oppose

STB Control. Ms Lulama then sent an e-mail which I have included to explain that that was not the position of the SABC. I also subsequently received from the Deputy Chairperson of the four person interim Board of the SABC from Ms Noluthando Gosa an e-mail saying Minister we would like to meet with you. The position presented by Ms Tshabalala and Mr Motsoeneng have not been approved by the interim Board. They are representing their own personal interests and she sent me an exchange of e-mails between herself and the Chairperson of the Board, Ms Tshabalala and she attaches the first e-mail to me with her name.

- 10 Mr Ronnie Lubisi who is the other interim Board Member and the fourth Board Member Mr Vusi Mavuso where they saying they dissociate themselves from the representations made on STB Control by Ms Zandile Tshabalala and Mr Motsoeneng. There are also e-mails of the same nature, they are actually extracts from the e-mails and the annexures Chairperson by Lulama Makhobo setting out a long period from 2008 right up until well August 2012 where the SABC is committed to set the Set Top box control in March 2013 if I recall they have an agreement that they would write to the Minister to do that and so on and so on. So from what I can tell Chairperson there was never a
- 20 Board decision to support STB Control. According to Ms Noluthando Gosa. According to what I gather Mr Krishi Naidoo says until much later and certainly what Ms Makhobo says but you can speak to her yourself. I have gone through the affidavits and I mean and the minutes, the voluminous minutes sent by Ms Theresa Geldenhuys, and I cannot for the life of me find any Board decision.



**ADV THANDI NORMAN SC:** Yes.

**MR CARRIM:** What I do have is on the 2<sup>nd</sup> of July it is Minutes of a sub-committee where a decision was taken to support STB Control subject to certain conditions which conditions were never met. In fact within 24 hours on the 3<sup>rd</sup> of July it was signed off. Crucially Chairperson it was not signed off by the legally mandated person to do that Ms Makhobo. She was not there. From what I can gather and you can ask her yourself she was opposed to the clause 9 I think it is of the contract which dealt with the News24, 24 hour channel and the  
10 entertainment channel on condition MultiChoice said you do not have encryption. That is pre-empting government policy and changing the SABC policy. I am prepared if it is necessary at all to go through all of the minutes well it will not take long about 20 minutes I can go through each one and show you.

**CHAIRPERSON:** *Ja.*

**ADV THANDI NORMAN SC:** Yes.

**MR CARRIM:** How the decision is absurd actually. It is ultra vires to use a lawyer's term.

**ADV THANDI NORMAN SC:** Yes.

20 **CHAIRPERSON:** There was no Board decision until much, much later.

**ADV THANDI NORMAN SC:** Yes.

**MR CARRIM:** If you need that I can do it.

**ADV THANDI NORMAN SC:** *Ja*, no can I just take you to the minutes of the 6 June which you have attached. This is before your time.

**MR CARRIM:** Yes

**ADV THANDI NORMAN SC:** Yes. I did not want to just ...(intervenes).

**MR CARRIM:** Yes it would be attached to first.

**ADV THANDI NORMAN SC:** It is attached it appeared from page – sorry – Annexure 3 page 90. 90 same bundle.

**MR CARRIM:** Oh you talking about mine?

**ADV THANDI NORMAN SC:** Page 90. Yes.

**MR CARRIM:** Yes page 90.

**ADV THANDI NORMAN SC:** You have got – you have attached to your ...(intervenes).

10 **MR CARRIM:** Oh yes we are yes I have got it.

**ADV THANDI NORMAN SC:** That is correct you have attached the minute. But what I would like to draw your attention to is at page 98. This was a meeting with there is various persons MultiChoice was represented and SABC was represented where – but I would like to draw your attention to what Ms Tshabalala says at page 98.

**MR CARRIM:** Yes.

**ADV THANDI NORMAN SC:** Maybe 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11.

**CHAIRPERSON:** It does not have line numbers but you might be able to guide us as to ...(intervenes).

20 **ADV THANDI NORMAN SC:** 15 maybe.

**CHAIRPERSON:** Whether it is somewhere in the middle of the page.

**ADV THANDI NORMAN SC:** Maybe 15 lines. Which – around the middle 15 lines on – from the top Chair.

**CHAIRPERSON:** The matter is going to be escalated?

**ADV THANDI NORMAN SC:** That is correct yes.

**CHAIRPERSON:** Okay.

**ADV THANDI NORMAN SC:** Ms Tshabalala says the ...(intervenes).

**CHAIRPERSON:** It is the same.

**ADV THANDI NORMAN SC:** Have you found it? Same bundle.

**CHAIRPERSON:** The same file that you have been having all along.

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

**CHAIRPERSON:** Yes and page 98.

**ADV THANDI NORMAN SC:** Are you on page 90? 90 on top yes.

**MR CARRIM:** 90 okay.

10 **ADV THANDI NORMAN SC:** Yes.

**MR CARRIM:** Chairperson can I understand the rules of the Commission and the norm and the processes. A lot of my notes are actually in my original text.

**CHAIRPERSON:** Oh okay that is ...(intervenes).

**MR CARRIM:** So I would plead with you to be slightly forbearing if that is the word, just bear with me.

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

**MR CARRIM:** Because I need to look at my notes but I have got you.

**ADV THANDI NORMAN SC:** Okay no you need to ...(intervenes).

20 **MR CARRIM:** Page 90 – I am on page 90.

**ADV THANDI NORMAN SC:** Are you on page 90?

**MR CARRIM:** Yes indeed.

**MR CARRIM:** Yes.

**CHAIRPERSON:** No if there is something in your notes that will refresh your memory.

**MR CARRIM:** Yes.

**CHAIRPERSON:** That is fine.

**MR CARRIM:** Good, okay thank you very much.

**CHAIRPERSON:** H'mm.

**ADV THANDI NORMAN SC:** Thank you Chair. Ms Tshabalala says there that the matter is going to be escalated. This is the matter of the agreement – is going to be escalated to the Board Meeting which is taking place on the 12<sup>th</sup> which is next week.

**MR CARRIM:** Yes.

10 **ADV THANDI NORMAN SC:** And if one has a look at the minutes of the 12<sup>th</sup> that I did not want to canvas these areas with you.

**MR CARRIM:** Yes.

**ADV THANDI NORMAN SC:** Because these are areas that Ms Makhobo talks to.

**MR CARRIM:** Will deal with *ja*.

**ADV THANDI NORMAN SC:** And I think she is the appropriate person to actually deal with those.

**MR CARRIM:** Yes.

20 **ADV THANDI NORMAN SC:** So – but I just – because you have attached the minute.

**MR CARRIM:** Yes.

**ADV THANDI NORMAN SC:** And also just to support the point that you make.

**MR CARRIM:** Yes.

**ADV THANDI NORMAN SC:** That at least the meeting was going to be

on the 12<sup>th</sup> of June and by the 6<sup>th</sup> of June there was no endorsement of that contract and then the 12<sup>th</sup> of June one does not find from the minute of that the approval that you are eluding to.

**MR CARRIM:** Yes.

**ADV THANDI NORMAN SC:** Yes but having said that in your own analysis you have already indicated that you felt that as you do in paragraph 115 that the sale or the access that MultiChoice had to the archives of the SABC did not benefit the SABC. Could you just talk to that aspect?

- 10 **MR CARRIM:** Yes firstly as I recall what I have said and having looked at the minutes Chairperson and having seen media statements. There is a media statement issued by the subsequent SABC Board which says that they want to charge Mr Motsoeneng for criminality on two grounds as I recall it. Chairperson I am choosing my words carefully as I recall it because if I were to literally read the text out it is going to take us days.

**CHAIRPERSON:** *Ja*.

**MR CARRIM:** So ...(intervenes).

**CHAIRPERSON:** *Ja*, no, no that is fine.

- 20 **MR CARRIM:** My words are – exact words are in the text.

**CHAIRPERSON:** *Ja* paraphrase it.

**MR CARRIM:** And presumably you will give the full text to the people effective.

**CHAIRPERSON:** *Ja*.

**MR CARRIM:** So my words are paraphrasing.

**CHAIRPERSON:** No that is fine.

**MR CARRIM:** So as I recall it to save time the SABC Board I think in 2015 or 2016 after Mr Motsoeneng had left presumably 2016 said two grounds. One is the R11.4 million which he got as the first of three tranches I think he was entitled to, he claimed for securing the SABC MultiChoice deal of R33 million. He said he was entitled to. So they wanted that R11.3 million back and as the SIU investigation and I think that matter is being handled by the court. But the second grounds on which the SACP spokesperson said they were thinking of taking  
10 criminal action against him was that he agreed to allow MultiChoice exclusive access to the archives without any authorisation of the Board. So we who were there then we did not understand what the implications were. But when it grew on us the gravity of what had happened the Department Officials were mandated by me to look into this. But you must remember Chairperson our focus at the time was on the ICT Green Paper. The related issues of Digital Migration and Broadband, South Africa Connect. Between the 10<sup>th</sup> of July and the 4<sup>th</sup> of December we took three major policy decisions to Cabinet and all were approved by a fully-fledged Cabinet no division on it either in the  
20 Cabinet committee or in the full Cabinet right? So it was only once we began to understand the power of MultiChoice on SABC at the time sadly that we realised we have to look more carefully at the MultiChoice SABC agreement. And that is when we – what emerged was the fact that not just an agreement to forego encryption against government policy and SABC policy and without Board approval but

also a bit stunning that SABC will allow MultiChoice exclusive access to its archives. Now we asked for some opinions and you know Chairperson you know more than me each lawyer has their own view. So there was a view that it is not a legal ownership by MultiChoice of the archives to which my immediate reply was that is neither here nor there. It is not a matter of whether legally they had handed over ownership which they cannot do anyway but the access is wrong. It must go through the Board and if it is talking about archive access some commentators, some experts drew it in the public drew it to the

10 public attention or me privately that that is a historical site. It is a culture, the value, the treasurer of the country. SABC has archives that nobody else has. That is a public broadcaster. You cannot forego it to eTV or anybody. Secondly I have spoken to Mr Niddrey and he cannot recall exactly who or if it was he who raised this with me. But I recall Mr Chairperson that some person suggested – it was not just that the archives were foregone even if not legally to the exclusive access by MultiChoice it is also that the worth of those archives were substantially reduced by what MultiChoice offered. One suggestion was at least R1 billion was the value of it and that may or may not be

20 true I am no expert. So when I wrote to Mr Vincent Smit who was Chairperson of the ad hoc Parliamentary Committee looking into the SABC I set out that our problem with the MultiChoice agreement was not just encryption. Was not just that a big multi-national is deciding for government, government's policy by forcing the SABC to change its policy and try to influence us as the government. Chairperson one of

the reasons I agreed to come here and I would have come anyway in response to your earlier points is I think this is a clear and explicit example it seems to me. I do not know whether the Commission – of what we call regulatory or policy capture. Now what I have seen Chairperson I only watch the news I do not follow the Commission because there is not time. As much as I respect your work but my sense is Bosasa you know, SAP, McKinsey and so on whoever appears before you their extracting from the state is related to tenders? They either shape if you like the tender specifications subtly and sometimes

10 there are many times they pay for it or they ensure that they get the tender through various possibly irregular means. But here is an example of actually the first example perhaps before the Commission of what one would call regulatory or policy capture. Now Mr Harris last week gave me the text. Either he got it from Advocate Norman of Doctors Kaufman's presentations to your Commission. And I read through it very fast and I see there I can quote it but it is various parts where he says that he and his colleague, another professor, built on a Nobel Prize awardee economist view that there is such a thing as state capture. They – it is not capture of institutions it is also regulatory or

20 policy capture. Now this for me at least for me, speaking for myself and many who worked with me is a very clear example of regulatory or policy capture. Whereby irregular means you shape a government policy and the technique or the – because Chairperson there is absolutely no reason to include in a commercial transaction between the SABC and DSTV a clause that deals with government policy. You



cannot encrypt your broadcast. And you will see elsewhere in the affidavit Sir that there is a section on re-transmission and you will see that in terms of the ICASA rules Chair being reviewed the pay TV service is obliged to broadcast the Free to Air broadcasters' programs. So that is SABC 1, 2 and 3 and eTV. Now interestingly at the time that I was there as a Minister the experts said to me that 40% possibly or thereabouts of the viewing that took place on DSTV was of the programs of SABC and MultiChoice. Presumably SABC mainly because it has indigenous language programs. And the majority of us in this

10 country speak indigenous languages. Yet the SABC gets nothing in terms of re-transmission fees. So Mr Niddrey and Mr Kruger raised with me then that I should approach ICASA about this matter and ask them to review it. Subsequently it seems somebody did. I was not reappointed so I could not follow up on that but what I would like to stress is that the encryption aspect had absolutely nothing to do with the commercial agreement. There is no such thing with ANN7. There is no such thing with EN – what ENCA. And when you ask representatives of MultiChoice why is it there they do not give you're an answer. But if you look at the minutes Chairperson of the 6<sup>th</sup> of June since we are

20 there I can show you at least four or five examples of how Mr Imtiaz Patel actually says that this is a deal breaker. We do not normally – I do not know his exact words and the Commission's investigators and research team, he says things like; you know what we do not normally pay for news and we are going to give you R100 million and R553 over three – five years. How do I go to my Board he says the MultiChoice

Board – how do I go to them and say it is worth our while if you give us something in return is more or less what is there – encryption it is a deal breaker etcetera. But we also point out to you and Advocate Norman that on page 6 of those minutes I am afraid ...(intervenes).

**ADV THANDI NORMAN SC:** Yes.

**MR CARRIM:** I would – it is page 6 would be presumably.

**ADV THANDI NORMAN SC:** Page 6 would be ...(intervenes).

**MR CARRIM:** Presumably 095.

**ADV THANDI NORMAN SC:** Yes.

10 **MR CARRIM:** Yes but your page 6 I am afraid – oh it is paid 8 sorry.

**ADV THANDI NORMAN SC:** Page 8 of the minutes.

**MR CARRIM:** Of the minutes of the 6<sup>th</sup> of June.

**ADV THANDI NORMAN SC:** Yes.

**CHAIRPERSON:** That is page 97 of the bundle.

**ADV THANDI NORMAN SC:** 97.

**MR CARRIM:** Page 97.

**ADV THANDI NORMAN SC:** Yes.

**MR CARRIM:** I am afraid yours does not correspond to mine.

Chairperson instead of holding the committee back.

20 **CHAIRPERSON:** H'mm.

**MR CARRIM:** You are recording me.

**CHAIRPERSON:** H'mm.

**MR CARRIM:** And if I am wrong.

**-CHAIRPERSON:** Ja.

**MR CARRIM:** You will ...(intervenes).

**CHAIRPERSON:** We can always check *ja*.

**MR CARRIM:** Correct that. So let me read to you very interesting how Mr Patel operates right?

**CHAIRPERSON:** H'mm.

**MR CARRIM:** So Mr Mavuso says, that is Vusi Mavuso, who by the way has told me not – I bumped into him he is in Parliament. Last Thursday I bumped into him. I said is the Commission calling you. He says no because I have been called by the SIU again. But he told me earlier he is very happy to come.

10 **CHAIRPERSON:** Okay.

**MR CARRIM:** He still holds the view they were right to say control is correct.

**CHAIRPERSON:** Yes.

**MR CARRIM:** He still holds the view as far as I can tell – I have had three exchanges with him that they had no permission Mr Motsoeneng or Ms Tshabalala to actually change their policy. So Mr Mavuso says I will read to you literally what is there.

**CHAIRPERSON:** Yes.

20 **MR CARRIM:** The point was it says that the offer presupposes that is the MultiChoice offer that all SABC channels on DTT platform would be made available to the public encrypted without a conditional access system and thereby incidentally received by MultiChoice's DDTH ...(indistinct). The reality for me I think has changed a broad spectrum because as it were now the Minister has pronounced that DTT is no longer in our scope. In other words it is not would it now ...(indistinct)

as it were. DT meaning Digital Terrestrial Television. Chairperson, Ms Norman because she knows me has told me that I speak too fast and I have been told that since the age of 5 I think.

**CHAIRPERSON:** *Ja.*

**MR CARRIM:** So if I am going too fast presumably please slow me down.

**CHAIRPERSON:** No, no I – no, no you are fine *ja*.

**MR CARRIM:** It is all there in the text that is why I am reading it fast.

**CHAIRPERSON:** Yes.

10 **ADV THANDI NORMAN SC:** Yes.

**MR CARRIM:** So Chairperson he says she meaning the Minister will run with that in however way she prefers to do that therefore clause 9 says Mr Mavuso becomes superfluous because it is not something that we can be able to change or be able to say anything about. I suggest it be removed completely says Mr Mavuso. Then Ms Tshabalala says, okay so members the proposal is to remove clause 9. This is Zandile Tshabalala. We have actually in clandestine meetings – clandestine meetings Chairperson – make what you will of that – interrogated this whole document and we all disagree with clause 9. Chairperson my  
20 emphasis all disagree. So Ms Geldenhuys says: Do not say clandestine meetings said Ms Geldenhuys. Ms Tshabalala says okay outside meeting. Well because there was a Board Meeting then GCEO meaning Ms Makhobo presented this document for MultiChoice. We listened to it, went through the document and we had a problem with clause 9 she repeats. So I think there is a bone of contention. There

is what we are going to discuss with MultiChoice etcetera, etcetera. Ms Makhobo then goes on to say, Chairperson – meaning the – Zandile Tshabalala perhaps clause 10 also – that is to do the ...(indistinct) right so I will drop that. Now elsewhere Ms Patel asks in this text in the – of the 6<sup>th</sup> of June meeting. He asks, is the meeting being recorded? Ms Makhobo says, yes. Then he says and you know Ms Norman will guide the Commission. He says, well then I have to be circumspect in what I say. Now if you are engaging at a public broadcaster if indeed you know you got nothing to hide why is Mr Patel preoccupied with well you

10 know I cannot really say what I want to say. He is dealing with a public broadcast here. These are not two private sector entities. That public broadcast is answerable not just to Parliament it is merely answerable to – through Parliament to the public. So Mr Patel may I suggest makes himself vulnerable and linked to what else I have said in his affidavit and Mr Koos Becker is behind it as I repeatedly say. Elsewhere are – points are that Mr Becker and Mr Nono Letele with due respect them may well have their strengths. I saw some in Mr Letele with due respect but none in Mr Patel. He did not seem to be in the one year I knew him for ten months say anything original. What he was

20 doing mainly was processing. Very aggressive processor. But Mr Becker on the other hand as I say was the key person using Mr Calvo Movello the current CEO, Mr Patel and others to do his bidding. But those are issues that if you care to I can address but I am happy to go through and show you.

**CHAIRPERSON:** Yes.

**MR CARRIM:** Throughout the minutes of the meeting the absurdity of the final decision it is fine.

**CHAIRPERSON:** Yes, no, no, no, it is not necessary.

**ADV THANDI NORMAN SC:** Yes thank you.

**CHAIRPERSON:** Yes Ms Norman.

**ADV THANDI NORMAN SC:** Thank you Chair. In – at paragraph 131.

**CHAIRPERSON:** Oh I see we are at one?

**MR CARRIM:** Page 131.

**ADV THANDI NORMAN SC:** Oh yes thank you Chair. Maybe then  
10 adjourn for the – take the long adjournment Chair.

**CHAIRPERSON:** Yes. I have a feeling that Mr Carrim is not following the route you may have planned.

**ADV THANDI NORMAN SC:** Yes, yes Chair.

**CHAIRPERSON:** And that he has been able to cover quite a lot.

**ADV THANDI NORMAN SC:** Quite, quite a lot.

**CHAIRPERSON:** In a particular sequence.

**ADV THANDI NORMAN SC:** Yes, yes.

**CHAIRPERSON:** So you would keep an eye so that ...(intervenes).

**ADV THANDI NORMAN SC:** When we come back.

20 **CHAIRPERSON:** So that we do not repeat what he has covered?

**ADV THANDI NORMAN SC:** No true Chair we doing that yes. Thank you Chair.

**CHAIRPERSON:** Oh okay alright.

**ADV THANDI NORMAN SC:** Thank you.

**CHAIRPERSON:** We are going to take the lunch adjournment we will

resume at 14:00.

**ADV THANDI NORMAN SC:** Thank you Chair.

**CHAIRPERSON:** We adjourn.

**REGISTRAR:** All rise.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** Are you ready Ms Norman?

**ADV THANDI NORMAN SC:** Thank you Chair.

**CHAIRPERSON:** Before we proceed.

10 **ADV THANDI NORMAN SC:** Yes.

**CHAIRPERSON:** Mr Carrim, I would like us to go back to the discussion we had before lunch relating to people that may not coming forward to assist this Commission, because they believe it is not the right forum for certain issues. I just want to make sure that I indicate what my thoughts are about that group of people.

20 Firstly, I think everybody in South Africa who has knowledge of matters that fall within the terms of reference of the Commission should come forward to assist the Commission and to share that information. So that the Commission can do its job which is for the country really, but if those people happen to also include persons who serve as Members of Parliament particularly – I will refer to the National Assembly, because there is a specific or there are specific provisions in the Constitution that relate to the National Assembly that are, I think, relevant to this.

I think one of them is Section 48 of the National Assembly

which you probably know well, because although you are in the National Assembly now. You spent a lot of time in the National Assembly. No, no. It is not Section 48. It is Section 42(3). Section 42(3) of the Constitution says about the National Assembly:

“The National Assembly is elected to represent the people and to ensure Government by the people under the Constitution.”

And then it says:

10 “It does this by choosing the President by providing a national forum for public consideration of issues, by passing legislation and by scrutinising and overseeing Executive action.”

Which seems to suggest to me that if you are as Member of the National Assembly even though you may have been sent there by your party. Once you are performing your functions as part of the National Assembly you have got to bear in mind that the National Assembly is elected to represent the people.

20 Therefore the people of South Africa must come first and then if you go to Section 48 it talks about the oath or affirmation that gets taken by Members of the National Assembly and it says:

“Before Members of the National Assembly begin to perform their functions in the Assembly. They must swear or affirm faithfulness to the Republic and obedience to the Constitution in accordance with Schedule 2 and the oath or affirmation contained in



Schedule 2 in respect of Members of the National Assembly include swearing or solemnly affirming to “be faithful to the Republic of South Africa” and to obey respect and uphold the Constitution and all other law of the Republic and to solemnly promise to perform his or her functions as a Member of the National Assembly to the best of his or her ability.”

It seems to me that the oath or affirmation that Members of the National Assembly take requires them to place the interests of the Republic above everything else and to the extent that the group of people that we are talking about may include people who are Members of Parliament particularly National Assembly who may have evidence, knowledge or information that would be important for this Commission to consider.

To the extent that they might not be wanting to come to this Commission, because they think there is another forum that is better suited particularly if they are thinking about a political party. It seems to me that they may be acting inconsistently with their oath as Members of National Assembly and the – or affirmation – that they are not – they may not be putting in the interests of the Republic of the people first, because this Commission was specially set up.

It is established in terms of the Constitution. Section 84 of the Constitution to look into matters of national interest that have arisen and it is going to make recommendations to the President. So I thought I must mention that so that no impression is created that one

condones those who are not under fear of being harmed in anyway physically or killed or anything and who might not really even be fearing any victimisation but simply who might think it is not the right forum that I think they may be acting inconsistently with the Constitution.

I thought I would just mention that. You might or might not wish to say anything.

**MR CARRIM:** Chairperson, I will be very brief, but perhaps if I may if it is not indecorous. Sometime when this Commission is over and you  
10 want to engage with me as one South African to another I am happy to talk with you ...(intervenes).

**CHAIRPERSON:** Yes.

**MR CARRIM:** But what I want to suggest also is I am no better than anybody else. I do not want to come across as a holier than thou. In fact the very Constitutional Court that you serve so admirably on has pronounced on this matter balancing our relationship as elected public representatives by parties on a PR List System and the interest of the public out there.

This is misunderstood. There is an ongoing on/off on/off  
20 debate on the relationship between public representatives in the ANC on a PR List System not a ward or constituency system and the need to represent public out there. My sense is Chairperson – unless I am wrong.

**CHAIRPERSON:** H'mm.

**MR CARRIM:** This takes place now and then. We are moving in the

direction that I think the Constitutional Court decision suggested, but Chairperson many of these things that are in constitutions and in legislation about the responsibilities of Members of Parliament to the public out there whether in a ward elected system or a PR System are there in laws and in constitutions even sometimes in the developed world too.

**CHAIRPERSON**: H'mm.

**MR CARRIM**: It is probably true to say that many MP's do not abide by that.

10 **CHAIRPERSON**: H'mm.

**MR CARRIM**: So it is a – it is increasingly my sense is – without going into a long discussion – the international norm. We as Members of Parliament are increasingly seeing by the public out there whether in a developed or developing world as not responsible enough to people who elect us.

People are increasingly sceptical of us and secondly there are specific challenges we have as the ANC in an emerging democracy. Where we are committed to what we call a national democratic transformation. If one wants to use ordinary parlance you would social  
20 democracy and forging our identity in a society with such acute income and material inequalities which are largely racialized.

With an untransformed economy or very marginally transformed economy. Some of these balances between your service to your party and your service to the country are very complex to tread and may I say oh this is not just an ANC problem. The DA has a similar

problem, but I will leave it there and perhaps if you feel up to it sometime. I am happy to be available to you to offer my views and what I think.

**CHAIRPERSON:** Yes. Yes, well I would say that if you wish to share with the Commission more on this – on these challenges that you are talking about. We would welcome that. I say that because one of the things that I have said publically. The Commission is looking at is to what extent did Parliament exercise its oversight over the Executive properly.

10                   Is it a situation where Parliament might not have exercised its oversight functions properly and that is why certain things may have happened or if it had exercised its oversight functions the way it should? Maybe certain things would have stopped before they became worse. You know. We have got to look at that and part of looking at that is going to be when you look at Members of Parliament who are Members of the majority party in Parliament.

                    To what extent do they feel free to hold the Executive accountable the way it is expected of any Member of Parliament? Is there a rule to say because the Minister is from my party I must be  
20   careful? I must not be too tough on him or her and maybe some of the – those might be some of the challenges that may have to be confronted to say is there a problem here or is there no problem.

                    The holding Executive to account is done in the same way whether a Member of Parliament is a Member of the majority party or not or is the position that even Members of the Executive know that

well opposition parties will talk, but the majority will be with me. So they will not bother me. You know.

So those are some of the things we need to look at as the Commission because it may well be that if we have Parliament performing its oversight functions effectively. In the future if similar things were to arise they would be stopped and the question might be what is it that is lacking that we should think of measures that should be put in place to make sure that the performance of oversight functions would be effective.

10                So ideas that you might have about these things would be most welcome. So I would welcome that particularly because you have been in Parliament for a long time. You probably have a lot of experience even about how Parliament – how in the National Assembly oversight functions are performed and you might be able to enlighten me quite extensively which might be quite helpful when one comes to say is there something that needs to be done about the performance of oversight functions to make sure that one, the levels of corruption in the country in the SOE's and Departments to not continue to deteriorate.

20                To make sure that they can be brought down by the use of proper oversight functions performance.

**MR CARRIM:** May I just suggest very quickly.

**CHAIRPERSON:** *Ja.*

**MR CARRIM:** Firstly, I do not really have the authority – political authority to speak on behalf of the Parliament.

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

**MR CARRIM:** So I will respectfully ...(intervenes).

**CHAIRPERSON:** Yes.

**MR CARRIM:** Decline your offer ...(intervenes).

**CHAIRPERSON:** Yes.

**MR CARRIM:** But I know you want MP's to appear ...(intervenes).

**CHAIRPERSON:** Yes.

**MR CARRIM:** Before the Parliament.

**CHAIRPERSON:** Yes.

- 10 **MR CARRIM:** It is appropriate for the two Chief Whips in particularly National Assembly Chief Whips ...(intervenes).

**CHAIRPERSON:** Yes.

**MR CARRIM:** To respond to your concerns.

**CHAIRPERSON:** Yes.

**MR CARRIM:** Secondly you Chairperson and others here know far more than me.

**CHAIRPERSON:** H'mm.

**MR CARRIM:** How powerful ...(intervenes).

**CHAIRPERSON:** H'mm.

- 20 **MR CARRIM:** The role of Parliament is in terms of the Constitution ...(intervenes).

**CHAIRPERSON:** H'mm.

**MR CARRIM:** And a *plethora* of the post 1994 legislation.

**CHAIRPERSON:** H'mm. H'mm.

**MR CARRIM:** We have no choice ...(intervenes).

**CHAIRPERSON:** H'mm.

**MR CARRIM:** In terms of law ...(intervenes).

**CHAIRPERSON:** H'mm.

**MR CARRIM:** In terms of the Constitution ...(intervenes).

**CHAIRPERSON:** H'mm.

**MR CARRIM:** To play an effective oversight role.

**CHAIRPERSON:** H'mm.

**MR CARRIM:** We ourselves as the ANC and here I say – speak on behalf of us – the majority of us have been saying it publically particularly the previous Chief Whip, Mr Mothapo. He is on record – if I recall – and other Chief Whips, Mr Max Sisulu and so on. We have repeatedly said play our role more effectively.

**CHAIRPERSON:** H'mm.

**MR CARRIM:** At the time that Eskom appeared ...(intervenes).

**CHAIRPERSON:** H'mm.

**MR CARRIM:** Before a special inquiry of the Public Enterprises Committee. There were a lot of statements made by ANC MP's that if we exercised our role ...(intervenes).

**CHAIRPERSON:** H'mm.

20 **MR CARRIM:** As effectively as the Constitution and the laws require and more fundamentally ...(intervenes).

**CHAIRPERSON:** H'mm.

**MR CARRIM:** What our ANC policy set out about a national democratic Parliament ...(intervenes).

**CHAIRPERSON:** H'mm.

**MR CARRIM:** A people's organ.

**CHAIRPERSON:** H'mm.

**MR CARRIM:** If you look Chairperson you a Constitutional expert. We are politicians. There is no different between what underlies your values and what you have just said ...(intervenes).

**CHAIRPERSON:** H'mm.

**MR CARRIM:** And what are in the Constitution and what we say. If you look at the period 1994 to 2004 there are so many articles written Chairperson on Parliament as a tribune of the people.

10 **CHAIRPERSON:** H'mm.

**MR CARRIM:** Some of it is jargon from the pre 1994 Parliament as an organ of popular power and it defers. Some committees – ANC led committees obviously have strong Chairpersons and Whips. The Whips are like the political heads of the study group. The Chair is the functional Chairperson of the Parliament as a whole. Who are more experienced? They exercise a very effective oversight role.

**CHAIRPERSON:** H'mm.

**MR CARRIM:** Others who are new feel intimidated, because often the Chairperson is an ordinary Member of the ANC and the Minister is the  
20 National Executive Committee. So if you like in Parliament the ordinary member is the political boss ...(intervenes).

**CHAIRPERSON:** H'mm.

**MR CARRIM:** Because the Minister is answerable to him, but in the political party structures the Minister is the boss, because he is in the NEC ...(intervenes).



**CHAIRPERSON:** He is part of the deduction.

**MR CARRIM:** But I know Chairperson, you have raised this. You have reached out to me via your Commission representatives on the SAA matter and I have cooperated and so I think the Chief Whip will decide who she wants to bring to Parliament ...(intervenes).

**CHAIRPERSON:** Yes.

**MR CARRIM:** But I cannot decide to speak on behalf of Parliament as you will appreciate.

**CHAIRPERSON:** Yes.

10 **MR CARRIM:** Thank you.

**CHAIRPERSON:** No, no, no. I was not inviting you to speak on behalf of Parliament or anybody. I was looking more at your own personal experiences having been a Member ...(intervenes).

**MR CARRIM:** Oh.

**CHAIRPERSON:** Of Parliament over a long period. I will – the Commission will be communicating with - with parliamentary structures at that level, but personal experiences for – of people who say I have been there over this period. This is what I have observed. That kind of thing is what I was talking about but thank you very much.

20 **ADV THANDI NORMAN SC:** Thank you. Thank you Chair. Mr Carrim, before we adjourned for lunch the issue that you were dealing with was you had just read the one set of minutes dated 6 June 2013 and you asked that you would like to refer to one or two others. You may take it that as you know the Chairperson has read your entire affidavit together with all the annexures.

So if you could just be very brief and make reference to the one that you would like to draw the attention of the Chair to. Thank ... (intervenes).

**MR CARRIM**: Chairperson ... (intervenes).

**ADV THANDI NORMAN SC**: Thank you.

**MR CARRIM**: I am not going to read the minutes.

**CHAIRPERSON**: Yes. Yes.

**MR CARRIM**: But lest it be seen that I am speaking in generality ... (intervenes).

10 **CHAIRPERSON**: Yes.

**MR CARRIM**: Like a typical politician.

**CHAIRPERSON**: *Ja*.

**MR CARRIM**: When Ms Geldenhuys gave the Commission her affidavit she attached the minutes and my affidavit was written before that. I had no idea how on the ball as it were the affidavit was and just – I will simply refer to the page numbers and summarise them, but the actual minutes will take too long to read.

**CHAIRPERSON**: Yes.

**MR CARRIM**: So if one looks at 95 in Theresa Geldenhuys' CC32 file.

20 **ADV THANDI NORMAN SC**: I beg your pardon Chair. The exhibit – that is Exhibit CC43.

**MR CARRIM**: Oh. It is CC43. Sorry.

**ADV THANDI NORMAN SC**: I do not think that has been handed up to you yet.

**CHAIRPERSON**: Oh. That has not been handed up?

**ADV THANDI NORMAN SC:** No, no Chair. No. Not yet.

**CHAIRPERSON:** Okay. Alright.

**ADV THANDI NORMAN SC:** Thank you Chair.

**CHAIRPERSON:** H'mm.

**ADV THANDI NORMAN SC:** It is exhibit ...(intervenes).

**CHAIRPERSON:** That is in Exhibit CC43 ...(intervenes).

**ADV THANDI NORMAN SC:** CC40 – that is correct.

**CHAIRPERSON:** And what page? 95?

**ADV THANDI NORMAN SC:**

10 **MR CARRIM:** Well I have I am afraid CC32. It says SABC reference bundle ...(intervenes).

**CHAIRPERSON:** Oh.

**MR CARRIM:** And that is on page 95, but what might help the committee ...(intervenes).

**CHAIRPERSON:** Yes.

**MR CARRIM:** Since we are not going to read it.

**CHAIRPERSON:** Yes.

**MR CARRIM:** It is just like as you ...(intervenes).

**CHAIRPERSON:** H'mm.

20 **MR CARRIM:** As well as without the heads of argument.

**CHAIRPERSON:** Yes. *Ja. Ja.*

**MR CARRIM:** Just to – for future.

**CHAIRPERSON:** You can speak to it.

**ADV THANDI NORMAN SC:** Yes.

**MR CARRIM:** So that ...(intervenes).

**CHAIRPERSON:** As long as we know where to find it.

**MR CARRIM:** *Ja.* Exactly. It does not seem as if I am speaking generality.

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

**MR CARRIM:** So I will deal with the date.

**CHAIRPERSON:** Yes.

**MR CARRIM:** It is the 12<sup>th</sup> of June – sorry, 2<sup>nd</sup> of July 2013.

**ADV THANDI NORMAN SC:** Yes.

**MR CARRIM:** This is the Special Finance Investment Procurement and  
10 Technology Committee Meeting.

**ADV THANDI NORMAN SC:** Chair you will find that at page 38 of  
CC43.

**CHAIRPERSON:** Well in the meantime I have been given Exhibit CC32  
which ...(intervenes).

**MR CARRIM:** Oh Allah. In that case it is page 95.

**CHAIRPERSON:** *Ja.*

**ADV THANDI NORMAN SC:** Yes. Yes.

**CHAIRPERSON:** 95 in red.

**MR CARRIM:** *Ja.*

20 **ADV THANDI NORMAN SC:** Yes.

**CHAIRPERSON:** Yes.

**MR CARRIM:** So Chairperson this is the day before the  
MultiChoice/SABC Agreement is signed. That happened on the 3<sup>rd</sup>  
of July by Mr Motsoeneng. Right. So on page 2 of the minutes of the  
2<sup>nd</sup> of July it is clear that there is no approval for STB Control. On

page 3 it is noticeable that Ms Lulama Mokhobo who is the GCEO is not there and it was agreed that the reference to clause 9 in the text of the discussion should be removed and it was decided that there were three conditions as I know it in these minutes that were set for Mr Motsoeneng to sign.

The first was to seek senior legal opinion on whether the MultiChoice/SABC deal is legally tenable. That was on the 2<sup>nd</sup> of July. That was the first condition if I recall it. The second condition as I recall it was that there should be Board – but there is no Board  
10 approval. The second condition is that Mr Motsoeneng who is the Acting CEO can go ahead and sign the agreement.

However as Mr Harris pointed out to me – and I think he is right. There is no possibility in corporate law for a sub-committee of a Board to change the delegations from a GCEO to an Acting – moreover Acting COO. That he says, and it seems reasonable to me, can only be done by a Board. So the second problem with the Committee deciding is that it cannot just willy-nilly change delegations.

There is no power. It can only have gone to a Committee. The third is that Mr Mavuso is constantly arguing against having clause  
20 9.

**CHAIRPERSON:** And he is the Chairperson?

**MR CARRIM:** He is the Chair of that Committee.

**CHAIRPERSON:** Yes.

**MR CARRIM:** Ms Zandile Tshabalala came in late to that meeting – as I understand it. Right, but Mr Mavuso makes it very clear at the end that

any agreement with MultiChoice must be, to use his words, on SABC terms. Now it is very clear Chairperson that no legal opinion was secured between this meeting on the morning of the 2<sup>nd</sup> of July and the signing of the agreement on the 3<sup>rd</sup> of July.

Indeed Chairperson if you go to the 30<sup>th</sup> of July. There is in fact a legal opinion offered. So the legal opinion is offered, if my arithmetic serves me. 28 days after and you will see later Chairperson that Mr Krish Naidoo, a Human Rights lawyer who has got a struggle, he was serving on the Board.

10 He did and he has given the Commission I think an affidavit in that regard – an assessment of the legality of and concludes this ultra vires and null and void, but subsequent to that I gathered there was a further legal opinion secured by Ms Zandile Tshabalala which said it was legally tenable and I think it is then that an 8/6 majority decided to approve the deal as it were.

The agreement with SAA – SABC/MultiChoice Agreement some 14 months later. Now if you go Chairperson to the transcripts of the Board Meeting. It is TGH, as I have it.

**ADV THANDI NORMAN SC:** Yes.

20 **MR CARRIM:** July, the 22<sup>nd</sup> Chairperson. On page 2. Mr Sipho Masinga, the Head of Technology at the time, who was removed by all accounts, because he insisted on STB Control and Mr Motsoeneng it is alleged removed him because of that and that ...(indistinct) partly played a role also in the removal of Ms Mokhobo, but she will speak for herself, but anyway the 22<sup>nd</sup> of July. Page 2.

Mr Sipho Masinga says very revealingly. It is the SABC that put Control in the policy. A Government policy of 2008 passed by Cabinet. He says:

“SABC put Control in the policy to defend its interest. Set Top box is a principle.”

To quote his words. So you have got Ms Mokhobo saying that there is an argument by MultiChoice in particularly and those who sympathise with it. That we do not need Set Top Boxes, because you see the future you are going to get what we call Integrated Digital  
10 Television. Where Chairperson you and I have such a TV. You may not know it.

Where you can actually do a whole lot of things that a computer can do, but the Department of Communications and the Ministry was clear that most people in this country can barely afford a TV. Still less are they going to have the capacity to buy an Integrated Digital TV. If you speak to Mr Kruger he will tell you that even with the IDTV, if I understand him correctly.

You will still need a Set Top Box choice – a Set Top Box Control System and in fact elsewhere in the memorandum I asked him  
20 in preparation for this meeting. Roy are they correct that you do not need Set Top Boxes and he has given his explanation. He said Set Top Boxes are even more important now than they were then and he explains why.

He says encryption is involved in a whole lot of services. WhatsApp, telegram signal and so on and so on. He himself is involved

– presiding in Mozambique where his company has inserted now in a poor country like Mozambique ...(intervenes).

**CHAIRPERSON:** And he says they have done digital migration ...(intervenes).

**MR CARRIM:** Exactly.

**CHAIRPERSON:** Much quicker there?

**MR CARRIM:** Yes. Yes. Quite – and it has got control. So in short he says in the end of his affidavit – his comment. So much for MultiChoice's view that Set Top Box Control is outdated. Mr Bekker  
10 also said that as recently as December 2017.

**ADV THANDI NORMAN SC:** Yes.

**MR CARRIM:** So that is Mr Kruger. I am no expert. It is for the Commission to decide.

**ADV THANDI NORMAN SC:** Yes.

**MR CARRIM:** On the 30<sup>th</sup> of July you see very clearly in the minutes the different views on Set Top Box Control. Now this sir is how many days? It is 28 days beyond – 27 days beyond the signing and 28 days beyond a Committee which did not have the power to make the decisions it did.

20 **ADV THANDI NORMAN SC:** Thank you.

**MR CARRIM:** Then ...(intervenes).

**ADV THANDI NORMAN SC:** Thank you Mr Carrim. Without going through all the minutes.

**MR CARRIM:** Ja.

**ADV THANDI NORMAN SC:** The point that you are making is that



those who signed the agreement had no authority and your case - in fact what you are placing before the Commission is that there was no - no Board approval for them to sign that agreement. Is that correct?

**MR CARRIM**: Not that we can see from the minutes.

**ADV THANDI NORMAN SC**: From the minutes. Yes. Thank you. Let us move ...(intervenes).

**CHAIRPERSON**: You can keep your mic on Mr Carrim.

**ADV THANDI NORMAN SC**: On – oh, sorry. Yes.

**CHAIRPERSON**: Just keep it on.

- 10 **ADV THANDI NORMAN SC**: Thank you very much and you have given us a list of those minutes that you say you have had a look at which do not show that they were the approval. Now let us – you have spoken about the role of Mr Bekker. Let us move on to your affidavit, because I know that you had said that you cannot – you have to leave today.

Your flight is later today. So we just have to try and move a bit quicker. You have dealt with your interactions with Mr Bekker. Could you just tell the Chairperson what were your meetings about? You have had meetings with him and that – you start with that from paragraph 135 and that will be at page 43. Could you just briefly tell  
20 the Chairperson where you met him? Why did you meet with him?

**MR CARRIM**: Yes Chairperson. I will be very brief. I think the advocate is getting rightly ...(intervenes).

**ADV THANDI NORMAN SC**: No, no, no.

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

**MR CARRIM**: I have indicated that because of budget tomorrow – it is

Budget Day.

**ADV THANDI NORMAN SC:** Yes.

**MR CARRIM:** I cannot be here, but I am available next week.

**CHAIRPERSON:** Yes. No, no we ...(intervenes).

**MR CARRIM:** Alright. So I will go ...(intervenes).

**CHAIRPERSON:** Actually I can tell you that I have said to Ms Norman there is no reason we should take the whole day on your affidavit because although it's quite extensive, 80 pages, I think that the things that I'm really interested in may be taking round about 40 pages or  
10 thereabout. The others are important to you for purposes of how this whole thing evolved but I have said we should be able to finish earlier than we have but there has been much to talk about, yes.

**MR CARRIM:** Yes, so paragraph 135, I simply say that Mr Patel asked me to meet Mr Bekker and I did around the September 2<sup>nd</sup> or 3<sup>rd</sup> in Cape Town. Now Mr Bekker had obviously served on various Government panels including President Mbeki's advisory panel and obviously his done considerably well and his company has, I mean, from a new alert of the apartheid era to the third largest media industry, I mean that's remarkable and as South Africans we should be proud of  
20 that. They play a very crucial role in the economy they are the biggest player in the JSE and I deal with how good they did but at the same time it flowed from that that Mr Bekker seemed to feel that what's good for Naspers is good for the country, even our dignitaries no person in my view. When I deal later with regulatory capture I pick that up.

Then where the first meeting – what his primary preoccupation was to tell me that the Set Top Box policy in the Government is a big folly, it's unnecessary, it's outdated and he seemed to want to advise me on these matters and he was very dismissive of the facilitation process by the independent facilitators. 137, but I kept the door open to him because he's a very important man in the broadcasting sector and the media section, we agreed we'd meet again and talk more about broadband, that never came to be. Where the facilitation process reached an impasse various people, Cabinet Ministers, senior to me, 10 people in the industry, the Chairperson of the Portfolio Committee in Parliament, all said, go and meet Mr Bekker, he will undo the ...(indistinct) if anybody does it. They said it's not worthwhile pursuing it with Mr Indias Patel and Mr Nono Letele, that the real power that be is Mr Bekker so we arranged such a meeting and that occurred in March 2014 ...(intervenes).

**ADV THANDI NORMAN SC:** And that is on page?

**MR CARRIM:** Sorry it's on page 44 paragraph 142, so that occurred in March 2014 here in Tshwane and Mr Patel was very keen that we have this meeting. He said that Mr Koos Bekker will think out of the box and 20 Mr Bekker respected a particular Minister, so the Minister was also president. So originally Mr Bekker focused on how powerful Naspers is, how much they contribute to the tax revenue in this country, and they do and they're treated very well all over the world but they see him in South Africa to have IC ...(indistinct) from their own country. 144, what happens is, at one stage I told him, Mr Bekker, you know, you have to

allow for competition, it's untenable 98% of paid TV is not transformation.

So at one stage, to my surprise he said to me, give me two or three names of black people you think I should encourage to compete, to which I said, we can't, you can't choose your own competitors and nor can a Minister decide, it's policies and regulations that will and I also pointed out to him, or I may have then or subsequently to others in MultiChoice and Naspers that they got the sole license, I think in 1988 to launch M-Net and I read in an article, I don't know if it's true that  
10 they were also given some financial support, that may or may not be true by the Government at the time but they were very close to the National Party, they had a heads-up start, they were far ahead of anybody else, I suggested to Mr Bekker than, that look, even if you are a competitor it's going to take a very long time Mr Bekker for this competitor to really be a real competitor but he wouldn't have it and at some stage the meeting got very frosty because he kept repeating – he stopped me making my presentation, why we went for control, which is set out in there and he was dismissive and he stopped me and he told me this is all nonsense and DTI doesn't know what it is doing and so on  
20 and then he said that, Minister, something to this effect, you speak the language of eTV. Now this came after a telephonic exchange with him, this is March 2014, in December 2013 when I found him to try to get him to come to a meeting with me to try to find some sort of compromise and to complain to him that people at MultiChoice and SABC are going about saying that I'm in the power of eTV which is

exactly what he had said and that I'm corrupt and so on and I told him that's outrageous.

At some stage there's an article by Mr Lloyd Gates in the Mail & Guardian where I told him, I asked Mr Bekker, as I remember it, look man what will I do, I'm so overpaid as a Minister what am I going to do with the money, how many novels am I going to buy. His reply to me was very unsympathetic, he said, tell me Minister, moreover he seemed to know exactly what happens in SABC Board Meetings which are meant to be close meetings. He seemed to know very much what was  
 10 happening and he was unsympathetic, so let's go to 146 where Mr Bekker, again, accused me of like – speaking the language of eTV. So Chairperson I have many weaknesses, I'm human and I think it was in decorous but I swore him, the meeting got very heated, it was not correct to swear him, it's not decorous but Chairperson it's human. I was fed up with him not repeating this thing and this is the currency out there amongst the people who didn't want control.

You know Chairperson I told him at one stage, I give a lot of my money away, I driver a 2001 Toyota Corolla in 2014, I drive 2005 Scenic, what will I do with the money. So Chairperson I'm sorry, my  
 20 sensibilities are very trodden on, so I swore him which I regret but can I move on the to – I asked him, can you give me information, evidence that I speak the language of eTV, secondly can you, in fact, show me which statements I've issued that are drafted by eTV, it's not forthcoming even up to now, I asked Mr Lolo Letele to deliver that on

the 14<sup>th</sup> of February 2018. I would like this Commission, if it's possible to get the evidence, where's the evidence, okay.

Then the next thing in late 2014 – well I'll drop that it's not really necessary.

**ADV THANDI NORMAN SC:** Yes.

**CHAIRPERSON:** Would it be correct to say, your interactions with Mr Bekker and basically with MultiChoice/Naspers personalities gave me the – gave you the impression, and that's what I'm reading in your – that's the impression I get from your affidavit, that they were – what  
10 they were about was to prevent effective competition from being allowed.

**MR CARRIM:** Absolutely Chairperson.

**CHAIRPERSON:** They were dominating the market and they were doing whatever they could to avoid competition happening?

**MR CARRIM:** Absolutely Chairperson.

**CHAIRPERSON:** Yes.

**MR CARRIM:** As I've said, with Mr Bekker it seemed almost like a primitive defence of territory and turf, he was the one that first introduced paid TV with his colleagues, he was going to allow any up  
20 starter coming to his turf. It wasn't a defence of profits, I've said that publically and it's there in the text.

**CHAIRPERSON:** So I'm just mentioning that because that might really cover your interactions with them but having said that there may be important things you want to highlight in regard to your entire interactions with them, then maybe you can highlight those.

**MR CARRIM:** Yes, well that comes later and Ms Norman will guide us but I refer to, for example – well Chairperson you know, before you are a set of e-mails that we call the Namic e-mails strictly speaking it's the Kitabo Vijay Panday wing of Namic. Those e-mails have been in the public domain, they are quoted in the very article that I refer to in the Mail & Guardian, they are quoted in other articles, they've been circulating since 2015 Chairperson, up till today nobody from MultiChoice has challenged the veracity of those e-mails and you have the means, I can tell by the so-called Gupta e-mails to check on its

10 veracity. I want to say, before it's misunderstood and in fairness to me and the lawyer, Peter Harris, I was told by Mr Nidrey about five or six months after the Mail & Guardian article appeared that there are these e-mails he said, Yunus, and he said I can pass it on to you, I think he said, do you want to have a look at it. So I said to Mr Nidrey what is there that I don't already know, and he said to me, *ja* and we passed on. I moved on, I was in finance and that's a lot of work and I've got a thousand other things to do.

So when I first prepared my affidavit I did alert Mr Harris that there are some of these issues like the Namic e-mails they're there

20 somewhere, I don't have them and we didn't pay much attention to it but 10 days ago or so before the Commission, we met with the Commission and we tabled it and said, do you want these e-mails, they said yes, so Mr Nidrey made it available. Personally I only saw it for the first time on Friday, last week when I got the bundle from Teresa Geldenhuys, I read it. I was taken aback as to how much those e-mails,

if they are valid, and up to now they've never been challenged by Namic or indeed by Mr Koos Bekker and MultiChoice and Naspers, if they are valid, Chairperson you can even throw my affidavit away quite frankly just look at those e-mails, it's astonishing the collusion between MultiChoice, Mr Bekker's mentioned twice and so, the collusion between MultiChoice, the Kitabo Vejay Pandey wing of Namic, what we call the MultiChoice wing of Namic as against the Adile Chabaleng, Professor Khunene wing. I don't think you need my affidavit really, so Mr Koos Bekker and his Team come out there very clearly. I hope at  
 10 some stage the Commission will find itself – because that is more powerful than anything I've said.

**CHAIRPERSON:** Yes, yes.

**ADV THANDI NORMAN SC:** Thank you, Chair I may just mention that those have been submitted to the Commission but they are being authenticated before they can be led as evidence before you.

**CHAIRPERSON:** Yes okay.

**ADV THANDI NORMAN SC:** Thank you Chair. That then takes care actually Mr Carrim of what you deal with in the Namic issues that will be from paragraph's 226 to 242 but what is left, really is – you've  
 20 covered everything about MultiChoice and its dominance in the industry and the influence that you say it had on the policy itself which is key to the work of the Commission. The last issue, really, is what you deal with, which is really these other matters are really personal matters between you and MultiChoice and as we have discussed in consultation that I don't think that they should dominate your evidence and – before



the Commission. Lastly then, in conclusion you make reference – you've made reference to what Mr Roy Kruger said about the STB boxes and their relevance and then in conclusion you make the case about regulatory capture and at paragraph 278 you make certain conclusions about who benefitted from the entire policy as you deal with it. If you may take it, page 79 of your affidavit, paragraph 278. Could you just testify to what you say there?

**MR CARRIM:** The specific paragraph is, I'm on page 79 paragraph madam?

10 **ADV THANDI NORMAN SC:** I beg your pardon, sorry, linked to that what I was just saying now could you just start from page – go to paragraph 187 at page 57 it will be linked to that conclusion that you make at 278.

**MR CARRIM:** What precisely do you want me to deal with?

**ADV THANDI NORMAN SC:** Yes, 187.

**MR CARRIM:** Ah yes, okay so perhaps I can offer my own opinion it wasn't a personal conflict between MultiChoice and me, I was only in that situation because I was a Minister, I don't know these people, I'd never met Mr Koos Bekker before I read it through, I met him just  
20 fleetingly once on a plane, I don't know him. So it was political and I was representing the ANC I insist and the Government and so – but what I mean by personal is to target me specifically and to demean me. There is the whole campaign there was a war room that was set up, ...(indistinct) was actually leading this war room and so, they had a

Special Task Team, media, to focus on me what could be fine, I've made many mistakes, but certainly, I'm not corrupt ...(intervenes).

**CHAIRPERSON:** Am I reading your affidavit correctly, namely that the only reason they attacked you personally in this way, as far as you are concerned is because they didn't like the policy position that you were pursuing as Minister, is that correct?

**MR CARRIM:** Absolutely.

**CHAIRPERSON:** *Ja* they – it was not because of anything arising between your personal interactions with them it was arising out of your  
10 performing your job as you understood it.

**MR CARRIM:** Yes exactly in fact, if I recall correctly, when Mr Koos Bekker met me in September 2013, in Cape Town, he said, you know we checked you out Minister, as they would do, and we spoke to many people and I know certainly one of the people is awkward because he told me about it and he said all of them said you are a very honest guy. Now from that to being accused of – in that advert of March 2014, serving eTV's interest but beyond that the scurrilous campaign against me which hurts. There's nothing wrong with being hurt when you're  
20 accused of corruption and there's no case for it, it's outrageous from people, you'll see from the e-mails, do things that you as a Judge will probably decide on, border on complete irregularity. There are also tax issues that arise there, I chaired the Finance Committee for the last five years and then COP, I don't know for a fact, you will get lawyer's and expert opinions but there are questions about tax issues that

Namic and MultiChoice might have to answer for, but that's for you to decide Mr Chairperson.

**ADV THANDI NORMAN SC:** Thank you.

**MR CARRIM:** So you want me to read ...(intervenes).

**ADV THANDI NORMAN SC:** 187 yes.

**MR CARRIM:** *Ja* you see, there's something very bizarre actually almost ...(indistinct) Chairperson, so when I become Minister, Mr Motsoeneng – look I had to reach out to Mr Motsoeneng because the public view was that he's very influential on the SABC but he's also  
10 very politically connected. Everybody – well people in the media saw it that way and I know I've got a point, people said, look manage him. So I did reach out to him, Ms Norman at times, and said I want to talk to him because I knew getting STB control going would require his support and the Chairperson, Sandile Shabalala, so I asked to see him but he also, was constantly reaching out to me. Now it was quietly odd because he seemed to see himself almost like an interlocutor between the President and me ...(intervenes).

**CHAIRPERSON:** Between?

**MR CARRIM:** Between the President and me, perhaps I should just  
20 read the text.

**CHAIRPERSON:** Yes read it.

**MR CARRIM:** Swiftly, so 187, Ms Norman,

“It also became clear shortly after I became Minister of Communication that Mr Motsoeneng saw himself as some sort of interlocutor between the President and me and as the

debate over the STB control matter escalated, he told me on several occasions that Wababa, meaning the President, would not or did not agree that there should be STB control. Mr Shabalala also asked me several times if the President agreed with me, implying that he did not. I pointed out to them that the President presided over the ANC and the country when the December 2012 ANC conference took the relevant decisions and competition and the paid TV Sector, the ANC NEC Communications Committee had expressed its support for STB control, the Cabinet took the decision on the 4<sup>th</sup> of December 2013 and also that I had briefed him on the policy before taking it to the Cabinet Committee. I made it very clear to Mr Motsoeneng that when I was appointed a Minister, I was not told by President Zuma that I had to answer to Mr Motsoeneng, I remain, Chairperson, astonished at Mr Motsoeneng's sense of proprietary".

I then go on to say that basically I briefed the President from what I could tell in a 40-minute exchange that's before I took it to Cabinet, he agreed with what I was saying, he didn't disagree with it. So subsequently they went around saying I misled the President. So I want to deal with it at present, because that's dishonest and outrageous. I mean, I'm a Minister appointed by him, so I would like to put it on record.

"I had briefed the President, paragraph 190, at some length on the BDM Policy, that's the Broadcast Digital

Migration that was adopted on 4<sup>th</sup> December 2013 before it was taken to a Cabinet Committee. He agreed with the approach set out, it is possible that he may have misunderstood me Chairperson but Mr Motsoeneng and Ms Shabalala went about saying that I had misled the President. It would make no sense for me to do this, that would be no benefit to me at all”.

Also in my engagement with senior Ministers and other ANC leaders there was unanimous support for the policy, so why would I  
 10 need to mislead the President. They also said that eTV drafted the policy. President I use the information – Chairperson, from the Facilitation Committee. I read it very widely, I had this excellent Team of advisors, privileged to have them. One morning, it just popped into my head – I got up in the morning, you know we percolate, now I’m conscious and suddenly one morning in Tshwane, I remember I got up and suddenly thought, you know what, let’s settle it like this and I’ve already explained the policy to you, a compromise. Those who want control can have it but they’ve got to pay, those who want control can now have it and the Manufacturing Sector defended and the other  
 20 objected. So I literally drafted the Cabinet memo, Ms Rosie Sekese helped with notes, so did Mr Kruger and other, the Team I mentioned, Wanda and Mr Nidrey and so on but I drafted it, it’s actually written by me. So its nonsensical that eTV did it and if they said so, obviously I say later the it’s just a lie but I don’t know whether they said it.

**ADV THANDI NORMAN SC:** Thank you, could I just take you back

again, just one paragraph it is very important which you omitted at page 42 paragraph 131.

**MR CARRIM:** Yes.

**ADV THANDI NORMAN SC:** Where you deal with Gupta leaks, how MultiChoice paid the Gupta's millions, can you just deal with that paragraph please?

**MR CARRIM:** Yes, obviously I don't have these e-mails, you seem to do but in any case I say, in a News24 media article, dated 24<sup>th</sup> November 2017, titled:

10            "Gupta leaks, how MultiChoice pay the Gupta's millions, Ms Mac, that's Clarissa Mac, the person dealing on behalf of MultiChoice on Regulatory and Government matters, I think she's since resigned is alleged to have drafted a crucial Government document on the relocation of broadcasting policy powers to the newly created separate Ministry and Department of Communication. As stated above Ms Mac and Mr Patel were the lead negotiators for MultiChoice in the STB control negotiations. The media attached article is attached as

20            Annexure 11 and it states the following, and I quote, MultiChoice Executor, Clarissa Mac of course has since resigned it says here, sent policy documents directly to Muthambi, that's the Minister who shared them with Gupta Lieutenant Ashu Chawla".

I think he's the person mentioned in the earlier e-mails when Mr Motsoeneng's PA was here,

"Setting out proposals for Zuma to transfer broadcasting powers to Muthambi after he split the Communications Portfolio Committee into two Departments in 2014".

Chairperson there's something else that I need to draw to your attention, all over the world the International Telecommunications says you should converge. Our ICT green paper adopted, in December 2013 also called for convergence, basically this means that whereas  
10 previously there was a separate post office, a separate television and so on and so on, now your very simple cell phone you can watch video on demand, you can actually see movies. You can watch TV, you can watch the news, you can actually send messages that you otherwise would have sent to the post office via e-mails and so on, so it's convergence it's our entire green paper. We visited all nine provinces, we had a major National consultative conference, it called for convergence. It was very surprising, against the global trade and against the ICT green paper where the Departments became split into two ministries and two Departments. So it's about transferring powers  
20 and there was a tussle as you know, in the public domain, Minister Cwele and Minister Muthambi about where the Broadcast Digital Migration belongs, must it belong to Minister Muthambi or the Minister of Telecommunications Postal. So that's the reference here, it's astonishing that somebody outside with a vested material and profit interest could actually draft or contribute in this way to drafting a

Cabinet memo on the division of powers which resides in the Presidency moreover. If as Ms Mac has said elsewhere or MultiChoice says, she was merely making a submission, then presumably other people should also be entitled to make a submission or in this sector because they're a private sector company. Here again is an example of regulatory capture, the entire affidavit, if you like, one of its main sub things is precisely your concern about State Capture a specific form of regulatory capture and if you look at those e-mails, which I hope you will get to do at the Commission sometime, you will see very

10 evocatively and very starkly there.

May I also say that I have no personal objection, and who cares what I think in a powerful ANC Government where I'm a marginal player, to lobby. Chairperson, lobbying by business is exactly correct in a democracy. If the Trade Unions can lobby and the NGO's can lobby Government so must in fact, business, that's perfect normal, it's endemic in a democracy. The question, however, is, where do the boundaries begin and end. We are a civilised, non-racial, social democracy, we must be bound by the norms of the constitution. Nowhere, Chairperson in law or in the constitution does it say that

20 MultiChoice could have done what it actually did and those e-mails will be the most stark illustration of how irregular and how unfortunate it would seem their behaviour was.

**ADV THANDI NORMAN SC:** Thank you, and you make the statement in paragraph 133, the next page.



**MR CARRIM:** “The influence of MultiChoice in drafting a policy for Government which is thereafter transmitted to the Gupta’s is irregular, that’s putting it mildly.”

**ADV THANDI NORMAN SC:** Thank you and then – now I think we can go back to where we were at paragraph – the last paragraph 278 of your statement we have covered the main areas.

**MR CARRIM:** Yes do you want me to summarise that ...(intervenes).

**ADV THANDI NORMAN SC:** Yes please.

**MR CARRIM:** 278, Chairperson on page 79 reads:

10 “It is only Naspers and MultiChoice that have benefitted from this change in policy by Minister Muthambi even though they are increasingly challenged by streaming services they still retain their strangle and domination of paid TV at huge costs to the economy and the country, especially the poor and disadvantaged. Previously as stated earlier they did this to get close links to the apartheid Government, now they do so through the frailties of those of us elected to Government and the inertia of our democratic State but moreover 279

20 concludes by saying, but we cannot allow this Chairperson we waste a titanic struggle over decades at a huge cost against apartheid and we finally triumphed over it through an unprecedented negotiated transfer of power. Of course the legacy of apartheid persists there are many problems that we have inflicted in ourselves

and the transition still has a long way to go but we can and must, over time, triumph over our current challenges as one of many aspects of this transition we need to accelerate the digital migration process as part of transforming our country in the interest of all the people, particularly the poor and disadvantaged and we need to do this soon, otherwise the fourth industrial revolution will leave us far behind, to the detriment of all our people, not just the poor and disadvantaged”.

10           Chairperson if we complete the digital migration process what is revealed in the first thirty pages, you get a digital dividend, which means, Chairperson, to put it crudely if I’m a Politician. You see, let me put it like this, as simple as it can be, of course the technocrats – you see if you take SABC1 it uses let’s say one radio frequency spectrum to crudify it right on an analogue, which is the current system, once you move to Digital, Mr Kruger and others will tell you, one radio frequency spectrum can give you between six, I think, and 15 television services.

20           So the amount of radio frequency spectrum, which is a scarce source that is used up with the current – atavistic or what can you say, backward, outdated analogue television system you release so much a spectrum that you can produce more channels in different languages if you had the resources to do so, you’ll encourage more competition, paid TV will get cheaper, more people will have access to it but

secondly, very importantly Chairperson, this is not, as I tried to suggest to you only about broadcasting.

You're going to release radio frequency spectrum for all the service providers in the mobile sector, so Vodacom, Cell-C, MTN, Telkom Mobile, that will be easy, when we as Government, as ANC attack the high cost of data, of course we are right to do that, because we are in a knowledge economy, information society. If you want to reach the rural pore, if you want them to enter the market, the economy with little projects and little self-help employment schemes, and little SMME's, you  
 10 need data pervasive be available. The cost is prohibited.

So, you have got also a very vital source of revenue, you can ask National Treasury, it is worth billions of Rands, releasing the spectrum which is now under agenda Chairperson with the new Minister, but obviously the crucial part of the spectrum if I understand this correctly, an expert will help you more in this regard, can only be offered when the digital migration process is complete. So where are we Chairperson? Collectively, that is why I apologised to my colleagues, my officials in the Department and experts who help me as a politician.

Politicians, we have thick skins, otherwise you cannot be a  
 20 politician, but officials, they should serve the public out there. They must be neutral and implement policies that the Ministers in Cabinet and the majority party in consultation, minority parties decide, so what I am saying in short is my understanding is and I could be wrong, the Set Top Boxes that were released after the last tender after I left, are dormant. Apparently they are lying, I do not know, in various warehouses, I do not

know where it is, but the digital migration process regrettably, but I have confidence in this new Minister for what it is worth. I think she is going to get in going, and the President and Government. They have been raising this spectrum issue, but we have been held back ultimately by MultiChoice and Naspers in particular. Secondly, I want to make something clear, it is not as if those who identified with MultiChoice and Naspers in particular, did so and were used by Naspers and MultiChoice.

No – no they also had their own personal business and other material interests. People in ACSTAR, I mean community TV. What has  
 10 community TV got to do with each of digital migration. They were high-bound to Naspers and MultiChoice, who threatened them, threatened them that if , I am told, if you support encryption we will dispose of you in the MultiChoice bouquet, DSTV bouquet, but some of them reached out to the advisors and myself and said look mister, we do not have a view of this thing. It does not affect us. If you can fund us, as the Ministry, one of them approached me, we will support in encryption.

And I say no, then I am buying you my friend. No that is equally wrong as MultiChoice's behaviour. You have in this affidavit, can I just read what Mr Yunis Sheik sent me? Look at the billing by  
 20 MultiChoice ...(intervenes).

**CHAIRPERSON:** *Ja*, that is right, *ja*.

**ADV THANDI NORMAN SC:** Yes.

**MR CARRIM:** Can you help me Ms Norman?

**ADV THANDI NORMAN SC:** Yes.

**MR CARRIM:** E-mailed by.

**ADV THANDI NORMAN SC:** I think it is, I will find it now ...(intervenes).

**MR CARRIM:** Mr Yunis Sheik of eTV ...(intervenes).

**CHAIRPERSON:** *Ja*.

**ADV THANDI NORMAN SC:** Yes.

**MR CARRIM:** Where he says they have actually been issued, that is another example of regulatory capture ...(intervenes).

**CHAIRPERSON:** *Ja*, you referred to it earlier, let us go through it so you can read it, *ja* ...(intervenes).

**MR CARRIM:** These are Mr Yunis Sheik's words, it is an e-mail sent to  
10 me. Now maybe Ms Norman you can help me.

**ADV THANDI NORMAN SC:** Yes. I am just ...(intervenes).

**MR CARRIM:** I will look for it quickly in my own notes.

**ADV THANDI NORMAN SC:** Chair, it is on page 41 ...(intervenes).

**MR CARRIM:** Page 41, yes?

**ADV THANDI NORMAN SC:** It is referred to as Annexure 8. Thank you.

**CHAIRPERSON:** Annexure 8?

**ADV THANDI NORMAN SC:** Annexure 8 ...(intervenes).

**MR CARRIM:** On page 41, I literally quoted so it is easier.  
...(intervenes).

20 **ADV THANDI NORMAN SC:** It is on page 118.

**CHAIRPERSON:** Yes. Do you want to read it from where you quote it if that ...(intervenes).

**MR CARRIM:** So that is one, paragraph 127, Sir.

**CHAIRPERSON:** *Ja*.

**ADV THANDI NORMAN SC:** Yes.

**MR CARRIM:** Right. It is on page 41 of my text.

**CHAIRPERSON:** Yes.

**MR CARRIM:** I say,

“In addition just as the facilitation process was beginning, Mr Yunis Sheik, an eTV Executive Director wrote on the 5<sup>th</sup> of September 2013 to inform me that Naspers/MultiChoice threatened to punish eTV if they argued in favour of SDB Control in the facilitation process.”

10           A copy of Mr Sheik’s e-mail is attached hereto as Annexure 8, and it stated the following, then I literally quote the e-mail which you have as an annexure, I will read it to you, this is Mr Yunis Sheik’s words addressed to me:

“We draw to your attention the following, one: we have been advised this day, that will be the 5 September 2013 by DSTV that if we should express support for the BDM Policy and Set-Up Box control during the course of the facilitation process, they will cancel the contract with eTV to host the ENCA News  
20           Channel on the DSTV platform. In addition, we have been handed a script,”

Now Chairperson, handed a script by DSTV,

“Which we were called upon to articulate.”

Notice, in parrot fashion:

“To the facilitators you have appointed.”

Point 2,

“In addition, we have been informed by Hlaudi of SABC, that they intend to oppose the BDM Policy and Set Top Box Control. We understand they too may well have been issued with a similar script and I have elected to succumb, least they suffer similar consequences with regard to their new 24 hours news channel. The declaration of eTV, DSTV issued by no less”

10

Notice Chairperson,

“Issued by no less than its CEO Mr Koos Bekker, to our CEO Marcel Golding is at once designed to place us under duress and undermine the BDM Policy and the facilitation process. In our view the facilitation process has been violated and the participants placed under considerable duress to oppose the BDM Policy and Set Top Box Control. For this reason, we are of the view, subject to your advice, that we should bedroll from the facilitation process altogether, as the process is conducted under the

20

ages of the Ministry, we should want to hear from you before we make a final determination of the matter.”

In subsequent paragraphs Chairperson, summarized, I handed over to Mr Nidri ...(intervenes).

**CHAIRPERSON:** Yes.

**MR CARRIM:** He then took it to Mr Harris and the facilitation Team, they met with both sides and they brought – they brought eTV back in.

**CHAIRPERSON:** Yes.

**MR CARRIM:** Let me also read the paragraph preceding that is linked to it, where it shows again regulatory capture. Paragraph 126 read:

“It has been alleged that Naspers MultiChoice assisted Keith Thabo, the former President of Namec, to draft an opinion piece, in his name. An article in the Mail and Guardian dated 29 May 2015.”

10 Annexure 5 states the following:

“AmaBhugane has also learned that at about the same time, MultiChoice’s management was involved in producing an opinion piece published in April last year that attacked Carrim. The article was published under the by-line of Keith Thabo, the then President of Namec. It is an important lobby group for mainly Blacks more, medium and micro-enterprises in the electronic manufacturing sector. AmaBhugane has seen the mail, e-mail correspondence from April 21

20 last year, it is presumably 2014 between Calvo Mawela, the head of, excuse me, of stakeholder and regulatory affairs for MultiChoice South Africa, and Thabo, referring to Mawela’s role in penning an opinion piece published on the technology website TechCentral on the same day.”



In the e-mail writes Mawela:

“Herewith the final article as requested,”

He then provides Thabo with the e-mail address of TechCentral Editor, Duncan McLeod saying:

“I think, try to get him try to get it to him as soon as possible”

The article entitled:

“Minister you are misleading the public accuses Carrim of rewriting history and distorting facts.

10 MultiChoice describe the allegation that it was involved in authoring opinion pieces from Namec Consulting. Through its office bearers”

On the next page 41 Namec asked Mr Mavela’s input. This is a quote sorry from Jackie Raktala who is a MultiChoice ...(indistinct) she claims:

“Through its office bearers Namec approached Mr Mavela to provide an input as a broadcasting engineer and he shared his thought based on his expert knowledge of the broadcast significance.”

20 This is in the public domain, it is from those e-mails that you have, but let me put something to you Chairperson that is obvious. Mr Kythivo does not even know the e-mail address of Duncan McLeod. He has given it by Mr Mavela moreover Mr Mavela says try to get it to him as soon as possible is just merely an editing. Secondly the e-mails reveal there was far, far more than just this role that Mr Mavela played. I was

surprised when I saw the e-mails on Friday night at the extent to which there was collusion. Acts South Africa is mentioned there, Mr McKenzie is mentioned there and so on and so on. I will not say more because you are still authenticating.

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

**ADV THANDI NORMAN SC:** Thank you, lastly you have mentioned Mr Mavela and you did mention that you got an apology from MultiChoice at some stage. Could you go to page 200 I beg your pardon Chair, page 71 paragraph 253 your counsel has asked that I ask you to deal with that  
10 paragraph. Thank you.

**MR CARRIM:** Yes – let me tell you the context quickly Chairperson. So, the business there contacts me one day out of the blue they say the 6<sup>th</sup> of June as we know it 2013 e-mails have been released in the public. I think it emerged from Mr Vincent's Smiths Portfolio Committee on the SABC matters and she asked me whether I am aware that MultiChoice made it to quote and these are Mr Patel's words "a deal breaker" this whole issue of control and we know that they raised a campaign against you and so on. So I explained to her it is not the norm for a Minister to comment, is there anything in the minutes that attacks my integrity because in that case  
20 there is nothing in government norms and policies and rules or in the ANC rules to say you must sacrifice your personal rules and political integrity for the sake of what, what there is no such thing in the NDR National Democratic Republic. I do not know of any such norm. I said if there is an attack on my integrity, I will respond but otherwise contact the Minister and the Chairperson of the Committee. The journalist came back to me

and said, I think she spoke to a news editor, we said no we cannot ask them because they were not there at the time I said neither was I but so reference to a policy that relates to my period and what she presumed to be the reason partly for my not being reappointed. Now I responded to her Chairperson, and not realising it is such a big story because I was busy with my work and she was irritating me, with due respect, but you know I am a journalist. I mean I cannot be dismissive, she meant well so there it is. Next day it is page 1 of business day and the next thing I find it is gone viral because you see MultiChoice is a world body and people

10 phoned me from Reuters and I do not know what and so on. I went to eTV again because I had three requests for interviews at the same time. eTV and ENCA as they call ANN7 as it was then and SABC and the person that offered me a lift from where I was to ENCA so I got into the car and went so it blew up. Subsequently what happened was I met Mr Nono Letele because they were doing this inquiry into ANN7. He is the Chairperson of MultiChoice I think he still is. So I met him and we had a discussion at the O.R Tambo Airport and he asked me basically, he said look over the phone and subsequently I cannot remember what was said over the phone and what was said personally to me, he said look Mr

20 Carrim I do not believe you are corrupt. I do not accept that you did anything wrong. You can call him here, I do not know what he will say, but that is what he said to me Chairperson and I said – he asked me what do you want this was more or less it from us. After my statement to the business day and the thing blew up. I said I want you to apologise to me I do not care as I said in my letter to him subsequently. Who cares

Chairperson in this day and age whether you are a Minister or a Deputy Minister who cares? In the time that I was there Ms Norman there were four Ministers can we even remember them? Does anyone remember maybe now if they watching they will remember that I was a Minister for a brief period, who cares? What I do not want Mr Letele and I told him in my letter so it is there. I do not want my grandchildren Googling one day in this IT age that their grandfather who presented himself as a socialist and as progressive who gave money away that is actually taking a bribe from eTV I cannot take that, I do not care whether I am the Minister or

10 not all I have got at the end of the day is my integrity. So I want you to apologise, I want MultiChoice to apologise and you know what I want you to put an advert in all those six whatever newspapers you did same size and retain your view that actually control was ridiculous, expensive and so on but do not give me this line that you representing the pole. You cannot you are a big monolith you are making super profits you cannot tell me you represent the pole even less can you say you represent your consumers who you charge so much, okay?

So he was very considerately he came across as very civil and to be quite fair you know in all the time I exchanged with him, the few

20 exchanges I had unlike the others I had he is very civil. He is a very gentlemanly type so he then said well I see you work in finance and I do not think you are corrupt I did not understand how far he would take it. So, he went to a Board Meeting, I am told by others, and he presented a case. He says look this chap is very upset only about one thing as I understand it from somebody else, who gave me a fleeting account of it

he said he wants an apology. So, Mr Calvo Mavela did apologise but Chairperson you will see the annexure and the end of a long explanation on a controversial ANN7 deal with MultiChoice that was the focus. He then said something like, in so far as our March 2014 advert suggested or reflected on a Ministers integrity. In so far as something we apologise, okay? And so, I will read to you while I actually say and then I am done with this side unless you have more questions. So, it reads ...*(intervenes)*.

**CHAIRPERSON:** *Ja*, let us just read that part

10 **MR CARRIM:** So, you refer me to *(Intervenes)*.

**ADV THANDI NORMAN SC:** Paragraph 253?

**MR CARRIM:** *Ja*, in addition to the above on the 31<sup>st</sup> of January during a MultiChoice press conference Mr Mavela the then Chief Executive – The Chief Executive now of MultiChoice apologized to me regarding the open letter referred to above. That is the advert Chairperson. The statement of Mr Mavela is attached here to Annexure 20 and he said:

20 “I would like to take this opportunity to confirm that  
the open letter which MultiChoice published in the  
Media on 16 March 2014 regarding digital migration,  
was in no way intended to cast aspersions on the  
integrity of the former Minister of Communications.”

Now here Chairperson, to tease the Commission a bit, my name is spelt wrong, Yunis with I, and Carrim with an E and may I say Chairperson if you care to read the annexure replying to Mr Andre Du Plessis there, he says, *ja*, you see Carrim and, what is this guy? Yunis

Sheik. They were buddies in a Natal Indian Congress and so on, so I replied to all of that. You may have seen it. One of the teasing comments I make, sarcastic comments, anyway he is Y-u-n-i-s and I am Y-u-n-u-s. That is another thing that does not bind us. We were part of a broader movement; I do not know him particularly. He is a nice guy from what I know, but I am not a buddy of his. Okay, so I subsequently addressed a letter to Mr Letele dated 14 February 2018 wherein I raised my dissatisfaction Chairperson, and I still hold this regarding the apology on the 31<sup>st</sup> of January 2018 by Mr Mawela ...(intervenes).

10 **CHAIRPERSON:** And basically, you were saying that the apology was in adequate ...(intervenes).

**MR CARRIM:** Not acceptable, yes that is right.

**CHAIRPERSON:** And was not published in the right forum ...(intervenes).

**MR CARRIM:** *Ja*, Mr Koos Bekker did not apologize. It was not put on their website, somebody told me.

**CHAIRPERSON:** Yes.

**MR CARRIM:** Nobody even reported in the press and the Media to clarify this. I mean some student might be doing a thesis 20 years from now.

20 They will Google that Carrim was in the power of eTV. Mr Bekker has never apologised. And then I explained what I just said in 256 that you know what, all I have is my integrity, and that matters to me.

**CHAIRPERSON:** *Ja*, no that is fine.

**MR CARRIM:** And it should to all of us. I do not care about positions and therefore he must apologise. I still got that view that he must

apologise.

**CHAIRPERSON:** Yes, no that is fine, thank you.

**ADV THANDI NORMAN SC:** Thank you Mr Carrim, thank you that is the evidence.

**CHAIRPERSON:** Okay, the, there may be two or so questions Mr Carrim that I want to ask you before I release you. One of the things that has amazed me about the digital migration is the delay that has happened because the Policy was – in 2008 originally if I recall correctly, but we are in 2020, and the last time I checked, not much had happened, and I  
10 would have thought that one, the President at the time would have been saying to Ministers in this portfolio at different times including yourself when you were Minister. What is going on? What is holding things up? It is taking long to get things done and wanting to be informed. What is the problem? Did that happen during your term as Minister of Communications?

**MR CARRIM:** Well to be fair to then President Zuma, I had many meetings with him partly by his prompting. Never once did he say to me that he does not support Set Top Box Control firstly.

**CHAIRPERSON:** Yes.

20 **MR CARRIM:** Secondly, he realized, you know Chairperson I should say this. There is a very dismissive attitude in the public domain about the President. There are claims that he does not read documents and so on. Well President, it is a bunch of lies about Mr Motsoeneng as well. You know, the President of the country at the time may not have a degree, he may not have even Class 2 education, but I think people underestimate

his intellectual and political capacity. They underestimate his firm understanding of the issues. In my exchanges with him, I had a strong sense he knew exactly what the issues were. It is possible that somebody was briefing him but whatever it is, as a politician to a politician he was ...(intervenes).

**CHAIRPERSON:** Yes, he understood the issues.

**MR CARRIM:** He was remarkably aware of the value of SDB Controlled broadband and he constantly encouraged me.

**CHAIRPERSON:** Yes, okay.

- 10 **MR CARRIM:** In fact I met people who told me what positive things he said about me, but what I want to say is that there were other powerful people who were also saying I am going too fast, overtly. Now my view of the current President and the Cabinet and Government and a particular Minister Stella Ndabeni-Abrahams, is they are very committed to move. The point is that we have this baggage that we have to carry, and I think that Naspers/MultiChoice that is responsible for this and those who identified with them for their own needs and were also trying to use MultiChoice and Naspers as much as MultiChoice and Naspers were trying to use them. I also think Chairperson, you rightly raised long-term
- 20 issues, there needs to be a proper code of conduct as I say. In my view, I cannot prescribe to the Commission for business lobbying of politicians and politicians availability to business, so on the side of Parliament we need to tighten some of these provisions, on the side of business we need to do that, because by any measure, the lobbying by MultiChoice was very primitive, very backward, it is not consistent with the social



democracy we are. And it has caused a huge step back to the digital migration. It suits them because they can retain their monopoly and so on. So Chairperson I would say that the current Government, the ANC today which retains its view on Set Top Box Control, I think they are on the right course and as an MP I will play whatever role I can to get them out of this phase, but they are on the right course, but they have to move faster in all our interests.

**CHAIRPERSON:** You may or not be able to deal with this but I ask anyway. At a certain stage and I think it was after your term as Minister.

- 10 The policy that was pursued by the Minister of Communications, Ms Muthambi, I seem to have got the impression that it was not consistent with the ANC policy on digital migration and it may not have been consistent with Government policy as it was when you were Minister of Communications. One or two of these might not be correct, but you can comment to the best of your recollection or understanding.

**MR CARRIM:** Firstly Chairperson it is not for me to comment on a Minister's role after I have now been reappointed, that is not really – that is not my thing, but all I can tell you is what is in the public domain.

**CHAIRPERSON:** Yes, yes.

- 20 **MR CARRIM:** You suggested it seems like the policy that the Minister adopted was not consistent with the ANC policy and previous Government policy. Well firstly, in my affidavit you will see that as recently as about 18 months ago Mr Jackson Mthembu, the then Chairperson of the NEC Sub-Committee and Communications repeated that SDB Control remains Government policy, long after Ms Muthambi. There are many other Media

articles if the research Team Google's, will find as to my knowledge Ms Lindiwe Zulu in the last fleeting exchange I had with her, had also – she was the Chairperson prior to Mr Mthembu becoming the Chair, also expressed her concern to me privately that, you know that was not consistent Government policy, but she did not take it more, it was a fleeting exchange in the House, but I should also say as far as I understand it Chairperson and I consulted with some people, the Court right up till the Constitutional Court you were served never pronounced on the legality or otherwise of Set Top Box Control.

10 **CHAIRPERSON:** *Ja*, no it did not.

**MR CARRIM:** They simply said does the Minister have the power?

**CHAIRPERSON:** *Ja*.

**MR CARRIM:** It is only today Chairperson, listening to you, obviously because you were there.

**CHAIRPERSON:** Yes.

**MR CARRIM:** I discover it was such a mad narrow majority.

**CHAIRPERSON:** Yes.

**MR CARRIM:** Now there is something Chairperson that people out there I think should think about.

20 **CHAIRPERSON:** Yes.

**MR CARRIM:** Which is we were never going to give eTV as subsidy. There was no such thing. It is like then saying the Government is giving a 7 billion Rand subsidy to the car industry, or all the tax incentives we give to business, it is powerful the course in developed democracies and here. Their intention was to actually squeeze eTV. They were cooing

that they got their way and Mr Bekker and MultiChoice and Naspers were furious as if Mr Bekker's moods or MultiChoice's moods must determine Government policy but it was never the intention even now people ask me, why did you want to give eTV a subsidy? There is no such thing. It is an absurd surrealistic claim.

**CHAIRPERSON:** *Ja.*

**MR CARRIM:** And I subsequently met eTV after the facilitation process ended and it is recorded in the minutes Ms Norman, I met each of them individual, as a politician now to strike a political deal since the objective  
10 facilitation process. I met Mr Sheik and Mr Golding and I said to them I do not know why you guys are claiming a victory. This is not about you. You are fat cats too of a smaller nature. It is about the new emerging African entrepreneurs. Five of whom were about to be issued licences in ICASA. Chairperson I have explained to Mr Bekker, I cannot take the budget and used it as my personal money box and give it to, because I happened to bump, Mr Sheik was a comrade in the 80's, why must I apologize? He worked very hard. He was part of the liberation movement as you know so well. Now, I mean I hardly had anything to do with him, he is in, I am in Msunduzi, Pietermaritzburg. He is in eThekweni, Durban.  
20 We served in the same structure like 600 the other activists in that structure. I have never met him since 1994 except fleetingly once at the airport.

**CHAIRPERSON:** Yes.

**MR CARRIM:** And firstly, it was very racist Chairperson, I mean I got a thick skin, we are a highly racialized society. So, first there were people

in SABC obviously and MultiChoice saying aha, you see Carrim is agreeing to it because he is buddy-buddy with Yunis Sheik. Maybe you can speak to Yunis Sheik. I would not qualify it, as a comrade, hundreds of comrades. Secondly then they said no, no, you see Yunus has got the same name as Yunis. I covered that in my response already. Then they said no, because they Indians, oh please, I am a Marxist, unapologetically so Chairperson, he does not belong to the same school. Even in the NIC we belonged to two different schools right. Then they said no – no Carrim is not going with Sheik he is going with Marcel

10 Golding, because you see Marcel Golding was a workerist, and Carrim is a left power man. Sorry I do not know if that is the right word, oh man please there is no such thing. So, when they lost all of that, you know what they then did? They said ah do you see? It is his advisors. Now they obviously playing the race card again. Advisors what they did not realise was Setumo Mohapi, let me repeat Chairperson, brilliant CEO of Sentech. The most influential person on me, apart from Government policy and ANC policy was Setumo who writes notes that are simple and a journalist like me can convert with little editing. Mr Roy Kruger, Mr David Nidri, right, was a long-term activist in the movement, right? And the

20 Wanga Glangamandla and Rosy, they were the Team Chairperson.

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

**MR CARRIM:** And then I thanked them again for their excellent work.

**CHAIRPERSON:** Thank you very much Mr Carrim. Thank you for coming to give evidence and to share what you know about this issue of digital migration during your term as Minister. Thank you very much for coming

...(intervenes).

**MR CARRIM**: Sir, I do not want to be rude but.

**CHAIRPERSON**: Yes.

**MR CARRIM**: If those e-mails are authenticated and I have read them, and if I had only had access to them, my affidavit not spend me hours and hours digging. It is there.

**CHAIRPERSON**: Yes.

**MR CARRIM**: I am willing if you so need me, it is your decision to come back and give some of the politics of those e-mails and I can fill in the  
10 events that are making more sense to me now Chairperson.

**CHAIRPERSON**: Yes.

**MR CARRIM**: If only I had those e-mails, and Mr Nidri has to apologise to me for saying ah man Yunus there was nothing there but it was there for 5 years, I only saw it on Friday, if you need me, I am willing. Thank you.

**CHAIRPERSON**: Yes, no thank you very much, the Legal Team hears what you say. Once they have been authenticated, I am sure they will be in touch with you but thank you very much. You are now excused.

**ADV THANDI NORMAN SC**: Thank you Chair. The next witness, Ms  
20 Mkobo is present. The only challenge is that one of the implicated persons by her in her statement Mr Tiaan Olivier has written to the Commission yesterday challenging some of the minutes that have been given to him. He is challenging that those minutes are not accurate. I have not had an opportunity to deal with those aspects with Ms Mkobo but we have arranged that she would go through them overnight. With your

leave Chair may she be allowed to testify tomorrow morning.

**CHAIRPERSON**: Okay.

**ADV THANDI NORMAN SC**: But depending what the Chair says, we can continue with her evidence and then we can do the authentication of the minutes later, because the ones that you have received from the SABC have been authenticated by the – by Ms Bhy, yes, to save time maybe we could ...(intervenes).

**CHAIRPERSON**: How many minutes are affected by Mr Olivier's challenge?

10 **ADV THANDI NORMAN SC**: That is the difficulty Chair, he has not – we wrote back to him, and we said to him please identify those that you believe, you say are not accurate. And he simply in his response in which we got, he simply goes and makes a very broad general statement, so maybe we could proceed and deal with that later?

**CHAIRPERSON**: Well, if Ms Mkobo believes that they are accurate

**ADV THANDI NORMAN SC**: Yes.

**CHAIRPERSON**: Then well it just depends how much is involved because if it is minutes of one meeting that are something like 5 pages, you know, it is one thing, but if it is minutes of a number of meetings it  
20 might be, it might require more time.

**ADV THANDI NORMAN SC**: Yes. I am in your hands Chair.

**CHAIRPERSON**: The situation tomorrow, how do we stand tomorrow?

**ADV THANDI NORMAN SC**: We have arranged Chair with the stream – the law enforcement stream, that they must have a witness ready for tomorrow but I do not think we will be even two hours with Ms Mkobo

because most of the ground has been covered by the evidence of Mr Carrim and as you might have notice Chair, Ms Mkobo does have a confirmatory affidavit attached to Mr Carrim's evidence. So she will simply deal with very few matters that only she would know about and – and that should not, if we start at 10:00 I believe that by tea time we should be done with her. Yes.

**CHAIRPERSON:** Okay, and then the Law Enforcement work stream has got how many witnesses?

**ADV THANDI NORMAN SC:** They have indicated that they have three  
10 this week Chair.

**CHAIRPERSON:** But that is this week, but for tomorrow?

**ADV THANDI NORMAN SC:** For tomorrow I know that they have one person, that Nicholson had advised me that, Advocate Nicholson advised me that that witness is going to be a long issue, I think the one did not finish on the last occasion.

**CHAIRPERSON:** Yes, *ja*.

**ADV THANDI NORMAN SC:** I have forgotten the name of the witness. He is going to finish that witness, but he believes that

**CHAIRPERSON:** *Ja*.

20 **ADV THANDI NORMAN SC:** He believes that he could take a while, but I could verify those facts.

**CHAIRPERSON:** Okay, no that is fine. Okay so, you were suggesting that maybe we adjourn for the day and then you can attend to the issue of these and so on.

**ADV THANDI NORMAN SC:** Queries, yes thank you.

**CHAIRPERSON:** Okay let us do that and then tomorrow we will resume at 10:00.

**ADV THANDI NORMAN SC:** Thank you Chair.

**CHAIRPERSON:** We adjourn.

**ADV THANDI NORMAN SC:** Thank you.

**REGISTRAR:** All rise.

**INQUIRY ADJOURNS TO 26 FEBRUARY 2020**

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