

COMMISSION OF INQUIRY INTO STATE CAPTURE
HELD AT
CITY OF JOHANNESBURG OLD COUNCIL CHAMBER
158 CIVIC BOULEVARD, BRAAMFONTEIN

16 JULY 2020

DAY 233



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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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PROCEEDINGS RESUME ON 16 JULY 2020

CHAIRPERSON: Good morning Mr Pretorius, good morning everybody.

ADV PRETORIUS SC: Good morning DCJ.

CHAIRPERSON: Yes you want to – you wish to place certain matters on record with regard to...

ADV PRETORIUS SC: Yes.

CHAIRPERSON: Ambassador Maqetuka

ADV PRETORIUS SC: DCJ Ambassador Maqetuka gave
10 evidence on Friday the 10 July. We sat until approximately eight o'clock in the evening when proceedings had to be stopped because of loadshedding.

CHAIRPERSON: Hm.

ADV PRETORIUS SC: At that time the witness Ambassador had almost completed the evidence on his written statement. In fact, he had three paragraphs to go. And the remaining part of his evidence would have dealt with his response to affidavits that had been supplied during that week by officials of the African National Congress. There is
20 not much controversial in that response and in fact largely the contents of the affidavit and the Ambassador's response will be common cause save for perhaps a few observations that the witness might want to make. So it has been determined by your leave Chair to produce the remainder of the Ambassador's evidence on affidavit and then after that

he may return for cross-examination from various implicated parties and suitable arrangements can be made in that respect.

The second point is that he will also provide sooner rather than later hopefully a supplementary affidavit which will deal with various corrections and clarifications that are required that emerged during his testimony.

In addition, it may be that there are certain documents which are declassified in the interim that may
10 also be put up as partly supplementary affidavits.

So in short Chair the affidavit of the Ambassador will be concluded by way of affidavit. He will reappear if you so rule for cross-examination in due course.

CHAIRPERSON: Okay, no thank you very much I just wanted to make sure we have got the way forward with regard to his evidence on record as well as exactly what happens so that whoever reads the transcript understands what happened and what plan was put in place. Okay that is in order thank you.

20 **ADV PRETORIUS SC:** Thank you Chair.

CHAIRPERSON: Thank you.

ADV HOFMEYR: Good morning Chair.

CHAIRPERSON: Good morning Ms Hofmeyr.

ADV HOFMEYR: Chair I have discussed with members assembled in the room today if they have a difficulty with

me removing my mask.

CHAIRPERSON: Hm.

ADV HOFMEYR: I have – they have indicated that they are sufficiently comfortable about the distance between us. My challenge is that my glasses mist the whole time while I have the mask on. So with your leave I request that I remove it when I am questioning Mr Mothibe.

CHAIRPERSON: Yes.

ADV HOFMEYR: And when I remain at the podium.

10 **CHAIRPERSON:** No, no you may take it off. I – as I understand it when we speak, we may take it off.

ADV HOFMEYR: Thank you.

CHAIRPERSON: And so that is in order.

ADV HOFMEYR: Thank you Chair.

CHAIRPERSON: Thank you. And to the extent that the witness also might not be clearly audible when he speaks, he can take it off as well. Ja okay.

ADV HOFMEYR: Thank you Chair. Chair I propose this morning before we commence to swear in the witness just to
20 orientate ourselves as to where we are.

CHAIRPERSON: Yes.

ADV HOFMEYR: In the aviation evidence in particular because we have had quite a number of months break.

CHAIRPERSON: Yes, no I do need to be reminded where everything fits in.

ADV HOFMEYR: Certainly.

CHAIRPERSON: Yes.

ADV HOFMEYR: So if I may proceed to that?

CHAIRPERSON: Yes.

ADV HOFMEYR: Chair in February this year we had a session of aviation and related evidence and it was towards the end of that session that we began looking at the role of auditors in the SAA group of companies. And you will recall that we heard evidence from Mr Polani Sokombela who was
10 a business executive in the office of the Auditor General and he was the person who led the audit at SAA and its groups of companies for the 2017 financial year.

Chair you will recall that before the Auditor General took over SAA's audit in 2017 the group had been audited by joint auditors comprising PwC and Nkonki Incorporated for the previous five years.

In February we had intended to move straight from Mr Sokombela's evidence to the evidence that we are in fact going to receive today from Mr Mothibe.

20 Mr Mothibe was the audit partner from PwC assigned to the SAA audits for the years 2014 to 2016 but we unfortunately ran out of time during the February evidence session and so we have returned today to present Mr Mothibe's evidence.

Chair in the public sector auditors have a particular

role to play. In addition to the usual responsibilities that they have when they audit private companies they are required when they audit public SOE's to assess amongst other things the levels of that state owned enterprises compliance with legislation including and importantly for our purpose the Public Finance Management Act which we colloquially call the PFMA and which really sets the test for regular procurement in a state owned enterprise context.

Chair we propose to explore in Mr Mothibe's
10 evidence a number of factors related to auditors in the public sector. And the question will be whether they properly discharged those obligations. Those obligations which are additional to the ones that they bear when they audit private companies.

Chair we submit that this inquiry is relevant to the commission's mandate. Because one of the questions that you have emphasised repeatedly over the years now that this commission has sat is the how question. If this commission concludes that state capture, corruption or
20 fraud did take place in the public sector then it is supremely important for this country and for its future for us to understand how it occurred and indeed why it went unchecked.

Chair auditors are a watchdog institution. I gave you the reference last time to the case law that establishes

that. And given their role and function it is therefore fair to ask if all this corruption and looting was potentially taking place in our public institutions in the past how was it that auditors did not pick it up?

In the context of SAA that question becomes particularly pressing because he – after PwC and Nkonki had completed their five years of auditing for the group the Auditor General stepped in to audit SAA for the 2017 financial year and found its finances in a state that can
10 only be described as shambolic.

So today we are going to focus on the following with your leave Chair with Mr Mothibe.

The first aspect we will probe is the fact that except for the first year of PwC and Nkonki's appointment all four subsequent years they were appointed without any procurement process being followed and this was against the advice of the Bid Adjudication Committee of SAA at the time and a legal opinion that was later procured.

Their own appointment therefore constituted
20 irregular expenditure for four solid years and yet it was never disclosed as such in the financial statements.

We will then explore why it was that PwC and Nkonki both had joint business relationships, made payments to an auditing firm called Kwinana and Associates during their audit work for SAA.

Now Kwinana and Associates was the auditing firm of Ms Yake Kwinana who was both a non-executive member of the Board of SAA for the period that these two firms were auditing the work – doing audit work at SAA but she was also the Chair of the Audit and Risk Committee at SAA. The very committee which year on year would approve the audit fees to be paid to auditors.

We will then in the third place explore why not one of the significant transactions that have been dealt with extensively in the evidence before this commission and which there are indicators may have been the subject matter of fraud and corruption and possibly state capture within SAA and were products of the decisions of the Board of SAA and in one occasion SAA Technical was not identified by these auditors as reportable irregularities. And we will spend some time just traversing with Mr Mothibe what reportable irregularities are. We had a bit of evidence on that from Mr Sokombela but not much so I plan to pursue that with Mr Mothibe today.

That obligation on auditors to report reportable irregularities is an important one, a serious one and their failure to do so is in fact a crime under the relevant legislation.

We submit that in the end the commission will need to determine whether any state capture, corruption or fraud

that it finds to have taken place in the public sector was in any way facilitated by the auditors of state-owned enterprises.

If it was then the next question will be whether that facilitation was due to mere negligence, auditors simply not doing their jobs as they were supposed to or something more sinister than that?

Chair we submit that even if it is only the former even if state capture, corruption and fraud was not picked
10 up by auditors of state-owned enterprises because of nothing more than their mere negligence it is still important to expose that. Because public funds were used to pay them for inadequate and substandard work and the public deserves better than that from a watchdog institution.

It may be Chair once these matters have been traversed not only in SAA but other SOE's you may consider recommendations like the Auditor General should be better capacitated and should be running all the audits at state
20 owned enterprises with the level of dedication and commitment that we saw from Mr Sokombela and his team as he dealt with in evidence before this commission over two days.

Or it might be that you make recommendations that the annual review that the Auditor General is required to do under the legislation at the moment to approve external

firms coming into SOE's should be stricter. There should be additional criteria.

Those are the sorts' recommendations. It may well be that this commission wants to consider in due course.

And so Chair it is with that background in place and just a reorientation of where we are that without further ado I have two procedural matters just to mention and then I would beg your leave to swear in the witness.

CHAIRPERSON: Thank you. Please administer the oath or
10 affirmation. Persons – all persons who are in the room must take responsibility to make sure that there is proper social distancing between themselves and the next person. I do not think that if you are sitting in the one row and there is somebody sitting immediately behind you in the next that that is one and a half meters or two meters. So do consider – there may be constraints that I do not know but I just want to make sure everybody remembers that we must still try and... It may be that for TV or whatever there are other constraints I leave it to you to think about that but there is
20 enough room to make sure that there is proper social distancing. Okay alright. Thank you.

REGISTRAR: Please state your full names for the record?

MR MOTHIBE: Pule Joseph Mothibe.

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

MR MOTHIBE: No objections.

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

MR MOTHIBE: Yes I do.

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.

MR MOTHIBE: So help me God.

10 **CHAIRPERSON**: Thank you. You may – you may be seated.

ADV HOFMEYR: Thank you Chair. Just a few procedural matters.

CHAIRPERSON: Hm.

ADV HOFMEYR: Before I begin with the questioning. Mr Mothibe is represented by a legal team. They did previously introduce themselves to you on the last occasion but I wonder if I could seek your leave for them simply to place themselves on record.

20 **CHAIRPERSON**: Yes let us do that.

ADV HOFMEYR: Chair it might be convenient for Mr Chappel to do so as he is seated at the moment.

CHAIRPERSON: That is fine.

ADV HOFMEYR: So that we do not have to move the podium.

CHAIRPERSON: Yes that is fine.

ADV HOFMEYR: And sanitise it.

CHAIRPERSON: Let us do that. Good morning – good morning you can just put on – ja. Yes.

ADV TONY CHAPPEL: My name is Tony Chappel from the law firm Norton Rose Fulbright and I have with me two of my colleagues Ms Mdluli and Ms Thompson.

CHAIRPERSON: Thank you. Thank you.

ADV HOFMEYR: Thank you Chair. Then on two final
10 procedural matters. Insofar as a Rule 3.3 Notices for Mr Mothibe's evidence is concerned that was done way back in February. There was one notice sent to Ms Yake Kwinana. We received simply a two or three paragraphed email in response from her.

Chair you have previously indicated in these proceedings that you require a proper and formal response to any affidavit that is sent to implicated persons. Ms Kwinana does not purport in that email response to seek leave to cross-examine or any such thing. She simply puts
20 up a few points in that email. I do not propose to deal with that with Mr Mothibe today. It is in any event the intention of the commission and we have engaged Ms Kwinana about this to have her come and give evidence in due course and so any matters arising there will be dealt with in that evidence.

CHAIRPERSON: No that is fine.

ADV HOFMEYR: And then the final procedural matter Chair is I understand that the commission has received an affidavit from Mr Simon Mantell whose company Mantelli's Biscuits was awarded an SAA tender in 2014 which shortly after the award was summarily withdrawn.

I had intended to question Mr Mothibe on possible relevant matters arising from Mr Mantell's affidavit but I have been informed that his affidavit is forming part of a
10 different process within the commission. I have not considered it as a result and I will not be traversing matters with Mr Mothibe today.

CHAIRPERSON: Hm.

ADV HOFMEYR: In relation to Mr Mantell's affidavit.

CHAIRPERSON: I wonder what process it is part of because the last I knew was that one of things you were considering is seeing whether the information that Mr Mantell gives in his affidavit could be used to question Mr Mothibe.

20 **ADV HOFMEYR:** Indeed.

CHAIRPERSON: So I am not aware what that process is and nobody has talked to me about that process. So I am concerned about that.

ADV HOFMEYR: Chair you are...

CHAIRPERSON: Because you – you had considered it as a

possibility.

ADV HOFMEYR: I had indeed.

CHAIRPERSON: Maybe during the tea break you could talk to me.

ADV HOFMEYR: Certainly Chair.

CHAIRPERSON: I am concerned about that.

ADV HOFMEYR: Indeed.

CHAIRPERSON: You know. Because also I think correspondence that may have gone to Mr Mantell may have
10 alerted him that this was a possibility.

ADV HOFMEYR: Yes.

CHAIRPERSON: And he might not have been told anything.

ADV HOFMEYR: Yes.

CHAIRPERSON: And he might be concerned to say, this is – I was told was a possibility but now it is not happening.

ADV HOFMEYR: Indeed.

CHAIRPERSON: And nobody has bothered to tell me what is going on.

ADV HOFMEYR: Chair can I say in response I – I share
20 your concerns. I do – it had always been my intention but late last week I was given this information. But let me if I may over the tea break raise it further with you. Thank you.

CHAIRPERSON: Okay. Okay thank you.

ADV HOFMEYR: Chair then to move to Mr Mothibe finally. Apologies for the delay Mr Mothibe. Mr Mothibe's evidence

Chair is Exhibit DD19 and I request that we enter it into the record as such. It comprises initially a first statement and a series of annexures and then additional documents. But since the evidence in February of Mr Sokombela Mr Mothibe then supplied a few weeks ago supplementary statement and so we have also just inserted that in the appropriate place in the bundle that had previously been prepared. And it spans more than a single file so I beg your leave to enter it as Exhibit 19A and B.

10 **CHAIRPERSON**: There is the lever arch file marked DD – Exhibit DD19A and then there is one marked Exhibit DD19B.

ADV HOFMEYR: Correct.

CHAIRPERSON: The – I guess that the – the first statement is the one in A?

ADV HOFMEYR: Correct Chair.

CHAIRPERSON: And then the supplementary would be whereabouts?

ADV HOFMEYR: It is just after it. It commences at page 30.1 because we slotted it in so that it could – his two
20 statements together would appear at the commencement of the file. So you will see his first statement runs from page 1 of DD19A to page 30, 30 with its annexures and then the...

CHAIRPERSON: I am sorry – I am sorry did you say 15 something or 50?

ADV HOFMEYR: No. Apologies Chair 30, 30.

CHAIRPERSON: 53?

ADV HOFMEYR: No 30, 30.

CHAIRPERSON: 30 30. Okay.

ADV HOFMEYR: So 30 and then the second statement commences at 30.1, 30.1.

CHAIRPERSON: Okay I found it.

ADV HOFMEYR: Excellent.

CHAIRPERSON: And what is in 19B?

10 **ADV HOFMEYR:** It is the further additional documents.

CHAIRPERSON: Continuation of annexures. Ja okay alright. In the meantime, since the last time I am not sure we have been emphasising that the – the file is not the exhibit but the statement is the exhibit and for convenience what has been done in regard to – in some of the matters is to call the file Bundle Something.

ADV HOFMEYR: Right.

CHAIRPERSON: But the statements is Exhibit whatever and its annexures.

20 **ADV HOFMEYR:** Okay.

CHAIRPERSON: So – so we will – when we talk about the exhibit it will be a reference to the affidavit and its annexures.

ADV HOFMEYR: Yes.

CHAIRPERSON: And – ja okay. The affidavit of Mr Pule

Joseph Mothibe dated or deposed to – or is it in the form of a statement? It is a statement.

ADV HOFMEYR: It is the form of a statement.

CHAIRPERSON: Ja.

ADV HOFMEYR: It was a request that it be provided as a statement so it could be confirmed under oath today.

CHAIRPERSON: Ja okay no that is fine.

ADV HOFMEYR: But you will see it is signed on page 14.

CHAIRPERSON: Yes.

10 **ADV HOFMEYR:** On the 22 January 2020.

CHAIRPERSON: Yes. The statement of Mr Pule Joseph Mothibe – I do not think it has got a date – or it does have a date. Dated 22 January 2020 is admitted together with its annexures as Exhibit DD19A. Now the other statement or is it an affidavit that one?

ADV HOFMEYR: No that one is also a statement.

CHAIRPERSON: Oh, I just saw on page 31 saying affidavit so...

ADV HOFMEYR: Yes sorry.

20 **CHAIRPERSON:** Oh that is somebody else. No I am sorry I think that is somebody else.

ADV HOFMEYR: That is another person's affidavit.

CHAIRPERSON: That is another person.

ADV HOFMEYR: That is from Ms Sassa we will come to that.

CHAIRPERSON: Supplementary – a supplementary statement now we – we from what you said earlier on I think you intend that we take this as a separate exhibit rather than an annexure to the other statement or?

ADV HOFMEYR: Chair my suggestion is that we keep it in Exhibit 19 A.

CHAIRPERSON: Yes.

ADV HOFMEYR: Because it has been separately identified by its pagination numbers.

10 **CHAIRPERSON:** Yes.

ADV HOFMEYR: 30.1 to 30.6.

CHAIRPERSON: Yes. Yes.

ADV HOFMEYR: So I would like to suggest we keep it in Exhibit 11 – 19A because that is how the referencing for my questioning today has been prepared.

CHAIRPERSON: Yes. Yes. It might not be mentioned as an annexure because it is a separate statement.

ADV HOFMEYR: They are separate yes. So it might be his supplementary statement which appears from page 30.1.

20 **CHAIRPERSON:** Ja.

ADV HOFMEYR: To 30.6.

CHAIRPERSON: Ja. Now the – I see there is an affidavit later on. Is that – is that – that is not an annexure to anything so...

ADV HOFMEYR: No these are – once you finish this...

CHAIRPERSON: It is – it will be an annexure to the first statement?

ADV HOFMEYR: No it is actually now the additional documents.

CHAIRPERSON: Oh okay.

ADV HOFMEYR: So once you complete the second statement or what we calling the supplementary statement.

CHAIRPERSON: Yes.

ADV HOFMEYR: The remainder of A continuing into B is all
10 the additional documents that have been produced.

CHAIRPERSON: Yes.

ADV HOFMEYR: And discovered in the course of the commission's investigations.

CHAIRPERSON: Yes.

ADV HOFMEYR: But they are pertinent to Mr Mothibe's evidence.

CHAIRPERSON: Yes.

ADV HOFMEYR: They do include affidavits of others.

CHAIRPERSON: Yes.

20 **ADV HOFMEYR:** And when I was going to come to them, I would explain the circumstances of their inclusion.

CHAIRPERSON: Ja.

ADV HOFMEYR: None of them are contentious but from page 31 then in DD19A it is a series [audio stopped due to power outage]. Maybe loadshedding.

CHAIRPERSON: I think that they – somebody should sort it out [audio stopped due to power outage]. They have previously promised that – loadshedding they would bypass us so that we could [no sound].

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: We were at the point where I was trying to think whether... what we should do with documents that are not annexures ...[intervenes]

10 **ADV HOFMEYR:** Yes.

CHAIRPERSON: ...to the statement because normally I would say the statement is admitted as exhibit so and so...[intervenes]

ADV HOFMEYR: Yes.

CHAIRPERSON: ...together with its annexures.

ADV HOFMEYR: H'm. H'm.

CHAIRPERSON: Then it is easier. But if it is documents that are not annexures ...[intervenes]

ADV HOFMEYR: Yes.

20 **CHAIRPERSON:** ...they might need to be separately identified but admitted as exhibits in their own rights.

ADV HOFMEYR: Yes, yes.

CHAIRPERSON: Yes.

ADV HOFMEYR: Yes.

CHAIRPERSON: So, which we can do because we can say

Mr Mothibe's statement is EXHIBIT DD19A.

ADV HOFMEYR: Yes.

CHAIRPERSON: And we say BCD...[intervenes]

ADV HOFMEYR: Yes.

CHAIRPERSON: ...up to wherever.

ADV HOFMEYR: Yes.

CHAIRPERSON: Would it be easier to do that immediately or as you refer to each document?

ADV HOFMEYR: I think as we go.

10 **CHAIRPERSON:** Ja, ja.

ADV HOFMEYR: What I am going to ask, Chair.

CHAIRPERSON: Ja.

ADV HOFMEYR: I just be assisted. There is a new member of the legal team, Ms Amy Armstrong, who is assisting me today.

CHAIRPERSON: Yes.

ADV HOFMEYR: She will be presenting evidence tomorrow.

CHAIRPERSON: Ja.

20 **ADV HOFMEYR:** If she can just keep running a list for me of where we are in the alphabet?

CHAIRPERSON: Yes, yes. No, that is fine. Yes.

ADV HOFMEYR: Then, as and when, I refer to a new document ...[intervenes]

CHAIRPERSON: Yes.

ADV HOFMEYR: ...we will enter it appropriately.

CHAIRPERSON: Yes. Ja. No, that is fine.

ADV HOFMEYR: Yes.

CHAIRPERSON: So, as I have already indicated, the... Mr Mothibe's statement dated 22 January 2020, would it be submitted as EXHIBIT DD19A together with its annexures.

ADV HOFMEYR: H'm.

STATEMENT WITH ANNEXURES OF MR PJ MOTHIBE IS HANDED UP AND MARKED AS EXHIBIT DD19A

10 **CHAIRPERSON:** I think it has got a few annexures. Is that correct?

ADV HOFMEYR: Correct.

CHAIRPERSON: Yes.

ADV HOFMEYR: Correct.

CHAIRPERSON: And then I think what comes after that... I think the annexures will probably go up to... just before the supplementary statement.

ADV HOFMEYR: That is exactly right. Yes.

CHAIRPERSON: Maybe, we may as well just deal with the supplementary statement as well.

20 **ADV HOFMEYR:** Yes, that is not a problem.

CHAIRPERSON: So Mr Mothibe's supplementary statement, it is undated. The supplementary statement, undated supplementary statement. It reads:

“Supplementary Statement by Mr Pule Joseph Mothibe, concerning joint audit of South African

Airways Groups, SOCL (Ltd) SAA...”

It will be admitted as EXHIBIT DD19B. It appears on page 30.1.

UNDATED STATEMENT BY MR PJ MOTHIBE IS HANDED UP AND MARKED AS EXHIBIT DD19B

CHAIRPERSON: And then others, we will...[intervenes]

ADV HOFMEYR: Indeed.

CHAIRPERSON: ...deal with as we go along.

ADV HOFMEYR: Certainly.

10 **CHAIRPERSON:** Okay. Alright. Thank you.

ADV HOFMEYR: Thank you, Chair. I am indebted.

CHAIRPERSON: H'm. And then what will... well, what will be necessary to do, is that on the spine of the file, it should be reflected ...[intervenes]

ADV HOFMEYR: [Indistinct]

CHAIRPERSON: ...what exhibits ...[intervenes]

ADV HOFMEYR: Indeed.

CHAIRPERSON: ...are inside. Ja.

ADV HOFMEYR: Certainly.

20 **CHAIRPERSON:** Okay. Alright.

ADV HOFMEYR: Thank you, Chair.

CHAIRPERSON: Yes.

ADV HOFMEYR: Mr Mothibe, then to commence. Oh, if you can just put your microphone on. I understand there is no difficulty with you leaving it on and it is just easier. Then

you do not have to worry about turning it on and off in the questioning.

MR MOTHIBE: [No audible reply]

ADV HOFMEYR: Mr Mothibe, if we start with your first statement. You will see it begins at page 2 and it runs to page 14 of EXHIBIT DD19A. Can you confirm that that is your signature on page 14?

CHAIRPERSON: Did you say it starts from page 2?

ADV HOFMEYR: Page 1. If I said 2, that was an error.

10 **CHAIRPERSON**: Okay.

ADV HOFMEYR: It is certainly from page 1 to page 14.

CHAIRPERSON: Ja.

ADV HOFMEYR: Thank you, Chair.

MR MOTHIBE: Chair, that is my signature.

ADV HOFMEYR: And can you confirm that the contents of the statement are true and correct?

MR MOTHIBE: The statement... or rather, the commissioned statements are true and fair, Chair.

20 **ADV HOFMEYR**: And are there any corrections you would like to make to the statement?

MR MOTHIBE: There are no corrections, Chair.

ADV HOFMEYR: Thank you. Mr Mothibe, can I just suggest for your convenience that you move... yes. I think it will just be a little bit easier for you and it also helps to amplify your voice.

MR MOTHIBE: I think so.

ADV HOFMEYR: And then there is your supplementary statement which we have admitted as EXHIBIT DD19B and that runs from pagination 30.1 to 30.6. Do you see that?

MR MOTHIBE: Yes, I do Chair.

ADV HOFMEYR: And can you ...[intervenes]

CHAIRPERSON: I am sorry, Ms Hofmeyr. I am concerned that for some reason, I do not know whether it is mic. Whenever you mention the page number of that statement, I
10 always hear fifty. [laughs]

ADV HOFMEYR: [laughs] Maybe I must try and articulate a little bit more clearly.

CHAIRPERSON: I wonder whether the transcribers are hearing ...[intervenes]

ADV HOFMEYR: Yes, let me ...[intervenes]

CHAIRPERSON: ...thirty or fifty.

ADV HOFMEYR: Fifty. Let me ...[intervenes]

CHAIRPERSON: Now they right the wrong thing. [laughs]

ADV HOFMEYR: Let me be clear. It is thirty with a three-
20 zero. So it is 30.1 to 30.6. Do you have that Mr Mothibe?

MR MOTHIBE: I have got the statement, Chair.

ADV HOFMEYR: This was not signed. That is not a problem. I understand the challenges under lockdown when you were producing this. Can you simply confirm for us under oath today that its contents are true and correct?

MR MOTHIBE: The contents are true and correct, Chair.

CHAIRPERSON: Yes, thank you. Mr Mothibe, I am concerned. Your voice is quite soft. I do not know whether it is because of the mountain of files next to you.

MR MOTHIBE: [laughs]

CHAIRPERSON: And or... did you want to try and raise it?

MR MOTHIBE: I will raise my voice, Chair.

CHAIRPERSON: That is much better, yes. Thank you.

MR MOTHIBE: Thank you, Chair.

10 **CHAIRPERSON**: Thank you.

ADV HOFMEYR: And just to check. There are no corrections that you would like to make to that statement, are there Mr Mothibe?

MR MOTHIBE: There are no corrections, Chair.

ADV HOFMEYR: Thank you. Mr Mothibe, I would just like to start with some background. If we may?

MR MOTHIBE: Yes.

20 **ADV HOFMEYR**: You indicate in your first statement, that is in EXHIBIT DD19A at page 1, that you are a registered auditor. Is that correct?

MR MOTHIBE: That is correct, Chair.

ADV HOFMEYR: Can you tell the Chair when you completed your articles?

MR MOTHIBE: Chair, I have completed my articles at the end of December 1995.

ADV HOFMEYR: And what qualifications do you hold?

MR MOTHIBE: I have got a Bachelor of Commerce Degree and a Higher Diploma in Accounting.

ADV HOFMEYR: And when did you become a partner at PWC?

MR MOTHIBE: Chair, I was admitted to partnership on the 1st of July 2003.

ADV HOFMEYR: And when did you take over as audit partner for the SAA Group of Companies?

10 **MR MOTHIBE:** I took over as partner on the South African Airways Groups of Companies on the 31 March 2014 financial year.

ADV HOFMEYR: And did you remain in that position until the 31 March 2016 audits were completed?

MR MOTHIBE: That is correct, Chair.

ADV HOFMEYR: And how many years did PWC in total audit the SAA Group with its audit partner, Nkonki Inc.?

MR MOTHIBE: Chair, it was for a period of five years.

20 **ADV HOFMEYR:** Thank you. I would then like to move to the topic of the requirements for auditing state owned enterprises and talk a bit about auditing procedures. Could you tell us, who designs the auditing procedures for an audit Mr Mothibe?

MR MOTHIBE: Chair, the auditing procedures would be designed by the audit team. That is the audit firms that

instituting the assignment.

ADV HOFMEYR: Now, in the course of preparing for your evidence Mr Mothibe, you provided to the Commission some of the working papers for those audits that you still retained as PWC.

And we took a look at those and try to decipher from them what sorts of procedures you and your team had devised for the audits that you conducted at SAA.

And so I would like to check with you if we are correct in
10 understanding that one of the things that you would do in your procedures was to study the minutes of meetings that took place within SAA. Is that correct?

MR MOTHIBE: Chair, one of the procedures that we do carry out is the review of the minutes of boards on committees and other relevant committees.

ADV HOFMEYR: Thank you. So you have mentioned the board. So you would consider board minutes, would you?

MR MOTHIBE: Chair, that is correct.

ADV HOFMEYR: And would you consider the minutes of the
20 Bid Adjudication Committee as one of the committee?

MR MOTHIBE: Chair, that would be considered by the team that is carrying out work in a specific audit area. It may be one of the areas that they look at but there are other areas would also consider.

ADV HOFMEYR: Yes, I do not have a difficulty with there

being other ones as well. I just want to get clarity on whether it would be part of the audit procedure to consider Bid Adjudication Committee Minutes?

MR MOTHIBE: Chair, to the extent that it is relevant, yes.

ADV HOFMEYR: When would it be relevant?

MR MOTHIBE: Chair, if one is looking at a contract and there may be following procedures relating to approvals.

ADV HOFMEYR: H'm. Mr Sokombela in his evidence on the 21st of February 2020, this year... Chair, I do not suggest we
10 go there.

I am just for the record going to give you the reference. It is in the transcript at page 103, lines 8 to 10. He said that his team certainly considered the Bid Adjudication Committee Minutes.

Would you suggest... would you agree with him that it is good audit procedure to look at those minutes amongst others?

MR MOTHIBE: Chair, I do not think it would be necessarily appropriated to comment on the work performed by Mr
20 Sokombela. I am comfortable to comment on audit letters as far as it relates to work, I have performed. Unless... I will be speculating Chair.

ADV HOFMEYR: Let me ask you Mr Mothibe then. Do you regard it as a good audit procedure to consider the minutes of the Bid Adjudication Committee at a state-owned

enterprise?

MR MOTHIBE: Chair, in as far as it is relevant to the area being tested, it would be a good procedure.

ADV HOFMEYR: And if you are testing supply chain management and its compliance, should you be looking at Bid Adjudication Committee Minutes?

MR MOTHIBE: Chair, it would make sense to me the Bid Adjudication Committee Minutes.

ADV HOFMEYR: Mr Mothibe, would you also as your audit
10 procedures be reviewing media reporting about the entity that you are reviewing and auditing?

MR MOTHIBE: Chair, it is no requirements of the standards, audit standards to look at media reports when one is performing an audit.

ADV HOFMEYR: Did you say it is not a requirement?

MR MOTHIBE: Chair, yes. It is not a requirement, Chair.

ADV HOFMEYR: Did you look at media reports in your own audit procedures?

MR MOTHIBE: Chair, we did look at media reports to the
20 extent that we could find or what we could fine.

ADV HOFMEYR: Yes, Mr Mothibe. You have actually looked at them quite extensively as I understand it. And for that purpose, I would like us to go to a document that...

Chair, you will currently find, and Mr Mothibe, you will currently find in the file that, on the spine, is numbered

DD19B.

Chair, I am just using that reference so that you can find it. I am mindful of your request that we now enter them as separate exhibits but if you go into DD19B at page 443?

MR MOTHIBE: [No audible reply]

CHAIRPERSON: [No audible reply]

ADV HOFMEYR: Do you have that Mr Mothibe?

MR MOTHIBE: Chair, I do have the...

ADV HOFMEYR: Now, we are going to enter this as the next
10 exhibit but I would like you to just explain to us what this document is.

MR MOTHIBE: Chair...[intervenes]

CHAIRPERSON: One second.

ADV HOFMEYR: Apologies, Chair.

CHAIRPERSON: Please do not forget the question.

ADV HOFMEYR: [No audible reply]

CHAIRPERSON: I am just wondering if we are going to enter it as the next exhibit.

ADV HOFMEYR: Yes.

20 **CHAIRPERSON**: Normally, one would prefer to have that sequence where...[intervenes]

ADV HOFMEYR: Yes.

CHAIRPERSON: [laughs]

ADV HOFMEYR: You see...[intervenes]

CHAIRPERSON: Under A we... it is sequential...[intervenes]

ADV HOFMEYR: Yes.

CHAIRPERSON: ...in order to be... to the next Lever arch file. I am just thinking... oh, but of course, what you can do is that we could go to the various exhibits in both files.

ADV HOFMEYR: H'm.

CHAIRPERSON: Even though we end up with, for example, D being in the first Lever arch file.

ADV HOFMEYR: Yes.

CHAIRPERSON: And E being the next.

10 **ADV HOFMEYR:** Yes, yes.

CHAIRPERSON: But later on, you could put them in one Lever arch file. I mean, the one set.

ADV HOFMEYR: Yes, yes.

CHAIRPERSON: To be sequential and then create another one that is sequential. That could be done.

ADV HOFMEYR: We could certainly. Chair, the only challenge ...[intervenes]

CHAIRPERSON: Ja, but there may be another way of doing it.

20 **ADV HOFMEYR:** H'm.

CHAIRPERSON: H'm.

ADV HOFMEYR: For today's purposes, my difficulty is that the only way that I can direct all of us to the pages I am interested in, is by its current pagination.

CHAIRPERSON: Yes, yes.

ADV HOFMEYR: So and that was devised assuming that we would use the method that we have been using previously...[intervenes]

CHAIRPERSON: Yes.

ADV HOFMEYR: ...which was the DD19A ...[intervenes]

CHAIRPERSON: Yes.

ADV HOFMEYR: ...for the first file. DD19B for the second file

CHAIRPERSON: Yes.

10 **ADV HOFMEYR:** And sequential pagination throughout.

CHAIRPERSON: Yes. I am wondering whether we... you should not be... we should not be creative and call... give these two Lever arch files bundle numbers.

ADV HOFMEYR: H'm.

CHAIRPERSON: Even if the bundle numbers are not necessarily sequential.

ADV HOFMEYR: Yes.

CHAIRPERSON: Or whatever bundle has been given.

ADV HOFMEYR: Yes.

20 **CHAIRPERSON:** So that we can say exhibit so and so is a bundle.

ADV HOFMEYR: H'm. Yes, yes.

CHAIRPERSON: That a bundle so runs from page whatever, on page whatever. Do you think that might...?

ADV HOFMEYR: I do think so.

CHAIRPERSON: Yes.

ADV HOFMEYR: I mean, the simplest way for today's purposes might be to... all that you have entered so far is DD19A and DD19B.

CHAIRPERSON: Yes.

ADV HOFMEYR: Those are the two statements, right?

CHAIRPERSON: Yes.

ADV HOFMEYR: My suggestion is that we then say that DD19C will be the documents running from, and then I will
10 give you the pagination now.

CHAIRPERSON: Yes.

ADV HOFMEYR: It will be... I think I can remember, page 31 to page 250.

CHAIRPERSON: Yes. Ja.

ADV HOFMEYR: And then DD19D will be from page 251 to page six - I just have to get it here - 624.

CHAIRPERSON: Yes.

ADV HOFMEYR: Because then we are going to be set for today.

20 **CHAIRPERSON:** Yes, yes.

ADV HOFMEYR: Then I will not have difficulty. Then I can take you to the number.

CHAIRPERSON: Yes.

ADV HOFMEYR: Will that be convenient Chair?

CHAIRPERSON: Ja, that will be fine. Let us do it that way.

ADV HOFMEYR: Super.

CHAIRPERSON: Do you want to...?

ADV HOFMEYR: I will just repeat it if I may?

CHAIRPERSON: Ja. H'm.

ADV HOFMEYR: So we have entered DD19A and DD19B into the record. We will then be entering DD19C into the record and that will run from paginated page numbers 31, that is three, one. To paginated page 250.

CHAIRPERSON: I am sorry. Did you say 19C or D?

10 **ADV HOFMEYR:** C.

CHAIRPERSON: C, yes.

ADV HOFMEYR: Yes.

CHAIRPERSON: C. That is at page 31.

ADV HOFMEYR: Yes, until page 250.

CHAIRPERSON: Until page two... is that up to the end?

ADV HOFMEYR: Correct. Yes.

CHAIRPERSON: Oh, and of the second Lever arch file?

ADV HOFMEYR: The first Lever arch file.

CHAIRPERSON: Oh, end of the first Lever arch file?

20 **ADV HOFMEYR:** H'm. H'm.

CHAIRPERSON: Yes. Okay. So that will be... all of those documents...[intervenes]

ADV HOFMEYR: Yes.

CHAIRPERSON: ...will be admitted as EXHIBIT DD19C and then they will be differentiated by reference to the page

numbers?

**LEVER ARCH FILE FROM PAGE 31 TO PAGE 250 IS
HANDED UP AND MARKED AS EXHIBIT DD19C**

ADV HOFMEYR: Exactly, Chair.

CHAIRPERSON: Yes.

ADV HOFMEYR: That is going to be very convenient for us.

CHAIRPERSON: Yes, yes.

ADV HOFMEYR: And then just to be clear for the record.

What will then be entered as EXHIBIT DD19D for dog
10 [laughs] will be pages... you will find that in the second file
Chair. And that runs from page 251 to page 624.

**LEVER ARCH FILE FROM PAGE 251 TO PAGE 6240 IS
HANDED UP AND MARKED AS EXHIBIT DD19D**

CHAIRPERSON: It is 251 to...?

ADV HOFMEYR: To page 624.

CHAIRPERSON: I think what we will do is... this could be
done later on. We might have to identify each document and
maybe use A, B, C or AA, BB.

ADV HOFMEYR: Yes.

20 **CHAIRPERSON:** Whatever. But for today's purposes, we
will say that EXHIBIT DD19D starts from page 251 to 624.

ADV HOFMEYR: Yes.

CHAIRPERSON: Subject to later qualification and
amendment.

ADV HOFMEYR: Certainly.

CHAIRPERSON: Ja.

ADV HOFMEYR: With a separate identification of the document.

CHAIRPERSON: Yes, yes.

ADV HOFMEYR: Thank you, Chair. We have made a note of that.

CHAIRPERSON: Yes, yes. Thank you.

ADV HOFMEYR: So then just to take us back to where we were Mr Mothibe. We are in, what has now been entered as
10 EXHIBIT DD19D and we were at page 443 and I was asking you to help us identify this document. What is this document?

MR MOTHIBE: Chair, as part of maintaining the understanding of the client, we use information that comes to our attention whilst...[intervenes]

CHAIRPERSON: I will ask you to raise your voice again.

MR MOTHIBE: Oh, apologies Chair.

CHAIRPERSON: Yes.

MR MOTHIBE: Whilst it is not a requirement of the
20 standards to go through the media to obtain such. Chair, to the extent that there are articles whichever been and provides us information that helps us to obtain an understanding of our business and what is going there which helps us in confirming our approach.

And we certainly do take account of those articles to go

out and... it is only possible to go out and says, because there is quite a universe of articles out there Chair.

And you will not be able to identify every single one of them. So to the extent that we desire an event, we do look at those.

ADV HOFMEYR: Mr Mothibe, was it part of your audit procedure to look at media articles related to the SAA Group?

MR MOTHIBE: Chair, as part of our own procedures, we
10 looked at those media articles that came to our attention.

ADV HOFMEYR: Yes. You say at page 442 under the heading: Purpose of EGA:

“In accordance with the risk-based audit approach,
we stay up to date with media...[intervenes]

CHAIRPERSON: I am sorry. I am sorry. I am sorry.

ADV HOFMEYR: Apologies, Chair.

CHAIRPERSON: My 442 is a table.

ADV HOFMEYR: Sorry, 443 Chair.

CHAIRPERSON: 443?

20 **ADV HOFMEYR:** 443. Apologies.

CHAIRPERSON: Okay. Yes. Okay.

ADV HOFMEYR: I was reading from the words that appear under the heading, just after the table at the top, the Purpose of the EGA, but let us look at the table first. This relates to the engagement for the SAA Group Audit for 2015.

Is that correct Mr Mothibe?

MR MOTHIBE: That is correct, Chair.

ADV HOFMEYR: And so the period end date of that audit is the 31st of March 2015. Is that correct?

MR MOTHIBE: That is correct, Chair.

ADV HOFMEYR: And it says, Audit Unit in the next line. SAA Group Audit 2015 HQ. What does HQ stand for?

MR MOTHIBE: That is head office.

ADV HOFMEYR: Headquarters maybe? I do not know
10 exactly. [laughs]

MR MOTHIBE: Yes, headquarters, head office. Yes, that is correct Chair.

ADV HOFMEYR: And it says EGA title. What does EGA stand for?

MR MOTHIBE: It is Engagement Gathering Evidence.

ADV HOFMEYR: Right.

MR MOTHIBE: That is... Chair, that is a PwC acronym that we use.

ADV HOFMEYR: H'm. So this is how you acquire audit
20 evidence. Is that right?

MR MOTHIBE: Amongst others Chair. This is one of the ways that we would identify evidence.

ADV HOFMEYR: Yes. Yes, the audit evidence that is going to inform the audit that you conduct. Correct?

MR MOTHIBE: That sounds correct Chair.

ADV HOFMEYR: And then under the purpose, there is the following. I will read it into the record.

“In accordance with ...[intervenes]

CHAIRPERSON: I am sorry. I am sorry, Ms Hofmeyr. Did you say EGA represents one of the ways in which you acquire evidence?

MR MOTHIBE: Chair, EGA, it is an acronym we use at PwC which relates to... if I can recall ...[intervenes]

CHAIRPERSON: Maybe you can start by telling me what it
10 stands for, EGA? Then that might help me. Or it is just... or there is no particular full name for it or full...?

MR MOTHIBE: Chair, if my memory serves me right. Chair, it should be Evidence Gathering Activity, Chair. So ...[intervenes]

CHAIRPERSON: Oh, that helps. [laughs] That helps. Ja, ja. Okay. Okay. So... no, then I understand.

MR MOTHIBE: Yes, Chair. Thank you, Chair.

CHAIRPERSON: Okay.

ADV HOFMEYR: And when you describe then later, below
20 the table on the page the purpose of your Evidence Gathering Activity, you describe it as follows:

“In accordance with the risk-based audit approach, we stay up to date on media reports pertaining to SAA and to evaluate the effect thereof in the financial statements, identify risks and therefore update our

audit approach on a continual basis when necessary...”

Do you accept the accuracy of that statement about the purpose of your Evidence Gathering Activities?

MR MOTHIBE: Chair, that is how the piece reads Chair.

ADV HOFMEYR: H’m. Mr Mothibe, you were present for the evidence of Mr Sokombela. Is that correct?

MR MOTHIBE: Chair, I was present for part of the evidence.

ADV HOFMEYR: Have you considered the whole of his
10 evidence before giving evidence today?

MR MOTHIBE: Chair, I have had a look at Mr Sokombela’s evidence. I have briefly had a look at that but not in that kind of detail Chair.

ADV HOFMEYR: But were you aware then that he emphasised that looking at media reports would be an important part of and did form part of the approach that his team took to the audit in 2017.

MR MOTHIBE: Chair, as I have indicated earlier. It is not a requirement of the standards for one to look at media
20 reports. However, and as we have done during our... under review, we did look at media reports that came to our attention and those had an impact or provided information that could prove useful onto the client.

ADV HOFMEYR: Are you aware that it is part of IRBA’s guide on reportable irregularities that you should keep

abreast of press reporting about the entity that you are auditing?

MR MOTHIBE: Chair, could I ask Ms Hofmeyr to repeat that question. I am not too sure that I understand what...?

ADV HOFMEYR: Sure. Are you aware of IRBA's guide regarding reportable irregularities?

MR MOTHIBE: Chair, I am aware of that guide relating to reportable irregularities.

ADV HOFMEYR: Do you seek to act in accordance with it
10 when you audit companies?

MR MOTHIBE: Chair, we act according to the guide at all times when we audit our clients.

ADV HOFMEYR: Are you aware that the guide indicates that auditors should be considering press articles about an entity when they are auditing it as one of the means by which you are assisted in identifying reportable irregularities?

MR MOTHIBE: Chair, I would have to remind myself of that but certainly Chair, we did consider media reports relating to the SAA Group of Companies when we carried out our
20 engagement.

ADV HOFMEYR: Thank you. Mr Mothibe, in my introduction today, I indicated that when an auditor audits a state owned enterprise, there are additional obligations on that auditor as compared with when the auditor simply audits a private company. Do you agree with that statement?

MR MOTHIBE: Chair, the... as I have indicated in my statement Chair. If... can I refer Ms Hofmeyr to one ...[intervenes]

CHAIRPERSON: You may refer to your statement.

ADV HOFMEYR: Oh, certainly.

MR MOTHIBE: Thank you, Chair.

ADV HOFMEYR: You will find that in DD19A and it commences at page 1.

MR MOTHIBE: Thank you, Ms Hofmeyr. Chair, on page 1 of
10 my statement on DD19 PGM01 at the bottom of the page
Chair, the last paragraph. We confirm there:

“The auditor’s duty ...[intervenes]

CHAIRPERSON: You can read that paragraph if you want to.

MR MOTHIBE: Thank you, Chair.

“The auditor’s duty in an audit is to provide an
opinion considering whether or not the annual
financial statements fairly presents the entity’s
financial position and results of its operations and
cash-flow information in conforming with general
20 accepted accounting practices...”

So Chair, that is our primary role as auditors. And we are also required to comment as to whether the... ordinarily, the report would confirm that the financial statements are prepared in accordance with the requirements of the Companies Act.

When we audit state owned enterprises, we do so on behalf of the office of the general and he has issued guidance which requires us to also consider matters of compliance with law regulations which is, by the way Chair, is a requirement of the auditor standards.

So Chair, much there are initial guidelines from the EGA they are, in fact, covered by ISA when it comes to... because we required to consider compliance with law regulations in terms of...

10 I think it is either 230 Chair. I will have to confirm the exact numbering if... But Chair, the audit standards sufficiently cover that Chair.

ADV HOFMEYR: Thank you, Mr Mothibe. I am grateful for your clarification on that point. If I can direct you to paragraph 9 on page 2 of your statement which, for reference purposes, is in EXHIBIT DD19A.

You will see a paragraph 9 there. You sum up, I think in essence, what you have described now to the Chair. You say:

20 “For all audits, the auditor is required to comply with International Standards of Auditing known as the ISA...”

That is what you were referring to a moment ago. Is that correct?

MR MOTHIBE: Chair, that is correct.

ADV HOFMEYR: And then you go on, you say:

“The ISA require the auditor to consider relevant and applicable law and regulations that may have a material impact on the financial statements as a whole...”

I take it to... the point you made earlier is that applies whatever company you are auditing. Is that correct?

MR MOTHIBE: Chair, that is correct. If I may give an example, Chair?

10 **ADV HOFMEYR:** H'm.

MR MOTHIBE: When you are auditing a bank Chair, there are initial requirements in terms of the Banking Act. So you will have to bring that into consideration. When, Chair you are auditing an insurance company, there is legislation specifically to insurance companies that you will have to consider.

So when you audit state owned enterprises, it is then the PFMA that is then brought into the picture. So in essence Chair, an audit is an audit.

20 There are no peculiarities Chair. Or there are no additionally requirements in terms of state-owned enterprises because all the standards that requires you to look at applicable law and regulations cover that Chair.

ADV HOFMEYR: And you will accept, as you just have, that one of the key pieces of legislation for state owned

enterprises is the Public Finance Management Act. Correct?

MR MOTHIBE: Chair, that will be correct.

CHAIRPERSON: So let me go back to the point you made just before you answered this question because it seems to me that it was suggested that it might not be accurate to say when you audit a public enterprise, there are additional requirements that are not there when you audit a private company.

That is the impression I got from your answer. Is it a
10 correct impression from the comment you made
...[intervenes]

MR MOTHIBE: Chair...[intervenes]

CHAIRPERSON: ...when you said an audit is an audit?

MR MOTHIBE: Thank you Chair for the question. Chair, I think or what I want to illustrate Chair is that, we carry out our audit in terms of International Standards of Auditing.

And even when we audit in the public section, you still comply with the International Standards of Auditing to the extent that there are additional requirements in the PFMA.

20 It is not necessarily initially required. It does not mean that the audit itself is suddenly different from what is in the private sector.

It is more, and if I can use the term Chair, it is more an industry issue. Different industries have got different requirements and one would then look at the public sector as

a different... as an industry.

And you say the PFMA is then the kind of regulation that you would look at when you audit a public entity or a state owned enterprise as in this Chair.

CHAIRPERSON: H'm. It might be... it may be that it is... what is... a difference without distinction. [laughs]

ADV HOFMEYR: H'm. Indeed, Chair.

MR MOTHIBE: Okay, Chair.

CHAIRPERSON: Because certainly the PFMA will not apply
10 to a private company, is it not?

MR MOTHIBE: [No audible reply]

CHAIRPERSON: But it will apply to a lot of these SOE's that certainly this Commission has been looking at, you know. And government departments.

But you seem to choose to look at not as an additional requirement but you simply... you prefer to approach the matter on the basis that each industry or sector has got its own features.

And when you are auditing an entity, whether private or
20 public, in a certain sector, in a certain industry, you have an obligation to comply to look at everything that applies to that sector.

If it is a public sector, you would include the PFMA. If it is in the private sector, you will not include the PFMA but depending on which sector it is, like insurance or whatever,

there may be specific legislation applicable to that category of entities or that industry.

And you as the auditor will have an obligation to apply your mind to all of the relevant legislation. That is how you approach it.

MR MOTHIBE: Yes, Chair. That is how... that is correct Chair.

CHAIRPERSON: Ja, okay.

ADV HOFMEYR: Thank you, Chair. We are indebted for that
10 clarification. I would then like to take you Mr Mothibe to the PFMA because there are a few provisions there that are going to form the backdrop to some of the questions today.

Mr Mothibe, you will find it in the file that has been made available to you in this box of files entitled Aviation Legislation.

Chair, we have dealt with that file previously. If I can just ask your registrar to assist you with the Aviation Legislation file?

CHAIRPERSON: [No audible reply]

20 **ADV HOFMEYR:** Chair and Mr Mothibe, you will find the Public Finance Management Act in that file commencing from page 46.

CHAIRPERSON: Shall we identify this? I think this is the file written EXHIBIT DD, Aviation Legislation reference bundle on this pile.

ADV HOFMEYR: Thank you, Chair.

CHAIRPERSON: That is the file we have here.

ADV HOFMEYR: Yes, and it has been entered into the record previously.

CHAIRPERSON: Yes, yes.

ADV HOFMEYR: That is helpful. Thank you. Then we commence ...[intervenes]

CHAIRPERSON: I just want to make sure whoever reads the transcript ...[intervenes]

10 **ADV HOFMEYR:** Indeed.

CHAIRPERSON: ...knows which file we are ...[intervenes]

ADV HOFMEYR: Years after. We assume... [laughs]

CHAIRPERSON: Ja. [laughs] Okay.

ADV HOFMEYR: And we start with the PFMA which commences at page 46.

CHAIRPERSON: H'm.

ADV HOFMEYR: Mr Mothibe, you are familiar with the provisions of this act?

20 **MR MOTHIBE:** Chair, I have read the act previously and I am familiar some of the provisions in the act Chair.

ADV HOFMEYR: The first provisions within the act I would like us to look at appears at page 50 and it is the definition of Irregular Expenditure. Could you read into the record what Irregular Expenditure is defined at, as on that page?

MR MOTHIBE: Chair,

“Irregular Expenditure means expenditure other than authorised expenditure incurred in contravention of or that is not in accordance with the requirement of any applicable legislation including this act or the state Act 86 of 1968 or any regulations made in terms of that act or any provisional legislation providing for procure and procedures in that provisional government...”

ADV HOFMEYR: Mr Mothibe, do you understand from that
10 definition that if a state owned enterprise incurs expenditure which is not in accordance with the requirements of the PFMA, it will constitute irregular expenditure?

MR MOTHIBE: Chair, that is what I understood Chair.

ADV HOFMEYR: Thank you. And then if we go to Section 51 which you will find at page 68. This is where we start to get to the substantive provisions of the PFMA that regulates state owned enterprises such as SAA and its group of companies.

And what Section 51 does Mr Mothibe and I would like to
20 confirm that this is also your understanding, is that it sets the responsibilities of accounting officers of state owned enterprises such as SAA. Do you agree with that?

MR MOTHIBE: Chair, that is correct.

ADV HOFMEYR: Amongst those responsibilities, could you tell us what the responsibility at Section 51.1.A.1 is?

MR MOTHIBE: If I read out, it says:

“Effective, efficient and transparent systems of
...[intervenes]

CHAIRPERSON: Your voice has gone down again.

MR MOTHIBE: I will come closer to the mic, Chair.

CHAIRPERSON: [laughs] Okay. Alright.

MR MOTHIBE:

“Effective, efficient and transparent system of
financial and risk management and internal control...”

10 **ADV HOFMEYR**: So it is a requirement. Is it your
understanding that it is a requirement of the PFMA that an
entity like SAA must ensure that it has and maintains internal
controls?

MR MOTHIBE: Chair, that is correct.

ADV HOFMEYR: And that it has and maintains an effective
efficient transparent system for financial and risk
management?

MR MOTHIBE: Chair, that is how the act reads. That is
correct, Chair.

20 **ADV HOFMEYR**: And is it also your understanding that it is
another obligation of the accounting authority for an entity
like SAA to have and maintain...? I am now at Roman three.

“An appropriate procurement and provisioning system
which is fair, equitable, transparent, competent and
cost-effective...”

MR MOTHIBE: Chair, that is how the act reads. That is correct, Chair.

ADV HOFMEYR: And that is your understanding of it, is it Mr Mothibe?

MR MOTHIBE: Chair, that is my understanding.

ADV HOFMEYR: Thank you. And who is the accounting authority for SAA?

MR MOTHIBE: Chair, that will be the board and obviously, the board may delegate it to the CFO and other relevant
10 officials.

ADV HOFMEYR: Would that happen by way of delegations of authority?

MR MOTHIBE: That will be correct, Chair.

ADV HOFMEYR: And then if we go over the page to page 69. The other obligation or responsibility of accounting authority is...

I would just like to be clear that we are on the same page about, is the responsibility for the accounting authority to have and maintain... apologies.

20 Now we are onto B. I am interested in these. So,

“The accounting authority of a public entity b) must take affect appropriate steps to ii) to prevent irregular expenditure...”

Is it your understanding that the Board of SAA was required to do that as well?

MR MOTHIBE: That is correct, Chair.

ADV HOFMEYR: Thank you. I would then like to go to Section 55 because that is actually the section, I suggest slightly closer to home for you because that is the section...

You will find it at page 70 Chair and Mr Mothibe. And it is Section 55 which deals with the annual report and financial statements of public entities.

And the one I am interested in there Mr Mothibe is Section 55(2)(b). Section 55(2)(b) reads as follows:

10 “The annual report and financial statements referred to in one of the sub-sections above must and be, include particulars of i) any material losses to criminal conduct and ii) any irregular expenditure and fruitless and wasteful expenditure that occurred during the financial year...”

Do you see that?

MR MOTHIBE: I see the section Chair.

ADV HOFMEYR: And Mr Mothibe, is it your understanding then that when you are as an auditor reviewing the financial
20 statements of a public entity such as SAA, one of the things you are going to be looking for is whether those financial statements comply with this requirement at B that they include particulars of any irregular expenditure?

MR MOTHIBE: Chair, will be correct Chair.

ADV HOFMEYR: Any fruitless and wasteful expenditure

must also be disclosed in those financial statements, just it not?

MR MOTHIBE: That will be correct Chair.

ADV HOFMEYR: And there will be non-compliance with the PFMA if the financial statements did not reflect that, correct?

MR MOTHIBE: Chair, the interpretation is correct.

ADV HOFMEYR: And would you also accept there would be none-compliance with the PFMA if the accounting authority, the Board of SAA permitted procurement to take place in a
10 manner that was not fair, equitable, transparent, competitive and cost-effective?

MR MOTHIBE: Chair, that interpretation is correct.

ADV HOFMEYR: Thank you. Now Mr Mothibe, we received some evidence from Mr Sokombela about the approach that the auditor general took to its auditing of SAA and its group of companies in 2017.

And he gave the Chair and the rest of us some detailed insight into how they went about determining whether irregular expenditure had been incurred and its extent in the
20 2017 financial year.

I would like to ask you before I go to what he said, to tell the Chair and us how you approached that aspect of your audit responsibilities for the year 2014 to 2016.

MR MOTHIBE: Thank you. Chair, I would like to also to refer the Chair to my initial statement. Chair, where we

indicate that the works plate between the joint auditors and to confirm that in the years... for the years ending March 2014 and February 2015, that part of the... was performed by the joint auditors.

However, Chair, I can talk to, certainly to some of the principles that guided their approach and for the 2016, the financial 2016 year Chair, the work was performed by my team at PwC.

So obviously Chair, I will talk to that. And also, to
10 confirm Chair that the approach was fairly consistent with the three years under review.

Chair, South African Airways has got a compliance office and it understanding, it appearing and confirming the understanding of the business processes and the different matters that they have got to consider.

We do sit with the compliance office and one of those areas that we engage them on is how the sittings are going to take place to identify and report irregular expenditure and fruitless and wasteful expenditure.

20 Chair, we have reviewed that process and in addition Chair, the work performed in the area of procurement and contract management which would help us to confirm the review that we had done from the compliance side.

So part of it Chair of the approach is the understanding the controls that exist of the entity. How they report. It

really be comfortable with have put it in place.

And then the substantive work that we will do in the procurement and contract management area will help us to confirm that everything was done as expected Chair.

ADV HOFMEYR: You and your joint audit partner, Nkonki for the years 2014 to 2016 were satisfied that the internal controls were adequate, were you not?

MR MOTHIBE: Chair, I think I should refer Chair to the supplementary statement that were submitted Chair where
10 we do confirm that the work performed, we did identify diversions and we did notify management and those charge with governance of the deviations.

And so Chair, to the extent that we did not elevate that part to the audit report as required Chair. We do... what is the correct word Chair?

Chair, we accept that we should have done that. So Chair, it was come close where it admitted they did not identify all the issues.

We picked up deviations when we performed our work.
20 We informed management. We informed the audit committee the issue with governance but we did not complete the final step and hence the concession that we have made Chair in that supplementary statement.

ADV HOFMEYR: Mr Mothibe, you have come to that concession between February and July this year. Is that

correct?

MR MOTHIBE: That is correct, Chair.

ADV HOFMEYR: Because your first statement before this Commission before the evidence of Mr Sokombela, you did not make that concession, did you?

MR MOTHIBE: Chair, at that time Chair I have reviewed the work that was performed. I had considered what were also required of us and it was my view then Chair that we had done sufficient.

10 Chair, subsequent to the initial statement Chair I did go back. We did go back to the PFMA. We did go back to our records and we considered what was required of us in terms of the IRBA guide from the office of the general auditor.

And Chair, it became clear that we had erred and we should have elevated some of those items of non-compliance Chair to the... of the report.

But Chair, I think it is important to know that those items were duly identified, were elevated to management. We sought their responses in that regard.

20 And those matters were elevated to the audit committee, those who were charged with governance.

ADV HOFMEYR: Mr Mothibe, I will be returning to this topic. At the moment I am still setting the sort of background of your understanding of the audit.

You see, Mr Sokombela indicated that what his team did

when they moved in for the 2017 audit in order to satisfy themselves as to the disclosure of irregular expenditure in the financial statements.

It is quite a detailed exercise. He said they would go. They would review tender files. Let me add, when they could find them because a substantial part of his evidence was also that they simply could not find whole reams of the contracts which they were required to audit.

He had to sent teams in to try and locate documents
10 because, on his version, the state of internal control was in disarray.

But when he was able to find complete tender files, I was very interest in the language he said. He said they would re-perform the awarding of those tenders.

That is how seriously he took the obligation to satisfy himself that the figure he is seeing in the financial statements for irregular expenditure is accurate, is verifiable. Did you do anything of that sort?

MR MOTHIBE: Chair, as part of the audit and in order to
20 comply with the PFMA, we have to perform procurement and contact management. Chair, that work was performed.

As I indicate Chair. Not only was worked performed. We found deviations which we reported to management and to the audit committee.

And Chair, after... I cannot comment on the amount of

work or the changes that Mr Sokombela experienced when he performed his audit because, as you will appreciate Chair, it was months after we had been there.

So Chair, a lot can happen in that in that interim period. However, as I indicate Chair, from the work that we performed on procurement and contract management, we did find deviations which we elevated to the audit committee and raise our concerns with management.

CHAIRPERSON: H'm. I think the... I think Ms Hofmeyr's
10 question is aimed at establishing whether your approach to the performance of these duties may have been the same as that of mister... was it Mr Sokombela?

ADV HOFMEYR: Yes.

CHAIRPERSON: Ja, because Ms Hofmeyr is saying Mr Sokombela said the way they approach it was that they looked at the files and effectively, as I understand the position, said, "Would we have done this? Is this the right way to do it in terms of tenders and bids?"

So she seeks to establish whether you also adopted the
20 same approach or did you adopt a different approach? That is what she seeks to establish.

MR MOTHIBE: Chair, I can confirm that the approach was guided by the regulations or have regard... regarded with the ...[indistinct] from the office of the audit general on how to perform work on procurement and contact management.

So our approach would have been the same. Chair, what certainly be different. It would have been, for example, the size of samples that were selected.

And Chair, the challenge with audit samples is that, the audit, it had limitations. Is that you can come in, see what your sample and find a few deviations.

A different auditor can... or person come in, see a different sample with the outcome would be fairly different. Especially considering the size or the number of contracts
10 that exist in a place like South African Airways Chair. Fairly big numbers.

So Chair, I cannot comment on these sample size but certainly I can confirm that we did receive the guidance from the AGM for guidance Chair.

ADV HOFMEYR: Mr Mothibe, the question had nothing to do with sample holding. I am going to come to that because I know it is a big part of your evidence today to distinguish different samples.

What I was interested in what the Chair confirmed was,
20 did you adopt the method that Mr Sokombela adopted? Did you go and find tenders that had been awarded and re-performed the award of those tenders?

And by that he meant, go and get the files. See how the bid started. See how it was responded to. See how it was awarded. See whether the person who eventually awarded it

had the delegation of authority.

Did you re-perform the awarding of the contracts that you determined necessary to audit?

MR MOTHIBE: Chair, insofar as it was in line with the guidance that we received from the office of the AG on how to audit procurement and contract information. That is correct Chair. That is the approach that we took.

CHAIRPERSON: Well, I am concerned about the qualification. [laughs] You said, insofar as it was in line
10 with... so I think what Ms Hofmeyr is looking at is. Let me assume that whether it is sampling or whatever, leads you to a certain contract that SAA awarded to Mr Mothibe, okay?

MR MOTHIBE: Yes, Chair.

CHAIRPERSON: So you want to look at how that contract was awarded.

MR MOTHIBE: Yes, Chair. That is correct.

CHAIRPERSON: Would you... once you have identified that contract as one of the matters that you must look at, would you then go through the various stages or requirements to
20 say, SAA was required to do A, B, C, D for this contract to have been awarded properly.

Did they do A, B, C, D properly? And if you then concluded that that was done properly, then you say, "Okay, I have taken care of this".

Or would you, for example, despite knowing that SAA

was supposed to do A, B, C, D, would you just look at A and B and if you are happy with that you do not look at C and D?

MR MOTHIBE: Chair, what you have described and you must understand... now I understand what Ms Hofmeyr is looking for. We would have done that Chair.

CHAIRPERSON: You did that. So you would look at A, B, C and D.

MR MOTHIBE: Yes, Chair.

CHAIRPERSON: So to speak. Okay, alright, I hope that
10 is helpful, ja.

ADV HOFMEYR: Thank you, it does. Mr Mothibe, how did you do that if you could not find the tender files?

MR MOTHIBE: Chair, as I indicated, Chair, for the simple stuff we had selected we followed that through and where there were challenges and there were deviations, we found them and we raised them with management and with the audit committee, Chair.

CHAIRPERSON: Does that suggest that you found files in regard to all the contracts you looked at because I think
20 Ms Hofmeyr's question is, how would you have looked at A, B, C, D, in my kind of an example, if you did not find the files?

MR MOTHIBE: Thank you, Chair. Chair, if one looks at the report that we sent through to management and to audit committee. We did mention areas where we could

not be provided with files and therefore, we would obviously not have been able to complete that process. Hence, Chair, I do indicate we followed the guidance on how to perform the audit of procurement and contract management. Where we found the files, we obviously able to perform every single test but there were areas where we could not be provided with the files and so the test failed and we reported that matter to management. We asked a follow-up and we reported the matter to the audit
10 committee.

CHAIRPERSON: Would it be correct to say without the files you cannot perform – you could not perform that job, your job as an auditor?

MR MOTHIBE: Yes, Chair, without the file then you are not able to complete the necessary steps, that is correct, Chair.

CHAIRPERSON: Yes, yes. You comment about the absence of the file or not being provided with the file but you cannot actually do what you are supposed to do,
20 without the file. You cannot perform the actual job that you wanted to do.

MR MOTHIBE: Chair, that is correct.

CHAIRPERSON: Yes.

MR MOTHIBE: And it is for that reason that we elevated – we raised an issue with management.

CHAIRPERSON: Ja.

MR MOTHIBE: And we elevated the matter to the audit committee and, chair, I think as I allude to in our summary statement, we acknowledge that we should have – there was that next step of - in the audit opinion mentioning those noncompliance issues with the PFMA.

CHAIRPERSON: Ms Hofmeyr?

ADV HOFMEYR: Yes, it is that is quite an important one, is it not, Mr Mothibe, because it is one thing for you to
10 need to do the work that is required of you to find that you are inhibited in doing that because you cannot find tender files to report that to management and the audit and risk committee but then not take it any further, that would be a dereliction of your duty, would it not?

MR MOTHIBE: Chair, I would not go as far as to say it is a dereliction of duty because we – certainly there are reporting steps that we were able to carry out, Chair. And as I do indicate, Chair, we did concern to the fact that that last step should have been carried out.

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

MR MOTHIBE: That is identifying the matter in the audit opinion.

CHAIRPERSON: Yes, but if you – if it was your duty to do that last step and you did not do it, why is that not a dereliction of duty because I think you do not concede to

Ms Hofmeyr's question that when she asked was it not a dereliction of duty? So my question is, since you do accept that that last step should have been done and it was not done, so my question is, which is basically Ms Hofmeyr's question, why was that not a – why do not regard that as a dereliction of duty?

MR MOTHIBE: Chair, can I think about that because, I guess, Chair, I am trying to wrap my mind around ...[intervenes]

10 **CHAIRPERSON:** Okay, no that ...[intervenes]

MR MOTHIBE: That it is a dereliction of duty because it could mean something else, Chair.

CHAIRPERSON: Okay, when ...[intervenes]

MR MOTHIBE: I would like to wrap my mind around that, Chair.

CHAIRPERSON: No, no, that is fine. Ms Hofmeyr can come back to it later on, ja.

20 **ADV HOFMEYR:** You see, the problem with that last step, Mr Mothibe, I would like to put to you and have your comment on, is if you do not focus on and perform your duty in the last step, then your audit opinion is going to be incorrect, is it not?

MR MOTHIBE: Chair, the audit opinion, in so far as it talks about compliance with laws and regulations, Chair, would be incorrect.

ADV HOFMEYR: Because you cannot satisfy yourself that there has been compliance because you have not got the tender file and although you have reported it to management and ARC, the audit and risk committee, you did not receive any meaningful response to that, did you?

MR MOTHIBE: Chair, in performing the work and in identifying the issues and elevating them to the audit committee we had already identified that it is in fact noncompliance with the PFMA. As I do indicate, Chair,
10 that last step is what was missing, that is where we erred in not informing the shareholders in that regard.

CHAIRPERSON: Ms Hofmeyr, please do not forget your next question, I just want to go back to the dereliction of duty aspect.

ADV HOFMEYR: Of course.

CHAIRPERSON: If we do not call it dereliction of duty but call it omission of duty are you comfortable to concede that?

MR MOTHIBE: Chair, it was omission, Chair.

20 **CHAIRPERSON:** It was an omission of duty.

MR MOTHIBE: It was an omission.

CHAIRPERSON: Okay, alright, thank you. Ms Hofmeyr, that does not preclude you from coming back to the question.

ADV HOFMEYR: Of course.

CHAIRPERSON: But I thought I would – yes.

ADV HOFMEYR: Thank you, Chair. Chair, I note that we are close to the tea break but I would like to just conclude on one point, if I may. Mr Mothibe, I understood your last answer before the Chair's question to be that you had identified noncompliance, you had raised it with management and the audit and risk committee but then I want to put to you, if that is so and you are not satisfied that there has then been compliance because of the
10 response you get, it is then misleading to the public, is it not, to sign an audit report which says that there has been compliance, there has not – we do not identify any instances of material noncompliance with applicable laws and regulations. Do you accept that?

MR MOTHIBE: Chair, after we have completed our work, when we put our audit opportunity together, we considered all the evidence that had been provided for audit purposes and applied judgment on some of these issues of noncompliance and other matters, in fact, Chair, as a
20 whole. And at that stage, Chair, our view was that there was no material noncompliance and I think, Chair, it is important to note that we had – we are not saying that there was no compliance, I guess, Chair, we were saying that there was no material noncompliance. Chair, again, I would refer one to the supplementary statement because

we do concede that there was an error in judgment, we should have identified those matters as material areas of noncompliance.

ADV HOFMEYR: Yes and so then when you stated in your audit report, we did not identify any instances of material noncompliance with applicable laws and regulations that was misleading.

MR MOTHIBE: Chair, that portion, Chair, was not correct, Chair, yes.

10 **ADV HOFMEYR:** Thank you, Chair, I see were are just at quarter past, if it is a convenient time to take the break.

CHAIRPERSON: Yes, we will take the short adjournment, we will resume at half past eleven. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Yes, we may continue.

20 **ADV HOFMEYR:** Thank you, Chair. Mr Mothibe, I would like to now move to the issue of PwC and Nkonki's appointment to audit SAA and I have looked at your statement and what it says on this topic and it may be that we can move fairly swiftly. That will depend on whether you and I are on the same page about certain aspects upfront. So let me ask first of all, do you accept that the tender process that was run by SAA for the appointment of auditors for 2012 financial year applied only to that year?

MR MOTHIBE: Chair, I think I will say that my understanding was that it was for a period of five years, if my memory served me right.

ADV HOFMEYR: But you have now been shown the documents that show that it was a tender for only one year, is that correct?.

MR MOTHIBE: Chair, I have seen the award letter which talks of they were only being awarded for 2011/2012 financial year.

10 **ADV HOFMEYR:** So as you sit here today do you accept that they were only awarded – they, being PwC and Nkonki were appointed for only one year pursuant to a tender process.

MR MOTHIBE: Chair, there were – my understanding was that we awarded the tender for five years. However, it is subject to annual concurrence by the audit committee – sorry, apologies, by the Auditor-General and that appointment also has got to be confirmed annually by the company at the Annual General Meeting as required by the
20 Companies Act.

ADV HOFMEYR: Mr Mothibe, how could you form that view based on the tender – the award letter?

MR MOTHIBE: Chair, as I did indicate in my statement, the appointment of PwC and Nkonki predates my joining the South African Airways – or rather PwC audit team.

When I had to go the assignment I understood that the award was for five years but also understood very well that it is subject to annual concurrence by the office of the AG and confirmation at every Annual General Meeting by the client because the client reserves the right to review the appointment, Chair.

CHAIRPERSON: But I think Ms Hofmeyr's question is whether as you sit there today you accept or you do not accept that the appointment was for one year so
10 distinguishing it from what you may have understood when you joined the team.

MR MOTHIBE: Chair, the award letter said one year and, Chair, from my understanding it is one year because it had to be renewed on an annual basis but the term would have been for five years. So that appointment has to be confirmed by the client at the AGM and had to seek concurrence also with the AG.

CHAIRPERSON: So is your evidence that you do not accept that the appointment for one year?

20 **MR MOTHIBE:** Chair, I am not too sure that one can read that letter as plainly as that because my understanding, Chair, is that they have to – you cannot appoint for more than one year, you have to seek concurrence and approval at every AGM, so the appointment would, as I understand it, Chair, would list that one year that we appointed and

then once there is concurrence and approval then another one confirms the next year, as it is, Chair.

CHAIRPERSON: Yes. I think Ms Hofmeyr will take us to the actual letter and then – yes, Ms Hofmeyr?

ADV HOFMEYR: Thank you, Chair. Mr Mothibe, I had hoped that we would be able to move through this quickly but it appears that we are not going to be. Do you know that the request for proposal to which PwC responded related only to an audit for the 2012 financial year?

10 **MR MOTHIBE:** Chair, maybe if Ms Hofmeyr could refer to the file.

ADV HOFMEYR: Of course.

CHAIRPERSON: Yes.

ADV HOFMEYR: Let us find it in – it is in DD19C as we have now numbered it from page 59.

MR MOTHIBE: I have got it, Chair.

ADV HOFMEYR: Now that is a document that appears at page 59:

20 “Bid document, request for proposal for the provision of external audit services to SAA Group.”

Do you see that?

MR MOTHIBE: I see that, Chair.

ADV HOFMEYR: And then if you turn to page 77, you will see there the scope of work is identified. Do you have that?

MR MOTHIBE: I see that, Chair.

ADV HOFMEYR: And in the second - it tells you that:

“The objective of the audit as a statutory requirement is the expression of an opinion on fairness in all material respects of SAA’s financial statements in conformity with International Financial Reporting Standards.”

And then the second sentence says:

10 “The audit for the financial year ending 31 March 2012 have to be conducted in accordance with the Internal Standards on Auditing.”

And then it gives you the focus areas for the audit for the financial year ending 31 March 2012. Do you see that?

MR MOTHIBE: That is correct, Chair.

ADV HOFMEYR: Do you now accept that the request for proposal related to the audit for the financial year ending 31 Mach 2012?

MR MOTHIBE: Chair, that is how it reads, Chair.

20 **ADV HOFMEYR:** You accept that. And then that was followed up by the award letter to PwC, that was clear on this point. You will find it at the same bundle page 115.

MR MOTHIBE: I have got it, Chair.

ADV HOFMEYR: This is a letter of award to PricewaterhouseCoopers from the Chief Procurement Officer of South African Airways; it is dated 21 December

2011. Please can you read the first paragraph of the letter into the record?

MR MOTHIBE: The one that starts:

“With reference to the above...”

ADV HOFMEYR: Yes, indeed, thank you.

MR MOTHIBE:

10 “With reference to the above request for proposal South African Airways Limited, SAA would like to congratulate PricewaterhouseCoopers on being awarded the above services as joint external auditors with Nkonki Incorporated for our 2011/2012 financial year.”

ADV HOFMEYR: That is an award for one year, correct?

MR MOTHIBE: Chair, that is how it reads.

ADV HOFMEYR: Yes, so do you now accept that PwC and Nkonki were only appointed for a single year after the tender process that preceded this letter?

20 **MR MOTHIBE**: Chair, that is how the letter reads but I do believe it is important to note that companies do not change just annually and from my understanding, as PwC, certainly was that the audit engagement would be for a period of five years.

Chair, it is not economically viable, certainly from our side, to respond to a tender or a tender of this size, of this complexity, if it was only going to be performed for a

period of one year. In the first year of engagement, Chair, there is a lot of investment that takes place with regards to understanding the client, the complexities that come with it and, Chair, as I do indicate, from a commercial perspective you certainly would not be responding to an RFP of this magnitude if it was only for one year.

Also importantly, Chair, running a tender process for audit services on an annual basis takes a lot of time not only for respondents but also for the client and, Chair,
10 it would be very disruptive for a client to be engaging with new auditors every single year. As you appreciate, Chair ...[intervenes]

CHAIRPERSON: Yes, Mr Mothibe, I think both Ms Hofmeyr and I understand what you are saying.

MR MOTHIBE: Okay.

CHAIRPERSON: I think another witness has said something similar.

MR MOTHIBE: Okay.

CHAIRPERSON: But the question is, irrespective of
20 whether you consider it viable or not viable to – for an entity such as SAA to appoint auditors for one year, the question is whether you accept that in this case the appointment was for one year. Right or wrong, but that is what happened.

MR MOTHIBE: Yes, Chair, that I have agreed to, Chair.

CHAIRPERSON: Yes, ja.

MR MOTHIBE: I thought it was important just to bring some perspective, Chair, to the matter.

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

ADV HOFMEYR: Mr Mothibe, then I would like to just pick up on something you were saying in that context setting, you – as I have it, you said something like it would not make sense for PwC to respond to an RFP of this magnitude if it was not for something like a duration of five
10 years. Did I have your evidence correct?

MR MOTHIBE: Chair, what I mean is, any audit firm – I spoke PwC because obviously, Chair, I do work for PwC, but I would say it would not be commercially viable for any audit firm to respond especially for a company this size, this magnitude, at this complexity. It would just be not viable if it was only for a period of one year.

ADV HOFMEYR: Then why did PwC bid for one year?

MR MOTHIBE: Chair, it goes back that our understanding was that it would have been for a period of five years,
20 which is line also with the rotation period of a partner as lay out in the Companies Act, Chair.

ADV HOFMEYR: Mr Mothibe, how did somebody in PwC read a request for bid confined to one year, receive an award letter for one year and form the view that it was getting to do audit work for years? How does that happen?

MR MOTHIBE: Chair...

CHAIRPERSON: So, in other words, what is the basis for you or PwC to have thought that this was for five years when the request for proposals was talking about one year and the letter for appointment was talking about one year?

MR MOTHIBE: Chair, as I do indicate – I did indicate earlier this predated my involvement. However, Chair, it is standard practice, always practice that when you get an audit only – or an audit, it is for a period of longer than
10 one year. We have not seen, Chair, anywhere where an audit was awarded for one year only, Chair, that does not happen in practice, Char.

CHAIRPERSON: Ms Hofmeyr?

ADV HOFMEYR: Do you think PwC bid for one year and hoped it might be able to get extensions of that one year?

MR MOTHIBE: Chair, as I do indicate, we were also alive to the fact that to the extent that the subsequent years' audits are with PwC they will still be subject to concurrence by the office of the AG and confirmation at the
20 AGM. So there is still a process that is followed in that regard.

ADV HOFMEYR: And what about the process of lawful procurement? Would PwC not have to subject itself to another procurement process if all it was appointed to initially was on year?

MR MOTHIBE: Chair, the procurement process is run by South African Airways and not by PwC, Chair, so I am not too sure I can speculate in that regard, Chair.

CHAIRPERSON: Well, you said that – I am putting it in my own words, I am paraphrasing what you are saying, that there was going to be – or there were going to be annual renewals. So the question then is, should those renewals not have been subject to a public – open public tender and I think your answer is SAA would run that but I think Ms
10 Hofmeyr probably wants to follow up on that.

ADV HOFMEYR: I agree it is for SAA to run the process, what I am trying to understand is, PwC's thinking – because your evidence before this Commission is it is not commercially viable for audit firms to bid for only one year's audit, is that correct?

MR MOTHIBE: Yes, I said only on this magnitude and it is something that we do not see in practice.

ADV HOFMEYR: Yes. And then I said well, how then did PwC go about its approach here because it bids for one
20 year, it gets awarded for only one year and I have asked you, did it think it would simply be able to extend each year or get appointed for further years?

And I understood your answer to be yes because there is a process where the Auditor-General has to yearly confirm his agreement with that appointment. Do I have

your evidence correct?

MR MOTHIBE: Chair, as I indicated, there are areas here which predate my involvement but certainly the understanding was that the audit for a period of longer than one year subject to approvals.

ADV HOFMEYR: Yes but do you accept that if ...[intervenes]

CHAIRPERSON: Okay, I am sorry, I am not sure that I understood that. Just repeat that last point?

10 **MR MOTHIBE:** I was saying, Chair, that my understanding, as I indicated, was that the award of the audit was for a period of longer than – not one year but five years and however, it will still be subject to approvals and we do take comfort in the fact that the office of the AG gave concurrence after the company appointed PwC and Nkonki at its Annual General Meeting.

ADV HOFMEYR: Mr Mothibe, do you accept that when a state owned enterprise like SAA appoints an external auditor it is procuring services?

20 **MR MOTHIBE:** It is a recurring service, Chair.

ADV HOFMEYR: And do you accept that the procurement of services by a state owned enterprise like SAA must be preceded by a tender process?

MR MOTHIBE: Yes, Chair, which tender process was entered into in 2011, it was responded [inaudible –

speaking simultaneously]

ADV HOFMEYR: Yes, for a single year, Mr Mothibe, is that correct?

MR MOTHIBE: Chair, I shared with Ms Hofmeyr my understanding of what it was.

CHAIRPERSON: Maybe let us – please do not forget your line of thinking, Ms Hofmeyr. Let us put this to bed if we have not done so, by which I mean let us see whether there is agreement exactly on what the position was.

10 We now know that the request for proposals was for one financial year, 2011/2012, okay? And you accept that but you say, if I understand you correctly, you had an understanding – you had an understanding that the appointment was for five years.

MR MOTHIBE: That is correct, Chair.

CHAIRPERSON: Subject to annual approvals or renewals, is that right?

MR MOTHIBE: That is correct, Chair.

20 **CHAIRPERSON:** Now where did you get this understanding from that the appointment was for five years when the request for proposal said one year, the letter of appointment said one year?

MR MOTHIBE: Chair, if you recall, I did indicate I was not part of the process, I became part of an audit team for the 2014 financial year. So we had already signed off jointly

with Nkonki the 2012 and the 2013.

So as part of the handover process we discussed – we talk about what our duty and our mandate was and, Chair, it was confirmed that our understanding was that we would be – we are appointed for a period of five years.

CHAIRPERSON: So your understanding is based on what, the team, the PwC team responsible for auditing SAA conveyed to you at the time.

MR MOTHIBE: And Chair, also what we have experienced
10 in what happens in the industry.

CHAIRPERSON: Okay, well one, certainly the team, the PwC team that was assigned to SAA conveyed that to you, and that is number one. Number two, you say there is a practice in the industry that also informed your understanding, is that right?

MR MOTHIBE: That is correct, Chair.

CHAIRPERSON: And what is that practice?

MR MOTHIBE: Chair, that typically when you appoint
20 auditors it would be for a – it would not be – certainly not for a period of one year only, Chair, and importantly, there is that annual reappointment approval at the AGM, Annual General Meeting of the company which is a requirement of the Companies Act, Chair, that that happens.

CHAIRPERSON: Is your evidence that the practice in the industry is that an auditing firm would be awarded a job

such as this and on paper it would be written one year but everybody else knows that it is not going to be for one year, it was going to be for five years or three years. Is that what you are saying?

MR MOTHIBE: That is my understanding, Chair, that is what I am saying, Chair.

CHAIRPERSON: So even if the entity makes it clear that this is for one year, you would take that you have been awarded a contract for five years.

10 **MR MOTHIBE:** Chair, I would think there would also be discussions with the entity. Once you were appointed you obviously would give the entity to understand your – the exact mandate, how long it is, but as I indicate, Chair, as the letter stands, I do agree it says 2012, because I do believe it should be because there is a requirement to have an annual reconfirmation by the AGM and by the – of the AG.

CHAIRPERSON: Ms Hofmeyr.

20 **ADV HOFMEYR:** Mr Mothibe, I want to move you to a new document in a moment but I just want to understand this practice in the industry. Is that a practice related to private companies or to state owned enterprises?

MR MOTHIBE: Chair, even with private companies we would – an audit firm would not respond to a request or proposals if the appointment would only be for one year.

That would not happen, Chair.

ADV HOFMEYR: Let me be clearer with my question, I can completely understand in a private company context why it would be the case that even though you are appointed for one year you have some reliance on an industry practice that at the next Annual General Meeting you will be appointed again, that is private companies.

State owned enterprises are regulated by the PFMA, they have to go out on tender before they procure
10 services and I am trying to understand whether the industry practice to which you speak is also an industry practice for the state owned enterprise who need to be audited.

Do they generally roll over their audits when they go out on tender only for one year? Is it your experience that they continue to extend those?

MR MOTHIBE: Chair, I have not seen – even the state owned enterprises that keep auditors only for one year. I have not seen that, certainly, Chair.

ADV HOFMEYR: My question is different but go ahead,
20 Chair.

CHAIRPERSON: Maybe you go back to your question before I ask.

ADV HOFMEYR: I want to understand this practice because it is quite important in a state owned enterprise context. Are you aware of a practice whereby state owned

enterprises run tender processes only for a year but it is understood by the industry that that is for a longer period of three, four, five years?

MR MOTHIBE: Chair, I am not sure if I can answer that question because I can talk to requests or proposals that I had responded to, so ...[intervenes]

CHAIRPERSON: Let me put it this way. You talked about a practice that you understand to be there in the industry.

MR MOTHIBE: Yes, Chair.

10 **CHAIRPERSON:** Okay. So Ms Hofmeyr's question is whether that practice that informed your understanding, does it include – does it apply to state owned enterprises or is this a question of you may have been aware of a practice that applies to the private sector but you invoked it in the context of a public enterprise without knowing that in the public sector – without knowing whether there is such a practice in the public sector?

MR MOTHIBE: Apologies for the delay, I am just to reflect on what one has observed, Chair. Chair, I do believe even
20 in the public sector an appointment of one year is – as I indicated, it is not one that I had seen, Chair, I have not seen that and the expectation ...[intervenes]

CHAIRPERSON: Yes, but the question is about the practice. So, in other words, as you sit there, are you able to say this practice that I am talking about exists in the

public sector as well or is your position that you are not sure whether it exists in the public sector but you know that it exists in the private sector? Is it the latter?

MR MOTHIBE: Maybe I have to say the latter, Chair.

CHAIRPERSON: Okay, alright.

ADV HOFMEYR: Mr Mothibe, you made the point earlier procurement is the responsibility of SAA and I readily accept that but what I would like to just draw your attention to is that it is customary for SOEs to devise tender
10 processes for the appointment of their auditors for five years.

I suspect for the very reasons you have given, right? And the reason I saw that with confidence is because we in our investigations have been able to find one of the tenders that Eskom put out, for example, in 2015 for its audit services and you will find that in DD19C at page 149. Let me just be clear, it begins at page 143, it is the Eskom RFP for audit services.

CHAIRPERSON: Did you say 149?

20 **ADV HOFMEYR:** It starts at 143, Chair, just so that we can identify the document.

CHAIRPERSON: Yes, okay.

ADV HOFMEYR: This is the November 2015 Eskom RFP for professional services including audit services and if you go in it at page 149.

I will not bore you with all the details of this RFP, Mr Mothibe, but it is an RFP for professional services including audit services and at paragraph 4.3 on that page there are stipulated additional conditions of tender and what Eskom does here – I suspect you might say is sensible – because Eskom says:

10 “The appointment will be made for period of five years relating to the audit of five financial years from 2014 to 2015 financial year onwards subject to the following conditions.”

And if you go to the last of the bullets there, this is the point that you have emphasised about the Auditor-General. What Eskom does is it says:

 “The final condition is there must be annual consultation with the Auditor-General before the appointment for a specific year is finalised.”

Do you see that?

MR MOTHIBE: I see that, Chair.

20 **ADV HOFMEYR:** So what I put to you is, there is a way for state owned enterprises to procure the services of auditors for more than one year and I am suggesting this is an example of that. Do you accept that that is so?

MR MOTHIBE: Chair, this is a good example, Chair.

ADV HOFMEYR: And it should be contrasted, I put to you, with the request for proposal that went out from SAA in

2011 because SAA's 2011 request for proposal looked nothing like this, did it?

MR MOTHIBE: The SAA RFP did not contain this clause, Chair.

ADV HOFMEYR: And, Mr Mothibe, you said that when you came in in 2014 – and I am mindful to the fact that you were not there from the beginning, but when you came in in 2014 you were led to understand that this was an appointment for five years, is that correct?

10 **MR MOTHIBE:** That is the understanding that I had, Chair.

ADV HOFMEYR: Yes and you got it from your team, is that right?

MR MOTHIBE: That is correct, Chair.

ADV HOFMEYR: And as part of the audit procedures that your team were following, were they reviewing BAC minutes and board minutes in the course of their audit procedures?

MR MOTHIBE: They would have done so, Chair.

20 **ADV HOFMEYR:** So do you know why they did not pick up a Bid Adjudication Committee minute in 2012 that raised concerns about the fact that the appointment of the auditors for the 2013 year had not gone through a procurement process?

MR MOTHIBE: Chair, I was not part of the team in 2012

so I cannot comment on that, Chair.

ADV HOFMEYR: In preparing for your evidence today have you raised any questions with your colleagues about why they might not have picked that up?

MR MOTHIBE: Chair, as I did indicate, remember, Chair, you said that our understanding was that it was for a period of five years, so if one thinks about it, Chair, there would not be any bid adjudication because the audit would have been for five years, as we understood.

10 **CHAIRPERSON:** Well, you might have I misunderstood the question.

MR MOTHIBE: Yes.

CHAIRPERSON: The question is whether in preparing for giving evidence today you did pick up that the PwC team did not pick up the issue of there having been no open tender.

Or, unless I misunderstood, then your answer, maybe you are saying your answer is you could not have picked that up because your understanding was that it was
20 for five years and if it was for five years ...[intervenes]

MR MOTHIBE: It would not be there.

CHAIRPERSON: ...the tender that had been done at the beginning would be applicable for all the years.

MR MOTHIBE: That is correct, Chair.

CHAIRPERSON: Okay, alright.

ADV HOFMEYR: So what I am trying to probe at the moment is how your team formed this understanding that it was for five years because part of the audit procedures is to look at minutes, right? And I want to now take you to the Bid Adjudication Committee minute that appears in DDC at page 117. This is - Mr Mothibe, do you have it?

MR MOTHIBE: I have it, Chair.

ADV HOFMEYR: This is a decision record of a meeting of the Bid Adjudication Committee of SAA dated the 7
10 December 2012. Do you see that at the top of the page?

MR MOTHIBE: I see that, Chair.

ADV HOFMEYR: And in the second block on that page there is a heading:.

“Project description or purpose”

And what it records there, I will just read it into the record:”

20 “Is to notify the BAC of the support and recommendation by the audit committee to the SAA board of directors of the extension and reappointment of PricewaterhouseCoopers, Nkonki Incorporated as the joint external auditors for the SAA Group excluding Mango Airlines for the 2012/2013 financial year at an estimated cost of R16 838 850.”

Do you see that?

MR MOTHIBE: I see that, Chair.

ADV HOFMEYR: Now that is the year after the year for which the tender process was run, correct?

MR MOTHIBE: That is correct.

ADV HOFMEYR: And your team, as I understand the procedures, would have been looking at this minutes amongst others and what I want to understand from you is how they could have missed what is reflected at the bottom of that page under the heading:

10 “Conditions or follow-up actions.”

That is written in hand and I will read it into the record:

“BAC noted that the normal defined and approved procedures in line with SCM policy and DOA was not followed. The head of GSM should escalate to the internal audit as the process was not correctly followed. BAC aware that this has been approved by the AGM and supported by the audit committee. Business should clarify the original contract period and provide additional information on the process followed.”

20

How did the PwC team miss when it was going through these minutes this recordal, do you think?

MR MOTHIBE: Chair, this minute predates my involvement so it is a – I am not sure that I am able to do that. If I respond, Chair, I will be speculating.

CHAIRPERSON: Yes.

MR MOTHIBE: And if I am allowed to speculate, Chair?

CHAIRPERSON: Ja.

MR MOTHIBE: It might be because it did not form part of their sample because whilst you do review minutes and review minutes and you pick up – you do pick up items from minutes that you would want to audit. There is different criteria that you use to pick them up and it could be that this letter, as related to the work that happened, it
10 was not part of the sample that they would have looked at.

CHAIRPERSON: Yes.

MR MOTHIBE: But, Chair, as I have indicated, let us say that is speculating, Chair.

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

MR MOTHIBE: It is not fair to do so, Chair.

CHAIRPERSON: That is fine. Let me ask this question, bearing in mind that you were not there at the commencement of PwC's involvement at SAA, I take it that the team would not have started the work without PwC
20 team, would not have started the work without having seen the letters of appointment or at least the leader of the team, is that right?

MR MOTHIBE: That is correct, Chair.

CHAIRPERSON: Yes. And now that we know that the letter of appointment made it clear it was for one financial

year, sitting there, are you able to understand how somebody would have seen that letter saying one year would say to you we have been appointed for five years? Now I am not suggesting that the person who told you is the leader of the team but I am just assuming that at least the leader of the team would have seen the letter of appointment. If he had seen the letter, would you have any understanding how he would say – or anybody who had seen it would say to you we have been appointed for five
10 years? You might be able to say I do not understand why anybody who would have seen the letter would tell me it is for five years or you might say because of A, B, C, D that I am aware of, I can understand why somebody who had seen the letter would tell me that the appointment is for five years. That is what I am interested in.

MR MOTHIBE: Yes, Chair, I understand your question. Chair, the appointment was for 2011/2012, that initial letter. Subsequent to that there was another appointment for the year 2012/2013, so when I became involved, we
20 had also already been appointed for 2013/2014 because as I indicated, Chair, I only joined the team halfway during the 2014 financial year. So as you can appreciate, Chair, with the passage of time and with the subsequent appointments post the first one, I can understand why the view was that it was a period of five years because that appointment, the

initial appointment had been reconfirmed for another two years, Chair.

CHAIRPERSON: But if one is basing the statement that PwC was appointed for five years, on what you are saying, it would not be on the basis of the letter of appointment, is it not? Saying that PwC was appointed for five years could not be on the basis of the letter of appointment, it has to be on the – it had to be on the basis of something else because the letter of appointment was quite clear.

10 **MR MOTHIBE:** Chair, the letter of appointment is issued on an annual basis, Chair, so for the subsequent year there would have been another letter issued confirming appointment, same as all subsequent years, Chair.

CHAIRPERSON: Yes but let us take it step by step. Do you agree with me that the letter of appointment to which we have made reference earlier which said one year...

MR MOTHIBE: That is correct, Chair.

CHAIRPERSON: ...could not form the basis for anybody to say PwC was appointed for five years. If there was a
20 basis for saying that, it must be something else, not the letter. You agree with that?

MR MOTHIBE: I heard you, Chair.

CHAIRPERSON: Yes. And I seem to understand you to say there were annual letters of appointment – or I do not know whether that is what you would call them, every year.

Now would those annual letters be the basis for anybody to say PwC was appointed for five years?

MR MOTHIBE: Chair, as I indicated, that was my understanding and, Chair, those further appointments, if anything, they would confirm the understanding that we were certainly appointed for a period of longer than one year.

CHAIRPERSON: Because, you see, if reliance is placed on those annual letters, I would imagine that what would
10 happened is that somebody would say well, we have been appointed one year at a time, every year we get appointed. So the duration of appointment is no longer than one year at any time. In other words, this year our obligation is for this year. Whether we will have any obligations, any job in regard to SAA next year, we do not know, we will know when we have been given another letter. Would you go along with that?

MR MOTHIBE: I do understand you, Chair.

CHAIRPERSON: Okay, thank you.

20 **ADV HOFMEYR:** And then just to return to the BAC Committee record, I understand you to say it might have been missed because it wasn't in the sample. You do not know that as a fact do you?

MR MOTHIBE: Chair hence I indicated it is – because this predates my involvement, it is difficult for me to respond to

a question like that Chair. Whatever I say would amount to speculation Chair which I do not believe it is fair on the person who is doing the work.

ADV HOFMEYR: If you had seen a minute like this would you have been concerned that the appointment of PwC and Nkonki since the 2012 financial year was irregular?

MR MOTHIBE: If I saw this I would raise, I would be concerned, that is correct Chair.

ADV HOFMEYR: And would you accept that the
10 appointments for the 2013 to 2016 financial year then would have constituted irregular expenditure under the PFMA.

MR MOTHIBE: Chair based on the understanding that Ms Hofmeyr has that would be the case, or certainly Chair based on the understanding that I had, because my understanding was that it was for a period of five years, I would not have thought so Chair.

ADV HOFMEYR: But with your knowledge now you accept that it did constitute irregular expenditure?

20 **MR MOTHIBE:** Chair without seeing how this matter was finalised, because there is an issue raised here, I am not too sure one is able to respond to that. Secondly Chair also appreciating that where there is an irregular expenditure there is an opportunity for the entity to regularise it and have we not seen what they would have

done to correct the matter I am not too sure I can be able to respond to that Chair.

ADV HOFMEYR: Let me in fairness break it down. We have accepted in your evidence that the procuring of audit services is procurement that must comply with the PFMA for an entity like SAA, correct?

MR MOTHIBE: That is correct.

ADV HOFMEYR: We know that they tendered to provide – to obtain audit services for the 2012 financial year,
10 correct?

MR MOTHIBE: That is correct.

ADV HOFMEYR: We know that they did not tender to receive audit services for the years 2013 to 2016, correct?

MR MOTHIBE: Chair there was no official tender process run by SAA.

ADV HOFMEYR: Yes, and we know that procurement not in conformity with the PFMA constitutes irregular expenditure correct?

MR MOTHIBE: That is correct.

20 **ADV HOFMEYR:** So then I put it to you again the appointment of PwC and Nkonki for the 2013 to 2016 financial years therefore constituted irregular expenditure, correct?

MR MOTHIBE: Chair that would be correct to the extent that there was no process put in place to regularise it/

ADV HOFMEYR: And do you know what PwC and Nkonki were paid for those four years of audit work that constituted irregular expenditure?

MR MOTHIBE: Chair I do not have the amount off my head but it is included in the pack Chair.

ADV HOFMEYR: I will assist you if you are willing to trust my calculation abilities Mr Mothibe because I have taken each of the payments that we received from SAA for 2013 to 2016 years for each of Nkonki and PwC and I have
10 added them up and the total I got to was R69 760 888, does that sound right?

CHAIRPERSON: Mr Mothibe I would just warn you not to be very trusting of a lawyer's calculation. [laughing]

ADV HOFMEYR: Mr Mothibe let's do it this way, over the lunch break I will direct you to Ms Olipski's affidavit. As I tally them up it is R69 760 888.

MR MOTHIBE: If you say so ma'am.

ADV HOFMEYR: Thank you, and if over the break, let me just give you the reference so you can go there, her
20 affidavit is in DD19C at page 49, if over the break you establish that I have made a calculation error you can let us know after two o'clock, are you comfortable with that?

MR MOTHIBE: Chair I am comfortable.

CHAIRPERSON: She probably got it right.

ADV HOFMEYR: Well I am not always sure with

calculations but ...[intervenes]

CHAIRPERSON: But you must check.

ADV HOFMEYR: It is in the order of R69million I suggest.

MR MOTHIBE: I will trust that Chair.

CHAIRPERSON: Ja, okay.

ADV HOFMEYR: So that R69million of irregular expenditure did not get disclosed in the financial statements for the years 2013 to 2016 did it

MR MOTHIBE: Chair at this stage there is an
10 understanding because we did not believe it to even be – it had not been disclosed.

CHAIRPERSON: Mmm, mmm.

ADV HOFMEYR: Thank you. Mr Mothibe I would like to move ...[intervenes]

CHAIRPERSON: I am sorry, if PwC believed that it had been awarded a contract for five years, it had been appointed for five years, at [break in audio] that the request for proposals told competitors and others in the public that whoever was going to be appointed would be
20 appointed for one year and if PwC [break in audio] as they continued every year to do this work that they were doing, they were performing work in circumstances where there was irregularity because the request for proposals and the letter of appointment said one year, it did not say five years and yet they were continuing every year.

MR MOTHIBE: Chair as I indicate much as the letter said one year, the understanding would have been that it was all of our opinion, we have never seen, there has never been an environment where we saw an appointment of auditors being done for one year only.

CHAIRPERSON: Yes, no I understand that, I am sorry to interrupt you, I understand that, but my question is you ought as PwC, I would imagine, you ought to have paid some attention to whether you were performing these
10 duties under a regular arrangement, under a lawful appointment and a lawful appointment you would have known must have been that if the invitation, the request for proposals said it is for a certain period and you competed with your competitors with other people and you competed for one period or a period of one year when you get to continue and do the work beyond that period it must be irregular, because your competitors, call them X, Y, Z, who all – let us say and I do not know how many bidders there were, but let us say there were two bidders and you
20 succeeded X, Y, Z was another bidder, they did not succeed, so as far as they are concerned you got a tender for one year, now they hear that two years later you are still there, three years later you are still there, four years later you are still there, but they have been watching for any new tenders issued by or requests for proposals issued

by SAA. They must feel aggrieved to say but these people were appointed for one year, why are they continuing, why are we not given an opportunity, what is happening, and I am suggesting that as PwC that ought to have been a concern to you as PwC because you knew that the letter of appointment said one year, you know that the request for proposal said one year.

MR MOTHIBE: Chair I would think that Chair as I explained my understanding and what we see in practice
10 would have covered part of that thing that we have never seen a company the size, this complexity, put out an audit tender for only one year. If anything Chair I would think that we should be able, which we did, Chair we took comfort in the fact that the Auditor General or the AG gave concurrence and I do know that as part of the concurrence process they do ask about – enquire of the procurement process that was followed.

Our appointment was also confirmed at the AGM, and at the AGM Chair all those which we governance are
20 there and able to raise objections or issues as appropriate, but Chair the fact that our appointment was also approved or the concurrence did come from the office of the AG, I do think we're able to take comfort on that Chair.

CHAIRPERSON: Let me ask this question, if PwC is - genuine understanding was that when this letter of

appointment said you are appointed for one year, one financial year, it actually didn't mean that, it meant five years because of all the reasons that you have given. Why would PwC not have said to SAA, why do you write one year, why don't you write five years even if it's subject to renewals every year, every year based on whether you have done the job properly the previous financial year, why would PwC not say, why are you giving us a letter of appointment that says one year because, maybe, we all
10 know this is for five years, because if PwC has accepted a letter that says one year, one financial year, but it's understanding is that this is for five years, SAA would be entitled, would they not be, after one year we are requesting proposals for the following year and you can't complain because you know you are appointed for one year? So I just have this concern as to, how do you accept an appointment on the basis of a letter that says one year but you say your understanding as PwC is that this is for five years but you don't point out to say, change this letter
20 because you and I know that it's for five years or we only put in a bid on the understanding that it's for five years? So, your letter is – we are not prepared to do this job if you are restricting us to one year, we will pull out if you are insisting on one year, why didn't PwC say that?

MR MOTHIBE: Chair it will be a bit difficult for me to

respond to – as I was not part of that initial – I didn't have a responsibility for that Chair.

CHAIRPERSON: Sorry your voice went down again.

MR MOTHIBE: Oh, sorry Chair, apologies. I say Chair, I was not part of the process back then Chair so I will not be able to – I don't have a response to that Chair, I don't have a response to that question Chair.

CHAIRPERSON: Yes.

MR MOTHIBE: I might have to go back and just
10 understand why that did not happen Chair.

CHAIRPERSON: Yes, would you accept it as an expected – a natural response that one would have expected from PwC to the letter of appointment if their understanding was, this is for five years? Would you accept that, what I'm suggesting would be the response that one would expect from PwC to say, well you have got it wrong on your appointment letter because we – our understanding is that we are here for five years and quite frankly if you say one year, we think it's financially – commercially not viable, we
20 will pull out?

MR MOTHIBE: I do understand where the Chair is coming from.

CHAIRPERSON: Okay thank you/

ADV HOFMEYR: Mr Mothibe you made reference to the Auditor General's oversights, are you aware that the

Auditor General took the view, during the term of your appointment, that the appointment of auditors did have to follow a procurement process?

MR MOTHIBE: Yes, I'm aware that it does follow procurement process.

ADV HOFMEYR: And do you recall what the Board of SAA's reaction to that was, when they received that advice from the Auditor General?

MR MOTHIBE: I don't recall Chair but I think you are
10 talking about – maybe just remind me which year you are talking about Chair?

ADV HOFMEYR: Of course, in 2015 the Board of SAA wanted to move all the auditing services to Nkonki and they received advice from the Auditor General that they could not do that without following a tender process, do you know what the Board's response to that advice from the Auditor General was?

MR MOTHIBE: Not off the top of my head Chair.

ADV HOFMEYR: We'll go to the minute later because it
20 was one of the minutes that I assumed you would have been looking at in your audit procedures but just to jump ahead, the Board of SAA recorded that it was "strange" that the Auditor General required it to go out to tender for its audit services, so you share that view of the SAA Board, that it was strange that it should be required to

procure these services in accordance with the PFMA?

MR MOTHIBE: I do not agree with the view of the Board, no.

ADV HOFMEYR: Thank you...[intervenes].

CHAIRPERSON: I'm sorry, I don't know if it's me alone, I'm freezing.

ADV HOFMEYR: I have never been so cold in my whole life Chair, so it is not just you, it is terribly cold.

CHAIRPERSON: How far away are we from lunch, thirty
10 minutes.

ADV HOFMEYR: Chair I don't have a difficulty, if it would be convenient with us taking an early break now and we try and do something in the next hour and return at one thirty if that would improve things, I don't know.

CHAIRPERSON: Well I think maybe we should, if we can, just persevere for the next thirty minutes and then during lunchtime, hopefully, somebody can do something. I think some time back they said they could do something to make the room warm so hopefully after lunch – but I think it does
20 take quite some time, but I think, let's persevere if we can.

ADV HOFMEYR: With fortitude we'll do it Chair and we'll make enquiries over the break if there's something that can be done.

CHAIRPERSON: Yes, yes and – ja I think if you have an overcoat or something, feel free to...[intervenes].

ADV HOFMEYR: You may see me return with an overcoat, indeed, thank you.

CHAIRPERSON: Yes.

ADV HOFMEYR: Mr Mothibe, I want to move from the topic of your appointment to the association that PwC had with Kwinana and Associates - I suspect somebody might have been listening, Chair, it seems we might have been spared the freezing air that is circulating in the room, but let's see how it goes. Right, Mr Mothibe, for this purpose,
10 if we can go in your first statement which is in DD19A and if you can pick it up at page 12 please.

MR MOTHIBE: I have the page Chair.

CHAIRPERSON: Did you say 12 or...[intervenes].

ADV HOFMEYR: 12 yes, 12, thank you Chair. Now there on that page you have a heading, payments made by Nkonki – oh apologies sorry – oh well I think your heading is just slightly inaccurate, you say there, payments made by Nkonki to Kwinana and Associates, I've only just picked that up now because what you deal with here is actually
20 payments made by PwC to Kwinana and Associates, is that right?

MR MOTHIBE: That is right.

ADV HOFMEYR: Okay so that's an error that neither you nor I picked up before.

MR MOTHIBE: Yes.

ADV HOFMEYR: But what you're dealing with in this section of your statement, as I understand it is the – well let's give the background, the Commission picked up a series of payments to Kwinana and Associates, the auditing firm of Ms Yakhe Kwinana who was a non-Executive member of the Board of SAA and the Chair of the Audit and Risk Committee and we required of you, in producing the statement that you address those payments and can I take it that, that's what you do from paragraph 46

10 on that page?

MR MOTHIBE: That is correct Chair.

ADV HOFMEYR: And then just to speed things up a bit, I just want to be sure that we're on the same page about the facts. As I understand it, there were three potential tenders that you bid together with Kwinana and Associates for, is that right?

MR MOTHIBE: That is correct.

ADV HOFMEYR: And, as I have it, the first of those occurred in late 2014 early 2015 and you submitted a bid with her firm to Eastern Cape Department of Education to provide internal audit services, is that correct?

MR MOTHIBE: That is correct Chair.

ADV HOFMEYR: And that bid was unsuccessful, correct?

MR MOTHIBE: That is correct Chair.

ADV HOFMEYR: Then, there was a second one, you

describe it as being in late 2014 and that related to audit work done at PRASA, is that correct?

MR MOTHIBE: Chair that is correct but Chair, just a correction, it was not audit work Chair.

ADV HOFMEYR: Right.

MR MOTHIBE: No, it was not audit work.

ADV HOFMEYR: That I did not have correct so it was other work, professional services?

MR MOTHIBE: It was – just to inform the Commission it
10 was work performed by one of our former companies that we have since disposed of, Combined Systems, and it was in the area of asset verification.

ADV HOFMEYR: Right, just give me a moment on that, if you don't mind. Sorry, so I'm just trying to understand, it was a – it was services that Kwinana and Associates rendered together with PricewaterhouseCoopers is that right?

MR MOTHIBE: That is correct.

ADV HOFMEYR: Thank you but not audit work?

20 **MR MOTHIBE:** Chair it was not audit work.

ADV HOFMEYR: Thank you, thank you and then the third bid was submitted in October of 2015 to provide consulting services to the Department of Military Veterans, is that correct?

MR MOTHIBE: That's correct Chair.

ADV HOFMEYR: And that was also unsuccessful?

MR MOTHIBE: That is correct Chair.

ADV HOFMEYR: So, just to summarise, three bids you put in jointly, two of them unsuccessful, one of them successful, correct?

MR MOTHIBE: That is correct Chair.

ADV HOFMEYR: And the total amount paid to Kwinana and Associates on the successful bid, can you tell us what that was?

10 **MR MOTHIBE:** The figure, Chair, is R6 187 799.90.

ADV HOFMEYR: Now as I understand your statement Mr Mothibe, PwC has a whole internal policy that is in place in order to guard against these joint business relationships with people associated with their audit clients, compromising their independence, is that right?

MR MOTHIBE: That is correct.

ADV HOFMEYR: And you take us through in your statement, what those policies are, is that right?

20 **MR MOTHIBE:** Yes, I do indicate that in my statement Chair, that's correct.

ADV HOFMEYR: And can you also confirm whether my understanding is correct, that PwC permits these joint business relationships when there – their materiality and significance is not of an order to compromise independence?

MR MOTHIBE: That is the correct statement Chair.

ADV HOFMEYR: And because of that policy and because of the impact for independence that these sorts of associations can have, as I understand your statement, PwC took steps to establish from Kwinana and Associates whether this work for that audit firm was material or significant, is that right?

MR MOTHIBE: Yes Chair, we have a – as part of our risk management we have an office that looks after joint
10 business relationships and before we enter into such relationships, Chair, we confirm whether or not – first of all Chair, we do integrity checks on the persons involved, once we are comfortable Chair, we then confirm that the amounts involved – whether or not they are material to either PwC or to that entity because if they're material Chair, they may have the effect of impairing one of the party's independence Chair.

ADV HOFMEYR: And what threshold does that internal policy set for materiality?

20 **MR MOTHIBE:** Chair, in terms of the IESB code which is an international code, Chair, that we follow and PwC, Chair, the threshold that has been set is at 5% of total revenues. So the revenues from this contracts could never exceed 5% of PwC's own revenue in terms of our policy and we made similar enquiries of Ms Kwinana in that

regard, as to whether or not the said revenues would exceed those thresholds.

ADV HOFMEYR: Yes, and as I understand your statement, PwC then did engage with Kwinana and Associates in order to establish whether the thresholds were met, is that right?

MR MOTHIBE: That is correct Chair.

ADV HOFMEYR: And it did so at the end of 2014, let's just go there, you'll find the particular email containing that
10 query in DD19C at page 132.

MR MOTHIBE: I've got that Chair.

ADV HOFMEYR: Thank you, these are copies of emails that you provided to the Commission, is that correct?

MR MOTHIBE: That is correct Chair.

ADV HOFMEYR: And it was after we followed up, having read your statement, they weren't originally attached to the statement is that correct?

MR MOTHIBE: Chair it was after – on the original
20 statement the Commission had not included enquiries as to the payments that were made to Ms Kwinana, I think that came after our first interaction, so in response to that we then provided...[intervenes].

ADV HOFMEYR: Yes, so your statement referred to you checking and then we called for the emails disclosing that checking, is that correct?

MR MOTHIBE: That is correct yes.

ADV HOFMEYR: I want to start at the first email in time, which appears at page 132 as we had it. It's the bottom email in the second half of the page from a person named Nicky Wayne, who is that?

MR MOTHIBE: Nicky Wayne was a manager in our Marketing and Business Development Department Chair.

ADV HOFMEYR: And if we pick up the last paragraph in that email, you'll see that Ms Wayne says,

10 "Please determine if the JBR, I understand that to stand for Joint Business Relationship, is that correct?"

MR MOTHIBE: That is correct.

ADV HOFMEYR: "With PwC will be material for Kwinana, if he fees for Kwinana for the current JBR relationship with PwC exceeds 10% of their annual turnover, the relationship will be deemed material for them",

Do you see that?

MR MOTHIBE: I see that paragraph Chair.

20 **ADV HOFMEYR:** Why is this referring to 10% rather than the 5% required under the PwC policy?

MR MOTHIBE: The 10%, if my – Chair if my memory serves me right, was a threshold that was shared to us by Ms Kwinana in terms of how she ...[indistinct] on her side.

ADV HOFMEYR: So, you apply a 5% risk but she

communicated to you, she applies a 10% risk, is that right?

MR MOTHIBE: Chair, from my reading of this, that is the case Chair.

ADV HOFMEYR: But just hand on, were there interactions with Ms Kwinana before this email went out?

MR MOTHIBE: Chair, the interactions with Ms Kwinana would have been by the propose engaging leader on the assignment of – who then would have made enquires to me as to whether or not I'm aware of – first of all there's a
10 relationship between Ms Kwinana, PwC and whether or not there are any issues or not regarding independence.

ADV HOFMEYR: Well, let's just unpack that a bit, are you aware of, or did you, yourself have interactions with Ms Kwinana before this email was sent, in which she disclosed to you 10% is her risk threshold?

MR MOTHIBE: Chair, the communication in terms of determining independence, anything in that space is run by a separate Risk Managing Department, I did not have any – I did not communicate with Ms Kwinana in that regard.
20 There's an independent, separate office that runs that process.

ADV HOFMEYR: So how did you come to know the point you made a moment ago, that Ms Kwinana's risk threshold was 10%?

MR MOTHIBE: Chair, in preparing for this there were

daily enquiries with persons that were involved to understand where we were.

ADV HOFMEYR: So somebody at PwC, who was part of that team, has told you before today that the reason why they asked for 10% was because that was Ms Kwinana's threshold, is that correct?

MR MOTHIBE: From the [Indistinct] yes, that is correct Chair.

ADV HOFMEYR: That is correct, why does PwC apply
10 Kwinana's threshold and not its own threshold?

MR MOTHIBE: Chair the thresholds, there's different thresholds that apply – that we apply. For Ms Kwinana she has got her own code, the PwC goes further than what the standards required Chair. So, we made enquires, we made an understanding of what they apply and whether or not the proposed fees would have been breaching the threshold.

ADV HOFMEYR: But why would PwC whose concerned to
20 ensure its own independence accept the threshold of the partner, why doesn't it apply its own threshold?

MR MOTHIBE: Chair, this work is carried out by the Risk Management Department, I'm not privy to the details of what goes into that process. I have to take comfort on the work that is performed by the back office.

ADV HOFMEYR: Is it permissible under the PwC policy to

simply apply the threshold of the partner?

MR MOTHIBE: Chair, it is permissible, if it is not permissible we would not have proceeded with the joint business relationship.

ADV HOFMEYR: Can you direct me to where in the policy it says that's permissible?

MR MOTHIBE: Chair I'll have to go and - maybe during the break Chair, we'll have to look at where we can deal with that Chair.

10 **ADV HOFMEYR:** Because let me tell you, I have not found it in the portions of the policy that you've provided to the Commission. What if the audit – the potential business partners threshold was 50%, would you apply it?

MR MOTHIBE: Chair I would have to take guidance, we would obviously – the Risk Management Department has got guidelines that they follow and based on the guidelines they would then have made their recommendation and we would have followed that recommendation Chair.

20 **ADV HOFMEYR:** Are you aware of what Kwinana and Associates response was to that enquiry made by Ms Wayne in December of 2014?

MR MOTHIBE: Chair, if my memory serves me right, they confirmed that the revenue should be below that 10% threshold.

ADV HOFMEYR: Well let's go to it, in particular, you'll

find it in DD19C at page 131. It's at the bottom of that page, the relevant email, it's from somebody named Lumka Goniwe, do you know Ms Goniwe?

MR MOTHIBE: No, I do not know Ms Goniwe.

ADV HOFMEYR: So, you do not know that she's related to Ms Kwinana?

MR MOTHIBE: No, I'm not aware of that.

ADV HOFMEYR: And you'll see the subject there is, Department of Education Internal Audit, Kwinana JBR
10 query, do you see that?

MR MOTHIBE: Yes, I see that.

ADV HOFMEYR: So, this related to that first tender that you bid, together with Kwinana and Associates for, is that right?

MR MOTHIBE: Yes, that is right yes.

ADV HOFMEYR: And that was the one that was unsuccessful, correct?

MR MOTHIBE: This one was unsuccessful, yes Chair.

ADV HOFMEYR: And what Ms Goniwe records there, I'll
20 just read it into the record for convenience is,

“Good morning, Nishan, we've calculated our fees to be in the region of – oh sorry R4.1million excluding VAT, I confirm that Kwinana and Associates turnover is more than R50million, the BEE certificate reflects Kwinana and Associates

before the demerger with Kwinana Equifin, I also confirm that Yakhe is a non-Executive Director of SAA, I hope you find this in order”,

Do you see that?

MR MOTHIBE: I see that Chair.

ADV HOFMEYR: And can we take it that PwC did find this in order because it proceeded to bid with Kwinana and Associates?

MR MOTHIBE: Yes I do indicate, Chair, the work would
10 have been performed by the Risk Management Department that looks after Joint Business Relationships, Chair, and one would have taken comfort on the work that was performed by that area.

ADV HOFMEYR: Do you always just take the say-so of the prospective joint business partner when you embark on these relationships?

MR MOTHIBE: I’m not too sure that I understand the question Chair.

ADV HOFMEYR: Thank you, let me be clearer. I
20 understand the process you followed, simply to involve this email exchange, there was the request, tell us if it’s over 10% there was a response, it’s not over 10% because our annual turnover is R50million, do you not probe any further than that, do you just take what they say in the email as sufficient?

MR MOTHIBE: Chair, as I said, the process is run by a back office and looked after – Risk Management, it's probably also important also to add, Chair, Ms Kwinana is a Chartered Accountant, she is a registered Auditor, there is a code of ethics that guides how we deal with – how we behave Chair, and with her being a recent member of IRBA belonging to the same profession, I take it that she's attached the code and that there's no reason to doubt her integrity when we're provided with thus.

10 **ADV HOFMEYR:** It was the independence of your audit though that was, potentially to be compromised by this association, did you make enquiries about this process at all, at the time?

MR MOTHIBE: I did not make enquiries about the process, as I indicate, there is a back office that runs this process Chair, and one takes comfort in enquiries that they make...[intervenues].

CHAIRPERSON: I wasn't sure, Ms Hofmeyr, whether you, in your question related to him or to PwC?

20 **ADV HOFMEYR:** Oh right, well I should be clear, it was PwC but by this point in time, as I understand it, you were the Audit partner you'd taken over from your predecessor, we're now in late 2014, is that right?

MR MOTHIBE: That is correct.

ADV HOFMEYR: Thank you, so both, I guess then Chair,

you and the PwC broader sense but you in particular, Mr Mothibe but you've indicated you did not make enquiries. Can I ask – and I take your point about the code of ethics, is it not customary just to ask the joint business partners for their previous years' financials, so that you can just have an extra check on whether what they're telling you about the percentage of turnover is accurate?

MR MOTHIBE: Chair I'm not part of that process, the JBR process so I cannot comment on that question.

10 **ADV HOFMEYR:** Do you think it will be a good step to take?

MR MOTHIBE: It does make sense Chair.

ADV HOFMEYR: What I want to put to you, Mr Mothibe, and it's not facts that you would have had at the time but if you were to learn that Kwinana and Associates' annual turnover for the relevant year, that's the year ending February 2015 was only R10 567 581 would you then be concerned about entering into a joint business relationship with the firm who was going to earn R4.1million out of that
20 relationship?

MR MOTHIBE: Chair I would be concerned.

ADV HOFMEYR: It would constitute about 38% on my calculation of Kwinana and Associates' actual annual revenue for that – turnover for that year. Again, you can do the maths over lunch if you want to check me but Mr

Mothibe let's move on. So, you take what Ms Lumka Goniwe is saying in response, she says R4.1million is less than 10% because their annual turnover is R50million and you proceed, is that correct?

MR MOTHIBE: Chair PwC ran the process through its JBR office, we were provided with information that we had requested and we had no reason to doubt the integrity of the information as it was provided to us.

ADV HOFMEYR: I understand that Mr Mothibe. That was
10 enquiries made in relation to the Department of Education bid which we've confirmed in your evidence, was unsuccessful. Then, you bid with Kwinana and Associates on the PRASA bid, is that correct?

MR MOTHIBE: Chair, the – on the PRASA bid, as I indicated earlier it was not PwC it was a subsidiary of ours that did the proposal, in the instance Chair, Combined Systems, the company involved did not follow due process, they did not put – make enquiries as required and put the joint business relationship through the necessary process.
20 This information only came to my attentions, in fact, once I was preparing for the Commission.

ADV HOFMEYR: Why didn't you say that in your statement then? That these processes were not followed in relation to the PRASA bid?

CHAIRPERSON: Maybe let's start with whether he accepts

that he didn't say it.

ADV HOFMEYR: Mr Mothibe do you accept that when you dealt with this, from page 12 of your statement in DD19C, you did not identify here that the processes had not been followed in relation to the PRASA bid?

MR MOTHIBE: That is the case Chair.

ADV HOFMEYR: That is the case?

MR MOTHIBE: Yes.

ADV HOFMEYR: But today you concede that the
10 processes were not followed for the PRASA bid, is that correct?

MR MOTHIBE: That is correct Chair.

ADV HOFMEYR: So, PwC – sorry and I just want to get clear because I was – I had to hesitate earlier, you drew this distinction between PwC and some other company but then I clarified with you that this was PwC who entered into the joint business relationship with Kwinana and Associates for the PRASA bid, I thought you said yes.

MR MOTHIBE: I think, Chair, Combined Systems was a
20 wholly owned subsidiary of PwC and Chair they were required to follow due process. We – after we made a submission we, obviously, Chair, proceeded to get an understanding but also the details and we have confirmed that they did not follow due process, they entered into joint business arrangement but they are wholly owned by PwC

and they were providing asset verification work at PRASA.

ADV HOFMEYR: And PwC paid Kwinana and Associates invoices didn't it, for this work?

MR MOTHIBE: The arrangement Chair, as it works is that, even with our subsidiaries PRASA required the invoices to come from one entity only, even though we are a joint business relationship so – because we own Combined Systems, the invoices would have come from PwC to PRASA and immediately when we got remunerated for the
10 work performed we obviously, Chair, had to remit to Kwinana and Associates their proportion Chair of the fees based on the amount of work they would have performed on the assignment.

ADV HOFMEYR: So, if we go to page 12, paragraph 50.3 you state there,

“In late 2014 and in the period up to 30 January 2015, PwC with Kwinana as JBR partner rendered professional services to the Passenger Rail Agency of South Africa”,

20 Do you see that?

MR MOTHIBE: That is correct Chair.

ADV HOFMEYR: Thank you and that is a correct statement is it?

MR MOTHIBE: The – as I indicated Chair, it was Combined Systems who entered into the joint business

relationship, Combined Systems ...[indistinct – audio faulty] PwC at the time.

ADV HOFMEYR: Who submitted the bid PwC or Combined Systems?

MR MOTHIBE: Chair I don't have access to the documentation so it will be difficult for me to respond to that question Chair.

ADV HOFMEYR: Can I assist you, because your evidence earlier was the – PRASA wanted to be dealing with one
10 entity as I understood it, is that correct?

MR MOTHIBE: That is correct.

ADV HOFMEYR: That entity was PwC, correct?

MR MOTHIBE: My understanding was that the ...[indistinct] bid I'm looking at the original – the actual documentation Chair hence my response, I don't know what was on the documentation therefore I cannot respond because I was not part of that process Chair.

ADV HOFMEYR: Does PwC take responsibility for its wholly owned subsidiary not complying with its requisite
20 procedures?

MR MOTHIBE: That should be the case Chair.

ADV HOFMEYR: Thank you and the consequence of that is that PwC entered into a joint business relationship with Kwinana and Associates for the PRASA bid in circumstances where it did not confirm whether that joint

business relationship breached its own policy, is that correct?

MR MOTHIBE: Yes, Combined Systems entered in the joint venture or the JBR without following due process.

ADV HOFMEYR: And if Kwinana and Associates earned R6.1million from that and you were to learn that its annual turnover for the 2016 financial year was in the order of R21million, do you accept my maths if I say that, that was constituting more than a quarter of the annual turnover of
10 Kwinana and Associates?

MR MOTHIBE: Your maths is correct.

ADV HOFMEYR: Thank you and had PwC known that it would not have entered into the relationship because it might have compromised its independence, correct?

MR MOTHIBE: That would be correct, subject to the work that would have been performed by the JBR Office Chair.

ADV HOFMEYR: Thank you, Chair it seems an appropriate time to end, we've hit 1 o'clock, maybe warmth can be generated for the room in the break.

20 **CHAIRPERSON:** Yes, I hope so, I hear some news I hope that it's for warming the place up not taking us back to where we were. So, I'm sure somebody will take care of that. We are going to take the lunch adjournment and we'll resume at 2, we adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Thank you. You may proceed Ms Hofmeyr.

ADV HOFMEYR: Thank you Chair.

CHAIRPERSON: I think you did well to put on your overcoat.

ADV HOFMEYR: I had to DCJ.

CHAIRPERSON: I am not sure that it is going to be warmer.

ADV HOFMEYR: No we will see maybe we will be fortunate that the sun has somehow managed to warm the room over
10 the period but there is not been anything else as I understand that could be done in the room.

CHAIRPERSON: Hm.

ADV HOFMEYR: We may just have to brace ourselves.

CHAIRPERSON: And the room is just – the room is quite big so...

ADV HOFMEYR: It is so warming it seems impossible.

CHAIRPERSON: Ja.

ADV HOFMEYR: But we will press on.

CHAIRPERSON: Okay.

20 **ADV HOFMEYR:** If we may. Mr Mothibe, I concluded before the break with the joint business relationships that PwC had embarked upon with Kwinana and Associates. I would now like to move the joint business relationships between your joint audit partner Nkonki and Kwinana and Associates.

MR MOTHIBE: If it pleases the Chair prior to the break I

think Ms Hofmeyr was enquiring about the 10% and I indicated I will go back and just see on the quotes where that comes through. Chair as I indicated the 5% [indistinct] benchmark is an internal PwC benchmark which is fairly more aggressive if you compare to the quotes. In terms of the IRBA quotes, and the ISBA quotes when there is mention of materiality the figure of 10% it is used in that space Chair. So the figure of 10% devolves from the IRBA and ISBA quote when it comes to the product of materiality.

10 **CHAIRPERSON:** There was also some homework you were going to do about figures to – to check whether a lawyer got it right this time.

CHAIRPERSON: Chair I have – I trust Ms Hofmeyr's calculations.

ADV HOFMEYR: Thank you Chair. Thank you Mr Mothibe. I would then like to move to the joint business relationship between your joint audit partner Nkonki and Kwinana and Associates but I do want to be clear before I embark on these questions with you. I absolutely accept Mr Mothibe
20 that these were arrangements between Nkonki and Kwinana and Associates and PwC did not have any involvement in them. Am I correct in making that assumption?

MR MOTHIBE: That is the truth Chair.

ADV HOFMEYR: Thank you. So all I am going to do is tell you certain facts which the commission has managed to

uncover in its investigation and all that I want to know from you is what view you take of those facts as the joint audit partner of Nkonki. So if I may just proceed with those facts. You have seen the affidavit have you of Ms Masasa your colleague from Nkonki Inc, is that correct?

MR MOTHIBE: Chair I had sight of her affidavit that is true.

ADV HOFMEYR: And she was conducting the audit as Nkonki's representative when you were conducting it as the audit partner for PwC, is that correct?

10 **MR MOTHIBE:** That is correct Chair.

ADV HOFMEYR: And you will have seen that we traversed similar matters with Ms Masasa. Chair Ms Masasa's affidavit is the one that we encountered just after Mr Mothibe's second supplementary statement. Chair it is an affidavit in which Ms Masasa was asked very similar things to the questions that Mr Mothibe was asked. In the interest of time it was not possible for us to present the evidence of both Mr Mothibe and Ms Masasa but you will see from the affidavit they generally agree with the position taken by each other
20 and in that respect it is not contentious in any way and so we would seek to admit it simply provisionally if it becomes contentious at any point as we have done previously decisions may be taken about then need to call Ms Masasa. But it is very similar to the position taken by Mr Mothibe today.

Chair I will not need to go there unless it becomes necessary. I will simply summarise. What you would have seen Mr Mothibe if you considered it is that the commission also probed certain payments that it could determine had been made by Nkonki Inc to Kwinana and Associates and those payments span the period September 2015 – actually sorry August 2015 to July 2017. And within that period there was R850 068,00 that Nkonki paid to Kwinana and Associates. And just for the record Chair and Mr Mothibe Ms

10 Masasa explains that related to work at Transnet and Eskom that Nkonki had done with Kwinana and Associates.

I want to put those payments to one side because the one that I want your comment on is a curious payment. It is a payment that Nkonki made to Kwinana and Associates on the 28 August 2015 and Ms Masasa explains that payment in her affidavit and if we can just go to it? You will find it in DD19C the file we have been in at page 42, 42.

MR MOTHIBE: I have got the – the paragraph Chair.

ADV HOFMEYR: You have got it? Excellent. Now at 42

20 paragraph 63.3 you will see that Ms Masasa deals with – I said it was a payment of R300 000,00 that I was particularly interested in but there were two that she addressing in this paragraph, 63.3 because she says there:

“There are two payments totalling R312 500,00 were made in relation to supplier development.”

Right and she goes on and she says:

“She has been advised by Ms Zilwa”

Now let me just explain. Earlier in her affidavit Ms Masasa indicates that Ms Zilwa was the CEO of Nkonki at the time. Ms Masasa had no knowledge of these payments and so in an effort to assist the commission she went and established the facts from Ms Zilwa.

Chair just to close that gap we did then go and get an affidavit from Ms Zilwa. She confirms what Ms Masasa
10 records here. So there is no issue there. But let us see what the account of these payments is that is given.

Ms Masasa says:

“She was advised by Ms Zilwa that these payments were made by Nkonki for the benefit of the Abasa Practitioners Fund. According to its website the APF as she abbreviates it was established in 1985 to promote the professional interests of black persons engaged in the accounting profession. The APF promotes the interests of various small black owned audit firms. Ms Zilwa has advised me that the
20 payment for R12 500,00 on the 26 March 2015 was a subscription fee Nkonki paid for the benefit of APF. And the payment of R300 000,00 on the 28 August 2015 was in relation to a sponsorship fee paid by Nkonki for the benefit of the APF. I am further advised by Ms Zilwa that the APF bank account was – and she puts in quotations “not

functional” at the time and that the APF member firms therefore – again in quotes “felt it was convenient at the time to deposit funds meant for the APF into the bank account of Kwinana and Associates.”

So that is the explanation that Ms Masasa was able to obtain from Ms Zilwa the former CEO of Nkonki. Now Mr Mothibe can you help me? Are you – do you know of the Abasa Practitioners Fund at all?

MR MOTHIBE: Chair I am aware of the existence of the
10 Abasa Practitioners – I think it was a forum which was formed years ago where a number of black audit firms came together to create capacity so that they can propose for – for big assignments – audit assignments. In fact I think years ago there were – they became a beneficiary of the – I think it was a Transnet Audit Proposal. So that – certainly the name Abasa Practitioners Fund Forum does – does ring a bell.

CHAIRPERSON: But are you saying what you know of is Abasa Practitioners Forum you are not sure of Abasa Practitioners Fund?

20 **MR MOTHIBE:** Yes Chair I am not too sure how they relate to each other.

CHAIRPERSON: Ja.

MR MOTHIBE: But hearing that principle I am aware of that Chair – of that.

CHAIRPERSON: Ja so you know about the Forum but

whether there is also a Fund you do not know or you do know?

MR MOTHIBE: Chair I am aware of the Forum – about the Fund.

CHAIRPERSON: Yes.

MR MOTHIBE: I was not aware of that Chair.

CHAIRPERSON: Yes.

MR MOTHIBE: As you appreciate Chair it was an organisation for black audit firms.

10 **CHAIRPERSON**: Ja.

MR MOTHIBE: And because I was then an employee of the PwC I would not have privy to that so whatever comes below the Forum Chair.

CHAIRPERSON: Yes.

MR MOTHIBE: I ...

CHAIRPERSON: Okay.

ADV HOFMEYR: Well pursuant to receiving this affidavit from Ms Masasa the commission did further investigations and it in fact engaged a Mr Ashley Walter Dicken who when
20 he deposed his affidavit Chair this is another affidavit that has been obtained again simply to give facts about Abasa and APF. Again, I propose that we admit it provisionally. There is nothing contentious in it and I do understand Mr Mothibe's previously been provided with a copy. This is an affidavit that...

CHAIRPERSON: Well I am sorry we – we have – oh we said by the way that those documents that form presently under C.

ADV HOFMEYR: Yes.

CHAIRPERSON: We will leave them as they are.

ADV HOFMEYR: And we are going to really...

CHAIRPERSON: Yes okay.

ADV HOFMEYR: Absolutely so you will in due course Chair receive a list.

10 **CHAIRPERSON:** Yes.

ADV HOFMEYR: Properly itemised.

CHAIRPERSON: Yes.

ADV HOFMEYR: What the documents are and so amongst them will be Mr Dicken's affidavit.

CHAIRPERSON: Yes. Ja.

ADV HOFMEYR: We will properly identify it but for present purposes just to tell you where you would find it.

CHAIRPERSON: Yes.

20 **ADV HOFMEYR:** It is in DD19B – sorry D which is the second file. The one we have not been working in yet and it commences at page 489. It is headed with...

CHAIRPERSON: 489?

ADV HOFMEYR: 489.

CHAIRPERSON: Okay.

ADV HOFMEYR: Chair you will see it is headed Replying

Affidavit but that is because I think Mr Dicken understood himself to be replying to the questions from the commission so you must not be confused that it is proceeded by other affidavits relevant. It is simply that he offers his reply to the commission's enquiries.

CHAIRPERSON: Well on 489 I do not have Replying Affidavit I have got – and I do not have the name.

ADV HOFMEYR: Oh.

CHAIRPERSON: I have got I, blank space, full name
10 solemnly declare – it is not signed.

ADV HOFMEYR: No.

CHAIRPERSON: Go to the next page.

ADV HOFMEYR: That is a different page to the 489 I am looking at. So maybe there has been a numbering error.

CHAIRPERSON: I am looking at the...

ADV HOFMEYR: The second file.

CHAIRPERSON: Registration Reference Bundle.

ADV HOFMEYR: Oh no sorry then you are in the wrong one.

CHAIRPERSON: Oh.

20 **ADV HOFMEYR:** You – I think your Registrar might have put the file you need just on the side here.

CHAIRPERSON: Okay.

ADV HOFMEYR: It is the DD – what – you should be looking for is DD19B on the spine but we have numbered this and entered it into the record as DD19D. And if you open up 489

there Chair you should have an affidavit. Mr Mothibe do you have it?

MR MOTHIBE: Yes.

ADV HOFMEYR: Thank you.

CHAIRPERSON: Well it looks like there are challenges.

ADV HOFMEYR: Oh no.

CHAIRPERSON: Where I am supposed to have page 489 I have got page 531. There is a jump from 488 to 531 and there is nothing.

10 **ADV HOFMEYR**: Chair it may be that we have got an additional copy that my learned friend can just assist me with.

CHAIRPERSON: Ja.

ADV HOFMEYR: Chair that ought to have been placed in your file this morning. I do apologise. The other new files that brought up had it so that is 489 now to be inserted in your file. It seems Mr Mothibe's updates were done but...

MR MOTHIBE: I think Chair maybe some of this would have come – should be in your file because I see duplications.

20 **CHAIRPERSON**: Have you got duplications?

MR MOTHIBE: Duplicated in my file.

CHAIRPERSON: Oh. Ja. Okay.

ADV HOFMEYR: Oh maybe you have the Chair's copy. Oh.

CHAIRPERSON: Well maybe somebody thought the witness must have two.

ADV HOFMEYR: Yes. We want to be doubly focussed on it. Sorry. Thank you. If you will just put it to the side Mr Mothibe we will collect it later. Thank you very much. At least we have identified where the rogue extra copy went.

CHAIRPERSON: So – so as present – as things presently stand you have now given me pages 489 to 430 so that seems to complete the pages that were missing.

ADV HOFMEYR: Yes exactly. Exactly Chair.

CHAIRPERSON: Okay. Okay. Alright thank you.

10 **ADV HOFMEYR:** So as I was describing it is entitled between the tramlines as a replying affidavit but that should not confuse the lawyers in the room. It is simply I take it to be Mr Dicken's way of indicating he is responding to the questions that he received from the commission. And I propose simply to summarise what Mr Dicken says here. Mr Dicken is a member and interim President of the Association for the Advancement of Black Accountants of South Africa. That is Abasa the entity that we have been talking about.

20 And what the commission was interested in establishing from Mr Dicken was can he help us with this relationship that Ms Zilwa describes was in place? That there was this APF – the fund – the Abasa Practitioners Fund that at some point in 2015 it did not have a bank account and so members of the auditing profession were paying to Kwinana and Associates what was really intended for the

Abasa Practitioners Fund.

We just wanted to get to the bottom of what he could tell us about those facts. And Mr Mothibe what he tells us and I am going to summarise now is that those facts are false. That there was no Abasa Practitioners Fund operational in August of 2015 when Nkonki allegedly paid R300 000,00 to Kwinana and Associates bank account for its benefit. He attaches to his affidavit reams of SIPC documents that he gets to support this the upshot of which is
10 that the Abasa Practitioners Fund was deregistered in 2011. Four years before the payment was made.

Right. The next thing that is mysterious about the payment and Mr Mothibe I will have a question I promise after I have just given you this background.

MR MOTHIBE: Yes.

ADV HOFMEYR: Is that five days after it was paid to Kwinana and Associates bank account allegedly for the benefit of a fund that did not exist it was paid out of Kwinana and Associates bank account into the personal bank account
20 of Ms Yakhe Kwinana.

Mr Mothibe before today did you know those facts?

MR MOTHIBE: Chair this is the first time I hear about these – these matters. This is news to me.

ADV HOFMEYR: Well let us just for completeness sake take you to those bank statements because we do not want to

leave any stone unturned and we want to be looking at the documents when I give you the background to the commission's investigations.

You will find the bank statements that reflect this in the same bundle you have been working in DD19D and if you go right to the back and pick up page 622, 622 you will find them.

MR MOTHIBE: Chair I do have sight of them.

ADV HOFMEYR: And I would like to take you to the relevant
10 entries. Page 622 you will see at the top the account name is Kwinana and Associates Gauteng – GAU is short for Gauteng Inc. And you will see there are three dates there reflected on the left hand side. The first is 2015.08.28 that is an ABSA Cashbook – I do not know what that is standing for CT Adhoc TRA. I think that is transaction and that is an amount of R100 000,00 in the top line you can see going into the account. And then the one that we are interested in the payment from Nkonki Inc to Kwinana and Associates is the next entry. 2015.08.28 it says internet payment credit and
20 then you see R300 000,00 there. Do you see that Mr Mothibe?

MR MOTHIBE: I do see that Chair.

ADV HOFMEYR: So that is how the commission was able to identify R300 000,00 being paid by Nkonki to Kwinana and Associates on the 28 August 2015. And then you see at

page 6 – sorry let me just get this right. Right. Then you have to go over to the next page 623 which is the next page of the Kwinana and Associates account. And what you will see there in the last line is an entry on 2015.09.02. Do you see that? The last line is 2015.09.02 entry and you will see there what gets paid out of the account is R630 000,00. Can you see that?

MR MOTHIBE: I see that Chair.

ADV HOFMEYR: It is important Chair just to go back and
10 say what you are looking at on these statements are transactions in the Kwinana and Associates bank account from the 28 August to the 2 September. It is a period of five days. Right. And what we have seen is R300 000,00 comes in on the 28 August. There are a – there is R100 000,00 before that. There are a few subsequent payments after that and then in a sense the whole account gets debited out because on the 2 September 2015 you will see that R630 000,00 goes out which leaves a balance in the account of R2 795,00. Do you see that?

20 **MR MOTHIBE**: Yes.

ADV HOFMEYR: So we remain confident in our conclusion that the R300 000,00 that came in on the 28th goes out with the R630 000,00 on the 2nd. And then the question is to whom does the R630 000,00 payment which includes the R300 000,00 go and for that purpose you go to the last page

which is page 624 and you will see there this is the account of Ms Yakhe Kwinana and you will see on the 2nd September 2015. Let me tell you how many lines down, 1, 2, 3, 4, 5, 6, 7 it is the 7th date entry on the left. You will see next to it it says I bank transfer settlement and you will see R630 000,00 confirming that that amount came into that account.

CHAIRPERSON: Is that the one written settlement?

ADV HOFMEYR: Yes.

CHAIRPERSON: I bank transfer.

10 **ADV HOFMEYR:** Yes.

CHAIRPERSON: And then is it the account number?

ADV HOFMEYR: R630 000,00.

CHAIRPERSON: That is given immediately under transfer?

ADV HOFMEYR: Correct.

CHAIRPERSON: Hm. Yes. Okay. Yes.

ADV HOFMEYR: So that is how we track the movement of the money Chair.

CHAIRPERSON: Hm.

20 **ADV HOFMEYR:** Just to explain the facts as I was detailing them for Mr Mothibe.

CHAIRPERSON: Hm.

ADV HOFMEYR: And what that tells us is 28 August.

CHAIRPERSON: So...

ADV HOFMEYR: Yes Chair.

CHAIRPERSON: So if Ms Zilwa and is it Ms Masasa?

ADV HOFMEYR: Indeed Chair.

CHAIRPERSON: If their version is true that this was – that they – this was money that they paid to – that was paid to Kwinana Associates – and Associates Inc for the benefit of Abasa Practitioners and if it is – if you are right indeed that in the conclusion that that is the money that goes out into Ms Kwinana’s personal account then on the face of it it appears that money that may have been intended for Abasa Practitioners ends up in her personal account.

10 **ADV HOFMEYR:** Yes.

CHAIRPERSON: If of course their version is not true it was never money for Abasa Practitioners then that is also something else.

ADV HOFMEYR: Indeed.

CHAIRPERSON: Ja.

ADV HOFMEYR: That Chair we cannot probe further without Ms Zilwa attending.

CHAIRPERSON: Yes.

20 **ADV HOFMEYR:** And again, I must emphasise Ms Masasa says she has no personal knowledge of this.

CHAIRPERSON: Yes.

ADV HOFMEYR: She relies on Ms Zilwa.

CHAIRPERSON: Yes. Yes.

ADV HOFMEYR: And Ms Zilwa tells her this and then we go to Ms Zilwa to get confirmation of these facts.

CHAIRPERSON: Yes.

ADV HOFMEYR: And she provides it to the commission.

CHAIRPERSON: Yes. Yes.

ADV HOFMEYR: So Ms Zilwa's version is it went to Kwinana and Associates.

CHAIRPERSON: Yes.

ADV HOFMEYR: But for the benefit of the fund.

CHAIRPERSON: Yes.

ADV HOFMEYR: Right.

10 **CHAIRPERSON:** Yes.

ADV HOFMEYR: Chair...

CHAIRPERSON: And I think you are right to – to emphasise that Ms Masasa it is not her version.

ADV HOFMEYR: It is not.

CHAIRPERSON: It is what she says she was told.

ADV HOFMEYR: Indeed. Indeed.

CHAIRPERSON: And she accepted what she was told.

ADV HOFMEYR: And she can take it only that far.

CHAIRPERSON: Yes.

20 **ADV HOFMEYR:** Which is why we deemed it appropriate to go to Ms Zilwa to get the confirmation from Ms Zilwa. I will take you there in a moment.

CHAIRPERSON: Hm.

ADV HOFMEYR: So that is Ms Zilwa's version to this commission on affidavit. I accept only on affidavit. She –

this has not been probed with her.

CHAIRPERSON: Hm.

ADV HOFMEYR: But what our further investigations tell us are really two things.

CHAIRPERSON: Hm.

ADV HOFMEYR: The Abasa Practitioners Fund did not exist.

CHAIRPERSON: Hm.

ADV HOFMEYR: In August of 2015.

CHAIRPERSON: Hm. Hm.

10 **ADV HOFMEYR:** Right. The second fact we uncover is that when we track the money in the account from the 28 August to the 2 September we can see it is paid out on the 2 September with other funds to Ms Kwinana's personal account. But Chair I absolutely accept the point. What we still do not know is whether Nkonki pays with the intention that it be paid albeit to a fund that does not exist against their intention it then gets paid to Ms Kwinana that we do not know and that I certainly cannot take further today. But the facts nonetheless are it ended up in Ms Kwinana's bank
20 account and the version before the commission today from Ms Zilwa albeit on affidavit is that it was paid for the purposes of payment to a fund that did not exist. So Mr Mothibe that takes me to the point at which I – I would like your assistance as the Joint Auditor of Nkonki. If you learnt as you have today that Nkonki made...

CHAIRPERSON: Of SAA.

ADV HOFMEYR: Did I say of SAA? Sorry Joint Audit Partner of Nkonki for the audit of SAA indeed Chair I apologise. If you learnt that Nkonki made a payment to the audit firm of the Director of the Board of SAA at a time that it was doing joint audit work with you and it were to be established that that payment was gratuitous and I say gratuitous in the sense that it is not for services rendered it is just paid and unrelated to any work performed would you regard that as a compromise to Nkonki's independence in its audit work?

MR MOTHIBE: Chair that would have certainly raised concerns from my side and I would have had to – I certainly would have raised it with our Risk Management Department for advice on how to deal with the matter.

ADV HOFMEYR: Would you have been increasingly concerned if you learnt that the month before this payment was made Ms Kwinana motivated for Nkonki to receive the audit work from SAA for the next five years?

20 **MR MOTHIBE:** It would have certainly formed a part of an input I would give to this management Chair.

ADV HOFMEYR: Hm.

CHAIRPERSON: I am sorry I think your voice has gone down again.

MR MOTHIBE: I am saying Chair. My shoulder Chair. My

elbow was on the – Chair I would have – that would have definitely raised concern and I would have certainly included that in the communication to my Risk Management Department.

CHAIRPERSON: Yes.

MR MOTHIBE: To seek advice.

CHAIRPERSON: Okay.

ADV HOFMEYR: Hm. Let us go to what Mr Mothibe you did say in your statement about this topic of independence right.

10 Because you address it at page 14 of your statement which you will find in DD19A. Page 14 contains the last paragraph of your statement. You say there in paragraph 55:

“I am of the view that notwithstanding that the payments were made”

These are the payments PwC made to Kwinana and Associates that you are referring to. You say:

“Notwithstanding that the payments were made in relations to services unrelated to SAA it was in my view incumbent upon Ms Kwinana to declare the fees earned from PwC and
20 Nkonki and recuse herself from any decision making concerning their appointment as auditors of SAA and procurement of services from them.”

Do you see that?

MR MOTHIBE: I see that Chair.

ADV HOFMEYR: Does that remain your view?

MR MOTHIBE: Chair that remains my view.

ADV HOFMEYR: And you then would accept that if Ms Kwinana did not make those disclosures or recuse herself from the decision making about whether to appoint PwC and Nkonki that would give rise to a conflict of interest for her?

MR MOTHIBE: Chair that would be the case.

CHAIRPERSON: Your voice went down even further.

MR MOTHIBE: Chair that is correct. That would be the case.

10 **CHAIRPERSON:** Okay.

ADV HOFMEYR: Were you aware that Ms Kwinana never recused herself from the board meetings at which these decisions were taken?

MR MOTHIBE: I was not aware Chair and it – it is not something that we would have really checked Chair when we performed our audit.

ADV HOFMEYR: But you did consider the minutes of board meetings did you not?

20 **MR MOTHIBE:** We did consider the minutes of board meetings.

ADV HOFMEYR: Would it not be an item you would be looking at amongst those minutes when it deals with appointment of auditors?

MR MOTHIBE: Chair the review of board minutes would be an item that would have been delegated to one of the team

members and we would typically be looking for areas like minutes being all out of controls, tea contracts or the new contracts that are entered into and Chair this item I would ordinarily would probably not have been something that you – they would have – they would have focussed on.

ADV HOFMEYR: But should they not have? PwC was entering into joint business relationships with Ms Kwinana's audit firm that was enough to make PwC concerned about the impact of that relationship for independence. Should it
10 not also have been checking that Ms Kwinana the director of that firm was not having anything to do with the decision making to appoint PwC?

MR MOTHIBE: Chair when we entered into the joint business relationships, we had already gone through a thorough process through our JBR process to ensure that the – the revenues earned from such contracts would not be material and there is no risk that they would have impaired the independence of both parties. So already at that level
Chair we were comfortable that the contracts – whatever we
20 had entered into was below the thresholds. So – and that Chair gives one a great level of comfort. Secondly Chair the – typically when one – or the requirement to disclose interest in contracts it typically relates to contracts relating to work done within the entity. So we had not entered into any contract with Ms Kwinana relating to work relating to South

African Airways or any of its subsidiaries for that matter Chair.

ADV HOFMEYR: Mr Mothibe I have to pick up on one aspect of your answer. You said PwC had gone through a thorough process to confirm that its independence was not compromised, correct?

MR MOTHIBE: That is – yes the JBR process.

ADV HOFMEYR: Yes but your evidence before the break was that you readily accepted that in respect of the PRASA
10 bid no process whatever was followed.

MR MOTHIBE: Not – correction Chair. I think what I am saying Chair and I stand by it is that Chair we have got a thorough process that we recommend within PwC and that – the expectation is that for every partner and for every person wishing to enter into relationship with – in fact with any of our existing clients there is an independence process that they have to follow. If we are to enter into a business relationship the PwC has a process designed to ensure that we identify every – we identify and we confirm that there is
20 no threat to our independence should that joint business relationship proceed. Chair there was one contract that was entered into by combined systems which did not go for a due process Chair and Chair at this stage I mean the persons involved in that were – were Chair dealt with and in fact Chair we saw it feed, to sell the business of combined

systems because of the potential threats to independents that you have presented. So Chair we have got a thorough process it is an expectation that every single employee or director of PricewaterhouseCoopers complies with that and I am comfortable that Chair everything that goes through that process should the JBR office say, yes you can continue then Chair yes we can take comfort in that process.

ADV HOFMEYR: Ms Mothibe in fairness to you I must put it to you. If you do not follow the process that is prescribed it
10 cannot be described as having been thorough. Do you accept that?

MR MOTHIBE: Chair we acknowledge that there was a failure by one of our subsidiaries to follow process and that was appropriately dealt with. It does not mean Chair that the process that we have put in place does not work.

ADV HOFMEYR: Mr Mothibe I put it to you that that is precisely what it means.

MR MOTHIBE: Chair what we had identified is that one of our companies did not follow due process and that has been
20 addressed. That matter was fully addressed Chair.

ADV HOFMEYR: Mr Mothibe you came onto this point and I had to ask you about it because in your answer to my question about the conflict of interest on the part of Ms Kwinana you went back to describe a thorough process which I understood your previous evidence had conceded

had not been thorough. But let us put that to one side for now. We focussing on the conflict of interest that Ms Kwinana has if she does not recuse herself and I had put to you would it not have been a requirement of your team – you team the PwC team who knows it is entering into a joint business relationship with Kwinana and Associates to satisfy herself that she is not making decisions to employ you each year for audit work and I understood your answer to be they do not need to do that because we have got a thorough
10 process. Is that correct?

MR MOTHIBE: Chair I said that – in the review of – of minutes they are certain items that we focus on and this area was not one of the areas that we had focussed on. Because we were com – from my side Chair I was comfortable that there was process followed when it came to ascertain whether or not the joint business relationships that we entered into with Ms Kwinana did not in any way impair our independence.

CHAIRPERSON: Well the prior process that you talk about
20 that is meant as I understand your evidence to discover if there are – there is conflict of interest. Is that what you called – is that the JBR the process followed before you enter into a joint business relationship?

MR MOTHIBE: Yes Chair it is the – it is done through what we call a [indistinct] system where the Risk Management

Team runs with the process to vet information that we have received from a [indistinct] partner and ourselves to ensure that we have not breached the thresholds and that also the other factors that we consider to ensure that we maintain our independence at all times.

CHAIRPERSON: But would – would the people who would have been in charge of that process would they have – would they have seen minutes of meetings at SAA at which Ms Kwinana may have sat where she probably should not have sat?
10

MR MOTHIBE: Chair those persons are not part of the audit team. They would not have access to those minutes because as you appreciate Chair there is confidentiality around client information and only those persons who are working with the client.

CHAIRPERSON: Yes.

MR MOTHIBE: Will have access to that.

CHAIRPERSON: Yes. Now – so the only people who could have a chance within PwC to pick up a point such as Ms Kwinana's sat in a meeting which made this decision where she should not have sat – the only people who could have picked that up would have been your team. Is it not? In other words, the team – the PwC – PwC team that was auditing SAA whether when you were – when you had joined the team or not but that is the team that should have picked
20

that up that had a chance to pick that up.

MR MOTHIBE: Chair in the review of minutes and when you review – typically review a conflict of interest matters it is – as I indicated it is typically its own contracts relating or to the company itself. So certainly, to the extent that we had contracts with Ms Kwinana or Ms Kwinana – apologies relating to work at SAA those attempts would have obviously been required to have – they would have picked up. These contracts were outside the scope of the – of that Chair and
10 this [indistinct] it is – it is – I think it is important that this is more a fiduciary what you have thought it should have been a fiduciary requirement or duty on her to disclose but there is no – there is no requirement within the Companies Act for her to make such disclosure. It is something that we – that in our view we thought it would be good – be the best practice – I think that is the word I would use – we were in best practice for her to make the disclosure and I still do believe it should have been Chair.

CHAIRPERSON: Hm. Ms Hofmeyr.

20 **ADV HOFMEYR**: Thank you Chair. Mr Mothibe I am not going to take those points further other than to say do you accept that an auditor must have not only independence of mind but also independence in appearance?

MR MOTHIBE: That is certainly the case Chair.

ADV HOFMEYR: And would you accept that independence

of appearance of an auditor may be compromised if the Chair of the Audit and Risk Committee of the entity that they are auditing both votes to continue to employ the auditor, determine their fees each year and is somebody who either herself personally is receiving payment from one of the auditors or her firm is receiving payment from one of the auditors?

MR MOTHIBE: Chair I think it is also important to – to note that these joint business relationships are common in the
10 South African environment where provisional service will work with each other in different areas and there would be a requirement also due to transformation and trans [indistinct] requirement that we have heard in our country. So us entering into joint business relationships with other provisional services firm Chair it is not an anomaly. To the extent that Chair Ms Hofmeyr's question as to whether or not the independence would have been impaired Chair I took – we took comfort in the process that we had followed and Chair the appointment of auditors is not only done by one
20 person but it is done by a committee. No one individual would have excessive influence over the work that is performed by a committee. So Chair I do not believe that in this instance Chair – I mean our independence would have been impaired. I do take Ms Hofmeyr's point that independence it is not only independence it is also

importance in mind Chair and I do understand the issue that she is mentioning Chair.

ADV HOFMEYR: Mr Mothibe I would like to move to the topic of reportable irregularities.

CHAIRPERSON: Maybe before you do that. Maybe they should switch off this – I do not – air conditioner because it does not seem to make much difference.

ADV HOFMEYR: It is difficult to call it that because...

CHAIRPERSON: Instead it interferes sometimes I cannot
10 hear Mr Mothibe properly. I think just switch it off and let us see if we are going to get colder. Mr Mothibe.

ADV HOFMEYR: Chair.

CHAIRPERSON: I am not sure if I understood your evidence correctly where you were saying that making the point that the decision to appoint auditors would have been made by a committee and no one person or one member of the committee would have excessive influence or something like that. You are not suggesting are you that somebody who is supposed to recuse himself or herself from the committee
20 when it considers a certain matter does not have to recuse themselves because he or she does not make the decision alone.

MR MOTHIBE: Chair I am not suggesting that Chair.

CHAIRPERSON: Ja so what is the importance of the point you were making about that?

MR MOTHIBE: Chair I think it was more to say the audit committee is made up of a number of persons and it is a joint if I can say a joint decision Chair. So ...

CHAIRPERSON: But you would not know whether – whether for example for argument sake whether the decision was made in your favour because of one vote and that vote happens to be Ms Kwinana's vote?

MR MOTHIBE: I hear what you are saying Chair.

CHAIRPERSON: Hm. So – so the – if you are not supposed
10 to sit you should not sit. Is it not? You should not be part of the decision making in regard to a certain matter if you are conflicted and you should not be sitting there?

MR MOTHIBE: Chair that is correct. If you are conflicted.

CHAIRPERSON: Yes.

MR MOTHIBE: Then you should be recusing yourself.

CHAIRPERSON: Yes. Yes. Okay. Or at least declare it so that it is known. There may be circumstances where you declare it and if you declare it nobody has an objection you can continue but this might not have been one of those
20 situations. Okay. Ms Hofmeyr you may proceed.

ADV HOFMEYR: Thank you Chair. Mr Mothibe could you help us with the following question? When is an auditor required to report a reportable irregularity?

MR MOTHIBE: Thank you Chair I will take you to pages DD19, 08.

ADV HOFMEYR: That just for the record Chair is DD19A so it is in the first file and it is page 8, is that right Mr Mothibe?

MR MOTHIBE: That is correct. Page 8. And Chair that is where we confirm that the Audit Process Act does place an obligation on an auditor to report to the Regulator irregularities where he is satisfied or has reason to believe that there have been – they have occurred.

ADV HOFMEYR: Hm.

MR MOTHIBE: Chair we then also at 35 what we understand
10 to be a reportable irregularity which is an unlawful act or omission permitted by somebody in a senior management position which has caused or is likely to cause material financial loss to the entity which is fraudulent amounting to theft or which it presents a breach of – material breach of fiduciary duty. So Chair it is in that respect that there would be a requirement for one to report material irregularity or rather a reportable irregularity. And in fact Chair we – we had done so at South African Airways for the year ended 31 March 2014. The business of South African Airways was
20 struggling and we did not believe that they were a going concern and management had not put into place a business rescue plan or of taking measures to give us comfort that the business will in fact be a going concern. At that stage also government had turned down their request for a financial guarantee and Chair we then dispatched a letter to – to our

Regulator informing them of the challenges. Also that it could be seen that the business – the directors are trading recklessly. And subsequent to us sending letter through to the Regulator the Department then of Finance provided the required guarantees which then allowed us 30 days after we have dispatched the letter as required by the Act to inform the Regulator that the said reportable irregularity is no more continuing Chair. So we do consider such and where appropriate we do report these irregularities to the Regulator as required Chair.

ADV HOFMEYR: I was not aware of that before your testimony. Did that relate to the 2014 financial year?

MR MOTHIBE: That is correct Chair it was – relates to the 2014 financial year.

ADV HOFMEYR: And just remind me when did you take over the auditing function?

MR MOTHIBE: It was for the 2014 financial year. So it was in my first year of engagement.

ADV HOFMEYR: And let us look at those requirements because you have summarised them helpfully for me at page 8 of your statement. I just want to be sure for the rest of our discussion this afternoon that we are on the same page about your understanding of reportable irregularities. Is it correct that a reportable irregularity on your understanding requires there to be an unlawful act or omission committed

by a person responsible for the management of the entity?

MR MOTHIBE: That is correct.

ADV HOFMEYR: And then that unlawful act or omission must do one of three things, is that correct?

MR MOTHIBE: That is correct Chair.

ADV HOFMEYR: It must either cause or be likely to cause a material financial loss to the entity, is that correct or associated entities?

MR MOTHIBE: That is correct.

10 **ADV HOFMEYR**: The second is that it is fraudulent or amounts to theft, is that your understanding?

MR MOTHIBE: That is correct.

ADV HOFMEYR: Or it represents a material breach of fiduciary duty, is that correct?

MR MOTHIBE: That is correct.

ADV HOFMEYR: And you also accept that you do not as the auditor have to be satisfied that these requirements are met you simply have to have reason to believe that these requirements may be met.

20 **MR MOTHIBE**: That is correct Chair. So there is an element of judgment that needs to be applied.

ADV HOFMEYR: Yes but it is a lower bar than being satisfied, do you accept that?

MR MOTHIBE: That is correct Chair.

ADV HOFMEYR: Thank you. Now the commission over what

is now about two years has received evidence related to a number of transactions taking place within SAA and its group of companies which we have drawn to your attention before today and which you address in your statement, is that correct Mr Mothibe?

MR MOTHIBE: That is correct.

ADV HOFMEYR: I would like to focus on two of those transactions. The first is in relation to Air Chefs and you will recall that you were asked about that?

10 **MR MOTHIBE**: Yes that is correct Chair.

ADV HOFMEYR: And just to find it in your statement it is at page 9 of your statement which is in Exhibit DD19A at page 9.

MR MOTHIBE: That is correct Chair.

ADV HOFMEYR: Chair in the last third of that page you will see a heading against what is effectively paragraph 40A which says:

“28 September 2015 decision by SAA Board.”

20 That is the decision relating to Air Chefs is it not Mr Mothibe?

MR MOTHIBE: That is the paragraph Chair.

ADV HOFMEYR: Thank you. Now the first thing I just want to understand because I was not able to discern this perfectly from your statement. I want to know when you were doing the audit work at SAA did you as a fact consider

this award when you were conducting the audit?

MR MOTHIBE: Chair this award did come across – what you call – our audit areas yes.

ADV HOFMEYR: Okay.

MR MOTHIBE: We did have sight of these board minutes.

ADV HOFMEYR: And you concluded that there was no reportable irregularity then?

MR MOTHIBE: Chair when we looked at the facts that were – that were presented to us it did not trigger a reportable
10 irregularity sensor if I can put it like that Chair.

ADV HOFMEYR: Now the evidence that the commission has received and again Mr Mothibe in fairness to you I am going to tell you about that evidence because I assume you are not somebody who watches the proceedings of the commission every day. But I am mindful of the fact that that not be evidence of which you were aware at the time. Once I have done that I am going to take you to the documents that you would have been aware of at the time but I want to give that background because that is the evidence before this
20 commission and it is the reason why the commission was interested in understanding from you why this was not reported as a reportable irregularity. Chair that evidence came principally from Ms Mpshe who gave evidence in the middle of last year – June/July of last year. Just for record purposes her evidence is contained in Exhibit DD15. Now

you will recall Chair that what Ms Mpshe told this commission was that SAA had gone out to tender for domestic lounge catering services. It had gone to tender because at that stage before the tender its subsidiary Air Chefs had been providing that service but there were concerns about the standards of the service. There were lots of customer complaints and so SAA took a decision to go out and tender and see if it could improve things. Her evidence was that they ran a full tender process. That it was

10 lawful and regular. That amongst the bidders for that process was Air Chefs and at the conclusion of the process Air Chefs was not selected but LSG Sky Chefs were selected and awarded a contract for R85.8 million for three years. Now that is the background to the Air Chefs tender that we received at the commission. What Ms Mpshe also went on to tell the commission was that there was an unfortunate presentation that the SAA board had to make to Parliament on the 2 September 2015 shortly after this process had been run. And Ms Mpshe's evidence was that during the

20 presentation to Parliament the Chair of the Board of SAA Ms Myeni had received some tough questioning about the fact that SAA had chosen to award this tender to LSG Sky Chefs when it had Air Chefs its subsidiary who provided the services and Ms Mpshe's evidence was that Ms Myeni was not in a position easily to answer the questions and that

after that session she became very angry and demanded from Mr Mpshe that the award be withdrawn from LSG Sky Chefs and awarded to Air Chefs. And she was supported in all of this by Ms Kwinana. Mr Mothibe were you aware of those facts when you were auditing SAA at the time?

MR MOTHIBE: Certainly not the detail that you are providing Chair.

ADV HOFMEYR: What did you know?

MR MOTHIBE: I was aware that there was a tender which
10 was previously awarded to LSG which Air Chefs had lost but then a business decision had been made was then taken to rather in source the provision of that catering to SAA around just by Air Chefs. So Chair what is – is that there was a decision to rather in source the [indistinct] service instead of giving it to a party outside the group.

ADV HOFMEYR: Why would a state owned enterprise having run an entire tender process and awarded that tender to a third party be able then to take a decision simply to in source those services?

20 **MR MOTHIBE:** Chair as I indicated it was – my understanding was that this was a business decision that was taken by the Board of South African Airways.

ADV HOFMEYR: But is it compliant with the PFMA?

MR MOTHIBE: Chair typically the – the decision to in source a service within the group one would not see that to

which require a tender process.

ADV HOFMEYR: Hm. I accept that.

MR MOTHIBE: It was – because Chair you set up a business to be able to provide a particular service inside and it makes sense for you to get the service inside instead – if you can within the group Chair.

ADV HOFMEYR: Hm. But when the very same entity has determined it should go out on tender it has run an entire tender process in which it subsidiary was a bidder and was
10 determined not to be awarded the tender would it not then be a breach of the PFMA if it was subsequently to be awarded the tender after it had been taken away from the party who had emerged in that process as the most competitive cost effective bidder?

MR MOTHIBE: Chair, what we saw was a review of a business decision and that in itself Chair, it is something that we... that you see on the regular basis..

As a board of directors, they do have a duty to make decisions and review decisions Chair, as mostly following
20 protocols.

So Chair, the decision to review the tender in itself Chair would not have constituted an or reportable irregularity.

ADV HOFMEYR: And what did the Board of SAA had been told that if it withdrew the tender from LSG Sky Chefs, it would breach its contract and it would be liable to exposure

of the R 85,8 million that LSG Sky Chefs was entitled to?

MR MOTHIBE: That Chair, is then something that... yes, the board would have to consider in making that decision.

ADV HOFMEYR: And it would be unlawful in those circumstances if that was the advice the board had received because there are rules of law governing procurement and there is a statute, you may or may not be aware, called the Public Promotion of Administrative Justice Act, which vests in those successful bidders certain rights. Are you aware of
10 those legal provisions Mr Mothibe?

MR MOTHIBE: Chair, that is not truly one of the... that act is not really one of those that we have looked at Chair.

ADV HOFMEYR: Are you aware that the Board of SAA at the time was advised by its own internal legal department that if it went ahead and did this it would be acting unlawfully under the Promotion of Administrative Justice Act?

MR MOTHIBE: Chair, I became aware of it Chair when I saw the information here in the pack but we were conducting the audit Chair, from the extract of the minutes. That one I was
20 not aware.

ADV HOFMEYR: But you did confirm for us earlier that this was a particular award that you did consider, correct?

MR MOTHIBE: As in... yes, it was brought to our attention and we were aware that... but the details as you... as that would packed out.

ADV HOFMEYR: So ...[intervenes]

MR MOTHIBE: Not that kind of detail, Chair.

ADV HOFMEYR: So you did not call for the documents that served before the board when it took this decision?

MR MOTHIBE: No, I did not call for the documents. No, Chair.

ADV HOFMEYR: Should you not have done that?

MR MOTHIBE: Chair, on the basis of the information that was provided to me, I took a... because ...[indistinct] was
10 delegated and we had requested a summary, an extract, all the salient features. I took that, all the information that I needed to make a decision, was included and was provided to me.

ADV HOFMEYR: Okay. So I take it you did not see the memorandum that Ms Mpshe prepared for the board of directors on the 20th of August 2015?

MR MOTHIBE: No, Chair I did not see that memorandum.

ADV HOFMEYR: You will find that in EXHIBIT DD19C. So that is the first file, Chair. At page 132.3.1. So a hundred-
20 and-thirty-two point 3 point 1.

MR MOTHIBE: I have the document Chair.

CHAIRPERSON: Yes, I see it here.

ADV HOFMEYR: Yes, which is in fact in file 1, Chair.

CHAIRPERSON: Oh, okay. Okay. Okay. Yes, at what page?

ADV HOFMEYR: We will start at page 132. A hundred-and-thirty-two point 3 point 1.

CHAIRPERSON: Yes.

ADV HOFMEYR: Thank you. Mr Mothibe, this is the memorandum that Ms Mpshe as the acting Chief Executive prepared for the board in advance on that fateful day before parliament, admittedly.

And what I just want to... I do not want to read it in detail. We do not have time for that. But she provides the
10 background to why they went out to tender.

She catalogues the process that was followed. She indicates how the evaluation took places. And then on the last page, you will see final recommendation.

You will see there under final recommendation, she records:

“It is hereby requested that the SAA Board of Directors note the final award to LSG Sky Chefs for a period of three years, from 1 September 2015 to 31 August 2018, at an estimated amount of
20 R 85 818 793,00...”

And some cents, inclusive of VAT. And she says:

“In this regard and further to the lawful tender process, a third party will be performing services previously rendered by SAA subsidiary company, Air Chefs...”

Mr Mothibe, at the time, do you know what the limit on the Delegation of Authority for the Chief Executive Officer of SAA was?

MR MOTHIBE: Shu, I would not remember off the top of my head Chair.

ADV HOFMEYR: Okay. I can tell you it was R 100 million. Okay and that was the evidence of Ms Mpshe. I am just not dreaming that up. So this was a decision that was within her delegation of authority to take. Do you accept that?

10 **MR MOTHIBE**: I accept that Chair.

ADV HOFMEYR: If it was R 100 million, she could determine that this should be awarded. Is that correct?

MR MOTHIBE: That sounds correct.

ADV HOFMEYR: Yes. But then what happens is. We have the interaction at parliament. You have on Ms Mpshe's evidence Ms Myeni becoming very angry afterwards and demanding that it be taken from Sky Chefs and awarded to Air Chefs.

20 And what Ms Mpshe then does in response is, she sends an email to the board the next day, setting out the whole process. And you will find that in the same bundle, page 132.15.

MR MOTHIBE: What page? Is it 15 or five zero?

ADV HOFMEYR: One five. Apologies. Fifteen. I have started on the second page of this email train because it

stats, in fact, with an email Ms Myeni to her co-board members and Ms Mpshe, to which Ms Mpshe offers the response two days later.

Let us just look at what Ms Myeni says to the board and Ms Mpshe at page 132.15. She says:

“Colleagues, I am sending to you... first and foremost, this is not in line with what we are doing at Air Chefs as a shareholder.

We have to review the submission which was not submitted to the board for noting.

Air Chefs is struggling and I announce my concerns as the shareholder.

Acting CEO kindly holds this process until the shareholder of Air Chefs applies its mind...”

Now, Ms Mpshe responds to that over the page, which is back the page at 132.14. And I do not suggest we read it but the essence of her response is to dispute that the board was not notified because we have actually just seen the notification that they received and she attaches it again.

And then at... in her answer to point two which you see bold just below the middle of the page. There is a paragraph she inserts.

And what she says there in the last sentence is:

“Any holding and/or cancellation of the awarded could result in litigation and financial exposure

against SAA...”

Can I take it that you were not aware of this email correspondence at the time.

MR MOTHIBE: Certainly, Chair. I was not aware of this email correspondence.

ADV HOFMEYR: And there is a response to that ...[intervenes]

CHAIRPERSON: I am sorry Ms Hofmeyr.

ADV HOFMEYR: Yes.

10 **CHAIRPERSON**: The last reading that you did was from what page?

ADV HOFMEYR: Chair, it is on ...[intervenes]

CHAIRPERSON: Was that to Ms Mpshe’s email?

ADV HOFMEYR: Yes, it is one 132.14.

CHAIRPERSON: Oh, 14?

ADV HOFMEYR: Yes. One, four. Apologies, Chair.

CHAIRPERSON: Okay. Yes, okay.

20 **ADV HOFMEYR**: And you will see she is now responding to the chairperson. And what is bold is the text from the chairperson’s email that we saw previously and then the indented paragraph is Ms Mpshe’s response.

CHAIRPERSON: Okay.

ADV HOFMEYR: We have traversed this with her. And then under 2.2 there, that paragraph from Ms Mpshe, I was just emphasising the last sentence.

CHAIRPERSON: H'm.

ADV HOFMEYR: Which is that her indication to the board was holding or cancellation of the award could result in litigation and financial exposure against SAA.

CHAIRPERSON: Yes.

ADV HOFMEYR: And I was saying to Mr Mothibe for his confirmation, he was not aware of this email correspondence at the time.

It has a sad developing history Mr Mothibe because Ms
10 Kwinana responded to Ms Mpshe's email later on that day
and you will find that back a page at page 132.13.

She says the following. I am going to highlight some parts of it. Chair, you will find it in the second half of the page on page 132.13.

CHAIRPERSON: Yes.

ADV HOFMEYR: She says:

20 "I note that Air Chefs also responded to this bid. Meaning that if it is not what they do, which I doubt, is something they would be able to do. Why was the board not notified of this decision as per the submission?"

I pause there Chair because the evidence was that they had received it but for some reason Mr Kwinana and Ms Myeni seem not to be aware of that.

CHAIRPERSON: H'm.

ADV HOFMEYR: She says:

“I recommend that the award be cancelled and if they claim for damages, the letter was written on the 20th. And what is that they would have prepared between the 20th and today the 3rd? Unless they knew that the tender is theirs.

I must take this opportunity to say I am very disturbed by this decision which is killing SAA subsidiary.

10 As the chairperson of SAA, it is making me very nervous where one day I will wake up and find that SAA's fleet is serviced and maintained by a foreign company that is completed with SAA.

My simple rhetorical question is, if SAA and its subsidiaries were owned by you, would you give business to your competitor even if you do exactly the same business?

Chairperson, this looks like treason and I request this to be investigated by the SIU's...”

20 So, Ms Mpshe then thought she ought to get a legal opinion to back up her position and so she did procure a legal opinion from the internal legal department at SAA.

You will find that at page 132.4. The numbering on my file seems to have gone on the side.

CHAIRPERSON: No, 132.4 with me.

ADV HOFMEYR: Chair, I think what happens is it moves to the portrait... the landscape, not portrait allocation in the file. So if you go to 132.11 and then you go back a page.

CHAIRPERSON: Okay?

ADV HOFMEYR: You will see the numbering moves to a different part of the page unfortunately because it has been printed oddly.

CHAIRPERSON: Oh.

ADV HOFMEYR: Which is unfortunate.

10 **CHAIRPERSON:** I think they should do a second circulation in the right place.

ADV HOFMEYR: And also, this is unfortunate because this is on half of the page.

CHAIRPERSON: Yes.

ADV HOFMEYR: So we will just turn it around.

CHAIRPERSON: Yes.

ADV HOFMEYR: Put it portrait.

CHAIRPERSON: Yes.

20 **ADV HOFMEYR:** And then put it at the right point at the page but just for now, if I can just then direct you to a few pages because then you will see the start of this legal department's memo.

CHAIRPERSON: H'm.

ADV HOFMEYR: I do not want to read a large part of it but just to give you the background. What is said out in this

memorandum is the background that Ms Mpshe already gave in her evidence.

That it was a business decision to go out to tender because Air Chefs had been providing the service. There were numerous complaints.

It was determined to see if there was a better service provided. They gone to tender. Air Chefs had been one of the bidders.

It had not won the bid. And then the conclusion is really
10 as follows Mr Mothibe. It is first that the tender itself, that process, was run fairly and lawfully.

It is second that if the award was cancelled, it would expose SAA to legal action and financial exposure which would mean financial losses for SAA.

It would be unlawful to withdraw the award because it would breach the requirements of the Promotion of Administrative Justice Act.

And finally, the legal department recommended that
20 cancelling the tender would also undermine good corporate governance.

And all of those issues were then presented to the board on the 28th of September by Ms Mpshe. I will not take you to the document now but it is in the bundle at DD19C, page 132.11.

So Mr Mothibe, that is the background to this decision

that the board takes on the 28th of September 2015 nonetheless to withdraw and award to LSG Sky Chefs.

And is it your evidence before this Commission that none of that background came to your knowledge when you looked at this?

MR MOTHIBE: Chair, as I indicated. We had delegated the review of the minutes to one of the members of the team. And the extracts that were provided to myself did not include the detail that Ms Hofmeyr is sharing and in the absence of
10 that we did not believe that the matter would have been then ...[indistinct] irregularity Chair.

ADV HOFMEYR: But should you not have ensured that your team got relevant documents before it?

MR MOTHIBE: As I do indicate. The requirement is for the team to give an extract of the salient features. So when the matter was brought to my attention, my expectation was that what was provided were the salient features Chair.

And therefore, based on that is not... the trigger or did not... or was not triggered Chair ...

20 **ADV HOFMEYR**: Do you accept today that these are the salient features?

MR MOTHIBE: Chair, looking at this today Chair, I think one would have had to consider these letters and as a matter of process Chair because of the... of what needs to be report or to raise ...[indistinct] irregularity, this would have gone

through the necessary processes within the firm.

ADV HOFMEYR: In your response on this Mr Mothibe which you will find at the beginning at the file and which we have entered into the record as DD19A at page 9, you say at paragraph 40A on that page that at the meeting, and you are referring to you hearing of the 28th of September 2015:

“The board decided to retract the domestic lounge catering tender and award it to Air Chefs...”

And then you say in the sentence:

10 “It is suggested that this was done without following the bidding process...”

Who suggested that?

MR MOTHIBE: Chair, I would have to go back and look at my... at the extracts of my notes.

ADV HOFMEYR: H’m. And why do you describe it as a suggestion that it was done without following a bidding process?

MR MOTHIBE: Chair, as I indicated, I have to look at the extract that was provided to myself and I would have to have
20 a look at that before I can respond Chair.

ADV HOFMEYR: Well, let us go because the board actually uses that language itself when it resolved to take this decision. That it took at a meeting on the 28th of September 2015.

You will find that board minute in the same volume,

DD19 but now it is the C part of it and you will find it at page 132.16.3.1.

That is the minutes of the special meeting of the SAA Stock Limited Board of Directors held on Monday, the 28th of September 2015.

Is this a set of minutes you would have considered when you were conducting the audit.

MR MOTHIBE: Apologies, I seem to be on the wrong page.

ADV HOFMEYR: Apologies.

10 **MR MOTHIBE**: 132...[intervenes]

ADV HOFMEYR: 132.16.3.1.

CHAIRPERSON: Oh, I am also in the wrong...

ADV HOFMEYR: Sorry.

CHAIRPERSON: I missed the three before the one.

ADV HOFMEYR: Apologies.

MR MOTHIBE: The same here, Chair.

CHAIRPERSON: Ja.

ADV HOFMEYR: So 132 ...[intervenes]

20 **CHAIRPERSON**: No, I think Mr Mothibe, we both got it that way.

ADV HOFMEYR: [laughs]

MR MOTHIBE: Ms Hofmeyr must have misled us.

CHAIRPERSON: [laughs]

ADV HOFMEYR: I must have misled you. I do apologise.
[laughs]

CHAIRPERSON: Ja. Sixteen... 132.16.3.1?

ADV HOFMEYR: Indeed. Thank you, Chair. Mr Mothibe, do you have it?

MR MOTHIBE: I have got it now, Chair.

ADV HOFMEYR: And my question to you was. Were these amongst the minutes that you would have considered when you were doing your audit work for the year?

MR MOTHIBE: Chair, as I have mentioned earlier. We had delegated this role to review members to other team
10 members. So I would not have seen the full minutes. I would have seen extracts of the key feature. What were the important issues pulled out of the minutes. So I would not have had full sight of the minutes myself. No.

ADV HOFMEYR: Mr Mothibe, do you ...[intervenes]

MR MOTHIBE: A team member of mine would have had access to minutes, yes.

ADV HOFMEYR: Do you accept responsibility for the work of your team?

MR MOTHIBE: That is correct.

20 **ADV HOFMEYR:** Right. So ultimately whatever processes you put in place, they must be good enough that your team is doing what they should do, correct?

MR MOTHIBE: That is correct.

ADV HOFMEYR: Right. Do you recall that you were actually yourself sent a copy of these minutes?

MR MOTHIBE: Chair, as I already indicated. I did not see the minutes. I saw extracts of the minutes and the minutes itself, no. I only saw extracts of the minutes, all of that.

ADV HOFMEYR: But you were sent these minutes. So why do you persist in saying you only saw extracts of them?

MR MOTHIBE: Because I do not... the review of minutes is delegated Chair. I do not read the minutes myself. That work is ...[indistinct] and the team is required to provide me with extracts of minutes. I have indicated, all salient
10 features, all critical issues that I needed to be aware of.

ADV HOFMEYR: Right. So you do not dispute that you were sent them? As I understand your answer, you might have been sent them but it was not your responsibility to review them. Is that correct?

MR MOTHIBE: The responsibility to review minutes was delegated Chair.

ADV HOFMEYR: And you accept responsibility for the adequacy of that review?

MR MOTHIBE: That is correct, Chair.

20 **ADV HOFMEYR**: So the person in your team who reviewed these minutes would have come across the item dealing with Air Chefs and would have found that at page 132 point 16 point 3 point 15.

MR MOTHIBE: [No audible reply]

CHAIRPERSON: Okay, Ms Hofmeyr. There are two minute

points and points now. So start again.

ADV HOFMEYR: I know. If you ...[intervenes]

CHAIRPERSON: Tell us again. 132...?

ADV HOFMEYR: Point 16. One six.

CHAIRPERSON: Ja.

ADV HOFMEYR: Point 3.

CHAIRPERSON: Ja.

ADV HOFMEYR: And point 15. One five.

CHAIRPERSON: [laughs]

10 **ADV HOFMEYR:** Chair, this... when I see these numerous numbers I shudder.

CHAIRPERSON: *Ai, ai.*

ADV HOFMEYR: I apologise.

CHAIRPERSON: And I do not seem to have... you said 132.16.3.15.

ADV HOFMEYR: Yes, it is actually... if you take the internal numbering of the minute which you will see at the top middle of the page, it is page 15 of 17. If that helps Chair?

CHAIRPERSON: *Ai*, at long last. [laughs]

20 **MR MOTHIBE:** [laughs]

ADV HOFMEYR: It is late in the day. I think we are all... [laughs]

CHAIRPERSON: Whoever did this numbering, please talk to them.

ADV HOFMEYR: [laughs]

CHAIRPERSON: We ...[intervenes]

ADV HOFMEYR: We have to have a better method.

CHAIRPERSON: Some of us are not accountants and auditors.

ADV HOFMEYR: No, no. Indeed.

CHAIRPERSON: So when you have got so many... such long numbers, it is difficult. So they can read... they can find a shorter way of doing it.

ADV HOFMEYR: Yes, certainly Chair.

10 **CHAIRPERSON:** H'm.

ADV HOFMEYR: Do you have internal page 15 of 17?

CHAIRPERSON: I found it.

ADV HOFMEYR: Thank you.

CHAIRPERSON: I think Mr Mothibe found it before I found it.

MR MOTHIBE: [laughs] I have got it Chair. Thank you.

CHAIRPERSON: H'm.

20 **ADV HOFMEYR:** I want to start with what the board resolved but there is a lengthy discussion in these minutes about the background, what had happened, that parliament had raised concerns, et cetera.

But then you will see just before the first "it was resolved" on that page, there is an entry that Mr Dickson who was one of the board members declared that he reserved his vote until he fully understood the risks of

cancelling the award to the airline.

And then he... there is a resolved.

“It was resolved that a) the SAA Domestic Lounges tender award be retracted and b) the catering contract be awarded to Air Chefs without going through the bidding process...”

Now Mr Mothibe, if one of the obligations of auditors of SOE’s is to determine compliance with the PFMA, and I take that you have accepted it in your evidence, is that correct?

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

ADV HOFMEYR: And a member of your team reads this resolution in the board minutes on the 28th of September 2015, that:

“The SAA Domestic Lounge Tender Award be retracted and that the catering contract be awarded to Air Chefs without going through the bidding process...”

Do you accept that that should have sounded an alarm?

MR MOTHIBE: Chair, that would have sounded an alarm.

20 **ADV HOFMEYR**: And more should then have been done and required of management to explain why it was that a tender that had been awarded was now being retracted without going through a bidding process. Do you accept that?

MR MOTHIBE: Chair, as I indicated. Yes, there should have been an alarm but also other factors need to be considered.

Obviously, enquiring and understanding of as to why that ...[indistinct] and arrived at that reasonable conclusion.

CHAIRPERSON: I just want to make sure that we are all on the same page. Would a member of your team by reading this minutes have immediately known that Air Chefs was a subsidiary of SAA?

MR MOTHIBE: Yes, Chair. They would have known.

CHAIRPERSON: Ja. Now, if they would have known that, would they have been concerned about this part even if they
10 took the view, which I think you expressed in your statement, that awarding the contract to Air Chefs would be in sourcing and therefore in terms of the view you expressed, there would no obligation on SAA to go out to tender?

MR MOTHIBE: Chair, that would be a reasonable ...[indistinct] Then the result also ...[indistinct] to take that view Chair.

CHAIRPERSON: Yes. But the point... what I am asking. I am trying, if I evaluate your answers to Ms Hofmeyr's questions, whether if that is the view they held, that this
20 would be in sourcing and that it would not be necessary or there would be no obligation on SAA to go out to tender, would this have raised a red flag or not?

MR MOTHIBE: Chair, if the view... it was... is it to be viewed that this amounts to in sourcing and it is a business decision that was taken Chair, it would not have necessarily raised a

red flag Chair, no.

CHAIRPERSON: Okay. I just wanted to check if... we might not be on the same page but I wanted everybody to know what my query was.

ADV HOFMEYR: Indeed, Chair.

CHAIRPERSON: Of course, whether or not there would have been an obligation to go out to tender or not, might be another issue that must be looked at.

ADV HOFMEYR: Indeed, Chair. Thank you. If your team
10 member had read the preceding discussion in this minute Mr Mothibe, he would have noted or she would have noted on the previous page, that is 132.16.3.14, that the CFO has made a remark against the letter G on that page.

You see what the CFO said there is that:

“He was not in disagreement with the sentiment that the business should be given to Air Chefs but in his capacity as CFO it would be remiss of him not to mention that the bottom-line impact for the group, should the tender be awarded to Air Chefs with
20 approximately R 4,5 million, which was far less than the exposure of R 85 million should SAA be sued by the preferred bidder for the contract price...”

Do you see that?

MR MOTHIBE: I read that paragraph, Chair.

ADV HOFMEYR: So again, just probing what you would

have expected of your team member, taking the Chair's point as our starting point and in deference to your team member, maybe when just the resolution is read, there is some understanding that this is just an in-sourcing decision. But, Mr Mothibe, if your colleague had also read G, would not a red flag have gone up? Even if this is in-sourcing there is a risk of R85 million exposure for SAA if they take this step.

MR MOTHIBE: Chair, obviously be wary of not using
10 hindsight because some of this information was certainly not available to myself when the assessment was made.

I think in reading this, you definitely would have to consider the implications of this financial loss to the entity and consider whether there is other obligations that we have had.

ADV HOFMEYR: And – apologies, Chair?

CHAIRPERSON: Apart from this and maybe even if he or she did not see this part of the minutes, what about if he or she knew because I think he or she would have known that
20 a previous decision had been made already to award the tender to an outside company. On hearing that a decision was taken to revoke that, would that not – and give it to a subsidiary, would the fact that a decision had already been made to award the tender to an outside company not also have been something to be concerned about, to say well, if

you have already decided to take – go out on open tender and you have decided to award the tender, can you just take it back like that, retract it and give it to an internal entity? Is that the kind of thing that would not have raised a red flag or not really, as you understand the position.

MR MOTHIBE: Chair, it is fairly difficult because now I am responding having read what I have read and having listened to the what Ms Hofmeyr has presented and I am worried that one is using hindsight and that. However,
10 Chair ...[intervenes]

CHAIRPERSON: Well, let me maybe put you at ease. When one is dealing with this kind of situation where you are thinking of what reaction could be expected from somebody in a certain situation, there may be situations where you are able to say outright of course this would have been a red flat, you know? There would be situations where you say no. And then there would be situation where you say I am not sure. So that might be a measure that is helpful, a tool that is helpful for you not to use
20 hindsight. So what are you able to say because the questions that are put to you by Ms Hofmeyr are aimed at establishing whether somebody should have picked up that this was a potential problem and therefore taken certain steps.

MR MOTHIBE: I understand you, Chair.

CHAIRPERSON: Yes.

MR MOTHIBE: Yes.

CHAIRPERSON: So going back to, I think my question because I think it was my question that you were trying to deal with. Simply knowing that the company had gone out on tender, bidders had put in their bids, and a decision had been made to award the tender to an outsider. If they are now suddenly were retracting it, would that be something that on your understanding should raise a red flag with a
10 member of your team?

MR MOTHIBE: Chair, I would think there would have been reason to ask more questions on that.

CHAIRPERSON: Yes, ja.

MR MOTHIBE: Yes. I think there would have been reason to ask more questions, Chair.

CHAIRPERSON: Yes, okay. Ms Hofmeyr?

ADV HOFMEYR: And, Mr Mothibe, if we read further in the background to this decision taken by the board on that day – I do not suggest we read all of it but I can tell you
20 that in paragraph D on page 132, point 16.3.14, the point is made that the business decision was taken to go out to tender because Air Chefs had in recent years been damaging the SAA brand due to poor offerings. So the person reading these minutes knows that fact, right? Knows a business decision was then taken to tender. The

reader of the minutes knows that the CFO is saying if we move this to Air Chefs there could be exposure of R85 million to SAA and furthermore, the reader actually also knows that the genesis of this difficulty is the questions that the Chairperson faced in parliament and you find that at 1 on the page. There it is recorded that – the Chairperson highlighted that some members of parliament had a recent meeting of the standing committee on finance, it raised a serious objection to SAA awarding a catering
10 contractor foreign-owned company whilst it had a subsidiary which offered the same services.

It might have been useful for parliament to be told but we understand from Ms Mpshe it was not, that the reason why that happened was because a valid tender process had been run and LSG Sky Chefs had come out on top.

Unfortunately, parliament was not given that insight but all of that background is then before the reader of these minutes and I take your evidence before the
20 Commission today, Mr Mothibe, to be this should have raised a red flag and more questions should have been asked, is that correct?

MR MOTHIBE: That is correct, Chair.

ADV HOFMEYR: Now in your statement to the Commission dealing with this, you said it was not

necessary to follow a bidding process. Why did you say that?

MR MOTHIBE: Chair, it was based on the extracts of the minutes that I had read.

ADV HOFMEYR: As you sit here today does that remain your view?

MR MOTHIBE: Chair, as I did indicate earlier, with this information there was a need to ask more questions, Chair.

ADV HOFMEYR: The board certainly knew it was required
10 to go through a bidding process, did it not?

MR MOTHIBE: From reading of this, it does look like that, Chair.

ADV HOFMEYR: And we know as a fact management had warned it against withdrawing the LSG Sky Chefs award, had it not?

MR MOTHIBE: From the minutes presented it is the case, Chair.

ADV HOFMEYR: And it had been told in the legal opinion that it would be unlawful for it to cancel that award,
20 correct?

MR MOTHIBE: That is correct, Chair.

ADV HOFMEYR: Now, Mr Mothibe, in your statement dealing with this issue, as I read it, you first of all say no bidding process was required but you have now fairly conceded in your defence, Mr Mothibe, that the person

reading these minutes should not have come to that conclusion.

But you say in the alternative – let us go to page 9 of your statement, just so that you have it in front of you at DD19A page 9. You say – you cater for a different situation where the bidding process was required and that is at the bottom of page 9, the last paragraph, the second sentence in. You say:

10 “Assuming that a bidding process was required,
 which I am advised it was not...”

But we are working on your assumption now.

 “...I would have required evidence that the SAA board took this decision with the intention of breaching a law or regulation or that it acted negligently, which evidence I did not have at the time. Consequently, I had no reason to believe that a reportable irregularity took place.”

I just want to pause there for a moment because this is a point you repeat a few times in your statement.

20 As you have captured the reportable irregularity obligation there, you seem to be indicating that you thought that as the auditors of the SAA you did not only have to find unlawful conduct on the part of a person responsible for management that had those consequences we looked at, you seem to be saying you also had to find

that that decision was taken with the intention of breaching the law or that it was done negligently.

Mr Mothibe, I do not see that requirement in the Auditing Professions Act, do you?

MR MOTHIBE: Chair, in the extract that I have put in here, that requirement is not included there, Chair.

CHAIRPERSON: Please raise your voice?

MR MOTHIBE: I was saying, Chair, in the extract or in the definition or understanding of the requirements to report
10 reportable irregularity, that matter of intention is not mentioned, Chair.

ADV HOFMEYR: So then I want to put it to you that it was not required of you that you were to establish whether this was done with negligence or intention, was it?

MR MOTHIBE: Chair, I would like to have a look at the full Act because, Chair, certainly the question of intention, Chair, if my memory serves me right, there is a requirement but I would like to confirm that, Chair.

CHAIRPERSON: You may need to have a look at the Act
20 if you wish to but let us see if we cannot deal with this in a different way. When you say in that paragraph that you would require there to be – you would require there to have been evidence that the board took this decision with the intention of breaching a law or regulation, what did you mean?

MR MOTHIBE: Chair, earlier in the statement I do mention that the understand was that it was a business decision that has been made to have the catering to be in-sourced to Air Chefs. So, Chair, to say that if there is a genuine resolution that has been taken, much as the board may have erred, Chair, the – let me rephrase that, Chair.

The three requirements here, Chair, talk of a material financial loss, it talks of fraud, amounts to theft. Or it talks of material breach of fiduciary duty. Chair, 10 where these elements occur, Chair, you do sometimes find that the intention – the action taken is that genuinely to defraud or to cause financial loss or to breach laws or regulations and breaching fiduciary duty.

I think, Chair, when I responded to Ms Hofmeyr's question I did indicate that there is also an element of judgment that is involved albeit it, as Ms Hofmeyr said, is the bar might be low. But it is important to understand why decisions are made, what was the intention.

And Chair, if there is an intention to break the law, 20 that makes it an obvious – that makes it easy for one to make the call, Chair, but where there were genuine basis decisions that were being followed and it resulted in a breach of law or an omission, Chair, I think that is where one then begins to apply judgment in determining whether or not this was in fact a reportable irregularity or there

were some other issues to be involved.

And also importantly, Chair, I would obviously would have had to consult within the firm to ensure that I have probably applied my mind to the matter.

CHAIRPERSON: Well, let us say that – let me tell you what I think you – what my understanding of what you were saying there, is it is that you are saying that you would not consider if – if, for example, the board said do not take this to open tender. But in saying that, they were in good
10 faith, you would say the failure to go out to tender is not an reportable irregularity even if it is an irregularity just because they were in good faith, they were acting in good faith, they did not believe that what they were doing was unlawful. But if that is what you are saying, I am concerned. Is that not what you are saying?

MR MOTHIBE: No, no, Chair, that is not what I am saying, Chair.

CHAIRPERSON: Well, what are you saying?

MR MOTHIBE: I am saying, Chair, that when these
20 incidents do happen, you need to get the full facts behind this and get an understanding of what transpired. As soon as it hits all the necessary triggers for reportable irregularity, I would also then follow a process to consult within the firm to make sure that my understanding is correct, Chair.

One of the things that we need to consider, Chair, is obviously intention. As I indicate, as soon as there is intention to breach law, it makes it easy.

CHAIRPERSON: Yes, I think that is what we are concerned about because if the law is – if you are going to obtain these services you must go out to tender and the entity decides not to go out to tender and that decision exposes the entity to financial loss, serious financial loss, why is that not reportable, a reportable irregularity?

10 **MR MOTHIBE:** Chair, maybe if I can give an example. When one looks at noncompliance matters – and if you do not comply with the law one may argue technically that you have broken the law and therefore – it then basically becomes a reportable irregularity.

CHAIRPERSON: Yes.

MR MOTHIBE: So then there would be many items that needs to be reported. So, Chair, I think all I am saying is that there are areas where one has to think and apply judgment but I am certainly not saying that, Chair, it is only
20 about intention, that is certainly not what I am putting forward, Chair. I do not know if ...[intervenes]

CHAIRPERSON: Well, Ms Hofmeyr may take it further but maybe where you want to – where you are required to be satisfied, whether you are dealing with a situation of fraud, maybe in that situation might your concern about intention

might be understandable even though, as Ms Hofmeyr said earlier on and you agreed with her, that the bar for purposes of reportable irregularity is lower, you know? But maybe there might be something there, I do not know, but other than that, if the law said you must go out on tender and you do not go out on tender, it does not seem to me that your intention is of any relevance. Do you agree?

MR MOTHIBE: I hear where the Chair is coming from.

CHAIRPERSON: Yes, you hear but you agree?

10 **MR MOTHIBE**: I do agree, Chair.

CHAIRPERSON: Okay.

MR MOTHIBE: That I do agree, Chair.

CHAIRPERSON: Okay.

ADV HOFMEYR: Thank you, Chair, and just to follow that up because, Chair, you have highlighted in your questions the first of the three criteria for the reportable irregularity, it is the unlawful act plus material financial loss. As you put it to Mr Mothibe, there is no intention relevant to that and Mr Mothibe has fairly conceded that.

20 I want to submit that also in relation to the third, a material breach of fiduciary duty, intention is not referenced and not relevant. Do you accept that, Mr Mothibe?

MR MOTHIBE: I do hear where you are coming from, Chair.

ADV HOFMEYR: Do you accept it?

CHAIRPERSON: Do you accept that as correct?

MR MOTHIBE: I accept as correct, Chair.

ADV HOFMEYR: Thank you, Mr Mothibe. Just helps and also for the record purposes that we know the common ground between us.

Right, so my question then is to re-evaluate what your team did because as the Chair has put it to you, if there was a requirement to go out to tender – indeed they
10 did go out to tender, a third party was awarded the tender but then it was withdrawn.

Then you have the requisite first unlawful act requirement, do you not, for a reportable irregularity?

MR MOTHIBE: Yes, if there is a requirement to go on tender which I was advised there was – it was not.

ADV HOFMEYR: You were advised how? You spoke about being given a sort of synopsis from the team that said this was in-sourcing. Did they actually positively state there was no need to go out to tender for this award?

20 **MR MOTHIBE:** Well, Chair, an in-sourcing arrangement, it is something that you do in the – you have gone out and set up a business process and you are now taking it forward and delivering within your business, Chair, so something like – if you are in-sourcing, Chair, it does not require a tender and in the discussions that we had, in-

sourcing does not require a tender, Chair, it is not a requirement.

ADV HOFMEYR: And if it was required, we have got the unlawful act. Was it committed by a person responsible for management of the entity?

CHAIRPERSON: One second, Ms Hofmeyr, I see the noise is back but I do not know whether we are warmer with the noise back or whether we are worse off. I feel quite some cold.

10 **ADV HOFMEYR:** Yes.

CHAIRPERSON: So I do not know whether the air con was switched temporarily and then later on was brought back or whether it is controlled centrally and therefore once it is on it is on, but I think I do see that I am not the only one feeling cold.

ADV HOFMEYR: Chair, can I make this suggestion? We are just at four o'clock.

CHAIRPERSON: Ja.

20 **ADV HOFMEYR:** Maybe we should just talk about arrangements and how much longer because if we are to go on maybe we can have a short adjournment, comfort break, we can establish what the position is in the room and try and get the best warming conditions and then return.

CHAIRPERSON: Yes.

ADV HOFMEYR: If you are in a position to do so. I did check with Mr Mothibe and his legal team, they are in a position to remain beyond four today, if that is suitable.

CHAIRPERSON: Yes, yes.

ADV HOFMEYR: And then see how we go.

CHAIRPERSON: What is your estimate of how much more time you need?

ADV HOFMEYR: Chair, I always reluctantly give these estimations. Whenever I think something is going to be
10 quick it always takes much longer but I can tell you that I am about two thirds of the way through my questions.

CHAIRPERSON: Yes.

ADV HOFMEYR: So there will only be a third more but reportable irregularities we have covered and there is only a second example of it.

CHAIRPERSON: Yes, yes.

ADV HOFMEYR: And then there are one or two more things. I think if we took another hour, I would make a good advance in completing but we may well need to still
20 reconvene tomorrow for a bit.

CHAIRPERSON: Yes, okay. Well, the question that – if we are going to need to convene tomorrow, it may be that we should not try to go much further.

ADV HOFMEYR: Yes.

CHAIRPERSON: But it may well also be that we could go

up to five. I have more flexibility tomorrow than I may have made you believe some time back. So tomorrow I am able to sit for quite some time but I do not mind us going up to five today. It is just that of course if you go up to five and Mr Mothibe and his legal team have to come back tomorrow for one hour it might not be such a good idea to go for another hour rather than take two hours tomorrow but I am not sure. Maybe, Mr Mothibe, are you flexible either way or what is your position?

10 **MR MOTHIBE:** Chair, I am looking at my team but I am happy to – if it means five o'clock, we can wrap it up but I am happy with ...[intervenes]

CHAIRPERSON: Yes but you are happy with tomorrow as well?

MR MOTHIBE: I am happy with tomorrow but, Chair, obviously if we can get it done today, it is preferable.

CHAIRPERSON: Ms Hofmeyr, shall we go up to five and see how it goes or what is your own sense?

20 **ADV HOFMEYR:** Chair, my own sense is it would be advantageous to take the extra hour.

CHAIRPERSON: Yes, yes.

ADV HOFMEYR: It just means we are going to safely finish tomorrow with our second witness.

CHAIRPERSON: Ja, ja.

ADV HOFMEYR: We also do have to do some logistical

things tomorrow and if there is any delay there I do not want that compromising us.

CHAIRPERSON: Ja, ja.

ADV HOFMEYR: So maybe we take the extra hour.

CHAIRPERSON: Okay maybe then let us take a short comfort break and then we will come back do an hour.

ADV HOFMEYR: Yes.

CHAIRPERSON: Which might take us to just after five o'clock and then we adjourn.

10 **ADV HOFMEYR:** Certainly. Thank you, we are indebted.

CHAIRPERSON: Okay, we will adjourn for ten minutes. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay let's continue.

ADV HOFMEYR: Thank you Chair. For my own purposes I must say it feels like it is slightly warmer, I don't know if everyone shares that view. No, okay I am being told not so maybe it is just my optimism.

20 **CHAIRPERSON:** Well you have an overcoat, some of us don't.

ADV HOFMEYR: Apologies Chair. There were efforts being made but they have done as much as can be done as I understand it.

CHAIRPERSON: Ja.

ADV HOFMEYR: Mr Mothibe just before the adjournment momentarily we were going through the elements of the report of irregularity, and I was checking the second requirement with you that the decision or the act, the unlawful act was taken by a person responsible for the management of the company, do you accept that that, that was met in this case?

MR MOTHIBE: It was met in this case Chair.

ADV HOFMEYR: And then those three results, the
10 material financial loss, the fraud or theft and then the third one, the breach of the fiduciary duties, I'd like to put it to you, Mr Mothibe that this did constitute this decision, a breach of the fiduciary duties of the Board and I say that because it would not have been in the best interests of SAA for the Board to overturn a valid and lawful tender process against advice of its lawyers and management simply because the Chair received some tough questions in Parliament, a decision which exposed SAA to R85million –
20 potentially to R85million in claims, do you accept that, that would not be in accordance with the fiduciary duties of the Board?

MR MOTHIBE: Chair it would not have been in line with the fiduciary duties of the Board.

ADV HOFMEYR: And, might it have been a decision that caused it material financial loss?

MR MOTHIBE: Chair there were risks of damages highlighted by the lawyers, the contract was worth R85million though material financial loss Chair, what we have to determine, Chair, what the potential loss would be and then as I indicated was the information available, we then consult with our internal risk department which advise – which would advise us when one reports ...[indistinct] or even it did indeed reported an irregularity.

ADV HOFMEYR: I'm not sure I just have your answer on
10 whether the risk of exposure for the R85million claim would, in your view, also render it a reportable irregularity because of a material – a potential material financial loss.

MR MOTHIBE: Chair, as I indicated Chair, certainly a material loss is not questionable, but a financial loss to the entity, there definitely would be financial loss to the entity, the quantum thereof Chair, it's what we do not know, that is why, Chair, I do agree that one would then – the process that would be followed within PwC is to gather all the facts and then take it through a process where there is
20 consultation to assist one in determining whether or not it is a material irregularity. So, Chair, even when all these facts have been – or we have determined what we believe is, according to these requirements, I am still required to take it through a process, through a consultation – internally with a - before the final call is made Chair.

CHAIRPERSON: Well, let us say you are auditing SAA now, you come across this and the facts are or include that this decision by the Board could result in SAA being sued or damages to the amount of R85million by the successful company, would that – would you regard that as – do you regard the decision by the Board to withdraw that tender as – and give it to a subsidiary as a reportable irregularity, on those facts?

MR MOTHIBE: Chair as I indicated, I would definitely
10 gather all those facts and consult as required by our processes at PwC. So, Chair, the decision to determine whether or not it's a material – it's a reportable irregularity would not only be mine as the division leader I would have to – I am required to consult internally to...[intervenes].

CHAIRPERSON: What more would you look for in order to make up your mind, whether, in your own view, the test for reportability is met with, Ms Hofmeyr said is – you know it puts a low bar.

MR MOTHIBE: Chair, as I indicated all these
20 requirements would probably have been met and therefore, Chair I would have put together the documentation that's necessary and say, these are my views, I do believe there's a potential reportable irregularity and I would have to submit that through our consultation process so that we can confirm my thought process before I would report to

the regulator if they agree with me. So there is a process that needs to be followed Chair, I do not make the decision on my own.

CHAIRPERSON: But is it correct, that as you sit there, when you hear these facts, your own view, leave out whether somebody else might persuade you differently, your own view, this would have been a reportable irregularity, in light of the potential litigation and the amount involve and ...[intervenes]?

10 **MR MOTHIBE:** Well Chair, the – or material key level South African Revenue was is set at R250million so the potential damage of R85million would have been below that threshold of R250million, so Chair, one would – that is why it's important that – because of the other elements that have been breached it is imperative for one to consult and make sure that you make the right call.

CHAIRPERSON: I'm sorry these three requirement – these requirements are not – isn't the position that each one of them is enough...[intervenes].

20 **ADV HOFMEYR:** Indeed Chair.

CHAIRPERSON: To make the irregularity – an irregularity reportable, isn't it, you don't need to have all three, yes?

MR MOTHIBE: That's correct Chair.

CHAIRPERSON: You don't need to have all three, yes.

MR MOTHIBE: That's correct Chair.

CHAIRPERSON: So – but I think you already conceded, and you must tell me if you didn't, when Ms Hofmeyr was asking you, that the one appeared and yet three on page 9 of your statement you said, that one is met, is that right, was met ...[intervenes]?

MR MOTHIBE: Chair you're talking about the material breach of fiduciary duty?

CHAIRPERSON: Ah ha.

MR MOTHIBE: Yes Chair.

10 **CHAIRPERSON:** You agreed with that one, I don't know number two might not, I don't know. So, the one relating to an act that is likely to cause material financial loss to the entity or to any partner or member or shareholder or creditor, that one, you seem to have some doubt whether that one was met?

MR MOTHIBE: Chair, yes because the amount is below material level of R250million.

CHAIRPERSON: Ja.

20 **MR MOTHIBE:** I do consider that the breach was by somebody in Management and also Chair, my assessment has got to be tested by somebody else to ensure that I've correctly assesses what has been because as I say Chair, I would have put all the facts together including the amounts, the fact that there was a breach of fiduciary duty Chair.

CHAIRPERSON: Hmm, okay.

ADV HOFMEYR: Thank you Chair. Mr Mothibe, I just want to pick up on this point that you've emphasised in your recent answers to the Chair about, you would need to go to others at PwC to run your thinking past them. Do I understand your evidence correctly, when I say that's what you've emphasised?

MR MOTHIBE: Chair that is correct, once such has been identified there's a process that we follow within PwC to
10 ensure that we have correctly assessed the supposed reported irregularity Chair, so there is a process we need to follow. I wouldn't do it on my own directly, Chair, no.

ADV HOFMEYR: But Mr Mothibe, apologies, do you accept that the obligation under the Act, the Auditing Professions Act is an obligation that falls on you?

MR MOTHIBE: The obligation does fall on me, Chair but I do take guidance.

ADV HOFMEYR: But it is therefore, I would put to you, fair for us to ask you what your determination was because
20 the obligation under Section 45, you've accepted, is an obligation on you, is that correct?

MR MOTHIBE: That is correct Chair.

ADV HOFMEYR: And that should be read, I suggest, with Section 52 which indicates that a registered Auditor who fails to report a reportable irregularity in accordance with

Section 45 shall be guilty of an offence, are you aware of that Section?

MR MOTHIBE: I am aware of that Section.

ADV HOFMEYR: So, if you, as the individual registered Auditor of SAA had failed to report a reportable irregularity, then it is you who would have committed that offence, correct?

MR MOTHIBE: That would be correct.

ADV HOFMEYR: Thank you.

10 **CHAIRPERSON**: The process that you talk about, of consulting others within the firm, would its purpose have been to enable you to form a view whether this was a reportable irregularity or would its purpose not have been to help you form a view because you would have formed a view but maybe it is a process that you are required to follow in terms of the policies of the firm irrespective of what view you have taken?

ADV HOFMEYR: Chair I would have taken a view and
Chair as I indicate some of these matters might require
20 judgment and it helps me to ensure that I have conceded
all of the tasks that I would have conceded Chair in order
to determine whether it is or it is not a reportable
irregularity...[intervenes].

CHAIRPERSON: I'll tell you why I'm a little concerned about your evidence, if I understand it correctly or at least

why I seek clarification because it seems to me that you are quite senior within the firm, you know, I think you said you became a partner in 2003 or 2002, is that right?

MR MOTHIBE: 2003 Chair.

CHAIRPERSON: Ja and you are close to 20 years as a partner now, you know, and it doesn't appear to me that this particular requirement is a complex requirement, so I'm wondering why you would need that consultation process whether you would need it in order to form a view
10 or whether, within the firm, there is an internal arrangement to say, if you think a particular decision is reportable you must have a consultation, consultation process. In other words, whether you would be doing that process to comply with the internal policies or whether you would be doing it as part - or as a process towards you reaching a decision or reaching a view?

MR MOTHIBE: Chair there certainly – there is a compliance requirement, we do have that.

CHAIRPERSON: Ja but you would have taken a view on
20 your own?

MR MOTHIBE: Yes Chair, the fact that triggered that means that you've already seen something and something has triggered that.

CHAIRPERSON: Yes.

MR MOTHIBE: So, you need to go through a certain

compliance Chair.

CHAIRPERSON: Okay.

ADV HOFMEYR: Mr Mothibe I'd like to move to the second contract of which I am interested in the topic of reportable irregularities and that is going to be the Swiss Port Ground Handling contract and you start to deal with that in your statement at page 10 that's in DD19A at page 10 towards the bottom.

MR MOTHIBE: I've got it Chair.

10 **ADV HOFMEYR:** Thank you, now, Chair, you'll be aware, Mr Mothibe I'm not sure whether you'll be as aware as those of us who live the Commission every day but the Commission has received extensive evidence about this contract, this contract that Swiss Port concluded with SAA in March of 2016 to provide ground handling services for a period of five years and it was to the value of R1.8billion and we've also heard evidence in this Commission that it was awarded that contract without a preceding procurement process having been followed. So to give you
20 the background that puts it, for us, on the radar of a substantial contract of significant value in respect of which there was no procurement process and so we ask you to address why that was not reported as a reportable irregularity. So let's go, if we may, to page 10 and what you say about it and really your answer begins over the

page, the one I want to focus on at page 11, it's the second paragraph from the top of the page, you say,

“During the performance of our audit procedures in respect of the financial year ended 31 March 2016 the agreement with Swiss Port did not form part of our testing sample. I was not aware of the Board resolution nor the circumstances surrounding the award and the conclusion of the Swiss Port agreement. In the circumstances, in the absence of such knowledge I did not consider whether this matter is or may have been a reportable irregularity”,

Mr Mothibe, the first thing I notice about this, that one is different to the Air Chefs contract as I understand it, on the Air Chefs contract you were aware of it but at the time you had concluded it wasn't a reportable irregularity, correct?

MR MOTHIBE: That is correct.

ADV HOFMEYR: And in this occasion you actually didn't consider it, is that correct?

MR MOTHIBE: Chair I was not aware of the – of this contract therefore I would not have been able to consider it.

ADV HOFMEYR: And how could it be that you weren't aware of the contract?

MR MOTHIBE: Chair according to my knowledge the contract was concluded on the 14th of March 2016. When we initially requested Board minutes from SAA the minutes of this meeting were – we were not told it is not available to us so Chair, we wouldn't have been aware of that approval. Chair I think it is also important to note Swiss Port is a long-standing service provider to the South African Airways. I stand to be corrected, Chair, I think there are three or four ground handling companies that
10 provide services to the – to South African Airways which Swiss Port being one of them. So, Chair – and the amounts are fairly similar in that regard. So Chair, a contract entered into with SAA to provide ground handling services by Swiss Port, on its own would not necessarily have understanding the business and who are the service providers would not necessarily have been odd if that was seen, even if one looks at the amounts involved. Chair, if the contract is awarded on the 14th of March you'd think – had you seen the contract, the services provided would
20 have run from what is read now in the documentation, from April going forward. So, for the period of 31 March 2016 there wouldn't have been any expenses flowing from that contract. So Chair, as indicated at year end, when you consider minutes of the Board meetings, those minutes were not available to us so we wouldn't have identified that

and as I do indicate, Chair, on its own, the Board awarding the contract and also because of the amounts involved we would expect that such approval shall go through the Board of Directors because the amounts were – in terms of delegation of authority the amount was fairly high and obviously the expectation is that it would have gone to the Board after it had gone through the necessary approval processes within South African Airways.

ADV HOFMEYR: But Mr Mothibe it went through no
10 process at all, this contract.

MR MOTHIBE: Chair, as I do indicate, at year end when you went in, the minutes giving the approval were not available but secondly Chair as I indicated, a decision by the Board or an approval of the Swiss Port contract at the Board, because of the contract involved it wouldn't necessarily raise any concern because the amount would be so high they're above the authority of all other levels and it did in fact require to come to the Board for approval. So on its own it would not have necessarily given – or
20 given cause for concern if one can put it like that.

ADV HOFMEYR: But Mr Mothibe you've already confirmed in your evidence that one of the things that you do as Auditors of State-owned enterprises, is determine whether any expenditure is irregular under the PFMA, don't you?

MR MOTHIBE: That's correct.

MR MOTHIBE: And the mere fact that it falls within the Board's delegation authority does not answer that question, does it?

ADV HOFMEYR: When you do the determination, yes you will see that there's some – that gets tested determine that, this contract, at year end, those minutes were not available it was not selected for testing purposes, we did select contracts for testing purposes but the Swiss Port contract was not one of them.

10 **MR MOTHIBE:** Mr Mothibe I'm aware of your position on sampling but that was not the question I asked. The question I asked was, the mere fact that the amount of a contract falls within the authority of the Board to approve is not enough to answer whether that contract constitutes irregular expenditure, is it?

ADV HOFMEYR: Chair that is correct but for one to determine whether or not the contract falls in the definition of a irregular contract one would have had to look at the procurement process, you would have to follow the
20 procurement process to determine that because the contract was not in our sample we did not follow the procurement process for this particular contract...[intervenes].

CHAIRPERSON: Yes, okay, I think let's go step by step Mr Mothibe. I think your answer to Ms Hofmeyr's question

is yes. You have provided quite some explanation but it seems to me that your answer is yes. She asked you, do you not agree that the mere fact that the amount of the contract falls within the authority of the Board is not enough to say, this contract doesn't constitute irregular expenditure and it seems to me, you are saying, we have to look at the procurement process as well which it seems to suggest to me that you agree with her, so I think you say, yes I agree, it's not the only issue.

10 **MR MOTHIBE**: Yes Chair.

CHAIRPERSON: Yes the she might ask you further questions but to that question, and answer that says yes, is enough.

MR MOTHIBE: Yes.

CHAIRPERSON: Okay.

ADV HOFMEYR: And in fairness to you, we will now look at the sampling question – well in a moment because the one thing I just want to pick up on is, you've indicated that those Board minutes were not made available to you and
20 that is why you didn't pick up the contract, is that right?

MR MOTHIBE: At the stage when we performed our work and let me give you a sample those minutes were not made available to us.

ADV HOFMEYR: Should you not have been intent to ensure that you had all the Board minutes for the relevant

year that you were auditing?

MR MOTHIBE: Those minutes were made available to us at a much later stage so yes we did have sight of those minutes but it was at a much later stage.

ADV HOFMEYR: Sorry say that again you were given them at a later stage, is that correct?

MR MOTHIBE: But not – yes but now when we were doing our sampling and we were doing our work.

ADV HOFMEYR: Okay but then irrespective of time if, 10 pursuant to your audit work, even if after the sampling you are given the Board minutes and the Board minutes raise concerns about reportable irregularities, do you accept that you would have obligations to follow the procedures required?

MR MOTHIBE: May I ask you to repeat the question?

ADV HOFMEYR: Yes, I understand you to say you weren't given them – these Board minutes reflecting the decision in April or shortly after the year end, is that correct?

MR MOTHIBE: That is correct.

20 **ADV HOFMEYR:** But you were given them, correct me if I'm wrong, at some point before you signed your audit report on the 30th of September 2016, is that correct?

MR MOTHIBE: That is correct.

ADV HOFMEYR: And then I put to you but it doesn't matter, as I understand it when you come to learn of the

subject matter of a reportable irregularity if it is a reportable irregularity you must report it, is that correct?

MR MOTHIBE: That is correct.

ADV HOFMEYR: Thank you, so then let's go to why it wasn't in your sample...[intervenes].

CHAIRPERSON: I'm sorry I think implied in Ms Hofmeyr's last question to which you have agreed is that, as long as you have not signed your report, if something comes to your attention that may indicate that there is some
10 irregularity you are supposed to look at that before you sign, is that right?

MR MOTHIBE: That is correct Chair.

CHAIRPERSON: Okay.

ADV HOFMEYR: Thank you Mr Mothibe. Then let's go to the question of why this R1.8billion contract did not find its way into your sample, because I understand that, from your statement to be part of your explanation for why it wasn't on your radar for reportable irregularity and you've repeated that today. So, with that background, I'd like to
20 remind you of what Mr Sokombela's evidence was before this Commission. Mr Sokombela assisted the Commission in understanding how Audit Risk Assessments are done and I want to just understand whether you have a similar understanding to Mr Sokombela, okay. Mr Sokombela's evidence – and Chair, just for the record this appears in

the transcript of the 20th of February of this year 2020 at page 88 and then also at transcript of 21 February 2020 at pages 8 to 83. So what Mr Sokombela told this Commission is that, an Audit Risk Assessment is designed to identify contracts that raise red flags, do you accept that?

MR MOTHIBE: That is correct.

ADV HOFMEYR: And he also went on to say, the flags could be raised by things like controversy in the media, or
10 because when the auditors conduct their research processes something about the contract concerns them, do you accept that?

MR MOTHIBE: That is correct.

ADV HOFMEYR: And he enlightened us as to why the Auditor General had identified the Swiss Port contract as an Audit risk. He said that there was litigation around it of which he became aware, there was a discovery that Swiss Port had not – did not have the requisite license and he also highlighted the fact that he had taken a number of
20 years for the contract to be concluded. If those items had come to your attention, would it have constituted a red flag for you?

MR MOTHIBE: Chair, I think it is important to note that I concede the matters that come to my attention that I get from the audit. As I did indicate Swiss Port was a long-

standing service provider to South African Airways. The value of the contract, correctly so, because of the amount had to go through to the Board because of the delegation of authority. So when we reviewed the minutes, seeing Swiss Port there and the number, the contract involved, on its own did not trigger any concerns there because, Chair, if you look at the amount involved and what they had been paid over the years and we do know that they are continuing services for the South African Airways, so on its own that did not trigger any concerns, Chair.

ADV HOFMEYR: Sorry Mr Mothibe, I see you were continuing.

MR MOTHIBE: The only thing Chair, the – Ms Hofmeyr makes reference to, if I am correct did you say investigations which were – we were not aware of when we performed our audit so that would have been item that would could have caused one thing to open your eyes much wider, to raise red flags but at that stage we don't have that available so it did not trigger that there is more to it than what we had been provided.

ADV HOFMEYR: Mr Mothibe I'll come back to the question of investigations but you've emphasised a few times the fact that Swiss Port was in an ongoing relationship with SAA and as I understand your evidence, that's why, when you saw later in the year before you

signed your audit report that this big agreement had been concluded with it, that didn't, on its own, raise an alarm, is that correct?

MR MOTHIBE: That is correct.

ADV HOFMEYR: Mr Mothibe were you aware, when you were auditing SAA from 2014 right up until this point that Swiss Port was being paid every month without there being any contract in place?

MR MOTHIBE: No Chair.

10 **ADV HOFMEYR**: Would it have concerned you to learn that it was being paid all throughout that period with no contract?

MR MOTHIBE: It would have been concerning yes.

ADV HOFMEYR: It would have been something you'd wanted to have interrogated further, would it not?

MR MOTHIBE: That would be correct Chair.

ADV HOFMEYR: Because what actually happened was, a tender process was run in 2011, Swiss Port was awarded a contract for five years in 2012 and then at no point, from
20 2012 was a contract ever concluded with it, did you pick that up in your three years of auditing at SAA?

MR MOTHIBE: Chair on the items that were shared for sampling Swiss Port was not part of those.

ADV HOFMEYR: Never in all three years?

MR MOTHIBE: Chair I can go and confirm on my files, but

I do not recall seeing that Chair remember that Chair the universe of contracts in SAA they've got quite a number of contracts Chair, it is a fairly big universe Chair.

ADV HOFMEYR: But it's a requirement of an auditor of a state-owned enterprise that they check whether the disclosed amount of irregular expenditure in the financials each year is verified, is that correct?

MR MOTHIBE: That is correct.

ADV HOFMEYR: How do you do that if you don't check
10 what is being expended against the existence of underlying contracts for that expenditure?

MR MOTHIBE: You check that but the contracts are on a sample basis.

ADV HOFMEYR: Okay so we're back at samples and what I was taking you through was Mr Sokombela's indication about the Audit Risk Assessment which you accepted and particularly red flag contracts. You see, Mr Mothibe, my understanding of Mr Sokombela's evidence is that, before you even get to sampling and this was a point, Chair, you
20 might recall, you sought greater clarity on, with Mr Sokombela, before you get to sampling there are certain high risk contracts, red flag contracts, that, because of your risk assessment you are going to be considering before you even get into sampling, do you accept that?

MR MOTHIBE: Chair I don't think I would necessarily

comment on the approach taken by Mr Sokombela when he performed his work but save to say, Chair, yes you do identify material contracts to the extent that there are concerns or issues, you would include them in your samples yes.

ADV HOFMEYR: But as I have your evidence you did not identify the Swiss Port contract as a high-risk contract, correct?

MR MOTHIBE: This particular contract was identified as
10 high risk in 2016 Chair.

ADV HOFMEYR: It had been picked up – well Swiss Port's contracting with SAA had been picked up by Ernst & Young who did a review in the second half of 2015, were you aware of that?

MR MOTHIBE: I'm aware that Ernst & Young were contracted to do some work on long carrying contracts and some that had rolled over, so I am aware that Ernst & Young was appointed to perform work at SAA, yes.

ADV HOFMEYR: It was actually appointed to consider
20 Procurement and Contract Management within SAA, were you aware of that?

MR MOTHIBE: That is correct yes.

ADV HOFMEYR: Yes, and they were doing it for the second half of 2015, correct?

MR MOTHIBE: That is correct Chair.

ADV HOFMEYR: So, would it not have been something you wanted to consider as the auditors of SAA, what the outcomes of that process had been conducted by Ernst & Young?

MR MOTHIBE: Chair we certainly had interest in that assignment, however, at the time that we signed our audit opinion, that work had yet to be finalised.

ADV HOFMEYR: Did you ask for any reports that Ernst & Young had prepared in the course of the year?

10 **MR MOTHIBE:** We had engaged with Management, firstly to understand the scope of the contract or of the work that they had to perform, we understood guidance that tap - I think there were three items each under four different headings Chair and as I indicated, Chair, when we enquired of Management that work was still ongoing and the contracts had been finalised, due to the fact that it was also – there's an element of forensic work that was going on Chair, there was something that took some time to complete and when we signed our audit opinion, their final
20 report had not been completed, Chair.

ADV HOFMEYR: I just wanted to get clear on the facts, did you ask to see – albeit not a final report, any version of the report that Ernst & Young had prepared?

MR MOTHIBE: We had requested to see reports from Management and I, for one, was not provided with one at

that stage, the word we got was that the work is still continuing.

ADV HOFMEYR: Okay, so just so that I have it clear, sorry Mr Mothibe, I am struggling a little bit to hear you. You requested it and Management said the work is not completed yet, is that right?

MR MOTHIBE: That is correct.

ADV HOFMEYR: So when I take you to the draft report that was sent to the SAA Board in December of 2015, I'll
10 take you there now, I'd like you to confirm for me whether you've ever seen this before – well maybe yesterday when you received it, let's go in page DD19D which is the second file Chair to page 551.

MR MOTHIBE: Maybe Chair, whilst we are there just maybe a reminder to the Chair and the Commission in that the work performed on Procurement and Contract Management, if you recall Chair, Ms Hofmeyr wanted to know if, for the three years I've been there we had not identified the Swiss Port contract, I think it's important to
20 remind the Chair and the Commission that for the first two years that work was, in fact, not even performed in the PwC but it was performed by ...[indistinct] auditors so we would have had performed cross reviews on the work that they had performed and getting comfort that the work was in terms of our auditor ...[indistinct] strategy and that the

result thereof were appropriate Chair. So, if one has to be technically correct it was only in 2016 that one from PwC actually did the full scope review of the Procurement and Contract Management.

ADV HOFMEYR: Mr Mothibe I understand that distinction, the Ernst & Young review, though, was done in the year that PwC was conducting the work, correct?

MR MOTHIBE: That is correct yes.

ADV HOFMEYR: Yes, and notwithstanding what you said
10 in emphasising that it was Nkonki responsible for this in 2014 and 2015, I read your supplementary statement you say, you don't use that to suggest you aren't, as the joint audit partner responsible?

MR MOTHIBE: That's important to note, that is...[intervenes].

ADV HOFMEYR: Sorry there was a negative in my question, so I know it was a bit difficult to answer, let me ask it with a positive. Do you accept as the joint audit partner of Nkonki responsibility for the outcome of the
20 audited opinion notwithstanding the fact that Nkonki did some of the work and you did other?

MR MOTHIBE: I do understand that.

ADV HOFMEYR: Yes, okay let's look at the report that Ernst & Young did provide to SAA. I said you'd find it at DD19D at page 551, do you have that?

MR MOTHIBE: I've got it now Chair.

ADV HOFMEYR: There's a covering letter which is addressed to Mr N Linell, do you know who that is?

MR MOTHIBE: I don't recall that name, I'm sorry Chair.

ADV HOFMEYR: Chair that is Mr Nick Linell and the Commission will, in due course, be receiving more evidence in relation to Mr Linell there's nothing currently before it but...[intervenes].

CHAIRPERSON: I think I have come across the name.

10 **ADV HOFMEYR:** You have actually and from other evidence, indeed. Although so far I don't think SAA related, but ...[intervenes]

CHAIRPERSON: Ja no I think it was related to another entity.

ADV HOFMEYR: Exactly.

CHAIRPERSON: Ja.

ADV HOFMEYR: So Mr Mothibe this is the draft admittedly report that went to the SAA on the 10th of December 2015, and I asked you to confirm for us whether
20 you saw this at the time?

MR MOTHIBE: I did not see any written ...[intervenes]

ADV HOFMEYR: And your evidence was you asked management for the outcome of Ernst & Young report, review, but you weren't given anything, is that right?

MR MOTHIBE: That is correct ma'am.

ADV HOFMEYR: It is unfortunate that management saw fit not to give it to you because they did actually consider the Swiss Port contract, and you will find that at page 597.

CHAIRPERSON: What is the page number again?

ADV HOFMEYR: 597 Chair, 597.

CHAIRPERSON: Thank you.

ADV HOFMEYR: You see the facts I detailed to you earlier about the situation with the Swiss Port contract Ernst & Young managed to uncover. They came in for five
10 months, they vetted procurement and contract management and what they were able to establish in that five month period is reflected on this page.

You will see this is a table and on the left hand side it is indicated the section of the report that deals with this contract, the contract is identified as Swiss Port and then you will see key issues identified. Swiss Port's contract is a month to month basis. SAA is failing to realise the cost savings as a result of delays in entering into a contract with Swiss Port. The delays will result in SAA overpaying
20 for the ground handling services.

Then on quantification of loss they say SAA has failed to realise cost savings of R92 936 578 over the period of the five years as a result of delays in entering into the contract, and then they have a key, they recommend that there needs to be a contract entered into

with Swiss Port and then in the key they identify control weaknesses as the concern planned.

These are the sorts of things that the auditors auditing SAA would be looking at, wouldn't it?

MR MOTHIBE: Chair it have seemed that the contract would have been identified for follow up, these are the items that would have been picked up.

ADV HOFMEYR: This is exactly, you're looking at what's the cause, control weaknesses, what's the potential loss,
10 correct?

MR MOTHIBE: That is correct Chair.

ADV HOFMEYR: And then in the second section of that table you will see under key issues identified they say delays entering into a contract, there is no contract in place between SAA and Swiss Port and Swiss Port currently operates on a month to month basis. They say here delays in entering into a contract, this is below:

“Procurement was concluded in 2013 ...”

Chair, just to make a note, the evidence before the
20 Commission is it is 2012, that might just be a typo, reflecting 2013, however the award has not been made to Swiss Port, therefore SAA is unable to realise the cost savings negotiated with Swiss Port and in the key over at the last column it says this is a matter of concern, which is actually a higher standard as I read this review than just a

control weakness.

Have you had any time to read the review, or do you accept when I say that matters of concern are more concerning items than control weaknesses?

MR MOTHIBE: Chair I saw this report, the previous auditors referred to us, it was yesterday, and in terms of the key that is here that is how they identified it.

ADV HOFMEYR: Yes, thank you, thank you. So I understand you didn't see this at the time, but you accept
10 that Ernst & Young was able to identify this contract when it came into their procurement and contract management processes and it had identified these weaknesses in this contract, do you accept that.

MR MOTHIBE: Chair if I recall in the scope Chair we are required to select three quarters of outstanding, three by management and I think there were other criteria set so obviously I cannot comment on how they selected the contract but the outcomes of the review is here in the report Chair.

20 **ADV HOFMEYR:** Did you just accept it when management, when you asked for a document like this report from Ernst & Young did you generally just accept it when management said it was not available to show you?

MR MOTHIBE: No, no, Chair they did not say it was not available, they said the work is still continuing Chair. It is

that comment that came from management and we were aware that Ernst & Young were still on site performing the work. They had not finalised Chair.

ADV HOFMEYR: Would it not have been relevant to follow that up with well have they made any preliminary reports to you?

MR MOTHIBE: Chair from the inquiries that we made at that stage it did not appear that there was anything available for us to look at initially Chair.

10 **ADV HOFMEYR:** You see the media had already been reporting about this Ernst & Young review towards the end of 2015. Chair I see we are close to five, it may be that I can just complete this point about the media and then we can adjourn, is that convenient?

CHAIRPERSON: That is fine, yes that is fine.

ADV HOFMEYR: Okay, so despite management of SAA not giving you the report it seems the press got hold of the report, were you aware of that at the time?

20 **MR MOTHIBE:** Chair on the video reports that we had seen on SAA that report was not identified.

ADV HOFMEYR: Well let us see what did make its way to the media, you will find that in DD19D, that is the second file at page 423, 423.

CHAIRPERSON: 423?

ADV HOFMEYR: Yes sir.

CHAIRPERSON: Yes.

ADV HOFMEYR: So your audit procedure that required you to pick up media articles related to SAA did not pick up this article, is that correct?

MR MOTHIBE: Chair you know ...[intervenes]

CHAIRPERSON: Just to confirm this is a Business Day article dated ...[intervenes]

ADV HOFMEYR: Correct.

CHAIRPERSON: ...what Ms Hofmeyr?

10 **ADV HOFMEYR** It is 9 December 2015 Chair, it is sort of the fourth line.

CHAIRPERSON: Yes, ja.

MS HOFMEYR: Thank you Chair. My question Mr Mothibe was your audit procedures that required you to pick up media articles about SAA did not identify this article at the time, the day.

MR MOTHIBE: This article is not included in the ones that we had looked at Chair, or that were identified.

20 **ADV HOFMEYR:** I want to suggest to you that it was quite a key article for your processes to have picked up, because what it records here is, and I am reading from the first sentence:

“The Board of South African Airways says it is getting closer to unravelling the reasons for large losses at the airline with an Ernst & Young forensic

report showing that as much as 60% of procurement could be subject to weak business controls.”

Chair there is those ampersands in this rendition of the report, I don't understand them to be there in the actual text, it is when it gets printed some years after, so for the purposes of reading I am just going to leave those out.

So the media seems to have known in December of 2015 that the forensic report was showing as much as 60% of procurement could be subject to weak business controls,
10 do you see that? --- I can see it on the page Chair.

And it also is quite specific, if you read this article it certainly appears to me and you will correct me if you take a different view, that the writer, Ms Carol Payton, has seen the report, because she talks about what it contains. Did you also form that impression about this article when you read it yesterday, I assume, or previously, no this was actually many months ago.

MR MOTHIBE: It does appear that the writer has got access to information that we did not have access to.

20 **ADV HOFMEYR:** Yes, yes, because the writer is able to say in the third paragraph, the report shows that 28 of the 48 contracts, which are the contracts that Ernst & Young audited, that is 60%, are improperly negotiated, poorly contracted or weakly managed, do you see that?

MR MOTHIBE: I read that Chair.

ADV HOFMEYR: It would have been useful, would it not Mr Mothibe if this had come to our attention at the time that you were asking the SAA Board for copies of any reports by Ernst & Young, wouldn't it?

MR MOTHIBE: Chair if it had come to my attention yes.

ADV HOFMEYR: What do you think you would have done when the SAA Board said it is still in process, would you have called for it if a member of the media had already seen it?

10 **MR MOTHIBE:** Chair if this information was in the public domain it would have suggested that there is something available to be shared by SAA Management.

ADV HOFMEYR: Did other articles of this importance to what you were doing at SAA get missed in your processes?

MR MOTHIBE: Chair that is a difficult question to answer, we identified a number of media articles relating to SAA which have been included I think Ms Hofmeyr referred to it earlier in the meeting or in the session Chair, so Chair there is a big leverage of articles out there, we identified
20 those that we identified and considered what impact they would have had on our audit.

ADV HOFMEYR: Mr Mothibe I should be very clear about the document I took you to earlier. When we went through the working papers that have been made available to the Commission we were particularly looking for the media

articles that the processes had identified over the years and that set of pages I took you to earlier were the media articles that we could find in the working papers but they were related to the prior year. When we looked for the media articles that your team conducting the 2016 audit had put together, we didn't find that anywhere in the working papers. Can you enlighten us on that?

MR MOTHIBE: Chair I would have to go look at my file again and bring a response on that.

10 **ADV HOFMEYR:** So it is actually not evidence before this Commission whether this article did or did not form part of those that had been identified by your team because we actually could not find any articles identified by your team for the 2016 audit. Can you help us today as a matter of fact did they review media articles?

MR MOTHIBE: Chair as I said earlier in my evidence that it is not a requirement of standards but we do ask and look at the media articles that would assist us in doing this assessment Chair.

20 **ADV HOFMEYR:** You do ask or you have a procedure that is designed to pull them from the media each month?

MR MOTHIBE: The procedure is we ask of our team to pull that out Chair but it is not, there is not a clear process there that they are just trolling and pulling every single article Chair.

ADV HOFMEYR: Well maybe by tomorrow Mr Mothibe if you have an opportunity you can just clarify this point for us whether there were any media articles sourced by your team for the 2016 audit.

Chair I have completed this aspect of the media reporting on the Ernst & Young contract so I suggest it might be a convenient time to adjourn, and then just to have an indication from you of when you would like us to start tomorrow.

10 **CHAIRPERSON:** You did tell me that with tomorrow's witness you thought you might need one a half hours to two hours.

ADV HOFMEYR: Indeed.

CHAIRPERSON: With Mr Mothibe how much time do you think you are still going to be busy with him?

ADV HOFMEYR: We actually have moved progressively swifter over the course of the day and so I think probably no more than two hours with Mr Mothibe, if not less than that.

20 **CHAIRPERSON:** Yes, yes, okay well in that event maybe we should – let us start at normal time, let us start at ten o'clock.

ADV HOFMEYR: Certainly.

CHAIRPERSON: Okay, we will adjourn for the day and tomorrow we will resume at ten o'clock.

We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS TO 17 JULY 2020