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DAY 219

FINAL

20

PROCEEDINGS RESUME ON 26 FEBRUARY 2020

CHAIRPERSON: Good morning Ms Norman, good morning everybody.

ADV THANDI NORMAN SC: Good morning Mr Chairman.

CHAIRPERSON: Are you ready?

ADV THANDI NORMAN SC: Yes thank you Chair.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: Chair this morning we are going to lead the evidence of Ms Lulama Mokhobo. Chair in – her evidence is contained in Exhibit CC21.

10 **CHAIRPERSON:** Yes.

ADV THANDI NORMAN SC: Chair that exhibit was – is already ...(intervenes).

CHAIRPERSON: Was previously admitted.

ADV THANDI NORMAN SC: It was previously admitted.

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: But what we did was to take all of her statements and put them in one file and remove them from the 21 which contained all the other statements belonging to other witnesses so as to make it easy to lead her on the later statement of hers.

20 **CHAIRPERSON:** I wonder whether you should not just have made copies and not take them out of the ...(intervenes).

ADV THANDI NORMAN SC: Of the others.

CHAIRPERSON: Other one.

ADV THANDI NORMAN SC: Alright – no, no by that I mean Chair they are still there is that one.

CHAIRPERSON: They still – oh okay.

ADV THANDI NORMAN SC: Yes, yes but for the purposes of today's hearing.

CHAIRPERSON: You made copies.

ADV THANDI NORMAN SC: Yes, yes.

CHAIRPERSON: Okay no that is fine.

ADV THANDI NORMAN SC: No they are still there yes. Thank you Chair.

CHAIRPERSON: So – but it remains as Exhibit ...(intervenes).

10 **ADV THANDI NORMAN SC:** It remains CC21.

CHAIRPERSON: 21?

ADV THANDI NORMAN SC: That is correct Chair yes.

CHAIRPERSON: But there is something you have added I would imagine?

ADV THANDI NORMAN SC: The supplementary – the latest supplementary.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: Which she is going to testify to.

CHAIRPERSON: Yes. But now the – what you would have added.

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

CHAIRPERSON: Would be something that was not there when it was admitted?

ADV THANDI NORMAN SC: When it was admitted.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: That is correct Chair yes.

CHAIRPERSON: So we should keep Exhibit CC21 as it was when it was admitted.

ADV THANDI NORMAN SC: That is correct.

CHAIRPERSON: So ...(intervenes).

ADV THANDI NORMAN SC: Or – and then make this 21A and B.

CHAIRPERSON: Yes maybe what we should do is you can keep 21 to be just a duplicate.

ADV THANDI NORMAN SC: Yes Chair.

CHAIRPERSON: Of what was admitted.

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

CHAIRPERSON: And then have whatever you have added.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: As Exhibit 21A or something.

ADV THANDI NORMAN SC: We will do that Chair.

CHAIRPERSON: But let it be separate exhibits.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: So that ...(intervenes).

ADV THANDI NORMAN SC: It is clear.

20 **CHAIRPERSON:** Somebody who looks at Exhibit 21 and sees that it was remitted on a certain.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Does not see a statement that was signed after.

ADV THANDI NORMAN SC: Thank you Chair.

CHAIRPERSON: *Ja.*

ADV THANDI NORMAN SC: We will do that yes. Thank you.

CHAIRPERSON: *Ja* okay.

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

CHAIRPERSON: The – how much has been added? Is it a supplementary statement only or are there ...(intervenes).

ADV THANDI NORMAN SC: There is two supplementary statements Chair but the one supplementary that was added it is her evidence which she submitted to the SIU. So from folder 2 that did form part of her first statement but what is new in this bundle ...(intervenes).

CHAIRPERSON: You talk about folder 2 you mean B?

10 **ADV THANDI NORMAN SC:** B – I beg your pardon. Divider B.

CHAIRPERSON: *Ja*.

ADV THANDI NORMAN SC: That formed part of her evidence because she – it was attached there as an annexure. So sorry.

CHAIRPERSON: Her evidence before the Commission.

ADV THANDI NORMAN SC: Before the SIU.

CHAIRPERSON: That is her evidence – that is her affidavit before the SIU?

ADV THANDI NORMAN SC: That is correct Chair yes.

CHAIRPERSON: Alright.

20 **ADV THANDI NORMAN SC:** But today what she is talking about is what is under folder C.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: So that is the ...(intervenes).

ADV THANDI NORMAN SC: The second supplementary.

CHAIRPERSON: So what falls under divider C was not in Exhibit 21?

ADV THANDI NORMAN SC: That is correct.

CHAIRPERSON: What about what falls under Exhibit B?

ADV THANDI NORMAN SC: It was.

CHAIRPERSON: It was.

ADV THANDI NORMAN SC: Because that was before she testified in September.

CHAIRPERSON: Oh okay.

ADV THANDI NORMAN SC: Yes, yes.

10 **CHAIRPERSON**: So what we need to do then is just admit her supplementary affidavit that is under C as a separate exhibit?

ADV THANDI NORMAN SC: Yes Chair.

CHAIRPERSON: And then later on or during the break you can take it out and put it on a different folder.

ADV THANDI NORMAN SC: Yes and market it – thank you Chair.

CHAIRPERSON: *Ja*. So that when we say this is Exhibit 21 it is exactly the same as ...(intervenes).

ADV THANDI NORMAN SC: As it was.

CHAIRPERSON: It was and then there is Exhibit 21A.

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

CHAIRPERSON: Which is the addition.

ADV THANDI NORMAN SC: We will do that.

CHAIRPERSON: Which is – will be separate.

ADV THANDI NORMAN SC: We will do that Chair. Thank you.

CHAIRPERSON: Okay. Do you want me to admit this?

ADV THANDI NORMAN SC: Thank you Chair could you – the supplementary affidavit of Ms Mokhobo be admitted as Exhibit CC21A.

CHAIRPERSON: The supplementary affidavit deposed to by Ms Lulama Mokhobo on ...(intervenes).

ADV THANDI NORMAN SC: October.

CHAIRPERSON: What is the date?

ADV THANDI NORMAN SC: The date appears it is October – I beg your pardon Chair. It appears at page 89 that will be on the 16th of October.

10 **CHAIRPERSON:** On the 16th of October 2019.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Is admitted and will be marked together with its annexures as Exhibit 21A.

ADV THANDI NORMAN SC: Thank you Chair.

CHAIRPERSON: Yes okay.

ADV THANDI NORMAN SC: Thank you Chair. Yesterday Chair we referred to the Exhibit CC43 which is of Ms Theresa Geldenhuys but it was not admitted formerly into the record. Could that be admitted? May I just mention Chair that Chair's bundle is not before the
20 Commission we omitted to ask the Protectors to bring that one but with your leave we shall make use of the witness which will become the Chair's one and then we will change it when we get it.

CHAIRPERSON: Are you going to need that one for ...(intervenes).

ADV THANDI NORMAN SC: For today.

CHAIRPERSON: For Ms Mokhobo's evidence.

ADV THANDI NORMAN SC: Yes Chair there is the referencing that we have make relating to this.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: Yes

CHAIRPERSON: You say at this stage you do not have my bundle?

ADV THANDI NORMAN SC: We do not have yours at this stage Chair but we made provision. We took the witness's bundle which is clean and we were going to use it for Chair today.

CHAIRPERSON: *Ja.*

10 **ADV THANDI NORMAN SC:** And then we have a separate copy that we have given to the witness.

CHAIRPERSON: *Ja.*

MS MOKHOBO: And with your leave we will use – Chair will use – will have reference to the witness bundle and then it will be replaced before the end of the day.

CHAIRPERSON: Okay

ADV THANDI NORMAN SC: Yes. Thank you.

CHAIRPERSON: Okay.

20 **ADV THANDI NORMAN SC:** No, no it is already there. It is – we placed it there already. Sorry. Just in front of you – there thank you.

CHAIRPERSON: The rest of the contents of this lever arch file except Ms Geldenhuys' affidavit – or is it an affidavit?

ADV THANDI NORMAN SC: It is – right Chair.

CHAIRPERSON: Are there two affidavits by her?

ADV THANDI NORMAN SC: Yes the one – yes Chair would recall that

she is the one who responds to Minister Carrim's evidence. We mentioned it yesterday and ...(intervenes).

CHAIRPERSON: One has not been deposed to.

ADV THANDI NORMAN SC: Yes but the deposed one appears at page 8.

CHAIRPERSON: Ends at page 8?

ADV THANDI NORMAN SC: Yes Chair.

CHAIRPERSON: *Ja.*

ADV THANDI NORMAN SC: The 27th of January.

10 **CHAIRPERSON:** What is the status of the one that has not been deposed to?

ADV THANDI NORMAN SC: She sent the one that was not deposed to first and then she subsequently commissioned with her ID number redacted in the one that appears from pages 1 to 8.

CHAIRPERSON: Is there any need for the one that is not deposed to?

ADV THANDI NORMAN SC: No Chair, no but because it has already been sequenced and paginated.

CHAIRPERSON: You did not want to ...(intervenes).

20 **ADV THANDI NORMAN SC:** No we did not want to take it out because it will leave that gap. The affidavit of Mr Theresa Victoria Geldenhuys deposed to on the 16th of February 2020 and the annexures thereto will be marked as – will be admitted and marked as Exhibit CC43.

ADV THANDI NORMAN SC: Thank you Chair. And lastly Chair may I also ask to introduce another exhibit which Ms Mokhobo is going to make – we are going to ask her to refer to that is CC42.

CHAIRPERSON: Before that.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: In this one that is the CC43.

ADV THANDI NORMAN SC: Yes Chair.

CHAIRPERSON: There is no other affidavit in it which is not an annexure to Ms Geldenhuys' affidavit?

ADV THANDI NORMAN SC: No Chair she only annexes minutes of meetings.

CHAIRPERSON: *Ja* okay.

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

CHAIRPERSON: Alright.

ADV THANDI NORMAN SC: Thank you.

CHAIRPERSON: *Ja*.

ADV THANDI NORMAN SC: Thank you Chair.

CHAIRPERSON: And what do you say about this other one?

20 **ADV THANDI NORMAN SC:** That one Chair is an affidavit from Ms Lindiwe Viola Bayi who is the Company Secretary at the SABC – Group Company Secretary at the SABC and her signature appears Chair at page 2 and she deposed to that affidavit on the 21st of February. All that she does Chair is to authenticate the minutes that she attaches together with the original agreement – with a copy of the agreement between MultiChoice and SABC. Yes.

CHAIRPERSON: And the other documents are annexures to her affidavit?

ADV THANDI NORMAN SC: They are annexures to her affidavit that is

correct Chair.

CHAIRPERSON: The affidavit of Ms Lindiwe Viola Bayi and the annexures thereto are admitted and will be marked as Exhibit CC42.

ADV THANDI NORMAN SC: Thank you Chair. Thank you Chair. May the witness be sworn in Chair?

CHAIRPERSON: Yes. Please administer the oath or affirmation.

REGISTRAR: Please state your full names for the record?

MS MOKHOBO: I, Lulama Mokhobo.

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

10 **MS MOKHOBO**: No.

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

MS MOKHOBO: 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 your right hand and say, so help me God.

MS MOKHOBO: So help me God.

ADV THANDI NORMAN SC: Thank you. Thank you Ms Mokhobo.

CHAIRPERSON: Sorry.

20 **ADV THANDI NORMAN SC**: Sorry Chair.

CHAIRPERSON: Thank you for coming back Ms Mokhobo

MS MOKHOBO: Thank you Chair.

CHAIRPERSON: Thank you.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: I just want to make sure I have got the pronunciation

of your surname correctly because somehow I think I have been saying – I have been pronouncing it as if the first O is A so if you can just – is it Mokhobo?

MS MOKHOBO: It is Mokhobo.

CHAIRPERSON: Mokhobo.

MS MOKHOBO: Yes. Yes Chair.

CHAIRPERSON: Okay alright.

ADV THANDI NORMAN SC: Oh thank you Chair.

MS MOKHOBO: Thank you.

10 **ADV THANDI NORMAN SC**: Thank you Chair I have also been pronouncing at Mokhobo then not Mokhobo?

MS MOKHOBO: That is correct. Mokhobo

ADV THANDI NORMAN SC: Mokgobo.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: Thank you.

CHAIRPERSON: *Ja* so do not pronounce like IsiZulu or IsiXhosa.

ADV THANDI NORMAN SC: That is what I am doing. I apologise. Thank you Chair.

CHAIRPERSON: It is Mokhobo. *Ja* okay.

20 **ADV THANDI NORMAN SC**: Thank you. Ms Mokhobo you have in front of you Exhibit CC21 but your – the statement that you are going to make reference to today appears from pages 70 onwards and they will be under a divider marked C.

MS MOKHOBO: Yes.

ADV THANDI NORMAN SC: And that statement has now been admitted

as Exhibit CC21A. So that is the only one that we will refer to and other documents that we may make reference to. Could you please take a look at page 70 and do you identify that as your affidavit?

MS MOKHOBO: I do.

ADV THANDI NORMAN SC: Okay if you go to page 89.

CHAIRPERSON: I am sorry I wonder whether that microphone is not too far.

ADV THANDI NORMAN SC: From her.

CHAIRPERSON: But I could hear you but maybe you might bring it – I
10 see it is pointing skywards as well.

MS MOKHOBO: It was.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Maybe it should – I do not know who interfered maybe bend it a little bit.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: Thank you Chair.

CHAIRPERSON: Thank you.

ADV THANDI NORMAN SC: Thank you. At page 89 is that your
20 signature?

MS MOKHOBO: Yes.

ADV THANDI NORMAN SC: And did you depose to that affidavit on the 16th of October 2019

MS MOKHOBO: Yes.

ADV THANDI NORMAN SC: Thank you. And that the contents of that

supplementary affidavit true and correct?

MS MOKHOBO: Yes.

ADV THANDI NORMAN SC: Thank you. You recall that Chair had invited you to submit a statement that deals with the Digital Migration Project and that is what you have done, is that correct?

MS MOKHOBO: Yes.

ADV THANDI NORMAN SC: You did testify before the Commission on the 4th of September 2019?

MS MOKHOBO: Yes.

- 10 **ADV THANDI NORMAN SC**: Yes. What I would like to do is to take you to page – to paragraph 44 that appears at page 83 because in terms of sequence I believe that is where you should start about your role in the SABC Digital Migration Program. Could you just tell Chair briefly what was your role in this program?

MS MOKHOBO: Chair I ...(intervenes).

CHAIRPERSON: That is the Digital Migration Program.

ADV THANDI NORMAN SC: Migration Program that is correct Chair yes.

MS MOKHOBO: Are you looking at – from point 45?

- 20 **ADV THANDI NORMAN SC**: 44 – page 83.

MS MOKHOBO: 44.

ADV THANDI NORMAN SC: Page 83.

MS MOKHOBO: Chair I thought it was important to locate where I was coming from as a Member of the SABC charged with running that institution. And in this paragraph I table my experience. I had been

one of the industry players in the 1980's to be precise starting from 1982 as the Head of the now defunct Bop TV edutel which was an educational radio and TV section of Bop TV and I was there for 10 years. And I go on to say having experienced the power of instructional and educational TV and radio technology and content in education in rural development particularly in poverty stricken communities and having seen teachers with poor qualifications and learners whose chance at bright futures were severely threatened by their lack of access to quality education blossom as a result of the TV and radio technology interventions. I could therefore grasp the vast opportunities that DDT with STB Control enabled technology could provide. I was during the phase when the Broadcasting Digital Migration Policy was being developed one of the people who were invited to give input. I was also a Member of the Sentech Board and was intimately aware of the possibilities that were at hand. I therefore view the SABC as possibly the best placed organ of state to be at the forefront of preparing nation to becoming a citizenry filled with hope and determination to learn and apply its learning for the greater good of family community and nation. The participation of the marginalised in the digital dividend and knowledge economy would indeed help make South Africa a better place for all who live in it. At a practical level the SABC Technology Division reported to me. I was therefore involved in providing strategic insights and playing the critical oversight role of ensuring that approved plans were implemented and budget utilisation was focussed on critical measurable deliverables. The most critical of

which was the digitising of all areas of the SABC critical to digital migration. I was thus able to share in the strategies research and development activities through the creation of the SABC's own STB encrypted laboratory testing facility and the showcasing of SABC's capabilities. And the showcasing Chair was done at a big convention which focussed on DTT and there were internationals who came in with all manner of equipment and the SABC actually won I think it was a silver award for what they showed. The showed their interactivity. They almost went as far as to show even gaming as one of the options
10 that could be included if the Set Top Box was encrypted.

ADV THANDI NORMAN SC: Yes. And you say you worked there with – you mentioned Mr Siphon Masinga?

MS MOKHOBHO: Yes.

ADV THANDI NORMAN SC: Yes. And what role did he play?

MS MOKHOBHO: Mr Masinga was the Group Executive for Technology.

ADV THANDI NORMAN SC: Yes.

MS MOKHOBHO: A very well trained engineer with numerous related qualifications and he showed an astuteness and creativity that if harnessed even after I had left the SABC would have led the
20 organisation into going beyond its traditional broadcasting role and becoming a non-linear hub of knowledge through technological possibilities provided by Digital Broadcasting and User Receiver Technology and here I mean the Set Top Boxes.

ADV THANDI NORMAN SC: Yes.

MS MOKHOBHO: Encrypted Set Top Boxes.

ADV THANDI NORMAN SC: So if then with that background that you have given the Chair when then the whole proposal about how this relationship between MultiChoice and the SABC was going to work you had the best appreciation of what would have – what would benefit the SABC?

MS MOKHOBO: Indeed Chair.

ADV THANDI NORMAN SC: Yes.

MS MOKHOBO: I did.

ADV THANDI NORMAN SC: And then I am going to take you back
10 ma'am to page 72 now because there you just highlight the events that led up to that led to the signing of the agreement between MultiChoice and the SABC.

CHAIRPERSON: I do not know whether I got this from reading statements or whether it was evidence that you did cover in your – or it was something that you did cover in your evidence previously but I do recall – I seem to recall that in your evidence you did say that this agreement was signed on a day when you were away from work – you were on leave or something. So the only reason why I am mentioning that is obviously that we do not need to cover what you have already
20 covered before. But Ms Norman would be alive to that.

MS MOKHOBO: Yes.

CHAIRPERSON: *Ja.*

MS MOKHOBO: Yes Chair.

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: Yes thank you Chair.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: Thank you.

CHAIRPERSON: But obviously it might be necessary to go back a little bit so as to connect the story properly.

MS MOKHOBO: Yes Chair.

ADV THANDI NORMAN SC: Yes Chair.

MS MOKHOBO: Thank you.

CHAIRPERSON: *Ja.*

ADV THANDI NORMAN SC: Yes. It just goes back by I think a day
10 Chair and \ then ...(intervenes).

CHAIRPERSON: That is fine. That is fine.

ADV THANDI NORMAN SC: Yes thank you. On the 15th of May could you just tell Chair what – summarise what happened on the 15th of May 2013?

MS MOKHOBO: Chair I make a statement here which is very aligned to statements that the Chair has heard from the Minister yesterday and from other members of his team who have testified here. And here I say on the 15th of May 2013 when MultiChoice wrote a set of proposed provisions to Mr Motsoeneng that would form the basis of the
20 MultiChoice and SABC Multi Channel Agreement, MultiChoice had seen an opportunity to cause a major policy shift in the Digital Terrestrial Transformation Project.

ADV THANDI NORMAN SC: Yes and you refer to Annexure 1 which appears at page 90 which was a letter addressed – are you there?

MS MOKHOBO: Yes.

CHAIRPERSON: What page?

ADV THANDI NORMAN SC: Page 90 Chair.

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: That is a letter that was addressed to Mr Hlaudi. Who wrote that letter to him?

MS MOKHOBO: It was ...(intervenes).

ADV THANDI NORMAN SC: Hlaudi Motsoeneng I beg your pardon.

MS MOKHOBO: Yes the letter was written by Mr Imtiaz Patel the then CEO of MultiChoice.

10 **ADV THANDI NORMAN SC:** Yes. And then if you go to the – well we do not have to deal with all of those because they are – they form part of some of the terms of the agreement but I will take you to the crucial terms which you are here to talk about.

MS MOKHOBO: Yes.

ADV THANDI NORMAN SC: Today. And then could you just tell the Chair then what happened on the 6th of June according to your statement because it is where ...(intervenes).

CHAIRPERSON: I am sorry Ms Norman.

ADV THANDI NORMAN SC: Yes Chair.

20 **CHAIRPERSON:** If no other witness has dealt with the contents of the ...(intervenes).

ADV THANDI NORMAN SC: The letter.

CHAIRPERSON: The letter it might be important that even if Ms Mokhobo does not read the whole letter.

ADV THANDI NORMAN SC: Yes Chair.

CHAIRPERSON: She highlights the main features of the letter as she says it here.

ADV THANDI NORMAN SC: Thank you. Thank you Chair. Would you proceed to do so Ms Mokhobo?

MS MOKHOBO: I shall Chair.

ADV THANDI NORMAN SC: Yes.

MS MOKHOBO: The letter begins with a thanking of the SABC I guess Mr Motsoeneng for the meetings – constructive meetings and open dialogues that they had regarding the development of a mutually
10 beneficial agreement between SABC and MultiChoice. He goes on to say:

“As you are aware it is our intention that a wider partnership between the SABC and MCA has developed over time. We appreciate that the SABC has to fulfil its mandate as Public Broadcaster in South Africa but at the same time it is the leading and most diverse free to a broadcaster operating in the country. MCA believes that building a partnership with the SABC will be beneficial to both organisations. MCA’s primary business is content,
20 ...(indistinct), technology and platform development. MCA has an active subscriber base of some 4.5 million digital satellite households and provides access to some 20 million viewers in South Africa. We believe that MCA can assist SABC in enhancing on its mandate as Public Broadcaster and immediately expand its free to air

broadcasting operations. DTT in South Africa is currently in a mess with risk for the all existing broadcasters. free to air broadcasters are faced with the challenge of advertising revenues being diluted over a number of free to air channels. Pay TV broadcasters on DTT have limited capacity available which reduces the ability to provide an attractive multi-channel pay offering to subscribers. The SABC will have to invest in the content for its DTT platform with advertiser revenues only being generated much later once the free to air DTT platform and base has been established. We propose that the SABC and MCA work together to develop their respective DTT and or digital satellite platforms. This can take the form of cooperation agreements and channel supply agreements. This will provide the SABC immediate access to MCA's active digital satellite subscriber base with an opportunity to generate guaranteed channel revenue and advertising revenue from day one. This presents the SABC with substantial potential upside for success of its operations and the free to air DTT platform."

ADV THANDI NORMAN SC: Can I just take you then directly to the proposal at page 91?

MS MOKHOBO: Yes.

ADV THANDI NORMAN SC: Yes.

MS MOKHOB: “The Channel Supply Proposal.

1.1 The SABC will provide MCA with the following channels, an exclusive entertainment channel, SABC Premium and a 24 hour news channel SABC News.

In the return for the delivery of the channels listed above by SABC MultiChoice will pay the SABC a flat fee of R500 million payable over a period of five years. The SABC will bear the full costs for the production of the channels. The SABC shall retain all advertising generated on these channels. The Entertainment Channel will be exclusive to MCA and MCA will be authorised to distribute the Entertainment Channel on its distribution platforms. The SABC News channel will be exclusive to MCA satellite platform and MCA will be authorised to distribute the SABC News channel on all its distribution platforms. The SABC will however be allowed to distribute the SABC News channel on its own free to air DTT platform subject to points 9 below.”

I suppose I should go directly to point 9 below?

20 **CHAIRPERSON**: *Ja*.

ADV THANDI NORMAN SC: Yes please.

MS MOKHOB: “The offer presupposes that all SABC channels on its DTT platform will be made available to the public unencrypted, without a conditional access system and thereby incidentally receivable by the MCA DTT

decoder.”

ADV THANDI NORMAN SC: Yes thank you. And that becomes the issue that you raise at the meeting of the 6th of June 2013?

MS MOKHOBO: Yes Chair.

ADV THANDI NORMAN SC: Could you just quickly go to paragraphs 11.1 and 11.2 where you deal with the proposed terms of the agreement that you canvassed largely at the meeting that would – we are now at page 72 – back to page 72.

MS MOKHOBO: Back to page 72. Yes Chair.

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

MS MOKHOBO: What would you like me to ...(intervenes).

ADV THANDI NORMAN SC: Yes if you turn the page.

MS MOKHOBO: Yes.

ADV THANDI NORMAN SC: This is where you discuss the terms that were contentious.

MS MOKHOBO: Yes.

ADV THANDI NORMAN SC: That were discussed points 9 and point 10 of the draft agreement that was submitted I believe at the meeting – that was debated at the meeting.

20 **MS MOKHOBO:** Yes.

ADV THANDI NORMAN SC: Thank you. Could you just quickly tell the Chair what – why did you have a problem with those particular clauses?

MS MOKHOBO: Chair I had a very serious problem with points 9 ...(intervenes).

CHAIRPERSON: I am sorry.

ADV THANDI NORMAN SC: Sorry.

CHAIRPERSON: Ms Norman will that cover paragraph 11 of her ... (intervenes)?

ADV THANDI NORMAN SC: That is paragraph 11 Chair.

CHAIRPERSON: Okay alright.

ADV THANDI NORMAN SC: Yes. Paragraph 11.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: Are you there?

MS MOKHOBO: Yes.

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

MS MOKHOBO: Paragraph 11 should I read paragraph 11?

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Yes you can read *ja*.

ADV THANDI NORMAN SC: Yes, yes.

MS MOKHOBO: Okay.

20 “On 6 June 2013 the SABC Interim Board and MCA’s Chairman Mr Lidela, CEO Mr Imtiaz Patel together with Mr Greg Humbaga met to discuss the substance of the future multi-channel agreement as a follow up to the letter referred to in point 9 above. Of particular contention as maybe gleaned from the verbatim minutes of the said meeting were two provisions that effectively dictated the SABC’s 2008 digital migration broadcast policy based strategy on Set Top Box encryption.”

They state Point 9:

“The off presupposes that all SABC Channels on its DTT Platform will be made available to the public and encrypted without a conditional access system and thereby incidentally receivable by the MCA DT Decoder.”

Point 10 states:

“MCA, the SABC, Sentech is required work together to promote coverage of all the SABC free to air channels on the SABC free to air. Multiplex will be made available to MCA Satellite Platform subject to available capacity.

10 This is in order to enable the SABC to generate revenue from day one.”

Point 12. This is where I began to explain why the two clauses were problematic.

“I was joined by SABC Board Member Mr Mavuso in categorically stating that points 9 and 10 were not enforceable through the future Multichannel Agreement and entirely depended on the Department of Communications and Governments deciding to amend the 2008 BDM Policy to reflect the change. Moreover

20 the DOC had begun a Must Carry Regulations review process which could ultimately lead to the SABC being paid for any channels that were broadcast through MCA and other satellite platforms.”

So essentially Chair we were sitting with people with very serious commercial interests who effectively wanted to dominate the

market by hook or crook and they saw the SABC as probably the most critical organisation which could lend credence to their attempt at basically taking the entire market over and shutting out anybody who tried to be a decentre.

The BDM Policy of 2008 Chair as far as I was concerned as the person who had been placed in that organisation to not only run it, but safeguard its duty in the current state and in the future and ensure the – that from all perspectives of its mission and vision that it covered them and the core mission of the SABC was to empower the citizenry of South Africa and how do you empower the citizenry if you do not do it via information.

Best placed organisation to provide on the spot information throughout the country without filters. Now the citizens would at the time and I think it is worse now Chair with the losses of jobs that we are seeing in the country with the deepening of employment crisis and the deepening of poverty. They deserved to be given an opportunity to have access to any piece of information that they would need.

An encrypted DT box would enable a return path that would enable a citizen sitting anywhere in the country for as long as they had a TV set. Even the old black and white box would be able to work through the Set Top Box. Would be able to search for information on the internet using that box. We had also and this was also a policy provision and I do cover that later, but if you will allow me ...(intervenes).

ADV THANDI NORMAN SC: Yes. You can deal with it now.

MS MOKHOBO: Advocate.

ADV THANDI NORMAN SC: Certainly.

MS MOKHOBO: We had also been enjoined through the BDM Policy to ensure that the Set Top Boxes would have a return path and that return path would enable a telephone capability whether it would be via a cord or if with the sophistication that we have in the country now – via Bluetooth or whatever means and with Telkom also been a State Entity coming on Board as a provider of telephony countrywide to enable also over and above its core function of enable people to talk to each other
10 via the phone, but to enable access to their internet network that would come through the Set Top Box.

So effectively old people, young people in faraway places would not have to travel the distances that they would need to travel to get to any place where they would require help. Whether it would be for registering a child's birth, for registering an old lady to receive pension and for all manner of things that I cannot off the top of my head mention right now. The list is too long.

CHAIRPERSON: That would include internet cafes and so on?

MS MOKHOBO: Yes.

20 **CHAIRPERSON**: They would not have to – young people would not have to try and go and – distances to look for those.

MS MOKHOBO: Indeed Chair ...(intervenes).

CHAIRPERSON: H'mm.

MS MOKHOBO: And the beauty of it all ...(intervenes).

CHAIRPERSON: H'mm.

MS MOKHOBO: Is they would not have to spend a penny, because they would have their own internet café at home. They would be able to go in and do their research. I am very passionate about education Chair. I come from an educator background. I am very, very passionate about education and we know how in trouble our schooling system is.

How we – our children continue to not to do well and not very long ago there was a research document that was published which suggested that the standard of education in our country seems to be
10 going lower instead of getting better.

CHAIRPERSON: I would not be surprised if that is true.

MS MOKHOBO: Indeed Chair.

CHAIRPERSON: I would not be surprised. I watch celebrations about Matric results and I think that the families whose children celebrate their achievements are entitled to celebrate. That is good, but I think we do not put enough emphasis on many learners who did not make it up to Matric and I think that recently it was said that in terms of Africans that figure is about half – if I am not – or even more than half.

If you look at those who started together at Grade 1. That by
20 the time that class reaches Matric and passes it is not less than half who did not go up to Matric. They drop out or stop at some stage and when we celebrate those who have achieved we need to worry about those as well who have been lost in the system. So I share your passion for education.

MS MOKHOBO: Thank you Chair.

CHAIRPERSON: H'mm. H'mm.

ADV THANDI NORMAN SC: Thank you.

CHAIRPERSON: So you were saying that there is so much of value that the SABC would have been able to give to the citizenry if the encrypted Set Top Boxes had been continued with in terms of the Digital Migration and what MultiChoice and Naspers wanted to do was to effectively strengthen their monopoly of – their dominance of the market, but in effect the consequences and effects on the citizenry were far reaching?

10 **MS MOKHOBO:** Indeed Chair.

CHAIRPERSON: H'mm. H'mm.

MS MOKHOBO: Indeed. I saw how children and their teachers would – they would actually glow at how much they could understand concepts better, because they would have somebody who knows the subject matter better. Teaching to them via television. They would be able to see experiments. A lot of these schools do not have laboratories and yet we decry the fact that we do not have enough children trained in science and mathematics.

20 How do you get trained – how do they get trained in those when they do not have laboratories and secondly when the teachers themselves do not have the appropriate qualifications or ability to impart the knowledge. So you would be able to get almost a distance learning program running throughout the country with the best teachers and the children would be able to watch those programs and if they could not watch them at the time when they run and that is where the

PVR functionality is so important.

They could set their PVR to record the program for themselves. So when they get home at the time when they are studying they could switch on and watch it. The same case goes for the teachers themselves who would be able to use the information they get to better match the information and learning requirements of their children, but as we know the challenge does not go away. At least not right now.

CHAIRPERSON: So effectively one of the points you make is that one
10 of the advantages would have been that when for example we talk about challenges about maths and science teachers and maths and science as subjects in very many schools in our country and talk about the fact that very many schools do not have qualified maths and science teachers.

This could have resulted in a situation where a teacher who is very well qualified could actually be accessed in a way by millions in the country if he or she was teaching maths or science. So that even though you might not have a qualified teacher in maths and science. You could benefit quite a lot from this teacher who might be – these
20 teachers who might be providing lessons through this program.

MS MOKHOBO: Indeed Chair.

CHAIRPERSON: *Ja. Ja.*

ADV THANDI NORMAN SC: Thank you.

MS MOKHOBO: And I know that MultiChoice will probably argue that they do have a learning channel on their platform and that learning

channel provides for that. Remember the facts of the matter is a lot – millions actually of South Africans cannot afford to pay those subscription fees.

CHAIRPERSON: Exactly. Yes.

MS MOKHOB: They cannot and what happens is ...(intervenes).

CHAIRPERSON: H'mm.

MS MOKHOB: If they fail to pay ...(intervenes).

CHAIRPERSON: H'mm.

MS MOKHOB: They are unplugged.

10 **CHAIRPERSON**: Yes.

MS MOKHOB: They are switched off.

CHAIRPERSON: Yes. Yes.

MS MOKHOB: So the whole argument that the SABC or people like myself ...(intervenes).

CHAIRPERSON: H'mm.

MS MOKHOB: Who wanted encryption ...(intervenes).

CHAIRPERSON: H'mm.

20 **MS MOKHOB**: Wanted to be able to switch citizens off. It was the most nonsensical argument ever, ever Chair. There is no way that anybody would switch anybody off, but people would be able to get access to their education at zero cost to themselves. All they needed to have ...(intervenes).

CHAIRPERSON: H'mm.

MS MOKHOB: Is the electricity to run the TV.

CHAIRPERSON: Yes.

MS MOKHOBO: Is to be able to connect to the port. It is to be – you know the PVR ...(intervenes).

CHAIRPERSON: Ja.

MS MOKHOBO: Functionality would enable them.

CHAIRPERSON: H'mm. H'mm.

MS MOKHOBO: That is all Chair.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: Thank you.

CHAIRPERSON: Yes. Yes.

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

CHAIRPERSON: Thank you.

ADV THANDI NORMAN SC: Thank you and then on the 2nd of July whilst you were on leave the – it is now common cause the agreement was signed?

MS MOKHOBO: Yes.

ADV THANDI NORMAN SC: Yes and I just want to take you to that agreement. Chair that agreement appears in Exhibit CC42.

CHAIRPERSON: Just before ...(intervenes).

ADV THANDI NORMAN SC: I am sorry.

20 **CHAIRPERSON**: We go there.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Prior to MultiChoice's letter addressed to Mr Motsoeneng arriving. Had you been aware of any discussions that might have been taking place prior to that between anybody from SABC and MultiChoice about any possible cooperation?

MS MOKHOBO: Chair, discussions around cooperating with MultiChoice began at the time when I had just begun at the SABC ... (intervenes).

CHAIRPERSON: Yes.

MS MOKHOBO: In 2012.

CHAIRPERSON: Yes.

MS MOKHOBO: When the – Parliament – Members of Cabinet were getting very upset with the SABC for not establishing the 24-hour news channel.

10 **CHAIRPERSON:** Yes.

MS MOKHOBO: There were elections coming up. There was so much pressure on the SABC to create space for a lot of news and in particular ... (intervenes).

CHAIRPERSON: Yes.

MS MOKHOBO: The coverage of different political parties and etcetera and the SABC on its own could not create the channel, because there was a ruling that all the space that was available was going to be used for the future and we could not touch it and therefore we could not create a new channel on the SABC and so the only other alternative
20 was to then go to MultiChoice and discuss the possibility and it turned out that many people had already been lobbying MultiChoice for the possibility of having a 24 ... (intervenes).

CHAIRPERSON: Yes.

MS MOKHOBO: Hour news channel.

CHAIRPERSON: Yes.

MS MOKHOBO: So our discussions began then Chair and in my previous admission I did state that nothing came of those initial discussions and contract, because the money that MultiChoice was willing to pay was too little.

CHAIRPERSON: Yes. I think I remember that, *ja*.

MS MOKHOBO: The critical thing Chair is that the contract did not have any of these very strange clauses that became a bone of contention for many of us.

CHAIRPERSON: Okay. Thank you.

10 **ADV THANDI NORMAN SC:** Thank you. Thank you Chair. If I may just take you to CC42 – Exhibit CC42 which is the affidavit of Ms ...(indistinct) – Ms ...(indistinct) at page 161. That agreement begins from page 153, but I would like to draw your attention to 161. Are you there?

MS MOKHOBO: Yes Advocate. Yes. I am there.

ADV THANDI NORMAN SC: Oh. Thank you. Thank you. Could you please just read – there are two clauses I would like you to place on record and the one is clause 2.1.3. Has Chair found it? Page 161 Chair. Sorry.

20 **CHAIRPERSON:** I am at page 161.

ADV THANDI NORMAN SC: One, yes Chair. Just for reference. Chair may want to have a look at page 153.

CHAIRPERSON: Is that where it starts?

ADV THANDI NORMAN SC: Where it starts for the witness to identify what that agreement is.

CHAIRPERSON: Yes. It is important for us ...(intervenes).

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: To be able to say the ...(intervenes).

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: The agreement starts from page so and so ...(intervenes).

ADV THANDI NORMAN SC: 150 ...(intervenes).

CHAIRPERSON: And goes up ...(intervenes).

ADV THANDI NORMAN SC: Yes.

10 **CHAIRPERSON**: To page so and so.

ADV THANDI NORMAN SC: That is correct Chair.

CHAIRPERSON: Then we can go to the particular page.

ADV THANDI NORMAN SC: Thank you.

CHAIRPERSON: H'mm.

ADV THANDI NORMAN SC: It goes up to page – it has got a lot of annexures. Page 199.

CHAIRPERSON: Yes. Okay.

ADV THANDI NORMAN SC: Yes. Thank you.

CHAIRPERSON: Alright.

20 **ADV THANDI NORMAN SC**: Could you identify what that agreement is just on page 153?

MS MOKHOBO: On page 1 ...(intervenes).

ADV THANDI NORMAN SC: 153.

MS MOKHOBO: 153.

ADV THANDI NORMAN SC: Yes.

MS MOKHOBO: It is a Commercial and Master Channel Distribution Agreement between MultiChoice (Pty) Ltd and South African Broadcasting Corporation ...(intervenes).

ADV THANDI NORMAN SC: Yes.

MS MOKHOBO: SOC Ltd.

ADV THANDI NORMAN SC: Thank you and then may I just refer you to page 161.

MS MOKHOBO: Yes.

ADV THANDI NORMAN SC: Could you please have a look
10 ...(intervenes)?

CHAIRPERSON: And that is a separate agreement from the other one that we have been – we were discussing yesterday with Mr Carrim?

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: That is a – this one is the same ...(intervenes).

ADV THANDI NORMAN SC: It is the same.

CHAIRPERSON: From that one or is it the same agreement?

ADV THANDI NORMAN SC: It is the same Chair.

CHAIRPERSON: Oh.

MS MOKHOBO: It is the same agreement Chair.

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

CHAIRPERSON: Oh. Okay. Alright.

ADV THANDI NORMAN SC: Yes. It is the same agreement. Thank you.

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: Thank you. Could you just read

paragraphs 2 – clauses 2.1.3 and 2.15?

MS MOKHOB: 2.1.3 states:

“MCA will pay the SABC an annual fee of R100 million excluding VAT during the time in consideration of the rights granted and obligations undertaken by the SABC. Increase by 5% per annum during each year of the term as from the anniversary of the start date with an amount of R30 million being payable within 30 days of the start date as a refundable advance in part payment of the annual fees for the first year of the agreement pending the launch of the pay TV channels.”

ADV THANDI NORMAN SC: Yes and then 2.1.5.

MS MOKHOB: “The channel signals for the SABC/FTA Channels as transmitted in South Africa would at all times be available to and receivable on the M-Net DTT Set Top Boxes distributed in South Africa. The SABC agrees that the SABC FTA Channels will not at any time be encrypted or allowed any conditional access system to be applied in respect of the channel signals for the SABC FTA Channels transmitted on the SABC DTT Platform in South Africa. So that viewers are able to view SABC FTA Channels without requiring anything other than the installation of the M-Net DTT Set Top Box.”

ADV THANDI NORMAN SC: Yes. Would I be correct to say that that

was similar to what clause 9 was in the proposal?

MS MOKHOBO: Indeed Chair.

ADV THANDI NORMAN SC: Yes, but then if you go to that final agreement and you go to clause 9. You will find that it deals with something different. clause 9 will be at page – I beg your pardon Chair – would be at page 173.

MS MOKHOBO: I am there Chair.

ADV THANDI NORMAN SC: Are you there; and then it deals with SMS ... (intervenes).

10 **MS MOKHOBO**: Yes.

ADV THANDI NORMAN SC: And that is not what was in the proposed – original proposed one which you objected to? What I am saying it was not clause 9 then.

MS MOKHOBO: No. It was not ... (intervenes).

ADV THANDI NORMAN SC: Yes.

MS MOKHOBO: Clause 9 then.

ADV THANDI NORMAN SC: Yes. Thank you.

CHAIRPERSON: Well let us hear first what clause 9 says.

20 **ADV THANDI NORMAN SC**: Yes. clause 9 – could you just read quickly what clause 9 says?

MS MOKHOBO: “MCA shall provide or cause to be provided
Subscriber Management Services (“SMS”) in the
performance benchmark MCA shall ...”

Sorry. I think I have skipped a page. I do apologise.

CHAIRPERSON: Yes.

MS MOKHOBO: Let me read it again.

CHAIRPERSON: H'mm.

MS MOKHOBO: “MCA shall provide or cause to be provided
Subscriber Management Services (“SMS”) in the
channels as maybe included by MCA on its
television platforms as generally accepted and
understood in the industry at the date of signature
hereof. The SABC acknowledges that all
proprietary and intellectual property rights rising
10 from conduct by MCA of the SMS shell is between
the SABC and MAC rests exclusively in MCA.”

ADV THANDI NORMAN SC: Yes. Thank you and in – maybe in
fairness just to balance up whatever we are going to deal with in the
end ...(intervenes).

CHAIRPERSON: There was a point you made. I did not get it
...(intervenes).

ADV THANDI NORMAN SC: Yes Chair.

CHAIRPERSON: About whether this captured something that was in
the proposal or something.

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

CHAIRPERSON: *Ja.* Will you just deal with that again? I did not
...(intervenes).

ADV THANDI NORMAN SC: You did not get that one Chair?

CHAIRPERSON: *Ja.*

ADV THANDI NORMAN SC: No. Chair, I had referred the witness – I

had asked the witness Ms Mokhobo to read paragraph 2.1 – clause 2.1.5 ...(intervenes).

CHAIRPERSON: Huh-uh.

ADV THANDI NORMAN SC: And the question that followed was because this dealt with whatever was going to be furnished would not be encrypted.

CHAIRPERSON: H'mm. H'mm.

ADV THANDI NORMAN SC: So I asked her whether that was similar to the clause 9 that she objected to and then she said yes.

10 **CHAIRPERSON**: Okay.

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

MS MOKHOBO: H'mm.

ADV THANDI NORMAN SC: But she could – just repeat what you said in reference to clause 2.1.5?

MS MOKHOBO: Chair, if I may just clarify ...(intervenes).

CHAIRPERSON: Yes.

MS MOKHOBO: Something quickly.

CHAIRPERSON: H'mm.

20 **MS MOKHOBO**: The letter was a proposal and out of propose or the proposal they then drafted the agreement.

CHAIRPERSON: Yes.

MS MOKHOBO: Therefore you will find clause 9 appearing in a different clause on the contract itself.

CHAIRPERSON: Yes. Yes.

ADV THANDI NORMAN SC: Yes.

MS MOKHOBO: Yes.

CHAIRPERSON: Yes.

MS MOKHOBO: So there is nothing that has been removed. What has rather happened ...(intervenes)?

CHAIRPERSON: Oh. It was substantial and not captured?

MS MOKHOBO: Yes Chair.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: What was in the letter in substance found its way to the agreement?

10 **MS MOKHOBO**: Yes.

CHAIRPERSON: Okay. Thank you.

MS MOKHOBO: All of what was in the letter ...(intervenes).

CHAIRPERSON: All of what was in the letter.

MS MOKHOBO: Plus there were some additional clauses.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: Yes.

MS MOKHOBO: Such as the SMS clause ...(intervenes).

ADV THANDI NORMAN SC: Yes.

MS MOKHOBO: Which was not in the original ...(intervenes).

20 **CHAIRPERSON**: Okay.

MS MOKHOBO: Proposal letter.

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: Thank you.

CHAIRPERSON: Thank you.

ADV THANDI NORMAN SC: Thank you Chair. So in essence then when this then was signed then one would have expected that there must have been agreement now between MultiChoice and SABC to say keep your nine – clauses 9 and 10. We are happy with them.

MS MOKHOBO: Seemingly Chair.

ADV THANDI NORMAN SC: Yes and in your discussions with us and when we went through the minutes which I had asked you to go through them. Did you manage to get hold of a minute that would show that on
10 the – at the meeting of the 2nd of July 2013 which you did not attend there was approval of that agreement?

MS MOKHOBO: Chair, there is a very strange set of minutes. Advocate could you please ...(intervenes).

ADV THANDI NORMAN SC: Yes.

MS MOKHOBO: Guide us to the exact ...(intervenes).

ADV THANDI NORMAN SC: Thank you Chair.

MS MOKHOBO: Pages in the files?

ADV THANDI NORMAN SC: Thank you Chair. May I take you Chair to exhibit ...(intervenes)?

20 **CHAIRPERSON:** Maybe while you are looking Ms Norman.

ADV THANDI NORMAN SC: Yes Chair.

CHAIRPERSON: Can I just ask this?

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Ms Mokhobo, prior to your going on leave and I am talking about the leave when in your absence the agreement was

signed. Had you been informed or were you aware that the interactions between SABC and MultiChoice had reached a stage where an agreement could be signed anytime?

MS MOKHOB: Chair, the last meeting that we had with MultiChoice was the meeting where myself and other Board Members, notably Mr Mavuso, raised very sharply our discomfort with the two clauses and the fact of the matter was that they were going to be reviewed or removed, because there was no way that I could have sat there and agreed that the law be broken.

10 Policies, statements from Government becomes law. There was no way I could have been party to that happening. So that meeting had discussed quite intensely – it was – shall I say there was a little bit of camaraderie in that meeting. There was a little bit of joking backwards and forwards.

CHAIRPERSON: Between MultiChoice and SABC?

MS MOKHOB: And SABC ...(intervenes).

CHAIRPERSON: Huh-uh.

MS MOKHOB: But there was absolutely clarity on things that should not have been in discussion ...(intervenes).

20 **CHAIRPERSON**: Yes.

MS MOKHOB: As being included in the contract.

CHAIRPERSON: Yes.

MS MOKHOB: Therefore it was quite surprising ...(intervenes).

CHAIRPERSON: H'mm.

MS MOKHOB: When I read the letter.

CHAIRPERSON: H'mm.

MS MOKHOBO: That they sent to Mr Motsoeneng. That those clauses were still there.

CHAIRPERSON: H'mm.

MS MOKHOBO: Those suggestions were still there.

CHAIRPERSON: H'mm.

MS MOKHOBO: Which they had been tabled as conditions precedence.

CHAIRPERSON: H'mm.

MS MOKHOBO: You cannot hold an entity like the ...(intervenes).

10 **CHAIRPERSON:** H'mm.

MS MOKHOBO: SABC to ransom like that but ...(intervenes).

CHAIRPERSON: H'mm.

MS MOKHOBO: There was a veiled threat. That it is either you agree to these clauses or we walk away. Chair, I may be criticised for this, but I would rather have walked away ...(intervenes).

CHAIRPERSON: H'mm.

MS MOKHOBO: From the contract.

CHAIRPERSON: H'mm. H'mm.

20 **MS MOKHOBO:** Than to compromise the SABC in this way ...(intervenes).

CHAIRPERSON: H'mm. H'mm.

MS MOKHOBO: And Chair I think it is very important that I bring to your attention that following my submission at the previous sitting where I presented.

CHAIRPERSON: In the Commission?

MS MOKHOBO: Yes.

CHAIRPERSON: Yes.

MS MOKHOBO: In the Commission. I got a call from a Star Newspaper journalist who said to me there were people who were saying I had lied and I think it actually made its way to a lead story in one of the – in the Star. Wherein whoever sent them that letter – the letter of my response to MultiChoice when I was acknowledging that we have received the letter.

10 However there have to be discussions that will look at arriving at – how did I put it? Arriving at terms that will be agreeable to both parties and that was very clear. You cannot come to me and say this is what I want and we agree that we will discuss and arrive at terms that we can both agree on and you go off and create what you – sorry Chair to be saying you.

20 So what the journalist then did was to write that story and then without bringing focus to the fact that I had said categorically on terms that will be agreed. They made it seem like I was lying. I had written that letter to MultiChoice which meant that I agreed with those terms. When it was totally untrue and I remember Chair the following day there was a further thing that said Mokhobo lied and this had to do with the TNA breakfast or our relationship with the Guptas.

It is scares me what the media can do, because my reputation was essentially thrown into the toilet. Over a matter as crucial as this that should not have been trifled with in that way. I just thought I should bring it up too.

CHAIRPERSON: No. That is fine. You just need to make sure that the letter that you wrote that if it is not already with the Commission that it is with the Commission, so that would be important. Now so just in terms of sequence of events the meeting that SABC had with MultiChoice where you say you and Mr Mavuso made it quite clear that these two points were not going to be agreed to as far as you are concerned, that meeting – did that meeting take place prior to the letter from MultiChoice to Mr Motsoeneng that we saw earlier?

MS MOKHOB: Yes Chair the discussion came up.

10 **CHAIRPERSON:** You can't remember the date or we might be able to find the date, we don't have to look for it if we – oh you can *ja* okay.

ADV THANDI NORMAN SC: I can yes Chair, the letter to Motsoeneng is the 15th of May 2013.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: And the meeting that Ms Mokhobo referred to is the meeting of the 6th of June 2013.

MS MOKHOB: Thank you for triggering my memory there Advocate, indeed that meeting was discussing the contents of ...(intervenes).

CHAIRPERSON: In that time, so the meeting was after the letter?

20 **MS MOKHOB:** The meeting was after the letter.

CHAIRPERSON: Yes, okay.

MS MOKHOB: Yes.

CHAIRPERSON: Now did Mr Motsoeneng attend that meeting?

MS MOKHOB: Yes he did.

CHAIRPERSON: He was there.

MS MOKHOBO: Yes.

CHAIRPERSON: Do you remember what his stance was on the issue if inclusion if he articulated any view at all?

MS MOKHOBO: Chair ...(intervenes)

CHAIRPERSON: It might be just ...(intervenes).

MS MOKHOBO: It would be hard for me to remember verbatim what he said but I do know that he mentions that those clauses were a non-issue.

CHAIRPERSON: Yes.

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

MS MOKHOBO: I am not sure whether he said that at that meeting or ...(intervenes).

CHAIRPERSON: Or at another meeting.

MS MOKHOBO: At a subsequent meeting, but to him those clauses were a non-issue and could be dropped, or sorry, should be or could be included.

CHAIRPERSON: Oh he was saying they were non-issue as far as the SABC was concerned from his point of view?

MS MOKHOBO: Yes.

20 **CHAIRPERSON:** So he was taking a view that was different from yours and Mr Mavuso?

MS MOKHOBO: Yes.

CHAIRPERSON: Because you were feeling very strongly that they should be dropped.

MS MOKHOBO: Indeed.

CHAIRPERSON: But you say that the meeting was characterised by a positive spirit.

MS MOKHOBO: Yes.

CHAIRPERSON: In the sense that it was not fighting as such, everyone was taking or rather you and Mr Mavuso were taking a very firm view on these two points and from MultiChoice side from what you said I infer that they didn't seem to be very opposed to dropping them, they didn't seem to be too emphatic at that meeting at least?

MS MOKHOBO: Chair they were very emphatic.

10 **CHAIRPERSON:** They were emphatic that they ...(intervenes).

MS MOKHOBO: That's where the words condition precedence came from.

CHAIRPERSON: Yes, yes.

MS MOKHOBO: That it is either those clauses were included or nothing.

CHAIRPERSON: Oh, okay, so MultiChoice on the one side and you and Mr Mavuso on the – well MultiChoice on the one side and Mr Motsoeneng they were quite firm that these clauses should be part of the agreement.

20 **MS MOKHOBO:** Yes.

CHAIRPERSON: You and Mr Mavuso were quite firm that they should not.

MS MOKHOBO: They shouldn't be yes.

CHAIRPERSON: Yes, okay. So the meeting – did the meeting end on the basis that there seemed to be an impasse on these two points or

how did the meeting end, was there to be a follow up meeting or was there just to be a letter that would be sent.

MS MOKHOBO: The meeting ended up on a note that there would have to be a thorough review of these matters, Advocate ...(intervenes).

ADV THANDI NORMAN SC: Maybe I could direct Chair to the resolution.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: We're talking the meeting of the 6th am I
10 correct? Is Chair still asking about the meeting of the 6th?

CHAIRPERSON: The meeting between MultiChoice and SABC ...(intervenes).

ADV THANDI NORMAN SC: Yes, that's correct.

CHAIRPERSON: Subsequent to the letter for MultiChoice ...(intervenes).

ADV THANDI NORMAN SC: Yes Chair so this is the meeting of the 6th Chair, that appears in Bundle CC42.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: That – the minutes will begin from page
20 15 and ...(intervenes).

CHAIRPERSON: You say Exhibit CC4?

ADV THANDI NORMAN SC: CC42.

CHAIRPERSON: Okay, do we have that here or not?

ADV THANDI NORMAN SC: Yes we do have Chair.

CHAIRPERSON: Oh, okay. Okay now I am confused, CC42, it

sounded like 64, okay right, what is the page?

ADV THANDI NORMAN SC: Thank Chair, the page where you will find there is this what we've got there is no resolution per se but I think I will direct Chair to what the chairman says in the end.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: The Chair – sorry Chair – you were chairing the meeting Ms Mokhobo am I correct?

MS MOKHOBO: Yes I was chairing the meeting.

ADV THANDI NORMAN SC: You were chairing the meeting yes, I am
10 just looking for where you say, but answer the question that the Chair had asked first about what Mr Motsoeneng's attitude was, Chair would find that at page 19, if I may just quickly read that.

20 "Thank you Chair, as far as I am concerned this is not an issue anymore from where I am sitting because the Minister pronounced herself about this matter. Remember the eTV and us and so on, that case, the issue here is we are not going to go that route as far as I am aware personally. The conditional access, the way we call it technically is not going to be because now but the DOC is reviewing the policy to deal with this matter. Even in Parliament during the budget speech now I remember the Minister did highlight this issue, so I don't think it is an issue now, whether we – and then there is a space – both of us I think for me Chair I think for now it is a non-issue because it is a

policy that even government is reviewing because from our side well we have different views, this is not official what I am saying. The views was that as SABC we can't allow people to by law we can't switch off people's TV license if they don't pay TV license, that is the standpoint they took, but not as a collective but different views and that different views influenced the DOC to review the policy to check whether really this is necessary for SABC. So that is our standpoint."

10

And Chair – I beg your pardon? Yes, and then page – and then – this is what Ms Tshabalala says on the same page:

"Thank you Mthias for giving us that feedback. I think you know all relationships we have got to find a way of a win-win situation. I think if I may reign or if other Board Members would really like your input on this maybe through your Chairperson since you have presented this condition if you can just give a day to bounce it to the Minister because you know we have as Mr Mavuso mentioned we have an unclear position on the matter and then we can approve all others except for that one, and we can revert back to you but of course we have to agree to all others, so I would like CO to go to the other clauses, thank you."

20

And then Ms Mokhobo says:

“Okay yes so we hold clause 10, clause 9 in abeyance while we get absolute clarity because what we need is a written confirmation of the stance and we cannot presuppose a relationship on the basis of what is not written. A statement is a statement until it is committed to paper. Thank you for that Chair. The second clause, which is clause 10 ...”

And then she goes on to deal with clause 10, and then in the end it is decided if we could – are you there Ms Mokhobo? Are you
10 finding where ...(intervenes)?

MS MOKHOBO: I am struggling to find the pages, I’m sorry.

CHAIRPERSON: Oh is that so.

ADV THANDI NORMAN SC: Oh, we’ve left you, it’s CC42, on the spine of the file.

MS MOKHOBO: Oh! Which one?

ADV THANDI NORMAN SC: It’s CC42.

CHAIRPERSON: It should be written CC42.

MS MOKHOBO: Oh, okay.

ADV THANDI NORMAN SC: Oh, I beg your pardon, I thought you were
20 on there.

MS MOKHOBO: My apologies.

ADV THANDI NORMAN SC: Yes thank you, could ...(intervenes).

MS MOKHOBO: And it is ...(intervenes).

ADV THANDI NORMAN SC: I was reading from page 19, this appears to be a transcript of the minutes, am I right?

MS MOKHOBO: Yes, correct.

ADV THANDI NORMAN SC: And then in the end this is what is stated.

CHAIRPERSON: When you saying the end on what page are you?

ADV THANDI NORMAN SC: Then the end Chair would be page 24.

CHAIRPERSON: *Ja.*

ADV THANDI NORMAN SC: Yes, and there – sorry maybe before we get to 24 I just want to get to where Ms Mokhobo concludes the meeting, it goes on, I beg your pardon Chair, I just need to find it. And then okay – then at page 23, this is what Ms Tshabalala says yes, this
10 is the one I was looking for because I did direct, *ja* Chair we can just towards the end of that page Chair, I think five lines towards the end.

“Ja, Chair we can just give you the comfort that we are taking the matter there and we are also expressed urgency into the meeting so when you go to the Board on the 12th there is a resolution. Well thank you very much, thank you.”

So from the documents that we referred Minister Carrim to yesterday there was an indication that there was going to be a Board Meeting on the 12th of June 2013.

20 **MS MOKHOBO:** Yes, yes Chair.

ADV THANDI NORMAN SC: And according to your understanding at this meeting which you had with MultiChoice was the issue about clauses 9 and 10 resolved?

MS MOKHOBO: No.

ADV THANDI NORMAN SC: Yes, thank you. And then if I may take

you to the next minute which appears Chair at page 112 on the same bundle, CC42, this is the minutes of a special finance investment procurement and technology meeting. Or maybe before we go there, I beg your pardon, let's deal with the one behind after that which is the 12th of June, because there was going to be a Board Meeting on the 12th of June.

MS MOKHOBO: Yes.

ADV THANDI NORMAN SC: Now if that ...(intervenes).

CHAIRPERSON: Maybe before that Ms Norman there is something
10 that I find strange in that meeting, is it 6th of June?

ADV THANDI NORMAN SC: 6th of June yes Chair, yes.

CHAIRPERSON: *Ja*, about the fact that those representing the SABC are not speaking with one voice, one expects normally that if you have a meeting like that with another organisation there would have been discussions among those from SABC who would attend such a meeting and the right person to state the SABC's position would be the one to speak and state the SABC's position, is this normal that it happened this way because you now have yourself and Mr Mavuso stating how you see the matters, you have Motsoeneng taking a view that's
20 different from your view. I don't know whether Ms Tshabalala was taken any view at that stage, but you were the CEO so something says to me how does the COO come to a meeting like that and express his own view?

MS MOKHOBO: Chair ...(intervenes).

CHAIRPERSON: But maybe my way of looking at it is not the right

way, maybe the position is maybe why not all the people are supposed to be at the meeting representing SABC afraid to express their own different views as opposed to expressing the view of the organisation.

MS MOKHOB: Chair this was a very, very sad time at the SABC where there was literally a chasm between the group executives, those led by Motsoeneng and those led by myself and myself not being the most liked person by the Chair of the SABC. She mentions – I do not have the minutes and perhaps Advocate you would be able to find exactly where she talks about clandestine meetings.

10 **CHAIRPERSON**: I think there was a reference to clandestine meetings ...(intervenes).

ADV THANDI NORMAN SC: Chair that's ...(indistinct)

CHAIRPERSON: Yes.

MS MOKHOB: There was a reference to clandestine meetings where she held these meetings with Hlaudi and his team and they made their own conclusions about what needed to happen DTT and neither myself nor the Group Executive of Technology, Sipho Masinga, were privy to those meetings, they were held entirely in secret, so we were all taken aback when they came with a position that was contrary, because I
20 believed, and so did other people within the organisation who worked with me, that we are an organ of state and are governed by the rules, the laws and policies of the State and that unless there is a change in a rule or a policy we cannot deviate from it.

And for me it really didn't matter how other people could see the future unfolding without government being involved. For me it was

important that we stay within the law and maybe I am very pedantic and in fact it was said at some point that I was a WWW ...(indistinct, African language) or something like that, meaning that I plodded – I refused to make critical decisions on things that when I felt that I could not take a decision on a matter because it was unlawful I said that and some people didn't like it, so this was one of those instances where people went away and managed to convince the Chair that what they were proposing was a better deal and it had nothing to do with me, I was not involved, I was not privy to it

10 So it was not surprising that at that meeting there were two camps the Mavuso Lulama Camp that said no and then there was this other camp that Hlaudi was running with.

CHAIRPERSON: I am very interested and maybe this can be dealt with at a later stage, but I am very interested in understanding how that came about because as I hear evidence relating to the SABC part of what I am trying to understand is, were there forces outside of the SABC that were effectively dictating what was happening within the SABC or what certain people within the SABC were doing and if so who were the people involved in doing that?

20 Because normally if you are the leader of an organisation you are the head, everybody needs to accept that you are the head and you have the right to pronounce on certain issues as between the GCEO and the Board there would be the separation of where the Board comes in, where the executive comes in but you know the leader, the head of the organisation on certain issues you know must pronounce and before

he or she does so she or he may consult with his or her colleagues and hear different views and those colleagues are supposed to accept that their views might not consult with her views or his views but that she or he being the head will make the judgment call, and that's it, but now you have a situation where in a meeting with an organisation from outside about what agreement could be reached you have the GCEO and a Board Member taking one view, you have a COO in this meeting taking a view that is contrary to that articulated by the GCEO and the Member of the Board, it just looks very, very ugly, you know.

10 So if in terms of your evidence today there is something that you might be able to configure it in getting me to understand how the SABC came to that and to understand whether there were people from outside the SABC who were responsible for this, that would help, because one wants to see whether the SABC was captured by somebody or what, okay.

MS MOKHOBO: I'm not sure if Chair wants me to respond to some of this?

CHAIRPERSON: If there is something you can say now you can do so.

MS MOKHOBO: Chair the SABC had been contested terrain for years
20 prior to my going there – in there. There were people who reported to other people in powerful places and they would try to throw their weight around and impose their will. I think the former Minister yesterday articulated how he was told by Mr Motsoeneng in no uncertain terms about certain issues that Mr Motsoeneng had no right knowing about. He boasted to me many times how he was close to the President, how

he had been at the President's until two am, how this or the other, President, President, and I think I mentioned in the previous session when I said in front of you Chair that there would be Ministers coming to see Mr Motsoeneng and not me, which was strange as the head of the company if you have the high ranking individual you would expect them to see you, but there were agendas and sub-agendas, we certainly didn't the serve the same agenda.

For me the agenda was very simple, it was go in make the organisation work, make it deliver on its mandate, make sure that
10 everything it does is lawful and ultimately make sure that it is profitable. But there were other sub-agendas and Chair speaks of culture, certainly the interest of MultiChoice became paramount to Motsoeneng to the detriment of the organisation. Yes, he claims that he succeeded in bringing R500 million into the organisation, it was R100 million per year. There is somewhere where I do very roughly calculations about different scenarios for the SABC, that was very little compared to what the SABC was forced to concede as a result of this man.

Chair the SABC had a history of Boards not agreeing with each
20 other and just as they say the tone gets set at the top you know, if the top being the Board itself was not agreed on certain principles and we had Board Members siding with this person and others siding with the other there is no way that the organisation could work as a healthy organisation, and as I say this had been going on for years.

I am not sure what will fix that organisation, other than to

ensure that people who are brought in are people of real integrity who are ethical, who are totally committed to what is good for the organisation and do not forget at any given time what their true purpose in the organisation is, but sadly it was not to be.

ADV THANDI NORMAN SC: Thank you.

CHAIRPERSON: Well Ms Norman you have heard what I am very interested in, not that I am not interested in other things but I am very interested in the issue that I have raised because it is a very strange situation. Mr Carrim testified yesterday that before he took his policy amendment to Cabinet on the 2nd of December 2013 he had a meeting
10 with the President who was happy with the amendment, what he was coming with. The President was part I assume of the meeting of Cabinet that approved, and he made it clear that the President never expressed any disagreement to him about the policy, and yet you have an official of the SABC, a high-ranking official who seems to have pursued an agreement that would be contrary or pursued a position that would be contrary to that of the SABC and that of government and as Ms Mokhobo says then she says there were many times when he claimed to have had meetings with the President, so it is important to
20 try and understand if there is any link.

ADV THANDI NORMAN SC: Yes Chair.

CHAIRPERSON: *Ja.*

ADV THANDI NORMAN SC: Thank you Chair, we have gone past the tea time would it ...(intervenes).

CHAIRPERSON: Okay, let us take the tea adjournment, it is t25 past

now, we will resume at 11:40.

ADV THANDI NORMAN SC: Thank you Chair.

CHAIRPERSON: We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: I am sorry, I have had a five minutes delay because of some urgent issues relating to the Commission. Let us continue.

ADV THANDI NORMAN SC: Thank you Chair. Ms Mokhobo may I please
10 refer you to page 117, same bundle that you were dealing with before we adjourned, CC42.

MS MOKHOBO: 117?

ADV THANDI NORMAN SC: 117, yes. Same bundle Chair, CC42 at page 117.

CHAIRPERSON: 117?

ADV THANDI NORMAN SC: Yes Chair, thank you.

CHAIRPERSON: Is that the minutes of the.

ADV THANDI NORMAN SC: The minutes of the 12th of June 2013.

CHAIRPERSON: *Ja*, I got that.

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

MS MOKHOBO: I found it.

ADV THANDI NORMAN SC: This was the minutes – the meeting that Ms Tshabalala referred to. I have read where she said there will be a Board Meeting on the 12th of June.

MS MOKHOBO: Yes Chair.

ADV THANDI NORMAN SC: I would simply like to take you – with – without taking too much time, to where that resolution of that meeting is and that appears at page 120, but before the resolution there is a paragraph which I would like you to read where the Acting COO reported something. Could you just go there, to that paragraph please? It starts with, it begins with the ACOO pointed out.

MS MOKHOB0: Oh okay.

10 “The ACOO pointed out that the previous Board had approved the MultiChoice proposal and the only outstanding issue had been that of funding. The key issue for the Interim Board was to ...(intervenes).”

CHAIRPERSON: I am sorry, I am sorry. Is it reading at?

ADV THANDI NORMAN SC: Sorry, page 120 Chair. 120 Chair, yes.

CHAIRPERSON: Where about?

ADV THANDI NORMAN SC: We said, where you have resolutions number Chair, it is the paragraph preceding that.

CHAIRPERSON: Yes, okay, alright.

ADV THANDI NORMAN SC: Yes, thank you Chair.

MS MOKHOB0: Okay.

20 “The ACOO pointed out that the previous Board had approved the MultiChoice proposal and the only outstanding issue had been that of funding. The key issue for the Interim Board was to ensure the sustainability of such funding. The Board pointed out that it acknowledge that the previous Board did

approve the proposal and was not about to reinvent the wheel. However, the Interim Board needed to understand the context of the matter and whether the initial MultiChoice proposal which had been approved by the previous Board had been changed. Through the instructions between Management and MultiChoice, it was evident that the commitment had increased as there was more money being offered than originally discussed which showed good progress and was to the advantage of the Corporation.”

ADV THANDI NORMAN SC: If we, can we pause there? Are you aware, because this is now the 12th of June 2013?

MS MOKHOBO: Yes.

ADV THANDI NORMAN SC: And the minutes you dealt with, was the minutes of the 6th of June 2013. Are you aware of any Board previously that had approved the MultiChoice proposal, as if you are talking about the same proposal?

MS MOKHOBO: That was a different proposal.

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

MS MOKHOBO: Which did not have any contentious clauses.

ADV THANDI NORMAN SC: Yes, but it did not relate to the DTT one?

MS MOKHOBO: No.

ADV THANDI NORMAN SC: Yes, thank you. And then what was the resolution of ...(intervenes).

CHAIRPERSON: So, let us just make sure we get that clear.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: What the Acting COO is talking about there is the MultiChoice proposal that was contained in the letter that we talked about earlier from MultiChoice to Mr Motsoeneng, is that right?

MS MOKHOBO: I believe so Chair.

CHAIRPERSON: That is what he is talking about?

MS MOKHOBO: Yes Chair.

CHAIRPERSON: Are you – and you are saying that it is not true that
10 there had by this time been any Board of the SABC which had approved that proposal?

MS MOKHOBO: That was the previous proposal Chair. It was not under this Board. This was in 2012.

CHAIRPERSON: Yes.

MS MOKHOBO: There had been a – we had completed the business plan. It was approved by the Board and it was signed as an approved contract, but it was different to this new contract.

CHAIRPERSON: So that is what I want to be clear about, that having
20 looked at these minutes, are you satisfied that the Acting COO in this paragraph is talking about the MultiChoice proposal that was contained in the letter from MultiChoice to Mr Motsoeneng that we referred to earlier on?

MS MOKHOBO: Chair.

CHAIRPERSON: Or are you not sure?

MS MOKHOBO: Chair I think that perhaps we can unpack this a little bit.

CHAIRPERSON: Yes, we can unpack, *ja*.

MS MOKHOBO: In the first instance, he talks about the MultiChoice proposal that then resulted in the contentious agreement that he signed.

CHAIRPERSON: Yes.

MS MOKHOBO: And then he goes on – then the statement goes on now to talk about the previous agreement that had been concluded.

CHAIRPERSON: Yes.

MS MOKHOBO: Which was not very attractive ...(intervenes).

CHAIRPERSON: In issue

10 **MS MOKHOBO**: In terms of the monetary gain.

CHAIRPERSON: Yes.

MS MOKHOBO: From MultiChoice.

CHAIRPERSON: Yes.

MS MOKHOBO: So it is two different ...(intervenes).

CHAIRPERSON: He is talking about two proposals?

MS MOKHOBO: Yes. It is a proposal – there is a proposal and then there is a previous contract.

CHAIRPERSON: Yes. Now do we – do the Minister suppose to tell us what the item was that was being discussed here, and at page 119 the
20 item is said to be MultiChoice proposal. It says the Chair:

2.1 “The Chairman pointed out that the Board had previously met with MultiChoice where they presented their proposal to the SABC in respect of the 24-hour News Channel. In the ensuing discussions there was disagreement concerning

clauses 9 and 10 of the Memorandum of Agreement. The Board had undertaken to discuss the concerns with the Minister and thereafter to revert to MultiChoice.”

That far – it is quite clear that the Chairperson there is talking about the latest proposal at the time, which was contained in the MultiChoice letter to Mr Motsoeneng, that part is clear.

MS MOKHOBO: Yes.

CHAIRPERSON: So that one it would be fair to say the item for
10 discussion was that proposal, is that right?

MS MOKHOBO: Yes. Yes Chair, that is correct.

CHAIRPERSON: It was their latest proposal not the earlier one that had been finalised?

MS MOKHOBO: Yes Chair.

CHAIRPERSON: So, Ms Norman you might be able to take it from there. I just want to see whether any misrepresentations were made to – about this meeting about whether the proposal – the latest proposal, at the time, had been approved by the Board or not.

ADV THANDI NORMAN SC: Yes Chair, thank you.

20 **CHAIRPERSON**: That is what I am trying to understand.

ADV THANDI NORMAN SC: Thank you Chair. Chair you are quite correct, it deals with his latest proposal because the preceding paragraphs deal with clauses 9 and 10. I beg your pardon Chair.

CHAIRPERSON: No, it is me.

ADV THANDI NORMAN SC: Oh is it you? Sorry.

CHAIRPERSON: Alright.

ADV THANDI NORMAN SC: And then maybe Ms Mokhobo there is another paragraph where you see, because I would like to ...(intervenes).

CHAIRPERSON: Maybe Ms Mokhobo can check if she did have a chance to refresh her memory of the previous paragraph.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: She can confirm whether the other paragraphs that I have not read.

ADV THANDI NORMAN SC: Yes

10 **CHAIRPERSON**: After reading the first one under this item, whether they talk about the latest proposal.

MS MOKHOBO: Yes they do Chair.

CHAIRPERSON: They do, yes.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: So, to the extent that in the paragraph that you read earlier on, the Acting COO may be talking about any proposal other than the latest proposal, then he would be talking about a matter that was really not on the table?

20 **MS MOKHOBO**: Chair, he speaks about – he speaks – oh I see, sorry. I did not read it properly. He speaks about the previous MultiChoice proposal.

CHAIRPERSON: Yes.

MS MOKHOBO: The key issue for – so he is comparing that old contract, the proposal pertaining to the old contract and the actual contract, he is comparing it to this new contract that he is now wanting to be signed. I

do not know if I am making myself clear.

CHAIRPERSON: Well, I am – I understand what you say, you see these minutes as I understand them, if you go back to page 119, under 2 it says approvals, and I take it that what that means is, items that require approvals.

MS MOKHOBO: Yes Chair.

CHAIRPERSON: So the next 2.1, the first item that requires approval is the MultiChoice proposal and from that first paragraph we know what – which MultiChoice proposal that refers to. And both you and Ms Norman
10 have told me that the next few paragraphs talk about the latest proposal; at the time of MultiChoice, but when we come to that paragraph just before resolution number 12/06/13, the Acting COO you say, talks about both the previous proposal that had been finalised as I understand the position as well as the latest proposal, is that correct?

MS MOKHOBO: Yes Chair.

CHAIRPERSON: Is that your understanding?

MS MOKHOBO: My understanding is this Chair. This paragraph that we have been looking at, the ACCO talks about an approved MultiChoice proposal which was done under the previous Board, but that proposal
20 which subsequently became a contract was not the same ...(intervenes).

CHAIRPERSON: That was done and dusted?

MS MOKHOBO: Was not the same as the one where there is clause 9 and 10 that is in disagreement.

CHAIRPERSON: Yes.

MS MOKHOBO: So, I am not sure what the value of him raising this was,

but I think he just wanted to say well there is a better deal. There was a bad deal with the previous one now there is a better deal, I cannot think of it any other way. I do not want to conclude that.

CHAIRPERSON: Two paragraphs earlier or three paragraphs earlier, you are said to have said – you are said to have cautioned the Board that whatever decision was taken, if there was an intention by the DOC to change the current Broadcasting Digital Migration Policy, it had to be in writing for the SABC's own protection. So it is quite clear that at that point you are speaking to the issue on which a decision is required.

10 **MS MOKHOBO**: Yes Chair.

CHAIRPERSON: Then after you had said that, the Acting COO is said to have confirmed that he had engaged with the DOC's policy division where it advised him that the Minister would address a formal letter to the Chairman of the Board, addressing both clauses 9 and 10. In essence clause 9 would no longer be applicable as the matter of controlled access was no longer an issue and therefore would be removed from the MultiChoice proposal, I wonder if that is correct? The Board requested the Acting COO to follow up with the DOC to ensure that the Minister's letter was received by the SABC, and then in response to Mr Lubisi's
20 enquiry, the GCEO pointed out that the SABC's legal Department had been fully involved in the matter, that they would advise and draft the contract if the matter was approved. At that stage it seems that everybody is talking about the issue on which a decision is required.

MS MOKHOBO: Yes Chair.

CHAIRPERSON: And that is the latest MultiChoice proposal.

MS MOKHOBO: Yes Chair.

CHAIRPERSON: And then it is – then next paragraph, the Acting COO pointed out that the previous Board had approved the MultiChoice proposal and the only outstanding issue had been that of funding.

MS MOKHOBO: Yes.

CHAIRPERSON: On the face of it that sentence seems to be out of place.

MS MOKHOBO: It is Chair because I am not sure why he brought this matter to the table.

10 **CHAIRPERSON**: Yes.

MS MOKHOBO: Except maybe to drive his point that the new proposal and contract should be approved and signed off.

CHAIRPERSON: Yes.

MS MOKHOBO: I think it was merely to drive that point.

CHAIRPERSON: Yes and then he says the key issue for the Interim Board was to ensure the sustainability of such funding. Again, that is talking about something that is not what is being discussed.

MS MOKHOBO: Yes.

20 **CHAIRPERSON**: The Board pointed out he is talking about the previous Board I assume?

MS MOKHOBO: Yes.

CHAIRPERSON: Pointed out that it acknowledged that the previous Board, oh no he must be talking about the current Board at the time. The Board pointed out that it acknowledged that the previous Board did approve the proposal and was not about to reinvent the wheel. Let us

pause there. To the extent that his reference to the proposal in that sentence may be said to be a reference to the then current proposal from MultiChoice, would he have been correct to say that the Board that was current at the time had approved the MultiChoice proposal? It cannot be because this was still being discussed. So it must be the – he must be talking about the previous one.

MS MOKHOBO: The previous.

CHAIRPERSON: But again you cannot understand why it would be relevant to talk about that approval is it not?

10 **MS MOKHOBO**: That is how his mind worked.

CHAIRPERSON: Yes. And then – so he says the Board did not want to reinvent the Wheel, so it is difficult to understand, then he says however, the Interim Board needed to understand the context of the matter and whether the initial MultiChoice proposal now he says the initial which has been approved by the previous Board had been changed through the interactions between the management and MultiChoice it was evident that the commitment had increased as there was more money being offered than original discussed which showed good progress and was to the advantage of the cooperation. Well, I do not know about you but I cannot
20 make head or tail about what he is seeking to contribute to the question whether there should be an approval of the proposal – the latest proposal of MultiChoice at the time. I am not able to say exactly what the relevance of the contribution is.

MS MOKHOBO: *Ja*, he was conflating the two.

CHAIRPERSON: Yes. Okay. Alright. Ms Norman you might be able to

clarify anything that seems unclear to me.

ADV THANDI NORMAN SC: Yes, no, no in fact it is in fact confusing Chair that is why I wanted Ms Mokhobo to because the impression created there is that there was a Board Meeting when this proposal was approved and saying to this Interim Board but what are you even dealing with here.

CHAIRPERSON: Yes, yes.

ADV THANDI NORMAN SC: This was approved already and if that Board understood it that way one would have believed that there was in fact an approval that was in existence when there was not such an approval. Yes, thank you Chair. Could you then go to the resolution? What was the resolution?

MS MOKHOBO: The resolution was that subject to the receipt from the Minister making pronouncements on the issues relating to clause 9 and 10 of the proposed MultiChoice Memorandum of agreement. The Board hereby approves the MultiChoice proposal for Group Exco to deliberate the operational matters including included in the proposed memorandum of agreement. So, this was the Board saying well, Group Exco you can start working, deliberating on operational matters but it does not say it is approved. It says subject to the letter from the Minister confirming the change.

CHAIRPERSON: That would be a letter that would show approval for dropping encryption?

MS MOKHOBO: Yes, Chair.

CHAIRPERSON: Yes. Okay.

ADV THANDI NORMAN SC: And that is the one that Chair had read referred to in the third paragraph from the resolutions?

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: Yes, thank you. And then the second resolution?

MS MOKHOBO: The ACOO follows up with the DOC in respect of the delivery of the letter of the Minister advising the SABC on the pronouncements relating to clauses 9 and 10 as included in the proposed Memorandum of agreements. Yes.

10 **ADV THANDI NORMAN SC:** And according to your understanding was that letter ever received?

MS MOKHOBO: No.

ADV THANDI NORMAN SC: Thank you.

CHAIRPERSON: The Minister at that time was it Mr Carrim?

ADV THANDI NORMAN SC: It was

MS MOKHOBO: No, no. it was Ms Dinapule

MS MOKHOBO: It was Ms Dinapule.

CHAIRPERSON: It was Ms Dinapule. Oh okay.

20 **ADV THANDI NORMAN SC:** Thank you. That is the minute of the 12th of June.

MS MOKHOBO: Yes.

ADV THANDI NORMAN SC: Now I would like to take to you to the minute ...(intervenues).

CHAIRPERSON: Well, it will also be important I know that you have been interviewing or the Commissioner has been interviewing her or

talking to her it will be important that she we hear what she has to say about what Mr Motsoeneng exactly said at this meeting.

ADV THANDI NORMAN SC: Yes, Chair.

CHAIRPERSON: He had been in touch with the – a division in the Department of Communications or he might even have said he had been in touch with the Minister.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: So we need to find that, *Ja*.

ADV THANDI NORMAN SC: So we need to find that out. Thank you
10 Chair. We will do. Thank you, Chair. And then the minutes of the second
the meeting of the 2nd of July was a day earlier than the signing of the
agreement it was signed on the 3rd of July 2013. Is that correct?

MS MOKHOBO: Yes, Chair.

ADV THANDI NORMAN SC: Now, that you will find the minutes you will
find at page 112.

MS MOKHOBO: Thank you, Chair.

ADV THANDI NORMAN SC: Thank you and I would like to take you to
what some of the things that are said by some of the Board Members
which maybe you could just shed some light? Could you please have a
20 look at page 113?

MS MOKHOBO: Yes, Chair.

ADV THANDI NORMAN SC: And Mr Mavuso was Chairing that meeting?
You were not present at this meeting?

MS MOKHOBO: Yes, Chair.

ADV THANDI NORMAN SC: This is the one where you had taken leave?

Now in paragraph 2.2, could you just read 2.2 the first paragraph?

MS MOKHOBO: Mr Motsoeneng requested that this item be removed?

Oh okay let me just read the title.

ADV THANDI NORMAN SC: Yes.

MS MOKHOBO: The title says:

10 “Terms of the MultiChoice Agreement in Respect of
24-hour news channel. Mr Motsoeneng requested
that this item be removed from the agenda because
the MultiChoice and SABC Legal Teams were still in
the process of finalizing the negotiations. The
Chairman stated that this special meeting had been
urgently convened to give particular attention and
approval to items 2.1 and 2.2. He raises concerns
that there were no supporting documents in respect
of these urgent items to enable the Members to
discuss, deliberate and make correct decisions. Mr
Motsoeneng responded that where supporting
documents were not submitted the items should not
be considered at the meeting.”

20 **ADV THANDI NORMAN SC**: Yes. And the just to – just for the record
this meeting was not a Board Meeting?

MS MOKHOBO: It was a Sub-Committee meeting.

ADV THANDI NORMAN SC: Yes, what is it called?

MS MOKHOBO: The Finance Investment – it is Finance Investment
Procurement and Technology meeting.

ADV THANDI NORMAN SC: Yes, and then then this meeting progresses but there is if you look the last paragraph which begins with Ms Nepfumbada?

MS MOKHOBO: Yes.

ADV THANDI NORMAN SC: Could you just read that paragraph?

MS MOKHOBO: Ms Nepfumbada stated that:

10 “MultiChoice had pointed out that the SABC Board had agreed on each issue raised by the SABC’s Legal Team including clause 9. The offer presupposed that all SABC channels on its DTT platform would be made available to the public unencrypted without a conditional access system and thereby incidentally receivable by the MCADTT decoder. She expressed concern that this meant that the SABC’s content will be accessible to all in sundry including those without rights to the SABC’s content. MultiChoice had stated that this clause was a deal breaker and unless the SABC agreed to this clause there would be no contract between the parties. Mr

20 Motsoeneng’s advice to the Legal Team had been that this clause was not necessarily a deal breaker as only the DUC could make a pronouncement on the Mascara regulation issues and therefore clause 9 had been reinstated in the contract.”

ADV THANDI NORMAN SC: And then the clause where there were

concerns had therefore been reinstated into the draft contract as follows, could you just read that the bullet points?

MS MOKHOB: “The contract was for a period of five years it included the offer that all SABC’s channels on DTT would be accessible or available unencrypted to MultiChoice meaning without any protection and also without a conditional access system. MultiChoice would determine the value for money in terms of the content in respect of the entertainment channel and in terms of the revenue derived from advertised advertisements on the news and entertainment channels. The SABC would be entitled to that revenue.”

10

ADV THANDI NORMAN SC: Yes, then there is something that the Chairman says Mr Matthews talks about the launch so I may not detain the Chair with those. Oh sorry, Mr Motsoeneng there is a paragraph after which you have read one, two, three, the third paragraph Mr Motsoeneng agreed.

MS MOKHOB: Mr Motsoeneng perhaps just to contextualize that Advocate maybe we should read the preceding paragraph first?

20 **CHAIRPERSON**: Yes, I think that is important.

ADV THANDI NORMAN SC: Thank you, yes.

MS MOKHOB: Yes, because the Chairman stated that

“The Board had advised MultiChoice that it was not created a prohibited mechanism. It had also been agreed to leave the finer details of the agreement to the Legal

Teams to resolve. The agreement had refereed to two channels namely News and Entertainment and did not include all channels. The Board's assumption had been, was there had been a common understanding in this regard and that this should not stop the proceedings whatever matter had been agreed in terms of the monetary gains should not be confined to what was on the table as the value proposition had to be beneficial to both parties. Mr Motsoeneng agreed that MultiChoice should also benefit from the agreement however I believe that the issues surrounding clause 9 was a simple one. He stated that the SABC's content was protected by the Mascara regulations and until this was changed no one had the right to use SABC's content. Mr Motsoeneng did not think that the second channel should be part of the agreement and the focus should be placed on the 24-hour news channel. He pointed out that if the negotiations with MultiChoice were not to the SABC's benefit the agreement should be abandoned."

20 **ADV THANDI NORMAN SC**: Okay. Now this analysis of the one that he says because there was the Mascara regulations and therefore no one could use the content of the SABC was that correct?

MS MOKHOB: Incorrect. I think he was jumbled up here.

ADV THANDI NORMAN SC: Yes.

MS MOKHOB: Because the Mascara regulations allowed for satellite

carriers it included Top TV at the time to carry SABC channels. So, I am not sure what he was on about here.

ADV THANDI NORMAN SC: Yes. Could you just read then in responding to Mr Motsoeneng's comments?

MS MOKHOB: "Ms Tshabalala was comfortable with the legal viewpoint provided and requested that the legal division cautioned the Team on what should be changed to ensure that the SABC maximize on their advantage and opportunities available. She emphasised that she did not want the SABC to enter into the agreement for purposes of urgency. Mr Nephumbada advised that she would prefer that the News Channel be dealt with separately from the Entertainment Channel in order to avoid any further issues. Mr Matthews responded that it had been agreed in principle that whilst the contract included both channels the launch date could be staggered."

ADV THANDI NORMAN SC: And there is a paragraph that begins with in responding to Mr Motsoeneng's the second the third one after that.

MS MOKHOB: "In responding to Mr Motsoeneng's comment, the Chairman stated that there was consensus to proceed with the agreement so there was no dispute, however it was important for a senior legal advisor to review the mechanism of the agreement as a safety measure in terms if the future. Mr Motsoeneng requested that in the GCO's absence a mandate be provided for him and Mr Olivier to

sign the contract. Ms Tshabalala concurred with Ms Solubisi's request that the agreement be reviewed by a senior legal advisor and that such review notes must be provided to the Board for comment and approval."

ADV THANDI NORMAN SC: And then what was the resolution?

MS MOKHOBO: The resolution was one, the terms of the MultiChoice agreement be and I hereby approved subject to the following:

10 "A dispute resolution mechanism be included in the MultiChoice agreement. The terms of the MultiChoice agreement be reviewed by an independent senior legal advisor to ensure that it was in the best interests of both parties and the outcome of the review of the MultiChoice agreement must be submitted to the Board for information."

Which is a bit concerning because in the paragraph above it said:

"The Board must be provided to the Board for comment and approval."

I do not know why then the resolution reads:

"For information it should be for approval."

20 **ADV THANDI NORMAN SC**: And then the last paragraph two.

MS MOKHOBO: "Mr Motsoeneng and C Olivier be and are hereby mandated to sign the MultiChoice agreement on behalf of the SABC."

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: *Ja* but this does not make sense. How does this

Committee, even assuming that it had the authority to give the approval, how does it mandate people to sign the MultiChoice agreement on behalf of the SABC in circumstances where there are outstanding issues on which they need to satisfy themselves?

MS MOKHOB: Absolutely Chair and to take it even further in terms of the delegation of authority framework this was not an approving Board.

CHAIRPERSON: H'mm.

MS MOKHOB: Their task was to interrogate and take a recommendation to the Board.

10 **CHAIRPERSON**: To the Board, yes.

MS MOKHOB: And the Board could then approve.

CHAIRPERSON: Yes.

MS MOKHOB: But in addition to that the approval had also to be escalated to both the National Treasury and the Department of Communications because it was dealing with fundamental shifts from policy from the Broadcast Digital Migration policy. Now they had no right to say it can be signed when the upward approval had not been garnered.

20 **CHAIRPERSON**: But also, at this stage as I understand the position, they still did not have the letter from the Minister that had been discussed earlier. And I am sure some of them would have been part of the meeting where it was said there would be a letter from the Minister.

MS MOKHOB: You know Chair there is a phrase that I like which says, make haste slowly. Which means yes, you can be quick but be slow and in reviewing and ensuring that everything is okay. This

should have been a make haste slowly assumption.

CHAIRPERSON: H'mm.

MS MOKHOBO: Not yes, let us do this very quickly.

CHAIRPERSON: Yes.

MS MOKHOBO: There was really no need for that.

CHAIRPERSON: But also, when they discussed they ought to – when they discuss an item, they ought to be alive to whatever discussions have preceded that meeting around the same item to say the history of this item is the following. At such and such a meeting this is what was
10 said and such and such a meeting this is what was said to the extent that certain things were outstanding. Have they been sorted out now?

MS MOKHOBO: Indeed Chair. I have no ...(intervenes).

CHAIRPERSON: That does not seem to have happened in so far as the letter is concerned.

MS MOKHOBO: Chair I would really implore your honour to invite Mr Mavuso.

CHAIRPERSON: Yes.

MS MOKHOBO: To come and give you his perspective.

CHAIRPERSON: Yes.

20 **MS MOKHOBO**: Because this was his meeting.

CHAIRPERSON: Yes.

MS MOKHOBO: And I am sure he has got better insights than myself and a whole lot of other people.

CHAIRPERSON: Yes. Okay, thank you.

ADV THANDI NORMAN SC: Yes. Thank you, Chair. Thank you, I think

that is all on the ...(intervenes).

CHAIRPERSON: You will give attention to that.

ADV THANDI NORMAN SC: We will do Chair, yes.

CHAIRPERSON: *Ja*.

ADV THANDI NORMAN SC: Thank you very much, yes.

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: So, then your conclusion is that this body as you have answered to the Chair had no authority ...(intervenes).

MS MOKHOBO: No, it had no authority.

10 **ADV THANDI NORMAN SC**: To approve.

MS MOKHOBO: And Chair I have provided Advocate Norman the delegation of authority framework of the SABC that shows in very clear terms the levels of approvals.

ADV THANDI NORMAN SC: Yes. And you have attached it ...(intervenes).

MS MOKHOBO: Even if – I am sorry Advocate.

ADV THANDI NORMAN SC: I beg your pardon.

MS MOKHOBO: So even if I was told to sign it, it would have still been improper.

20 **CHAIRPERSON**: Yes.

MS MOKHOBO: At this level.

CHAIRPERSON: Yes.

MS MOKHOBO: It would have still been improper. So, I would not have gone ahead and signed.

CHAIRPERSON: Yes.

MS MOKHOBO: Unless all the approvals had been received. The letter from the Minister. Possibly a letter from National Treasury because of the policy shifts.

CHAIRPERSON: *Ja.*

MS MOKHOBO: And *ja* and Board approval.

CHAIRPERSON: But you may or may not be able to comment on this. Was it not – Mr Mavuso was chairing this meeting of this Committee, the same Board Member who stood with you at that meeting with MultiChoice?

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

CHAIRPERSON: Is it the same Board Member?

MS MOKHOBO: It is the same Board Member.

CHAIRPERSON: Yes. Because I would have expected that because of the position he took at that meeting, he would have been more circumspect and he would have checked much more than anybody else to see whether everything that was supposed to happen sorted out first before there could be approval. So that I would suggest the letter that you talked about.

20 But of course, I cannot remember – the letter might not have been discussed at that meeting because the discussion of the letter might have been at a Board Meeting. But if he was at the Board Meeting which discussed the letter where Mr Motsoeneng said there would be a letter from the Minister then I would have expected him here to have said, where is the letter.

MS MOKHOBO: Yes Chair.

CHAIRPERSON: You may or may not be able to say anything. I am just making an observation.

MS MOKHOBO: I would propose that that question be put to him.

CHAIRPERSON: Be put to him, *ja*. Thank you.

ADV THANDI NORMAN SC: Thank you. Thank you Chair. That is all then on the minutes. Could we go back to the statement? Chair I am going to refer the witness to a letter that she referred to in answering one of your questions earlier before we adjourned for tea. Where she made mention of a letter that she had written where a journalist that
10 misquoted her.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: That letter Chair appears under folder B. It is – it was an Annexure to the previous statement at page ...(intervenes).

CHAIRPERSON: Exhibit CC21?

ADV THANDI NORMAN SC: CC21 Chair, yes.

CHAIRPERSON: *Ja*, under folder B.

ADV THANDI NORMAN SC: Under folder B and then that would be page 51.

20 **CHAIRPERSON:** Yes.

ADV THANDI NORMAN SC: Thank you. Could you deal with that letter Ms Mokhobo? Or maybe let us start with the one before that is the one that you have read. The 15th of May letter that you have read into the record.

MS MOKHOBO: Yes Chair.

ADV THANDI NORMAN SC: And then could you just tell Chair at page 51 you were responding to Mr Patel. What did you say to him?

MS MOKHOBO: Chair, it is very important to table there the context of this letter.

CHAIRPERSON: Yes.

MS MOKHOBO: Was in the same spirit as the discussions, the numerous discussions we had had at the previous meeting.

CHAIRPERSON: At the meeting of the 6th ...(intervenes).

ADV THANDI NORMAN SC: 6th of June.

10 **MS MOKHOBO:** The meeting of the 6th with MultiChoice and SABC.

CHAIRPERSON: Yes.

MS MOKHOBO: Where indeed there was a lot of excitement that, “Phew, finally we will have a 24-hour news channel”. Even though we do not agree on certain serious principles that I express there. So, this letter was in the same spirit. And I was asked by the Board to write the letter to Mr Imtiaz.

CHAIRPERSON: Yes.

MS MOKHOBO: So, it reads and it was address to Mr Imtiaz Patel.

20 “The Board and Executive Management have duly considered MultiChoice as proposal regarding the SABC’s 24-hour news channel and the entertainment channel. And we are pleased to inform you of the decision to proceed in accordance with the proposal. Very importantly Chair, on the terms that will be agreed between the SABC and MultiChoice. We look forward to

a mutually rewarded relationship for the coming 5-year period.”

That caveat is very important Chair. That the terms had to be agreed. At this point the terms have not been agreed. And certainly, saying we look forward to a mutually rewarded relationship would still ride on whether or not we agree on the terms. So, this was certainly nothing approving the terms of the proposal at all.

ADV THANDI NORMAN SC: Yes, thank you.

CHAIRPERSON: From what I heard earlier on, was there not a Board Meeting just before or just after that date?

MS MOKHOBO: Of the 19th?

CHAIRPERSON: Of the 19th June?

ADV THANDI NORMAN SC: The 19th of June, yes.

MS MOKHOBO: Yes Chair. There was a Board Meeting.

ADV THANDI NORMAN SC: It was on the 12th of June.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: It was on the 12th.

CHAIRPERSON: There was one on the 12th of June?

ADV THANDI NORMAN SC: On the 12th of June.

20 **MS MOKHOBO**: Yes.

ADV THANDI NORMAN SC: Which is the one we dealt with.

CHAIRPERSON: Is that the one where Mr Motsoeneng talked about a letter.

ADV THANDI NORMAN SC: Correct.

CHAIRPERSON: From the Minister.

ADV THANDI NORMAN SC: No, no, Chair. Yes, that is the one where Chair has just – sorry ...(intervenes).

CHAIRPERSON: The one where I read a number of well ...(intervenes).

ADV THANDI NORMAN SC: As to why Mr Mavuso did not pay attention because the letter had been mentioned.

CHAIRPERSON: Oh, that we just dealt with.

ADV THANDI NORMAN SC: Yes, that is correct Chair.

CHAIRPERSON: But I thought that was a Committee meeting – a Sub-Committee meeting rather than Board.

10 **ADV THANDI NORMAN SC:** Chair, I am the one who is confused. I beg your pardon.

CHAIRPERSON: *Ja.*

ADV THANDI NORMAN SC: You are quite right. The one that she just referred to is the 2nd of July.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: The 12th of June is where Mr Motsoeneng talks about the letter.

CHAIRPERSON: And that was a Board.

ADV THANDI NORMAN SC: That was a Board Meeting, yes.

20 **CHAIRPERSON:** A Board Meeting.

ADV THANDI NORMAN SC: Yes Chair.

CHAIRPERSON: Was there another Board Meeting just around 19, 20, 21 June or just before that after the 12th?

ADV THANDI NORMAN SC: I could just ...(intervenes).

MS MOKHOBO: Chair there was a Board Meeting.

CHAIRPERSON: Yes.

MS MOKHOBO: Where I was mandated to then write this letter.

CHAIRPERSON: Yes.

MS MOKHOBO: But we will have to find ...(intervenes).

ADV THANDI NORMAN SC: I will have to find the minutes Chair
...(intervenes).

MS MOKHOBO: The minutes.

ADV THANDI NORMAN SC: And ...(intervenes).

CHAIRPERSON: Yes.

10 **ADV THANDI NORMAN SC:** Because the Board – whilst Ms Resvichele
is looking Chair may we proceed and deal with something else in the
meantime?

CHAIRPERSON: Okay, that is fine.

ADV THANDI NORMAN SC: if you agree. Thank you.

CHAIRPERSON: That is fine.

ADV THANDI NORMAN SC: And at the meeting ...(intervenes).

CHAIRPERSON: And – I am sorry.

ADV THANDI NORMAN SC: Sorry Chair, yes.

20 **CHAIRPERSON:** Ms Mokhobo, I am trying to understand this letter in
the context of what you said was alleged by journalist or by certain
people through a journalist about your position and what you have said.
It is quite clear that you are saying that the SABC will proceed but that
you talk about terms that will be agreed.

MS MOKHOBO: Yes Chair.

CHAIRPERSON: So, you are not saying that it is on terms that have

already been agreed?

MS MOKHOBO: Indeed Chair, thank you.

CHAIRPERSON: Yes. But within that context it seems to me that maybe the letter should be read to simply mean that the – you are saying the Board is quite happy – the decision that the Board had made was really to proceed with the discussions.

MS MOKHOBO: Yes.

CHAIRPERSON: With a view to an agreement being reached on terms that have not been finalized.

10 **MS MOKHOBO**: Yes Chair.

CHAIRPERSON: It is just that I think if you – the way it says, inform you of the decision to proceed in accordance with the proposal. At that stage it is like you are accepting the proposal as is.

MS MOKHOBO: H'mm.

CHAIRPERSON: But as you emphasize it says, on the terms that will be agreed.

MS MOKHOBO: Yes Chair.

CHAIRPERSON: That that is the *pro vice*, so you emphasize.

MS MOKHOBO: Yes Chair.

20 **CHAIRPERSON**: *Ja*. Okay alright.

ADV THANDI NORMAN SC: Thank you, Chair. Thank you. Do you have any recollection of a Board Meeting which when you – or rather let me put it this way. When the Board mandated you to write this letter to Mr Patel, was – did you convey to Mr Patel the decisions of the Board or did you simply draft the letter in your own terms?

MS MOKHOBO: No, it was the decision of the Board.

ADV THANDI NORMAN SC: So would the ...(intervenes).

MS MOKHOBO: The Board of the Executive Management.

CHAIRPERSON: And the minutes which have got that decision are somewhere in the bundle as far as you know?

MS MOKHOBO: Yes. They should be there.

ADV THANDI NORMAN SC: Yes.

MS MOKHOBO: They should.

ADV THANDI NORMAN SC: I just need to get the date of that meeting.

10 It would come before the 19th of June – 12th of June or because the only one I have is the 12th of June. I do not have any – the 6th of June, the 9th, the 12th so I do not have any Board Meeting minutes. We do not have them between the 12th and the 19th.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: It is only those of the 12th.

CHAIRPERSON: Well what we – do you recall Ms Mokhobo whether you did see them? It is a question of locating them or you are not sure whether they are there.

MS MOKHOBO: I would have to ...(intervenes).

20 **CHAIRPERSON**: You will have to check.

MS MOKHOBO: To try and locate them.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Okay no, that is fine.

ADV THANDI NORMAN SC: Thank you.

CHAIRPERSON: What will – if they are ...(intervenes).

MS MOKHOBO: Here it is Chair.

CHAIRPERSON: Uh-huh.

MS MOKHOBO: The ...(intervenes).

CHAIRPERSON: What page?

MS MOKHOBO: Boards Indorsements. This is on the bundle – Ms Geldenhuys bundle.

ADV THANDI NORMAN SC: Oh okay.

MS MOKHOBO: Yes. Exhibit CC43 Chair.

10 **CHAIRPERSON**: Okay. What page?

MS MOKHOBO: Page 055.

CHAIRPERSON: Okay so 55.

ADV THANDI NORMAN SC: 55. 12 June.

MS MOKHOBO: And this was on the 12th of June.

CHAIRPERSON: Yes.

MS MOKHOBO: It was a special Board Meeting.

CHAIRPERSON: Yes.

MS MOKHOBO: Right at the top, the first paragraph.

CHAIRPERSON: What paragraph?

20 **MS MOKHOBO**: The first paragraph, right at the top.

CHAIRPERSON: Yes okay.

MS MOKHOBO: Alright, 055.

CHAIRPERSON: H'mm.

MS MOKHOBO: "The GCO pointed out that what had been agreed at the previous meeting was the matter that was

currently being pursued. The Boards indorsement had been required to enable management to send a confirmation letter to MultiChoice to the effect that the SABCs engagement with MultiChoice would preclude clauses 9 and 10. Clause 9 propose that the SABC must etcetera. It was confirmed that until there was a clear pronouncement from the Minister in this regard the SABC could not commit to clause 9.”

So, Chair in keeping with the Chairs reading of the letter it
10 should certainly have included instead of making a wild a broad statement that says on terms that will be agreed.

CHAIRPERSON: Yes.

MS MOKHOBO: I should have been more specific.

CHAIRPERSON: Yes.

MS MOKHOBO: And said, to exclude clause 9 and 10.

CHAIRPERSON: Yes.

MS MOKHOBO: I should have been more specific.

CHAIRPERSON: *Ja*, no, no.

MS MOKHOBO: But then I approached it from a very broad
20 perspective.

CHAIRPERSON: Yes. No, no, no.

ADV THANDI NORMAN SC: Thank you.

CHAIRPERSON: It – *ja* I think you should have been more specific but you do say on terms to be agreed.

MS MOKHOBO: Yes.

CHAIRPERSON: And as long as 9 and 10 have not been agreed, it does cover it. It is just that it might have been better if it was more specific.

MS MOKHOBO: And they knew crystally clear what had not been agreed.

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

ADV THANDI NORMAN SC: Thank you. Thank you Chair. Then if you go back to the statement. You have covered most of your evidence when you were dealing with the benefits of having encryption and
10 towards the latter part of your statement you deal with the tensions between yourself and Ms Tshabalala. And they are recorded there, I am not sure that it is ...(intervenes).

MS MOKHOBO: What page are you on?

ADV THANDI NORMAN SC: I am now on page – sorry, go back, page 85.

MS MOKHOBO: This is on ...(intervenes).

ADV THANDI NORMAN SC: On – sorry CC ...(intervenes).

MS MOKHOBO: The Geldenhuys bundle?

ADV THANDI NORMAN SC: No, I beg your pardon. Exhibit CC21.

20 **MS MOKHOBO:** Okay.

ADV THANDI NORMAN SC: The folder that has your statement and then we are looking at the 21A which will be under divider C.

MS MOKHOBO: So that would be page?

ADV THANDI NORMAN SC: That would be page 85.

MS MOKHOBO: Page 85.

ADV THANDI NORMAN SC: Yes. But maybe before we go there, there are the three scenarios that you put just to close this your topic about the disadvantages of the – of this deal for the SABC. Could you just tell the Chair about you have arrived at those scenarios? I am going to take you to the page where you deal with scenario one, two and three. I beg your pardon, sorry. You will – before we get to this- sorry, I beg your pardon Chair. I just want to direct you to the exact paragraph.

Actually, I think you dealt with them in the previous statement. You were talking about the 500 million and you said that the 500 million
10 is way too little as compared to the benefits that the SABC would have derived had it taken its time and looked at the contract properly and to make sure that it benefits it.

MS MOKHOB: Yes.

ADV THANDI NORMAN SC: And what informs that view that you have?

MS MOKHOB: The view is informed by a fax that was in fact mentioned by the Minister as well yesterday.

ADV THANDI NORMAN SC: Yes.

MS MOKHOB: The former Minister yesterday. Where he spoke of the amount of viewership that SABC had at the time. It was a completely
20 dominant player while MultiChoice had a smallish audience profile. The SABC boasted quite a substantial audience – I think at that time the SABC alone was responsible for I think it was 65%, I may be wrong but anything between 60% and 70% of the audience profile of South Africa.

ADV THANDI NORMAN SC: Yes. In fact, you deal with that in the statement that you made to the SIU.

MS MOKHOBO: Yes.

ADV THANDI NORMAN SC: That appears under B. I beg your pardon, page 37. Those are the scenarios.

MS MOKHOBO: Yes.

ADV THANDI NORMAN SC: But could you just summarize them?

MS MOKHOBO: Yes.

ADV THANDI NORMAN SC: There are two scenarios where you say that as a result there has been huge losses to the SABC.

MS MOKHOBO: Yes.

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

MS MOKHOBO: The whole stance that the SABC should not have attempted to get – to enter into the direct to home perspective which is Pay TV perspective was very sad in the sense that it was saying to the SABC, do not even try this commercial venture whereas the SABC could have done it very successfully. And in this I illustrate what the possibilities could have been.

20 Now if you just look at the 2019 Abridged Annual Report of MultiChoice Africa. At the time when I looked at it, it was last year, which had to do with the last year figures. MultiChoice had an active subscriber base of 7.4 million households and this was up from 4 million. In 2011 they had only 4 million and by 2019 they had 7.4 million.

Now I give a scenario where if the SABC were to come up with – no before I go into that Chair. I am sorry. The average and this contained in their report. The base average that they use to calculate

their revenue is R322 per month per subscriber because they take from their most superior bouquet to the lowest bouquet and come up with a round figure. Its total revenue came up to 40.4 billion Rands over its 2019 financial year. That is very substantial.

Now I argued that if the SABC through its vast footprint and high audience attraction value did go head to head with MCA but offering its subscribers a low R40 subscription fee which would cut across R40 subscription per month. And if it only had 4 million subscribers who said, yes, we would be able to afford R40 per month, it
10 could raise monthly revenues of almost 160 million Rands per annum and annually 1.920 billion. These figures are obviously very conservative. It is really going right down to the lowest levels. I know that MultiChoice's lowest level is something like R29 if I am not mistaken. But MultiChoice we thought the SABC bouquet running on it would probably not have those kinds of audiences.

Now I am saying if we come down to a much smaller subscriber base and I know that the subscriber base could actually be much higher especially now when affordability levels are so low, we could make much more money. I am saying we as though I am still there, excuse
20 me. The SABC could make much more money. So, I was just painting a scenario of the – what did not make sense to me with people saying, no you cannot go into that space because you will not be able to manage it or afford it or whatever, it just never made sense to me anyway.

ADV THANDI NORMAN SC: Thank you.

MS MOKHOBO: Yes.

ADV THANDI NORMAN SC: And then may we lastly then we just deal with the fact that you have already mentioned that the relations between you and the Chairperson of the group Board Ms Tshabalala were not so good.

MS MOKHOBO: Yes.

ADV THANDI NORMAN SC: Yes, and you have attached minutes to show the altercations during the meetings of 2013 – September 2013.

MS MOKHOBO: Yes ma'am.

10 **ADV THANDI NORMAN SC:** Okay thank you. And then ...(intervenes).

CHAIRPERSON: Is there something to be highlighted about those altercations or not really?

ADV THANDI NORMAN SC: Not really Chair, it is about – but of course Ms Mokhobo feels that her integrity was being attacked. But for the purposes of the Commission it does not really deal with – it does not relate to the ...(intervenes).

CHAIRPERSON: It does not throw a light on ...(intervenes).

ADV THANDI NORMAN SC: It is just a relationship kind of – that is how I look at it. But unless I am wrong Ms Mokhobo, do you think it
20 goes deeper than that?

MS MOKHOBO: Chair, I think yes on the surface that is what it is but if you go deeper it all had to do with attempts for me to be removed because there were – as I said earlier there were agendas.

ADV THANDI NORMAN SC: Okay.

CHAIRPERSON: H'mm.

MS MOKHOB: There were things that people wanted done which I was not doing. So, the undermining was just incredible. But things got very, very bad at the point where we were at the Minister's roundtable discussion and I called Mr Mavuso to ask him to just confirm with me whether there had indeed been approval. Now this is at a different level, it is now past the MultiChoice agreement which has been signed with the clauses that should not have been there. It is now at a level where the Minister is now trying to have DTT roll out but he has to resolve the question of the Set Top Box. And in that meeting at that
10 point the SABC had still not taken the position that there will be no Set Top Box control. Remember the contract was signed, it went off and the Board just went quiet about it. I think everybody was just shellshocked and decided not to pursue the matter anymore because it was done.

Now here is an opportunity for the SABC to get back its power and that opportunity is sitting at the roundtable – the Minister's roundtable with other industry players and establishing that we actually as the SABC believe there is value in having the Set Top Box control. And then she stands up and she says the SABC has agreed that there
20 will be no Set Top Box control. And no such agreement had been reached.

CHAIRPERSON: And who is saying that now, the Minister?

MS MOKHOB: The Chairperson.

CHAIRPERSON: The Chairperson, Ms Tshabalala?

MS MOKHOB: Yes.

CHAIRPERSON: Yes.

MS MOKHOB0: And at that point I was in shock and incidentally our relationships had become so cold and distant at that point that they sat on the other side of the room and I sat on the other side of the room. I was like the lone soldier there you know. And they were sitting there and they decided that is what they were going to say about the Set Top Box control. I was obviously shellshocked and I called Mr Mavuso to check if indeed that was true and Mr Mavuso confirmed for me that no, the Board never ever arrived at that conclusion. That there was a
10 contract with MultiChoice which agreed with them on that one could regard as an expediency to get the contract going. But there was never a fundamental agreement that the Set Top Box control would not be supported by the SABC. The SABC needs it. We need the – that Set Top Box control. And then I subsequently informed the Minister and the DG that here are people who are now almost reverse engineering things to meet the MultiChoice agreement. They are now saying the SABC has taken and we had never taken that position. So there was an urgent Board Meeting that was called where the Chairperson proceeded to attack me on that. She said I had breached confidentiality. How do I
20 breach confidentiality when I speak to a Board Member of the organisation that I come from you know? And obviously I had to let it be known by my superiors that here was something patently wrong that was being conducted. If I did not do that then I would not be delivering on my fiduciary duties.

ADV THANDI NORMAN SC: Thank you.

CHAIRPERSON: It speaks to the issue that I said I want to hear more about.

ADV THANDI NORMAN SC: Yes Chair.

CHAIRPERSON: There are people – there are witnesses who have come before the Commission and said in the context of the organisations where they were employed that there were attempts by certain people or certain forces to remove from Government Entities, Government Departments, SOE's people who did not or were not prepared to do wrong. And it is necessary to explore the validity of this
10 proposition wherever there may be matters that may suggest that maybe certain people were being pushed out. Now one cannot get to the point of saying whether this was so or not in the SABC without hearing more about these challenges. You have just said that you had to speak to the DG and say this is what is happening. So it becomes important to even know what was the DG's attitude to this kind of situation. What was the Minister's attitude because based on what Mr Carrim told me yesterday one expected that the Minister's boss, the President, was in support of the position that Mr Carrim took which is the same position that Mr Mokhobo took. But here was a situation
20 where certain people within SABC seemed to go completely against that and at this stage I am – I have not heard that the Minister or officials within the Department of Communications came in and said, what are you doing? You know or that kind of thing. Or show clear support for what should be the correct position as far as government is concerned. So getting all of that might help one understand even what was going

on and – but also might help one understand the people if there were any who were behind some of these things and to identify what was the agenda? Was the agenda part of State Capture? Was the agenda something else? Was the agenda corruption?

ADV THANDI NORMAN SC: Yes. Thank you.

CHAIRPERSON: Okay thank you so ...(intervenes).

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: So I say again Ms Mokhobo after today if you have more information to share with the Commission in relation to this
10 please feel free to communicate with the Legal Team. Because I do want to try and understand. This is very strange for me that things were happening the way I am hearing were happening within the same organisation.

MS MOKHOBO: Thank you Chair. Thank you.

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: Thank you Chair. You had dealt Ms Mokhobo last – on the last occasion with the appointment of Mr Motsoeneng.

MS MOKHOBO: Yes.

20 **ADV THANDI NORMAN SC**: That is when you testified before the Commission and then it – but what you did not deal with is what you deal with in – at paragraph 59 when you – because of his – according to what you say here – according to – because he was disruptive you had suggested that he should be removed. Could you just tell the Chair about that at paragraph 59 page 88?

MS MOKHOB: Yes Chair. I have been suggesting and in fact I got into very serious trouble for that initial suggestion the first which I had made much earlier after I had started there. I think it must have been around March or thereabouts and I got into serious trouble for having suggested that. But then on the 26th of February ...(intervenes).

CHAIRPERSON: You make the suggestion at a Board Meeting or something?

MS MOKHOB: I made it to Board Members.

CHAIRPERSON: To Board Members *ja*.

10 **MS MOKHOB**: Yes.

CHAIRPERSON: Okay.

MS MOKHOB: And not in a formal meeting.

CHAIRPERSON: Not in a formal meeting?

MS MOKHOB: Yes. Because you know for me to make that statement I would have had to do it correctly via the HR Department.

CHAIRPERSON: Yes.

20 **MS MOKHOB**: And submitted it to the Human Resource Division and then it would go to the Sub-Committee to be discussed and then go to the Board. I was feeling this sense of urgency and serious frustration because he was making it very difficult for me to do my work. Blocking the staff from submitting documents. I mean if you were to read there was a – I am trying to recall the name – Sizwe ...(indistinct, African name) evaluation that was done of the SABC and in there they spoke of two centre of power. There was the centre which was the CEO and the centre which was the COO. And they spoke of how haphazard things

were in terms of submitting documents to the Board. In terms of getting things done. The cause was simply because at that point the acting CEO felt he needed me out of that organisation and he frustrated everything that I did so that ultimately the Board would declare me incompetent and fire me. I remember in 2013 I had not been there long when I heard the rumour that by August of the same year I would be gone. And I was due to have an interview with one of the magazines and the journalist called and say we heard your CEO has been suspended. In the meantime I was at my desk. So there were a lot of
10 attempts to discard me. So now eventually the Board woke up to the fact that there was something very seriously wrong with the acting CEO. And that happened when he suggested to them that they were all implicated in some wrongdoing or the other. And only that some of them they were those who knew that this man was not okay. But some continued to support him until at that point where he said that then they woke up to the fact that he was actually very, very dangerous and was going to have them fired when he said they were all implicated. And that is the point where they then suggested that he be removed. So on the 26th of February in 2013 Chair the Board unanimously agreed to
20 remove Mr Motsoeneng from his position as acting COO. This move was however frustrated when it emerged that the Board did not have the powers to remove Mr Motsoeneng as he had been appointed by the then Minister of Communications Ms Dina Pule. Doctor Ngobani and the Deputy Chairman Mr Thami Ka Plaatjie resigned soon thereafter followed by the remainder of the non-executive Board Members in

March 2013. Having being reinstated Mr Motsoeneng continued with his disruptive style of management.

ADV THANDI NORMAN SC: Yes. And you say that you would not have recommended his appointment?

MS MOKHOB0: Absolutely not. Absolutely not.

CHAIRPERSON: H'mm. Now why was what you referred to as I think disruptive conduct on his part why was that not being addressed? Was that because you would have needed the support of the Board and unless you had that support there was nothing you could do or there
10 was very little you could do or what was the position?

MS MOKHOB0: The position Chair was that as acting COO any matter that had to do with his discipline had to go to the Board. It could only be dealt with by the Board not by myself directly. And there was no appetite for that. As I said I had even suggested that he should be removed and be made to go either back to his former position or whatever but I was very clear that I could not work with this man. A COO is such a critical Member of a top management structure because that is the person who oversees the daily nitty gritty operations of where the delivery needs to happen. So the channels making sure that
20 the channels deliver on time, news deliver on time. You know all those critical areas that would talk to immediate delivery whereas the CEO dealt with all the other matters that affected the organisation wide issues. And the fact that he did not understand the fact of the power relations that I was indeed his superior and he had to take my word and he instead preferred to be friends with the Chairpersons of the Board to

take his instructions from them, to go to them and instruct them on how to deal with me and the organisation just made it impossible for me. Absolutely impossible. And Chair I am sure the Chair may have heard at the Parliamentary Portfolio Committee Commission I think it was called a commission as well on the SABC that was chaired by the Honourable Vincent Smith.

CHAIRPERSON: It was an ad hoc Committee I think it was.

MS MOKHOBO: Ad hoc Committee yes.

CHAIRPERSON: *Ja. Ja* not commission

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

MS MOKHOBO: Where both Chairman Ngobani and Chairperson Tshabalala told Mr Smith that if they had had things their way they would – I would never have been appointed at the SABC. Now how bigger a vote of no confidence do you want than that? By the time – anyway I had left so it had no force or effect on me. And this was despite the fact of the hard work I had put into that organisation. Turning around the finances. Getting a whole lot of things done. DTT roll out the technology roll out had stalled completely. There was no movement and it was critical and urgent. And just ensuring that the
20 broad spectrum of stakeholders who had something to do with the SABC understood what we were doing and where we were going. But in retrospect I was happy that they said they would never have chosen me because I clearly was not the right candidate for them. Too pedantic.

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

CHAIRPERSON: That is the end of your questions?

ADV THANDI NORMAN SC: Yes, yes thank you.

CHAIRPERSON: Yes. Ms Mokhobo you think you might have quite something to share with the Commission on the issues that I have raised or you will need to reflect?

MS MOKHOBO: Chair I think it is very important that I reflect.

CHAIRPERSON: Yes okay.

MS MOKHOBO: So that I do not come.

CHAIRPERSON: Yes.

MS MOKHOBO: With half baked.

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

MS MOKHOBO: Stories.

CHAIRPERSON: That is fine.

MS MOKHOBO: What I do know for sure Chair is the SABC is a microcosm of the country so the political climate of the time in the country had a direct impact on the SABC. Different political parties, different interests, different expectations and having their own people within the organisation. That was the first problem. Secondly people who were overly ambitious without understanding the job content and relying on the highest levels of the country for them to be given space
20 to do as they liked. That was a big problem. The third one was the lack of a shared vision between those who would be placed in I will say very broadly SOE's because we have seen this play itself out thought the SOE's. Lack of a clear vision and agenda and agreed *modus operandi* between the people who would be appointed in this. Another very big problem. Because if there is no agreement and I think this

goes to even how the Board Members are appointed. The Board Members are appointed by different Members of Parliament who belonged to different political affiliations and have different agendas and those people who would come in carrying the agendas of those who have appointed them. And those agendas as you know our political parties do not see eye to eye on anything. So immediately you have – *ja* – you just need a matchstick to light the fire. The SABC did not have – has not had a stable Board. I think this one is probably – there is somewhere where I have analysed that and maybe I should send it to
10 you.

CHAIRPERSON: Yes please *ja*.

MS MOKHOB: But it also goes to the Ministers as well.

CHAIRPERSON: H'mm.

MS MOKHOB: Somewhere in my documents I do outline.

CHAIRPERSON: *Ja* there is ...(intervenes).

MS MOKHOB: The difficulties.

CHAIRPERSON: There is a part where there is a list of Minister.

ADV THANDI NORMAN SC: Yes.

MS MOKHOB: The list of Ministers and how long they were actually
20 there.

CHAIRPERSON: Within a very short space of time.

ADV THANDI NORMAN SC: Yes.

MS MOKHOB: Yes.

CHAIRPERSON: They were about ten or more Ministers quite a few of them spent less than or around a year and a half.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Then moved out then others came in. It must have been quite unstable.

MS MOKHOBO: And in each instance the people would be removed because they did not satisfy an agenda.

CHAIRPERSON: Yes you see that is what I am – I want to know more about in case that agenda is something that falls within the terms of the Reference of the Commission to try and get to understand whether all of this or most of it arose from something that we are looking at.

10 **MS MOKHOBO:** Yes.

CHAIRPERSON: And who were the role players who were contributing to this situation?

MS MOKHOBO: But Chair I would even propose to the Chair that perhaps have *in camera* discussion with each one of those Ministers.

CHAIRPERSON: Yes

MS MOKHOBO: Because each one of them ...(intervenes).

CHAIRPERSON: Yes.

MS MOKHOBO: Will have a story to tell.

CHAIRPERSON: Yes.

20 **MS MOKHOBO:** And then form your reports and opinion based on that.

CHAIRPERSON: Yes.

MS MOKHOBO: The same as with the Board Members of the SABC.

CHAIRPERSON: Yes.

MS MOKHOBO: Each one of them has a story to tell.

CHAIRPERSON: Yes. Well it might be something to think about it is

just that *in camera* hearing is not so easy you know.

MS MOKHOB: Okay.

CHAIRPERSON: To do except you know clear circumstances. One wishes that people – that there would be a fair number of people who may have been in those positions Board Members and senior managers who would say this is about the country. As you say it is not just SABC it is a lot of SOE's you know. This is about the country and this Commission is the forum at which everyone can make a contribution to say, I know about the following and on my analysis this is connected
10 with that and that and that and that. And then the Commission can come up with recommendations aimed at ensuring that whatever wrong may have happened does not happen again. So it is – it would be important – it would be good if more people who have got this knowledge, former Board Members, senior you know executives could just come forward and share. But do reflect and see what further contribution you could make. Because it would be a pity if one ends up not having understood the full picture before making recommendations because one did not get all the information.

MS MOKHOB: Yes Chair.

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

ADV THANDI NORMAN SC: Thank you.

CHAIRPERSON: Thank you very much Ms Mokhobo.

MS MOKHOB: Thank you Chair.

CHAIRPERSON: We thank you for coming to – again to the Commission to give evidence. We appreciate it but for now you are

excused.

MS MOKHOBO: Thank you.

CHAIRPERSON: Thank you.

MS MOKHOBO: Let it be for a long time Chair. I – having to relive my experiences.

CHAIRPERSON: Yes.

MS MOKHOBO: Every time is – it is still very traumatic.

CHAIRPERSON: Yes.

MS MOKHOBO: The pain is intense.

10 **CHAIRPERSON**: No I can understand.

MS MOKHOBO: Thank you Chair.

CHAIRPERSON: Okay thank you.

ADV THANDI NORMAN SC: Thank you Chair. After lunch Chair then the LEA's will continue yes.

CHAIRPERSON: Law Enforcement Agency work stream?

ADV THANDI NORMAN SC: That is correct Chair.

CHAIRPERSON: We will hear the evidence of Advocate Mlotshwa I think, is that correct?

ADV THANDI NORMAN SC: Colonel Du Plooy.

20 **CHAIRPERSON**: Oh Colonel Du Plooy okay thank you. We are going to adjourn then we will resume at 14:05.

ADV THANDI NORMAN SC: Thank you Chair.

CHAIRPERSON: We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

ADV WILLIAM NICHOLSON: Good afternoon Chair.

CHAIRPERSON: Good afternoon Mr Nicholson. Are you ready?

ADV WILLIAM NICHOLSON: Indeed I am Chair.

CHAIRPERSON: Yes.

ADV WILLIAM NICHOLSON: The witness ...(intervenes).

CHAIRPERSON: We have not started with Colonel Du Plooy previously?

ADV WILLIAM NICHOLSON: No. We have not ...(intervenes).

10 **CHAIRPERSON:** We have not started.

ADV WILLIAM NICHOLSON: Chair.

CHAIRPERSON: Okay. Alright. Do you want to just tell us what his evidence will connect to? Just so that everybody understands where we are moving to now.

ADV WILLIAM NICHOLSON: Indeed Chair. Chair, the witness I am calling is Petrus Johannes Du Plooy. He is a Colonel in the Hawks. He is going testify. He is the investigating officer in the Intaka matters which is – which had been testified about by Mr Trevor White from PwC. Mr Trevor White dealt with the factual issues.

20 The – Colonel Du Plooy is going to deal with the issues – will corroborate some of those issues and will also deal with the issues as he is interaction with the National Prosecuting Authority and how it came about that this matter was withdrawn.

CHAIRPERSON: Mr White's evidence related to – if I recall correctly two contracts. Maybe more. One contract relating to the Department

which had as its political head at the time Mr Mabuyakhulu in KwaZulu-Natal and the Department of Health when it was – it had Ms Nkonyeni as its Political Head. Was it two contracts or was it – or those were two separate contracts and then there was the Amigo case?

ADV WILLIAM NICHOLSON: There are two separate contracts and the Amigo case. That is correct Chair.

CHAIRPERSON: Two separate contracts plus the Amigo case?

ADV WILLIAM NICHOLSON: That is correct Chair.

COLONEL DU PLOOY: Yes. Okay. Alright.

10 **CHAIRPERSON:** And he will give evidence in regard all – to all three or only the two contracts or only the Amigo case?

ADV WILLIAM NICHOLSON: Only the Amigo case Chair.

CHAIRPERSON: Oh. Okay.

ADV WILLIAM NICHOLSON: The Intaka matters as well. The media had dubbed the Amigo matter.

CHAIRPERSON: *Ja.* Okay. Are you ready that he should be sworn in?

ADV WILLIAM NICHOLSON: Let the witness be sworn in.

CHAIRPERSON: Yes. Okay.

ADV WILLIAM NICHOLSON: With leave – with the Chair's leave.

20 **CHAIRPERSON:** Okay.

REGISTRAR: Please state your full names for the record.

COLONEL DU PLOOY: Petrus Johannes Du Plooy.

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

COLONEL DU PLOOY: No. I do not.

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

conscience?

COLONEL DU PLOOY: I do.

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

COLONEL DU PLOOY: So help me God.

ADV WILLIAM NICHOLSON: Chair, the witness has prepared an affidavit. The affidavit is marked Exhibit RR5. With the Chair's leave may the exhibit be handed in?

10 **CHAIRPERSON:** The rest of the documents in the lever arch file are they simply annexures to his affidavit?

ADV WILLIAM NICHOLSON: That is correct Chair.

CHAIRPERSON: Are there other affidavits or statement that are not annexures to his affidavit in the file?

ADV WILLIAM NICHOLSON: There is only one affidavit and this Colonel Du Plooy's affidavit in the file.

CHAIRPERSON: Okay. Okay. Colonel Petrus Johannes Du Plooy's affidavit and its annexures are admitted and are marked as Exhibit RR5.

20 **ADV WILLIAM NICHOLSON:** I am indebted Chair.

CHAIRPERSON: H'mm.

ADV WILLIAM NICHOLSON: Colonel Du Plooy, have a look at page 1 of the documents in front of you. Can you identify that document?

COLONEL DU PLOOY: I do. It is a sworn affidavit from myself.

ADV WILLIAM NICHOLSON: And does that affidavit go from pages 1 to

10?

COLONEL DU PLOOY: That is correct.

ADV WILLIAM NICHOLSON: And the annexures thereafter to your affidavit which is part of your affidavit go from 11 to 130?

COLONEL DU PLOOY: That is correct.

ADV WILLIAM NICHOLSON: If you have – if you look at the bottom right hand corner of each page. Are those your initials?

COLONEL DU PLOOY: That is correct Chair.

ADV WILLIAM NICHOLSON: And at page 11 is that the Commissioner
10 of Oath Certificate?

COLONEL DU PLOOY: That is correct Chair.

ADV WILLIAM NICHOLSON: Do you confirm the contents of the affidavit are true and correct?

COLONEL DU PLOOY: I do Chair.

CHAIRPERSON: Well at the bottom of each page there appears to be two people who initialled. Is it you and the Commissioner of Oaths?

COLONEL DU PLOOY: That is correct Chair.

CHAIRPERSON: Yes. Okay.

ADV WILLIAM NICHOLSON: And the Commissioner of Oaths or both
20 you and the Commissioner of Oaths have initialled the annexures as well?

COLONEL DU PLOOY: That is correct Chair.

ADV WILLIAM NICHOLSON: Now Colonel Du Plooy where are you currently employed?

COLONEL DU PLOOY: I am currently employed at Serious Corruption

Unit the DPCI Durban.

ADV WILLIAM NICHOLSON: What is the DPCI?

CHAIRPERSON: Sorry. You will just have to raise your voice Colonel. Maybe the mic also bring it closer – *ja. Ja.*

COLONEL DU PLOOY: As I said I am currently employed DPCI Durban. It is the Directorate of Serious Offences. I am currently the Provincial Coordinator for the serious corruption cases.

ADV WILLIAM NICHOLSON: What is the DPCI?

COLONEL DU PLOOY: Directorate of Priority Crimes.

10 **ADV WILLIAM NICHOLSON:** And it is also known as the Hawks?

COLONEL DU PLOOY: That is correct Chair.

ADV WILLIAM NICHOLSON: How long have you been in the South African Police Services?

COLONEL DU PLOOY: I have completed 36 years.

ADV WILLIAM NICHOLSON: And can you take us through your career very briefly in the South African Police Services.

COLONEL DU PLOOY: I joined the SAPS in December 1983. I have performed duties in the uniform section at Johannesburg – well in Johannesburg. I joined the Detectives in 1991. I lately became part of
20 the – what we call the Government Fraud Task Team. That was formed in 1995. The main function of that task Team was to look at Government fraud in KZN.

It subsequent – I subsequently perform duties in Syndicate Fraud Unit Commercial Branch and then what we had is Anti-Corruption Task Team or it is also known by – as the ACTT and currently I am in

the Serious Corruption Investigation Unit.

ADV WILLIAM NICHOLSON: Okay and what other qualifications do you have?

COLONEL DU PLOOY: I have got a National Diploma and I have done various courses in Commercial Law.

ADV WILLIAM NICHOLSON: Currently the units where you are working what matters do you investigate?

COLONEL DU PLOOY: We investigate matters that emanate from the PFMA, MFMA. We are looking at corruption, fraud, money laundering, racketeering at private sector and in public sector.

ADV WILLIAM NICHOLSON: Okay and do you only work with policeman in these units?

COLONEL DU PLOOY: No. We have what we call the multidisciplinary approach that have other stakeholders. Our stakeholders are like forensic auditors, National Treasury, the NPA, Asset Forfeiture to name some of them.

ADV WILLIAM NICHOLSON: Colonel if we can look at paragraph 7 at page 2. You refer to three police CAS numbers.

COLONEL DU PLOOY: That is correct.

20 **ADV WILLIAM NICHOLSON:** Do these CAS numbers refer to the Intaka matter?

COLONEL DU PLOOY: That is correct.

ADV WILLIAM NICHOLSON: And we have confirmed that you are the investigating officer of these matters?

COLONEL DU PLOOY: That is correct Chair. These cases are known

to me as – the main person being Dr Savoi or his company Intaka. So they all relate to each other in terms of Dr Savoi.

ADV WILLIAM NICHOLSON: Okay and starting at paragraph 7.1 who is the complainant in that matter?

COLONEL DU PLOOY: This case was registered after Dr Savoi himself came forward and gave information to the then Commercial Branch in 2009.

ADV WILLIAM NICHOLSON: So we have the unusual situation where Dr Savoi is both the complainant and the suspect – and the accused?

10 **COLONEL DU PLOOY:** That is correct Chair. At the time the Scorpions and the Commercial Branch in SAPS were not one unit. It was before the disbandment of the Scorpions. So what happened is Dr Savoi had reported the matter. We then registered the case and we started investigating. The Scorpions on their side having done a raid in Northern Cape and Cape Town where they have seized Dr Savoi's stuff.

So when we merged Colonel Jones – that was the main person in the Scorpions dealing with that issue then become my Commander. As a – he is a full Colonel. I was a Lieutenant-Colonel. So – and he then named this investigation – we call it Crisscross.

20 Apology. Crisscross at the time although the press branded this whole thing as the Amigo's.

So from 153-8 the initial case that Savoi reported we then had the other case as the investigation progressed and we had forensic auditors on Board at Pricewaterhouse or Mr Trevor White that assisted us with those three investigations.

ADV WILLIAM NICHOLSON: Okay. Did Mr Trevor White about these three case numbers?

COLONEL DU PLOOY: Yes he did.

ADV WILLIAM NICHOLSON: At paragraph 11 at page 3 you mention a memo from the NPA. The memo is at page 12. Can we go there?

COLONEL DU PLOOY: That is correct Chair. This memo is a letter that Advocate Anton Steinberg – at some state he was the prosecutor in this matter before he went to The Hague. He was at that stage Deputy Director of the NPA. So he perused and he was part of the Organised
10 Crime Division in Durban. So what happened is he perused the matter with Appelsbosch and Rietvlei.

That is PMB CAS 626/01/2010 to do with the water purification plants. 10 million for the two hospitals and then after he perused the docket he then – it is sort of a decision that he made that we are going to proceed and then he wrote this letter to me. I then replied to this letter as well. In this letter he says in paragraph – I – if I just take you to paragraph 2. He said:

20 “Having perused the above-mentioned docket. I am satisfied that a *prima facie* case of fraud alternatively conspiracy to commit fraud has been made out in respect of the following individuals.”

He then names seven individuals. Now the individuals there will be the Intaka portion of it and then the Department of Health Officials with the HOD, Dr Nyembezi of the Department of Health. At this stage we knew of the other issues in terms of the Oxy Intaka where

Professor Mbhele was involved. This was the first portion that was completed.

So we were investigating it simultaneously in terms of that. So he is – basically was happy and he predicted at that stage that once this whole thing is done we will be able to do racketeering or racketeering prosecution in terms of the Intaka matter.

ADV WILLIAM NICHOLSON: Okay. If we can just go to the next page. It is the second paragraph from the top. If you can just read that out.

COLONEL DU PLOOY: He said:

10 “As discussed at our previous meetings in connection with this project there appears to be a good prospect of charging most if not all of the above with racketeering, but this will be dependent upon the finalisation of investigation in respect of the remaining matters. In particular the DO – Department of Health Oxy Intaka matter and the KZN Department of Local Government Traditional Affairs acquisition of Wataka Units.”

20 The Wataka is the water purification plants from Intaka. So in there he mentioned the three cases, because he was aware of all three cases, but the first case that was ready was this 626 with the Appelsbosch and Rietvlei issues.

ADV WILLIAM NICHOLSON: And he also alludes to a racketeering charge sheet at the end of the day.

COLONEL DU PLOOY: Yes. That as well. That was his subpoena and

I think that is what we were work – walking – working towards.

ADV WILLIAM NICHOLSON: Okay. So you have mentioned that the author of these documents was Advocate Steinberg. At page 15, if you can just have a look at that.

COLONEL DU PLOOY: That is correct. He was a Deputy Director of Public Prosecutions Organised Crime Division Durban.

ADV WILLIAM NICHOLSON: And at page 12 what is the date of the memo?

COLONEL DU PLOOY: 17 June 2010 Chair.

10 **ADV WILLIAM NICHOLSON:** Okay. Can you just briefly explain what was the purpose of this memo?

COLONEL DU PLOOY: The purpose of this memo is basically to say we are ready to prosecute. I think after this memo they start drafting charge sheets in terms of – to place this matter on the roll and he then also sort of gave me ...(intervenes).

CHAIRPERSON: I am sorry. I thought what you were looking at just now was a letter. Now you talk about a memo. Where is the memo?

ADV WILLIAM NICHOLSON: The document he is referring to is a memo. I apologise Chair.

20 **CHAIRPERSON:** H'mm.

ADV WILLIAM NICHOLSON: At page 12 is the memo.

CHAIRPERSON: That is a letter. Not a memo. Not at least what I have got on page 12.

ADV WILLIAM NICHOLSON: That is correct Sir.

CHAIRPERSON: That is a letter written Advocate Steinberg to

Colonel Du Plooy.

ADV WILLIAM NICHOLSON: That is correct. It is a letter. I apologise.

CHAIRPERSON: Okay. I just wanted to make sure that we are talking about the same document. It is a letter ...(intervenes).

ADV WILLIAM NICHOLSON: That is correct.

CHAIRPERSON: As I see it there. It is written in the format of a letter and I do not see anything that says memo. *Ja.* Okay. We are talking about the same thing, but it is a letter.

10 **ADV WILLIAM NICHOLSON:** Indeed Chair.

CHAIRPERSON: *Ja.* Okay.

COLONEL DU PLOOY: That is correct Chair. It is a letter that Advocate Steinberg wrote. He basically told me that I have to do certain things and he said he is basically ready to proceed with the Oxy Intaka's. Pietermaritzburg CAS 626.

ADV WILLIAM NICHOLSON: Okay and he refers to project Crisscross. Where does that come from?

COLONEL DU PLOOY: As I said. That is what Colonel Jones from the Scorpions that when we amalgamated. He called that Crisscross.

20 **ADV WILLIAM NICHOLSON:** Did you reply to this memorandum?

COLONEL DU PLOOY: Chair I did reply to this memorandum.

ADV WILLIAM NICHOLSON: And is that ...(intervenes)?

CHAIRPERSON: To his letter.

ADV WILLIAM NICHOLSON: To this letter. I apologise Chair.

COLONEL DU PLOOY: Sorry Chair. To the letter Chair, sorry.

CHAIRPERSON: But this counsel is confusing you.

COLONEL DU PLOOY: Yes.

CHAIRPERSON: You are not – yes.

ADV WILLIAM NICHOLSON: Did you reply to this letter and is the reply at page 70?

COLONEL DU PLOOY: That is correct Chair. I wrote a letter to Advocate Steinberg and also to my Provincial Commander at that stage Commercial Branch Brigadier Lategan and in this letter I basically informed him and the Provincial Commissioner's Office of the – give
10 more detail and – about what this was about and also where I note the instructions that he had given me, because paragraph 6 of that letter I said I have taken note of your queries with regards to the following matters and then I mention if there – I also then for sake of that we have record – that he have record of this matter.

If you go to paragraph 7. I have made an index in terms of what was the contents of the docket at this stage. So it was both I hear what you are saying. I will do – I will comply, but for record keeping this is what we are dealing with. When our investigations and reports were finalised the whole lot was then scanned when it came to
20 give further particulars to the defence.

So it was like 250 000 pages. So for the sake of the – Advocate Steinberg I just mentioned what was in the case, because this is Pietermaritzburg CAS 626 contents. If I can say.

ADV WILLIAM NICHOLSON: At paragraph 12 at page 3 you mention cases from the Northern Cape. Can you just explain that very briefly?

COLONEL DU PLOOY: Chair, the Northern Cape – when the exhibits were seized from Dr Savoi in Intaka and we looked at it. We realised that the Oxy Intaka's and Wataka issue was also pertaining to the Northern Cape. They have a similar problem to us, but we only had one set of documents to work with.

So we call it the Northern Cape leg and a KZN leg and so when Mr Trevor White repaired – prepared his reports got five reports and I think they have got four reports and I think he did nine reports all together for both provinces. When Asset Forfeiture was done it was
10 done for both of these provinces as well, because they could only take his money once.

So that is where the Northern Cape play the important role in us and also the exhibits that or the evidence that we are going to use in KZN will also then have to be used in the Northern Cape.

ADV WILLIAM NICHOLSON: If you go to paragraph 13 you mention five forensic reports by PwC, PricewaterhouseCoopers.

COLONEL DU PLOOY: That is correct Chair. Just to mention it is about 350 lever arch files that that we brought from Cape Town. For KZN Mr White prepared five forensic audit reports. Now if you look at
20 paragraph 13.1 Pietermaritzburg CAS 151 is to do with the Oxy Intaka or the self-generating oxygen plants. Pietermaritzburg CAS 626 have the water purification plants for Department of Health and Durban Central CAS 153-8 had to do with the water purification for Local Government and Traditional Affairs.

Then there was a report prepared specifically for

Ms Peggy Nkonyeni and that is why the case reference number is the same, because Oxy Intaka is 151, but is the supplementary report in terms of her. If you go to paragraph 13.5 Pietermaritzburg CAS 151 is again and that is to do with Professor Green-Thompson. It was also at some stage the Head of Department of Health ...(intervenes).

CHAIRPERSON: Hang on.

COLONEL DU PLOOY: In KZN and is also a ...(intervenes).

CHAIRPERSON: Hang on. Hang on. I am not sure where that is. I was thinking you are still talking about Colonel Du Plooy's response,
10 but it does not have paragraph 13.

ADV WILLIAM NICHOLSON: That is it.

CHAIRPERSON: So it cannot be that response.

ADV WILLIAM NICHOLSON: It is at page 3 paragraph 13 of the Colonel's affidavit.

CHAIRPERSON: Page 3?

ADV WILLIAM NICHOLSON: Page 3 paragraph 13.

CHAIRPERSON: That is in his affidavit?

ADV WILLIAM NICHOLSON: That is correct.

CHAIRPERSON: Oh. We moved from the letter. Okay. Alright. Okay.
20 Continue.

COLONEL DU PLOOY: So Chair there was in total five forensic reports, but it is pertaining to three case numbers. So in total five reports. Two of those reports are supplementary reports that was requested by the NPA.

ADV WILLIAM NICHOLSON: If we go now to paragraphs 14 and 15 of

your affidavit at page 4. Who was the lead prosecutor?

COLONEL DU PLOOY: The lead prosecutor after Advocate Steinberg left to The Hague. It became Advocate Nledile Dunywa. He worked from the DPP's Office in Pietermaritzburg.

ADV WILLIAM NICHOLSON: H'mm.

COLONEL DU PLOOY: He reported to the – at that stage the Acting DPP Advocate Simphiwe Mlotshwa.

ADV WILLIAM NICHOLSON: Now you make the point that Advocate Mlotshwa was very hands on. Why do you say so?

10 **COLONEL DU PLOOY:** This is quite ...(intervenes).

CHAIRPERSON: I am sorry. Was what?

ADV WILLIAM NICHOLSON: Was very hands on.

CHAIRPERSON: Well let him give the evidence. *Ja*. Tell us about Advocate Mlotshwa as Acting DPP in terms of matters that he had to deal with.

COLONEL DU PLOOY: Chair, Advocate Mlotshwa had – I use the words hands on, because he played a big role in this matter. For instance he was part of the meetings. He knew what was the evidence about. Although the lead prosecutor is Advocate Dunywa.

20 Advocate Mlotshwa was on par what is happening and he signed all the warrants of arrest.

When I arrested all the people to appear in his court. It is his signature and not Advocate Dunywa's signature. So he is the most senior at that stage in KZN to sign those warrants. So he was happy that everything was in order when he signed this.

CHAIRPERSON: Okay. You may continue.

ADV WILLIAM NICHOLSON: At paragraphs 16 and 17 of your affidavit at page 4 you speak of arrest. Eight suspects were arrested including Savoi.

COLONEL DU PLOOY: That is correct Chair. On the 25th of August that was when – they initially were arrested for fraud and the first appearance was for that and then later on the racketeering indictment and certificates were done. That was signed by Advocate Simelane. The NDPP.

10 **ADV WILLIAM NICHOLSON:** And who signed the warrants of arrest?

COLONEL DU PLOOY: It was Advocate Mlotshwa. The Acting DPP.

ADV WILLIAM NICHOLSON: Now if we go to paragraphs 18 and 19 of your affidavit which is at page 4 of the bundle.

COLONEL DU PLOOY: Yes.

ADV WILLIAM NICHOLSON: Was there a draft charge sheet?

20 **COLONEL DU PLOOY:** Yes. If you look at my Annexure PDP3. What the prosecutors have done. There was not a racketeering charge sheet, but when they placed these matters on the role. They drafted a charge sheet for these two individuals specifically and they would then forward it to us to see whether it is in line with what the evidence is. Now if you go to Annexure PDP3.

ADV WILLIAM NICHOLSON: That is at page 24 of the bundle Chair.

COLONEL DU PLOOY: I have received this and I have saved this on my computer. I have written with pen on top in 2011/07/04.

ADV WILLIAM NICHOLSON: If we can just ... (intervenes).

COLONEL DU PLOOY: Yes. This is a draft charge sheet that I received ...(intervenes).

ADV WILLIAM NICHOLSON: Okay. Continue.

COLONEL DU PLOOY: And in this is the draft sheet for this matter where it is written by Peggy Nkonyeni would then be placed on the role which would then later be converted into a racketeering matter. The charge sheet itself explains what the allegations against the two accused is.

ADV WILLIAM NICHOLSON: At paragraph 20 of your affidavit which is
10 page 4 you refer to a racketeering certificate.

COLONEL DU PLOOY: That is correct Chair. I just want to point out there is typing error. Advocate Simelane was the NDPP. He was not the DPP. There should be an N before the D. Advocate Dunywa would have – and I supposed Advocate Mlotshwa would have made presentations to the NDPP whereas he responds listening to them issued the racketeering certificate and also approved the indictment for racketeering charges.

ADV WILLIAM NICHOLSON: Let us go to page 40 of the bundle which is Annexure PDP4 of your affidavit.

20 **COLONEL DU PLOOY:** Chair, this is the racketeering certificate that was signed on the 31st of July by Advocate Menzi Simelane and in this he agreed to prosecute 23 or 23 suspects. If I can call it and it is listed here in terms of Section 2(4) of the Prevention of Organised Crime Act.

ADV WILLIAM NICHOLSON: Are there certificates at pages 40 and

41?

COLONEL DU PLOOY: That is correct. It is two pages.

ADV WILLIAM NICHOLSON: And if you can just confirm at page 41 who signed the racketeering certificate?

COLONEL DU PLOOY: It is Advocate Menzi Simelane the National – at that stage the National Director Public Prosecutions.

ADV WILLIAM NICHOLSON: Now in your evidence so far you have stated that no less than three Senior Prosecutors were of the view that the evidence suggested racketeering. Is that correct?

10 **COLONEL DU PLOOY:** That is correct.

ADV WILLIAM NICHOLSON: And these are Advocate Steinberg, Advocate Simelane and Advocate Dunywa.

COLONEL DU PLOOY: That is correct, but I believe Advocate Mlotshwa also as Acting DPP in KZN also believed the same.

ADV WILLIAM NICHOLSON: Okay. If we go to paragraphs 23 and 24 of your affidavit which is at page 5 of the bundle. You state:

“The matter was transferred to the High Court.”

20 **CHAIRPERSON:** Mr Nicholson. I would like his evidence to flow from him and for him to only look at the statement if he needs to refresh his memory. That is what I would like. I would like him to, because he probably knows the – what he deals with here. He has had this for quite some time on different topics. I know we say you lead him, but I would like him to give his evidence in a way that shows that he only looks at the documents when he needs to refresh his memory, but otherwise he can deal with the issues. Do you want to try that? So

ADV WILLIAM NICHOLSON: Thank you Chair.

CHAIRPERSON: So maybe not so much drawing his attention to any paragraph before he can talk about it, because there would be certain events he got involved. Started some investigation. There was Mr White. At a certain stage he dealt with Mr Dunywa and Mr Mlotshwa over a certain period. This is what happened, after that this is what happened so that the evidence as it unfolds is seen as coming from him rather than just following the affidavit.

ADV WILLIAM NICHOLSON: Indeed Chair, I shall try. What became
10 of the circuits hearing indictment or the certificate?

COLONEL DU PLOOY: Sorry I didn't follow?

ADV WILLIAM NICHOLSON: Do you know what became of the circuits hearing certificate?

COLONEL DU PLOOY: It would be part of the High Court bundle of documents together with the indictment that goes with the certificate.

ADV WILLIAM NICHOLSON: Let me rephrase that, was the suspects or the accused ever indicted for ...(intervenes).

COLONEL DU PLOOY: Yes they appeared, we have Judge McLaren a retired Judge. Chair this is not a simple case, this is not – it's a
20 complicated case like Mr White have testified it took him three days on a high level to explain to you, more or less what just the KZN issue is. The NPA then thought, we can't go to a normal High Court and that Judge there have other work so let's get the separate Court with a retired Judge. He was then appointed – Judge McLaren was appointed and we got him to do the trial in a period of three months so it was

quite a voluminous tedious thing that we had to do. The accused then ... (intervenes).

CHAIRPERSON: Well I don't want what you say to be understood in a manner which you probably don't mean. The fact that the case was going to be heard over a long period doesn't necessarily speak to its complexity, it might speak to the fact that there are many witnesses which need – who need to be called and there may be a lot of documentation because a case can be complex even if it takes two days. So getting Judge McLaren, who I think was probably retired by
10 then would have been more for the fact that the case required a Judge who was not going to be involved in other cases for the duration of that case and a retired Judge would therefore be more suitable because he would have the time.

COLONEL DU PLOOY: Yes, Chair, maybe to just say it in a different way, if you look at racketeering charges and you have a trial, you don't want to have a week now and a week six months later because racketeering in its own right is not a simple thing and it was a time issue to do with how many witnesses were going to be lead, how many documents to be handed in but the case was different in the sense that
20 it wasn't a simple case.

CHAIRPERSON: Yes no, no but what I mean is, you don't suggest or do you suggest that those Judges that are not retired could not handle because it was complicated?

COLONEL DU PLOOY: Any Judge would ... (intervenes).

CHAIRPERSON: That's not what you hear, what you mean is it needed a Judge who had time.

COLONEL DU PLOOY: That's correct.

CHAIRPERSON: *Ja* and a retired Judge would have time, okay.

COLONEL DU PLOOY: That's correct Chair and what happened is, the accused all appeared in the – we took the case from the Pietermaritzburg Regional Court and then they decide that Durban is going to be the best place to have it, so the High Court in Durban was used. They appeared on the racketeering charges and it was remanded
10 for various time but at the time when the withdrawals was made in this case, it was in High Court, in front of the Judge in terms of the racketeering charges that was put to the accused. The – it took a while to do this investigation, Chair as I say it's a lot of documents, National Treasury for their time, in order to assist us, they spent of R100 000 get professional people that scanned all the evidence, the reports, the docket. So that is – and in my statement, paragraph 25, they typed 2500 pages which is actually 250 000 pages so it wouldn't have been possible to make 23 sets of all of this. So it was scanned, National Treasury paid for it and we only gave the accused a legal disk to say,
20 there's the case. So it had its benefits for us and then also we don't have to carry all those boxes around whenever we had a meeting to discuss something.

At – I just want to – during March 2012, we then received an invite to attend, now at that stage as far as I'm concerned the investigation was complete we should prepare for trial. So in 2012

Advocate Dunywa then sent us an invite and if I can just refer you to PDP6 – Annexure PDP6 ...(intervenes).

ADV WILLIAM NICHOLSON: That's at page 127 on the Chair's bundle.

CHAIRPERSON: Yes, 127?

ADV WILLIAM NICHOLSON: 127.

CHAIRPERSON: Okay.

COLONEL DU PLOOY: A Chair we were invited to a meeting, if you look at the invite, it's an e-mail that was forwarded to myself, Trevor
10 White, Colonel Jones and then Advocate Malodgwa was cc'd. Advocate Dunywa was the author of this e-mail and he invited us to a meeting that was to be held on the 23rd of March 2012, 20th Floor, Southern Life Building, that's the NPA's building in Durban and he says:

“Which will be attended by the National Head of SSCU
and the National Head of Organised Crime of the NPA.”

At that stage the National Head of the SSCU was Advocate Mrwebi and Advocate Mosing was the Head of Organised Crime. They
– we looked at the invite and they request me to do something and I request, Mr Trevor White, our Forensic Auditor to prepare documents.
20 We didn't really know what this meeting was going to be about, I would say, we didn't go properly prepared to the meeting in a sense that we knew exactly what was going to be discussed. So in this meeting they requested me to make a summary of investigating diary, a list of exhibits that was handed in from different Government Departments and chain statements. Chair remember, at this stage they already have

everything, the whole docket was scanned, so it – there was nothing I can take to make them wiser, they already have it. The Forensic Auditor, Mr White, would then – had to do the flow of funds for Mbezi Rowmoor Analysis, Intaka flow of funds, those things are already in the report you don't have to ask for it separately if you can go and read it yourself ...(intervenes).

ADV WILLIAM NICHOLSON: If I may just ask, at the point of this meeting, were the five forensic reports that you have testified about, were they already completed?

10 **COLONEL DU PLOOY:** Yes that's correct Chair.

ADV WILLIAM NICHOLSON: Continue.

COLONEL DU PLOOY: If you – and Chair what is – which I can't understand about this e-mail if you look at point 3 which doesn't make sense to me, it says:

“Colonel Jones to submit a report on a mammogram case indicating, amongst other things why the case was withdrawn and a complete docket.”

Now Chair, just to enlighten you, this was the case against Ms Peggy Nkonyeni and Mkwanazi which also now appear in my matter.

20 There was a Maritzburg Department of Health to do with a mammogram machine, Advocate Hein van der Merwe was the prosecutor, Colonel Jones was the investigating officer, I think it was still in the days of the Scorpions. Why they want to see this docket which has got nothing with Intaka, I don't know. On the day itself, we did not discuss point number 3, I don't know why Advocate Dunywa put this in the letter, it

doesn't make sense, him being my prosecutor it doesn't make sense. I'm not sure if he was told to put it there, I don't know but as far as I know that all the above-mentioned items Advocate Dunywa had full knowledge of it, he had it on a disk. It was available for anybody to look at it.

CHAIRPERSON: Would this be an indication, maybe that he might not have read certain things that had been furnished to him or to his office?

COLONEL DU PLOOY: No Chair, you can't make – knowing how we did the investigation, Advocate Dunywa had one case it was Intaka, he
10 was given an office in Durban and he only had to do this as far as I know, I only dealt with him and this was day-to-day, this wasn't like, I'll see you next week or next month, this was day-to-day and he was not the only prosecutor, he had a team of prosecutors. There was no way that Advocate Dunywa will send me this letter and then me thinking he didn't know what the contents of the case is, I can never come to that conclusion.

CHAIRPERSON: Had the discussions that you had, had with him prior to him sending you this e-mail, had those discussions included discussions with him of some of the things that I was asking you for or
20 that he was asking Mr White for, so that you say that, I know for sure that he had – he was aware that such and such a report was already with the NPA because we did discuss it, is it that kind of situation or is it not that situation?

COLONEL DU PLOOY: Chair you can't say that Advocate – or a person can't say that Advocate Dunywa didn't know, you must

remember there's a racketeering certificate, there was representations to the NDPP, you don't just get a certificate it's quite a tedious job. Advocate Dunywa, in order to draft an indictment, he had to know the contents or the merits of the case, he had to know the facts, he would have confirmed with us, but he had to know the case inside out. That, I know it's quite difficult to get a racketeering certificate because they make – they went more than once to Pretoria to make a proposal to Advocate Simolani.

CHAIRPERSON: So you just can't understand why he was asking for
10 these things from you and Mr White?

COLONEL DU PLOOY: But besides the point if you look at the heading it say, he informs us who's going to attend to this, now there's role players that had nothing to do with. Advocate Dunywa works under Advocate Malodgwa , DDP – acting DDP at KZN, Advocate Lawrence Mrwebi is a commercial crime ...(intervenes).

CHAIRPERSON: National.

COLONEL DU PLOOY: Ja but National – but Commercial Crime Head, Advocate Mosing, Organised Crime Head, it had nothing to do with my case and that is why I didn't really understand what's happening now,
20 what are we going to do this for because I found it strange that Mbhele would send me an e-mail like this and then I had to bring these things, so I don't know where he got this from, whether he got told I've got no idea, Chair we'll have to ask him about that.

CHAIRPERSON: And you never – you have never had the chance to hear from him, why he asked for these things?

COLONEL DU PLOOY: Chair I never – because the meeting that took place if – maybe if I continue you will understand then I made up my own mind what is the reason for this.

CHAIRPERSON: *Ja* from Mr White's evidence I think I know how the meeting was handled and the pressure to – the restriction what you could talk about.

COLONEL DU PLOOY: That is correct Chair but the thing is that we attended this meeting Chaired by Advocate Mrwebi on the 23rd of March 2012, in my statement I mention who was present. Now if you look at
10 Advocate Dunywa, Vemani, Advocate Makosi Mthembu and there was another Advocate, I can't remember him, but another person present. Myself Colonel Jones and then Mr Trevor White and then there were the two Advocates, Mosing and Lawrence Mrwebi. They came through the door there was a problem – it was very hot that day and they couldn't find either the aircon was not working or they couldn't find a room where we were going to sit and discuss.

Now at that stage we didn't know what's going on. They came they sit down it's the first time I met these people I didn't work in the Scorpions I didn't know who is Lawrence, Advocate Mrwebi or whoever.
20 He introduced himself to us, he said hello, he said that – at some stage he said I'm withdrawing against Mr Mike Khulu what evidence we have against Peggy Nkonyeni. He put it straight to the point, not like the invite, the invite they didn't speak of that in the way that it happened in that meeting. I just want to maybe explain to you Chair that I was also part of the commercial set up, the commercial NPA and investigating

officers is what we call, prosecutor guided. It's a close relationship in terms of – we have our own Court, we have special – we have our own Commercial Crimes Courts it's much more hands-on, much more personal relationship that you'll normally have with a prosecutor. They are more involved, they know what we are doing and they – it's a better way of dealing with cases because the cases get more attention, that was the whole purpose of this Commercial Court.

This meeting – so if I go to a meeting that was chaired by a prosecutor at the SSCU, its – everybody interacts, everybody will have
10 a say and then eventually there will be a conclusion and what is the way forward. This meeting didn't – this was like, I ask you questions, you tell me what, the prosecutors came in they sat on my left I sat next to them, they kept quiet, whether it's by instruction or not the questions was directed to me because I'm the investigating officer, Mr White was sitting across the table and I was trying to explain – now I just want to go one step back, in racketeering the prosecutors have, as I see it, how they're going to approach this matter in Court, they have their own strategy there's certain things they want the Court to draw inference on, so they have their own – racketeering in itself has its own benefit in
20 terms of prosecution.

I can't say I'm a layman but I'm not a specialist in the charges, this was in 2011 and 2012 so it's a while ago and what happened is, we did not have the same interaction. The prosecutors kept quiet, we got answered, when Mr Mrwebi – he wasn't happy with our answers, I also sort of got a little bit uptight because this meeting wasn't going well in

terms of my view and at a point Mr White said to him, you have to give me ample time so I can prepare and then I can come and present it over three days, give me three days I'll present the reports to you, you can then go through it and we can satisfy your questions that you have but in the way that this meeting took place it wasn't – I at one stage said to them, you as the NPA it's your job to make the decision, make the decision, I'm not going to be a party to what you're saying here because my prosecutors are keeping dead quiet they're not interacting, which is unusual for me.

10 I said, please notify the DPCI and myself in writing what you want to do. Up till today I don't know what is the reasons for the withdrawal, I don't know why they came there what was the reasons, the NPA can answer that better I don't know that. I told Advocate Mrwebi, maybe not correctly but I told him, you are just here to tick a box, they used those words consultation. If you consult with the police it's fine then everybody is happy.

CHAIRPERSON: But you are articulating what you were feeling about this whole matter.

COLONEL DU PLOOY: I wrote a letter to my Head, General Moodley, 20 well is now General he was Brigadier it could be Moodley in charge of the Anti Corruption Task Team and I knew I had to explain to General Dramat's office as to why these things took place. Everybody is under the impression there's this racketeering case and now there's withdrawals all of a sudden but at a stage the withdrawal didn't take place the next week or the week thereafter it took some months before

it happened. This was a consultation in order – whether we have to persuade them or change their minds, whether they had meeting with the prosecutors before they came into that room, I don't know. He didn't discuss any evidence about Mr Mike Khulu, only about Peggy Nkonyeni. Chair so ...(intervenes).

CHAIRPERSON: Okay yes, Mr Nicholson you might be feeling left out right now, you can continue to lead his evidence *ja*.

ADV WILLIAM NICHOLSON: Indeed Chair, Colonel du Plooy you mentioned that at the commencement of the meeting Advocate Mrwebi
10 stated that he's withdrawing against Mr Mabuyakhulu and he wants to hear about miss – the evidence against Ms Nkonyeni, were these charges ever withdrawn?

COLONEL DU PLOOY: The charges were withdrawn against the two accused there were other accused as well that the charges were withdrawn in High Court.

ADV WILLIAM NICHOLSON: The other accused do you have their names?

CHAIRPERSON: But before we get to the point where they are withdrawn, Colonel du Plooy are you done telling me what occurred at
20 that meeting what was the – how did that meeting end?

COLONEL DU PLOOY: Chair maybe I must refer you to PDP7 I'm not sure, it's page 129, I wrote this letter in 2012, 21st of August to Brigadier Moodley then, this letter basically explains ...(intervenes).

CHAIRPERSON: It's addressed to the National Coordinator.

COLONEL DU PLOOY: National Coordinator, the ACTT stands for – it

was the Anti Corruption Task Team that the President put in place in order to address Government fraud and corruption.

CHAIRPERSON: Okay.

COLONEL DU PLOOY: So Brigadier Moodley was the Head of that, he was the Brigadier, he's now a General today but he was the head of that.

CHAIRPERSON: Okay.

COLONEL DU PLOOY: So we had to inform him that we had this meeting, so he's not surprised by – if he reads in the newspaper there's
10 these withdrawals. So what happened is Advocate Mrwebi told us what he's going to do, I didn't know – I knew what he was going to do about Mr Mabuyakhulu but he didn't make up his mind or didn't tell us what he's going to do with Ms Peggy Nkonyeni at that meeting, so we left. I then wrote this letter because on the 16th of August 2012 the press then phoned me, I think the – it was the Mercury, if I read my own paragraph one, of my letter and they are saying that there is going to be this withdrawal so they've got a letter or they got a letter from the accused they knew there was going to be a withdrawal. I said I don't know because we were never formally informed that there's going to be
20 a withdrawal and on the – I'm just looking for a date.

ADV WILLIAM NICHOLSON: If we can just look at page 129 the first paragraph, you say – if you're going to see that paragraph.

COLONEL DU PLOOY: Sorry which paragraph are you referring to?

ADV WILLIAM NICHOLSON: Paragraph 1 on page 129.

COLONEL DU PLOOY: Yes, this is on the 16th of August where the

press are now asking us questions about the withdrawal against certain accused and they apparently have letters that were signed by the Acting Director of Public Prosecutions, I think at that stage it was the Director, I think Advocate Noko was appointed after Advocate – I think this might have been, the word Acting, should not be – I think it's Advocate Noko because Advocate Noko signed letters that was to the accused where it says intention of withdrawal. In other words, the accused knew that the cases against them were going to be withdrawn before myself. I've actually asked – when I found out about this I
10 asked Advocate Dunywa the prosecutor, he said he's not aware of this, he doesn't know about this withdrawal, he's saying he wasn't informed, so I take his word for that. The NPA also released – in paragraph two, the NPA also had a press release the following day where they're indicating that these charges are going to be withdrawn and then paragraph three I talk about who it is going to be withdrawn against which then took place. Subsequently then the withdrawal took place against those accused, against Peggy Nkonyeni, Mike Mabuyakhulu, Lindiwe Nkomazi Pendile Thule Ndosi, those three were the Khuboni Attorneys that took over from Sandile Khuboni.

20 **ADV WILLIAM NICHOLSON:** The other four names that you mentioned, you mentioned Ms Nkonyeni, Mr Mabuyakhulu, the other four names that you mentioned there, were you consulted about the withdrawal of those Members?

COLONEL DU PLOOY: No.

ADV WILLIAM NICHOLSON: Of those accused.

COLONEL DU PLOOY: No we only spoke about – the only person that was discussed is Peggy Nkonyeni. He said I'm withdrawing Mike Mabuyakhulu but the Mkwanzis and the other three not a word mentioned about them.

ADV WILLIAM NICHOLSON: And if we can just turn to the racketeering certificate which is at page 40 of the Chair's bundle.

COLONEL DU PLOOY: That is correct.

ADV WILLIAM NICHOLSON: All six people that you have mentioned, are they part of this racketeering certificate?

10 **COLONEL DU PLOOY:** That is correct, they are part of the certificate.

ADV WILLIAM NICHOLSON: If you can just say where they are?

COLONEL DU PLOOY: Accused 3 – accused 4 is Peggy Nkonyeni, accused 13 is Mike Mabuyakhulu, accused 15 is Lindiwe Mkwanzis, then accused 16 Pendela, accused 17 Thuzi and accused 18 is Nozi, the three attorneys.

ADV WILLIAM NICHOLSON: Now you've testified that three days were allocated for this matter in Court, what's the status of this matter currently?

20 **COLONEL DU PLOOY:** We have ...(intervenes).

ADV WILLIAM NICHOLSON: Three months, I beg your pardon.

COLONEL DU PLOOY: Sorry I didn't hear.

ADV WILLIAM NICHOLSON: I said you mentioned that three months was allocated for the hearing, for the prosecution of this matter, what's the status of this matter presently.

COLONEL DU PLOOY: As we speak today the 5th and the 6th of May is a permanent stay application that's going to be heard in High Court, which Dr Savoi brought or Intaka brought it's going to be argued – the main issues that they're raising is, you withdraw charges against Peggy Nkonyeni and Mike Mabuyakhulu yet you still charge Dr Savoi for the same things, how does the evidence change it didn't go away it's still the same, how does that fit. They want an answer for that and therefore they say, when the NPA dealt with this issue they didn't follow their procedures, it's basically an abuse of power and that is what the
10 defence is arguing in their papers, it's going to be heard on the 5th and 6th of March.

ADV WILLIAM NICHOLSON: Now if we can just return to the withdrawal of the charges, were you in court when the charges were withdrawn.

COLONEL DU PLOOY: That is correct Chair.

ADV WILLIAM NICHOLSON: Are you able to say what transpired in Court?

COLONEL DU PLOOY: Advocate Dunywa stood up he said, as per my instructions I'm withdrawing the charges, he didn't say (indistinct) I
20 don't think there's a case I'm withdrawing, he said, as per my instructions and then he further – he ended up with saying:

“As the accused were already notified in writing of the intention to withdraw by Advocate Noko.”

So he didn't have a choice but to withdraw it because the DPP of KZN already made the decision for him in writing by notifying the

accused then the charges were withdrawn, he actually placed it on record on the High Court.

ADV WILLIAM NICHOLSON: Now you've made the point that ACTT Act was never provided with reasons for the charges being withdrawn. Was the South African Police Services as the wider body, were they ever provided with reasons for the charges being withdrawn?

COLONEL DU PLOOY: Nobody from the investigation side was ever informed of the reasons. So I – up till today I don't know what is all the reasons, I've never seen a presentation or representation in terms of
10 why. Chair if you intend withdrawing charges and you as a prosecutor will come to me and say listen, we have to withdraw or we short the following items because we need to prove intention or whatever the facts is, we will then see whether the investigation can reveal or cover that portions that you are lacking or that you require as a prosecutor to then complete a proper charge sheet or to prosecute. In this case it's just withdrawal and a case, sort of, go away. We never had the opportunity to fix – if we did something wrong, we never got that opportunity. the other portion as well is that if you withdraw against
20 people, it doesn't mean they can't become a witness because these people played a role in this – in the actions in terms of how this thing played out, I don't know whether they're going to be called or whether they just disappear especially Mr Mike Mabuyakhulu, Peggy Nkonyeni, those people. There was a period that there was a lot of High Court applications, Dr Savoi and his Legal Team brought a lot of applications and it was dealt with by the Head Office, not the Durban office by the

Head Office of the NPA and with – among all those years I'm talking about six, seven, this thing started in 2009 so the case is on hand 11 years but let's say the last six years, I've never heard of the reasons or never given the opportunity to see what can we do to satisfy the NPA not to withdraw charges, that never happened.

CHAIRPERSON: One second. Yes Mr Nicholson?

ADV WILLIAM NICHOLSON: So, if I hear you correctly, the status of the investigation and the withdrawal of the charges as you have stated in your – is this a letter or memorandum? This is a letter at page 129. That
10 is just the, that is just your understanding of how the matters were withdrawn and the status of the matters?

MR DU PLOOY: *Ja*, at that stage. That was 2012. That was my understanding on it. That letter I drafted I actually explain in paragraph 8 who these people are that is going to be withdrawn. If you look at – at the second page – or 130 paragraph 8, I actually explain who these people are, because I am telling my bosses what is the names that I am saying to you how they involved in the matter, and then if you look at paragraph 11 of that same letter I say there, I had no dealings, the people that withdrew the matter up till today I never met Advocate Noko. I know
20 she was in KZN, I never met her personally. The matter was withdrawn. I never met, I think her, at this stage the NDPP was Advocate Jiba. I never met her. I do not know; I do not know her. I only dealt with Advocate Mlotshwa, Advocate Nledile, and currently Advocate Vimbani is my lead prosecutor with Advocate Makhosi Mthembu, and I just want to use, by way of using an example Chair, about the relationship that the

Investigating Officer that I had in this matter, we – the last person that we withdrew the case against was Professor Green Thompson. We went – myself and the two Advocates, we went, we consulted various witnesses. We realised that as they said it then its – we were not happy with it as it is now and if we withdraw against Professor Thompson we can always put it later back on the role if there is other issues that was clarified. I was a part of that decision, I played a role, as Investigating Officer I played a role in that, not the way that Advocate Mogwebe treated us in that meeting. We were not – we, it was not a participating thing in terms of
10 where my Prosecutors can come in and say wait, this is what we decided in terms of our strategy, what the Prosecutors kept quiet. It is like they got told to keep quiet. And then we had – and when we asked for an extension, let us properly inform you in terms of the facts as the merits of that, he says no I do not have time, my hour is up.

ADV WILLIAM NICHOLSON: Okay, if we go to – just one annexure that we have not dealt with, is at page 49 of the Chair's bundle, and it goes all the way through to page 125. Are you able to identify that document?

MR DU PLOOY: This is the indictment that goes with the racketeering certificate. It was forwarded to me. It is a draft indictment to myself as
20 Investigating Officer. This is the indictment which they then later on appeared in Court for racketeering charges, the accused.

ADV WILLIAM NICHOLSON: If we go to page 92, who's name appears there?

CHAIRPERSON: A lot of Colonel du Plooy's evidence is corroborative, so we might not have to go through everything for purposes of

corroboration because a lot of those things are difficult to think anybody would dispute them but there are those which may well be disputed and therefore it will be important to cover, so I just mentioned that you bare that in mind, I am not saying do this, do not do that as long as you bare that in mind because a lot of it like that meeting that we have talked about, Mr White talked about it extensively, but it is important to have corroboration for what transpired at that meeting, that is important because that could well be disputed or certain aspects of their evidence may well be disputed, but keep an eye for those that are unlikely to be
10 disputed.

ADV WILLIAM NICHOLSON: Indeed Chair, I am about to wrap up Chair, there is just one point that I want to make emanating from this.

CHAIRPERSON: *Ja.*

ADV WILLIAM NICHOLSON: At page 92 of the Chair's bundle, whose name appears there?

MR DU PLOOY: It is Advocate Mlotshwa.

ADV WILLIAM NICHOLSON: And was Advocate Mlotshwa at the meeting of the 23rd of March?

MR DU PLOOY: No, he was invited, or he was cc'd, but he never
20 attended.

CHAIRPERSON: Okay, ...(intervenes).

ADV WILLIAM NICHOLSON: Do you know.

CHAIRPERSON: Oh, I am sorry, just ask, *ja.*

ADV WILLIAM NICHOLSON: Do you know if he was consulted? Are you able to spread any light on that?

MR DU PLOOY: No, I cannot remember.

ADV WILLIAM NICHOLSON: Okay.

CHAIRPERSON: Was it not quite strange that he was not invited to the meeting if that is what happened? In circumstances where he was the acting head of the NPA in the province and had been very involved throughout this matter up to that stage?

MR DU PLOOY: I agree with you Chair in a sense that Advocate Mogwebe told us he is reviewing the matter. Normally an outsider from that section cannot come and butt into an investigation, prosecution from
10 somebody else because they have to do their own thing, but if he was sent by the then Acting NDPP to come and review this matter, whatever the reasons for that is, I would expect Advocate Mlotshwa to be there, because you must remember the Prosecutors have to defend that racketeering charge it and that indictment. It was not the Investigating Officers, SAPS or Mr White that drafted that. We gave them the information evidence, they drafted that. If they believe strongly in their case to take it to the High Court, then surely Mr Mlotshwa and the Prosecutors can defend that. I cannot talk on behalf of them, but I would expect Mr Mlotshwa to be there.

20 **CHAIRPERSON**: Okay, thank you. You said something earlier in your evidence with regard to Mr Mogwebe's Unit in the NPA vis-à-vis this type of case, I understood you to be saying that Mr Mogwebe's, that this type of case fell outside of the Unit that Mr Mogwebe was heading. Did I understand you correctly?

MR DU PLOOY: Although this case is of commercial content, in other

words it will be similar to what he is dealing with it, but it was not his responsibility, the DPP KZN, it was his responsibility. Mr Mogwebe is the head of commercial which sits at the, although the various Courts exist in the country, he is managing the Prosecutors for that, those Courts from the National Office, that is where his office is. So, we never had one meeting with him or Advocate Mosing, or Moseng. There should not have been any interaction with them normally. They would never be involved, but when he came, he said I am reviewing the matter. In my language it means somebody is sending them to have a look at what we are dealing

10 with. That is why I sort of want to agree with you Chair that I think Advocate Mlotshwa and at least the Prosecutors should have on the day that we had this meeting say their say in front of us. If I said something they did not agree with then they have to say that but, because of the strategy of prosecutions which they play a vital role, I could not give those answers to Advocate Mogwebe. I did not decide to prosecute, they sitting with, I have got all these Advocates, we went – we attended meetings in Pretoria in VGM where the, at Mr Simelane's office where Dr Ramaite there all, like 20, 30 Advocates sitting, and they were aware of this. So it is not like this case, and this case was well publicised in the

20 newspapers. It was an important case in a sense that of the people that was involved, it was important because remember we did as a forfeiture so we ceased Dr Savoy's assets. We want to get our government money back ...(intervenes).

CHAIRPERSON: So you were not making a point along the lines that this case, that there was somebody else at the Head Office of the NPA

under whom this case fell and it was not Mr Mogwebe. That is not the point we are making, we are simply making the point that you had had no interactions with him, the people you had had interactions with, were the people in the KZN office of the NPA, Mr Mlotshwa and Mr Dudla.

MR DU PLOOY: But for prosecution purposes Mr Mogwebe is not in the Department that deals with this matter. The only person that can actually send him to come and review a case a full side outside of his office, is Advocate Jiba, the NDPP, or the Acting NDPP at the time.

CHAIRPERSON: Who was Acting NDPP at the time.

10 **MR DU PLOOY:** Because I think in the NPA Act there is certain issues that governs in a way that reviews take place. I am not sure exactly what, but you cannot just walk into another guys office and say I want to review your ...(intervenes).

CHAIRPERSON: Unless of course Advocate Mogwebe and Advocate Mosing had gone there with the blessing of the Acting National Director of Public Prosecutions?

MR DU PLOOY: I did not think Advocate Mlotshwa would have allowed them.

CHAIRPERSON: Yes

20 **MR DU PLOOY:** To do that if there was not a blessing somewhere.

CHAIRPERSON: If there was?

MR DU PLOOY: If there was not a blessing from Advocate Jiba.

CHAIRPERSON: Yes, *ja*, so

MR DU PLOOY: Because what were they doing there in his place?

CHAIRPERSON: Yes, so you think there must have been a blessing from

the acting, as you see it.

MR DU PLOOY: Chair I cannot see that Advocate Mogwebe wake up one morning and thinks I am going to check out that mummy boy's case and see what is happening there.

CHAIRPERSON: Yes, yes, okay.

MR DU PLOOY: I do not think it happened like that.

CHAIRPERSON: Thank you.

ADV WILLIAM NICHOLSON: Just one more issue before I conclude, Colonel Du Plooy you mentioned that – I want to stay away from laboured
10 complainants. The first affidavit in the – in CAS 1538/1/2009, that is a Durban Central CAS, was obtained from Dr Savoy.

MR DU PLOOY: That is correct yes.

ADV WILLIAM NICHOLSON: How did it come about that he reported this matter?

MR DU PLOOY: Dr Savoy made a donation, well in terms of what he is saying he made a donation to the ANC of 1,053 million. Those monies was paid over into Sandile Kabone's trust account. He issues, Sandile Kabone issued a – call it an invoice where he said it is for legal fees. Dr Savoy then realised then at some stage that, because he claimed VAT on
20 it, he then reported it to say, I never had any dealings with Mr Kabone, so in other words that invoice for work done is fictitious. He then paid back the VAT in terms of that invoice, that covered the donation to the ANC. So what happened is, when he reported it I think he also got advised that this might be corruption in a way because the money that was utilised from Kabone, then went to Mr Tshabalala and his wife for their debt. So

Advocate – Mr Kabone paid of his, wherever he had debt for his farm, his tractors, whatever. So if you follow the money the money never – that specific money in terms of as it come into the bank account and how it was spent did not reach the ANC in terms of that million or that 1,053 million. Dr Savoy realised it was, I suppose it is a point for legal advice and reported the matter. So I took a – he reported it, I then went back and we took a Section 204 statement from him in Cape Town. So he was going to be our person to explain this from the commercial branch, but not a person for the Scorpions. The Scorpions did their own thing, and
10 then when we merged it was then decided that Dr Savoy actually is the main perpetrator in terms of where all the money went, in terms of the procurement portions. That is when we then combined everything. The Northern Cape and KZN.

ADV WILLIAM NICHOLSON: Okay. Those are my questions Chair, ...(intervenes).

MR DU PLOOY: I just want to, sorry I just want to add there Chair that I finish up here where I say and this was also one of my problems that I had. There was a submission made to the High Court, and I saw it was like a statement and what and not. And I saw that they mention that
20 Advocate Dhunia is not a Prosecutor anymore, and it worried me because he is my Prosecutor I am dealing with, I phoned him, and he said to me he is still the Prosecutor, I said no Nadile you are not, you have been removed. There is somebody else now but it is not you. He then assured me he did not know about this, so he was removed as Prosecutor for the entire matter, KZN. Kimberly had its own Prosecutor, but for the KZN

matter, that is all thanks.

CHAIRPERSON: So was the position that you thought he had been removed but actually he had not been removed or was the position that he had been removed but he did not know he had been removed?

MR DU PLOOY: That is correct Chair. He did not know he was not ... (intervenes).

CHAIRPERSON: And he had been removed?

MR DU PLOOY: He did not know that, *ja*.

CHAIRPERSON: And around about when was that when you had that
10 discussion with him about being removed or not, do you recall?

MR DU PLOOY: I cannot recall the date, but it is at the end. Thereafter he was not involved in the matter anymore.

CHAIRPERSON: Yes. So in the end he was not removed, he just did not know? He was removed but he did not know, until they called him.

MR DU PLOOY: He was removed but he did not know, they did not tell him I am going to remove you.

CHAIRPERSON: Yes.

MR DU PLOOY: That did not happen.

CHAIRPERSON: Okay, okay, thank you. Now Mr Nicholson, if there are
20 important matters that you think have not been covered and should be covered, feel free to cover them. I do not want you to feel that I restricted you too much, I just did not want us to cover things that are unlikely to be controversial especially because we – our time is precious, but anything that is important that you feel you have not had a chance to cover, feel free to cover.

ADV WILLIAM NICHOLSON: Chair from my side I have covered all, everything that I have prepared on. I do not think there is anything else.

CHAIRPERSON: Colonel Du Plooy is there something that you feel we have not – we overlooked, that you think is important for you to mention?

MR DU PLOOY: No Chair that is all I have to say.

CHAIRPERSON: You think it is covered?

MR DU PLOOY: I think it is covered Chair.

CHAIRPERSON: Okay, alright, thank you very much Colonel Du Plooy for coming to give evidence, we appreciate it very much. For now you are

10 excused.

MR DU PLOOY: Thank you Chair.

CHAIRPERSON: Thank you.

ADV WILLIAM NICHOLSON: Chair, the other witness who is only available tomorrow is Advocate Mlotshwa. So he will be here tomorrow. I see that we still have some time but unfortunately there is no other witness.

CHAIRPERSON: Yes. How long is he likely to be?

ADV WILLIAM NICHOLSON: Not, two hours, not more than three.

CHAIRPERSON: And then do you have somebody else?

20 **ADV WILLIAM NICHOLSON**: There is nobody else.

CHAIRPERSON: There is nobody else.

ADV WILLIAM NICHOLSON: Unfortunately, we had intended calling Advocate Manyathi however she was only available on the 1st, Monday and Tuesday.

CHAIRPERSON: Yes.

ADV WILLIAM NICHOLSON: He was not available for the latter part of the week.

CHAIRPERSON: Yes, okay and then arrangements will be made for another – for him to come on another day?

ADV WILLIAM NICHOLSON: To conclude his evidence yes.

CHAIRPERSON: *Ja*, okay that should be done without delay so that we are done with this part of the evidence.

ADV WILLIAM NICHOLSON: Indeed Chair.

CHAIRPERSON: The reports – Mr White's report or reports and
10 whatever reports relates to these matters that emanate from the
investigation that Mr White conducted. Do we know whether they have
been presented to persons who are implicated and that they have been
given an opportunity to indicate whether they seek to give any evidence
before the Commission to challenge those reports and that evidence and
whether they seek leave to cross-examine anybody?

ADV WILLIAM NICHOLSON: As far as I understand with Mr Trevor White
and this witness, Mr Trevor White, there was only two legal
representatives who came forward to say that they may do an application
for cross-examination.

20 **CHAIRPERSON:** Yes, oh there was counsel for, oh no – no I am thinking
about something else Commission Ngobeni.

ADV WILLIAM NICHOLSON: Yes that is correct, yes, there was a
counsel for that.

CHAIRPERSON: *Ja*.

ADV WILLIAM NICHOLSON: And there was another counsel here

present while Mr Trevor White testified.

CHAIRPERSON: But nobody came who represented for example Ms Nkonyeni and Mr Mabuyakhulu, as far as you recall?

ADV WILLIAM NICHOLSON: If I may just speak to – my understanding is that they have made representations and they have asked for the reports and they have been given them.

CHAIRPERSON: Yes, okay maybe, maybe after we have adjourned I could be briefed fully on that so that we see what plans need to be made to hear what they have to say together with anyone else including people
10 like the HOD for Health, of course Dr Savoy and whoever else so that we can – we know whether one, they desire to give evidence, they desire to do whatever or whether they are saying well because there is a criminal trial coming we are electing not to challenge the evidence.

ADV WILLIAM NICHOLSON: Indeed Chair, what I can say is that we are in the process because that – the DS for 3.3's have expired. We are in the process of inviting, of writing letters to invite them to make submissions and then we will make a decision as the Legal Team if we need to take any further steps.

CHAIRPERSON: Okay, but after we have adjourned please come through
20 so that I can be updated.

ADV WILLIAM NICHOLSON: Indeed Chair.

CHAIRPERSON: Thank you very much. We are going to adjourn the proceedings for the day and tomorrow we will resume at normal time, namely 10:00. We adjourn.

INQUIRY ADJOURNS TO 28 FEBRUARY 2020

**TRANSCRIBER'S CERTIFICATE FOR COMMISSION OF INQUIRY INTO STATE
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DAY: : 219

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