

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

**17 JULY 2020**

**DAY 234**



**Gauteng Transcribers**  
Recording & Transcriptions

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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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**PROCEEDINGS RESUME ON 17 JULY 2020**

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

**ADV HOFMEYR:** Good morning Chair.

**CHAIRPERSON:** I see that you seem to be optimistic that it is not going to be so cold.

**ADV HOFMEYR:** Yes.

**CHAIRPERSON:** Today.

**ADV HOFMEYR:** I am trying to add something to the  
10 prospect so...

**CHAIRPERSON:** Okay alright. Let us continue.

**ADV HOFMEYR:** Thank you Chair. Mr Mothibe when we concluded matters yesterday we had been looking at the press coverage from the Business Day in relation to the Ernst and Young review and I had asked you whether you could assist in looking through the working files in anticipation of today and whether you were able to find any media articles that had been collected by your team under the 2016 audit procedures. Were you able to find those?

20 **MR MOTHIBE:** Chair I looked at the file I could not – I would not – was not able to identify any – any of those. Safe to say Chair as I did indicate yesterday the collection of the review of media reports it is not a requirement in terms of the other standards. It is one of the parties that we had and there are also a number of other ways that we do

accumulate audit evidence.

**ADV HOFMEYR:** But then the facts are Nkonki your joint audit partner for the previous year collected extensive media articles each month of the year as part of the audit procedure but your PwC team in the subsequent year did not do that. Is that correct?

**MR MOTHIBE:** Chair Nkonki did that as part of their own procedures and in keeping with PwC it is part of our procedures, we did look at that in the previous year.

10 **ADV HOFMEYR:** Yes and in your year, the 2016 year ending 31 March 2016 you did not.

**MR MOTHIBE:** Chair we did not do that. We used other way – methods of procedures to accumulate audit evidence and to determine our risk assessment.

**ADV HOFMEYR:** But was it not a designed part of your audit procedures that you would collect media articles?

**MR MOTHIBE:** No Chair it was not part of exact procedures it was an audit [?] procedure that we had – would be. As I indicated it is not a requirement of the ISIS that one reviews  
20 media reports.

**ADV HOFMEYR:** Mr Mothibe I accept subject to something I am going to come to in relation to reportable irregularities that it may not be a requirement of the ISIS but your own audit procedures that EGA that we looked at indicated that you would on a monthly basis and regularly check media

articles, did it not?

**MR MOTHIBE:** Chair that EGA was – is not part of the standard EGA's that are in the PwC audit guide. It is an additional step that we had added. So it is – as I indicated it is not a standard requirement Chair.

**CHAIRPERSON:** Yes. But Ms Hofmeyr makes it clear to you that she understands the part about it not being a requirement and maybe – and maybe one should say a requirement falling under a certain category maybe. But she  
10 is saying or at least part of what I think she is saying is as a matter of fact you have Nkonki who had been doing that and if I am not mistaken you said yourself yesterday and – but you must tell me if I misunderstood it is a good practice to do that. And I think her – her real enquiry is since it is a good practice to do this since another firm was doing it why did you not do it? Ms Hofmeyr you – is that part of what you are looking for?

**ADV HOFMEYR:** Indeed. Chair the only aspect I added is that we looked at that EGA the Evidence Gathering Activity.

20 **CHAIRPERSON:** Yes.

**ADV HOFMEYR:** Which has been designed in their own audit procedures.

**CHAIRPERSON:** Yes. Yes.

**ADV HOFMEYR:** And it stipulated that media articles would be looked at.

**CHAIRPERSON:** Yes.

**ADV HOFMEYR:** As a source.

**CHAIRPERSON:** Yes, actually I think that was the last – last point she was asking.

**ADV HOFMEYR:** Indeed.

**CHAIRPERSON:** To say but if it is in that Evidence Gathering document.

**ADV HOFMEYR:** Activity.

**CHAIRPERSON:** Oh activity it – it says you are supposed to  
10 do it.

**MR MOTHIBE:** Chair.

**CHAIRPERSON:** It might not be seen as maybe an essential requirement but you are expected to do it.

**MR MOTHIBE:** Chair as I indicated it is an extra step that we added. It is not only – on the standard EGA requirements it is not there. It was an extra step that we added and I think Chair I did agree to that.

**ADV HOFMEYR:** Indeed. And then you did not follow in the 2016 audit your own step?

20 **MR MOTHIBE:** Chair that step was not there in the 2016 file. So it is not – it would not be entirely correct to say we did not follow that because it was not in the – in the file – the step did not exist.

**CHAIRPERSON:** But when you say it was not in the file you are not suggesting that at that time that was not one of the

steps in terms of which in terms of the firm's policy you were supposed to take. You are not saying that it was introduced after. You are not saying that or are you – that step?

**MR MOTHIBE**: I am not too sure I understand the Chair.

**CHAIRPERSON**: Okay. That step of media gathering. I am saying – I am asking whether you mean that at that time when you did this audit you mean that this step had not been introduced by PwC as – as part of what you would do.

**MR MOTHIBE**: That is correct Chair.

10 **CHAIRPERSON**: Is that what you are saying?

**MR MOTHIBE**: Yes Sir – Chair as I indicated Chair in 2016, we – it was an extra step that we added it is not part of the mandatory steps that is included in our own process.

**CHAIRPERSON**: Yes when was it introduced – this media step?

**MR MOTHIBE**: Chair it was not introduced it was an extra step that we added because of what we considered to be a necessary process to gather evidence or to understand.

**CHAIRPERSON**: But when was it – when was it added?

20 **MR MOTHIBE**: Chair.

**CHAIRPERSON**: Had it been – had it been added already at the time you were doing this audit?

**MR MOTHIBE**: No Chair it had not been added Chair.

**CHAIRPERSON**: Was it added afterwards?

**MR MOTHIBE**: Chair I do not know – Chair as I indicated it

is not part of the process it was an extra step that as a team we thought we should add to help us in the risk – with the risk gathering – risk assessment process so it has never been added. It is an extra step that the team took.

**CHAIRPERSON:** Yes okay. I am trying to get us to a point where we are on the same place. So that is why I was now using the word – the verb, added because that is the verb you used. Now I am going to use took. Now when did you as a team take this decision to have this step as an extra  
10 step? When was that?

**MR MOTHIBE:** As I indicated Chair. For the 2015 year we decided to add that step, that extra step in our file.

**CHAIRPERSON:** Yes.

**MR MOTHIBE:** Yes.

**CHAIRPERSON:** So at the time when you were doing the audit in 2015 or for the 2015/2016 financial year was it there? Had you taken the step to add this extra step?

**MR MOTHIBE:** In 2015 yes Chair it was there.

**CHAIRPERSON:** Okay alright.

20 **ADV HOFMEYR:** And then in 2016 you did not follow that step Mr Mothibe. Could we have just a clear answer to that question?

**MR MOTHIBE:** Yes the step was not added in 2016.

**ADV HOFMEYR:** Thank you. Was not followed?

**MR MOTHIBE:** No, no it was not added on the file.



**ADV HOFMEYR:** Mr Mothibe.

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

**MR MOTHIBE:** I think Chair.

**CHAIRPERSON:** Okay let – let us put this. The step is media gathering if we give it an acronym, is that right?

**ADV HOFMEYR:** Indeed Chair.

**CHAIRPERSON:** Ja. Ja news gathering through the media.

**ADV HOFMEYR:** Indeed.

**CHAIRPERSON:** Ja. That is the step.

10 **MR MOTHIBE:** That is correct Chair.

**CHAIRPERSON:** So did you do that in the 20 – or the 2015/2016 financial year?

**MR MOTHIBE:** Chair we did that in the 2015 financial year  
Chair.

**CHAIRPERSON:** You did?

**MR MOTHIBE:** Yes Chair.

**CHAIRPERSON:** 2015/2016 financial year?

**MR MOTHIBE:** That is correct Chair.

**CHAIRPERSON:** Okay.

20 **ADV HOFMEYR:** Chair sorry just so we get the financial years right. As I understand it you did it for the financial year ending 31 March 2015, is that correct?

**MR MOTHIBE:** That is correct Chair.

**ADV HOFMEYR:** You did not do it for the year ending 31 March 2016?

**MR MOTHIBE**: That is correct Chair.

**ADV HOFMEYR**: And it was the year 31 March 2016 when PwC took over the primary performance responsibility for SCM compliance, correct?

**MR MOTHIBE**: Yes that area was allocated to us in 2016 Chair.

**ADV HOFMEYR**: Thank you. Whereas the previous year it had been Nkonki's performance responsibility, correct?

**MR MOTHIBE**: That is correct.

10 **ADV HOFMEYR**: Thank you.

**CHAIRPERSON**: Hm.

**ADV HOFMEYR**: Mr Mothibe I said that I keep promising I am going to come to the reportable irregularities' guides reference to the need to look at press reporting or third-party sources. You indicated yesterday if I recall your evidence that you were aware of that requirement of the Irba guide for reportable irregularities. Did I have your evidence correct?

**MR MOTHIBE**: Chair I am – alive to the requirements of the Irba Guide on reportable irregularities.

20 **ADV HOFMEYR**: So I do not then suggest we need to go there but just to refresh your memory. What the guide says – fell free to pull it up if you want to but I do not suggest it is necessary for you to go there Chair. It is in DD19C at page 129. It is a section of the Irba reportable irregularities guide for auditors and it says at paragraph 7.1.3:

“The auditor also considers matters which come to the auditor’s knowledge from third party sources. For instance, criminal charges, allegations of non-compliance raids, press coverage of suspicious or suspicions or enquiries directed to the auditor would be information which the auditor should consider in determining whether reportable irregularity exists.”

Mr Mothibe I would like to then draw your attention to another article that your team failed to consider in the audit  
10 for the year ending 31 March 2016. And that is a particularly important article because it traverses in quite extensive detail the concerns that were happening within the management of SAA towards the end of 2015. It is specific about the Swiss Port contract and what appears from the face of the article to be very concerning events happening around it. That is an article you will find in Exhibit DD19C which is in your first file at page 132 point 21.1.

**CHAIRPERSON:** Is it 132 point 21.1?

**ADV HOFMEYR:** Indeed, Chair and I am going to try today  
20 not to ever go to a fourth point if I can possibly help it.

**CHAIRPERSON:** Yes.

**ADV HOFMEYR:** Because it is terribly difficult to find the pages.

**CHAIRPERSON:** Okay.

**ADV HOFMEYR:** So Mr Mothibe this is an article – a money

web article that you will see if you just flip through it spans a total of four pages and it is entitled SAA Defies National Treasury and DTI Instruction. CFO resigns. Board persists with 30% procurement set aside and it is dated 17 November 2015. I would like to flag a few points in this article because had your team been doing this media checking it would have come across some of these pertinent items in this article. I am reading from the middle of the first page and asked by italicized words.

10 “The SAA board is persisting with efforts to have 30% of its procurement contracts set aside for transformation partners. In defiance of express instructions by National Treasury and the Department of Trade and Industry to stop this practice. Against this background tensions between board and top officials who continued to war against unlawful practices is reaching breaking point. This has become clear from a money web investigation into efforts to amend the SAA ground handling contract with Swiss Port International.

20 So that is the introduction and then I will flag a few other important points over the page at 132.21.2 I will pick it up at the second paragraph:

“Money Web has since learnt that both National Treasury and the DTI wrote to the SAA board in September to advise it that SAA’s 30% requirement does not comply with the BBEE Act the codes of good practice or the procurement legal

framework.”

And then you can click and actually see the letter that National Treasury sent to the SAA board or click on the second link and go and read the letter from the DTI. If we go on there is an indication of some of the content of the letter. On September 13 DTI acting BBEE commissioner Zondwa Ntuli wrote:

“SAA should not proceed to implement the 30% set aside until approval is applied for from the Minister of Trade and  
10 Industry.”

And on September 28 Chief – sorry Treasury Chief Procurement Officer Kenneth Brown wrote:

“The resolutions of the board to set aside the 30% in its current form is not supported by any procurement legal framework and must be stopped with immediate effect.”

It goes on:

“From email correspondence that Money Web has seen between SAA head of Supply Chain Management Doctor Masimba Dahwa, Kwinana and Chief – a SAA Chief financial  
20 officer Wolf Meyer it is however clear that Kwinana was driving the amendment of the Swiss Port contract to include a 30% BEEE partner from November 1.”

If we move on a little bit further down under the heading Changing Contract Dates we read:

“In the correspondence Dahwa points out that changing the

commencement date of the Swiss Port contract from the original date in 2011 to 2015 could be challenged legally.”

And then the second paragraph:

“Kwinana responds by brushing this concern aside and asking whether Dahwa will implement the board resolutions on the matter.”

It goes on:

“Meyer to whom Dahwa reports and who also serves on the board then takes over and writes a long response about the  
10 Swiss Port agreement as well as our Engen board memorandum. He warns in detail against several aspects of the proposed amendment at Swiss Port agreement that would not be – that would be non-compliant with Supply Chain principles, the Public Finance Management Act and good governance.”

And then if we skip to the penultimate paragraph:

“Meyer concludes by stating SAA is currently exposed to and cannot afford an audit report containing findings of governance transgressions.”

20 And a last aspect of the article I would just like to flag for your attention is over to the following page at page 132.21.3. There is a reference there to a response that Ms Kwinana gave to Money Web when they were preparing this report at least this article and it is in the second paragraph. She is quoted there as saying:

“That she had said that the Swiss Port file was brought to the board for approval and that the prospected transformation partner Ganicron [?] Pty Ltd was brought by Swiss Port.”

Chair I am just going to pause there. Some of those facts about the Swiss Port contracts are still going to be traversed in the evidence of Mr Ndzeko who is still scheduled to appear before the commission and whom we had not got to receiving his evidence in February. And Mr  
10 Mothibe just to mention Doctor Dahwa who is referred to in this article is somebody who has previously been given – who has previously given evidence before this commission and he spoke about a fateful Friday evening at which he was put under eight hours of pressure to sign the very Swiss Port contract with this 30% set aside and persistently refused to do so on the basis that it would be unlawful.

So that is the background Mr Mothibe that your team I submit would have benefitted from if it had considered that media article. With hindsight do you regret that they did not  
20 consider it?

**MR MOTHIBE:** Chair as Ms Hofmeyr has indicated in terms of the – the guidance on identifying reportable irregularities we consider matters that come to our attention even if they come from the media. This matter had not come to our attention from the work that we had done and therefore we

would not have been able to consider it.

**CHAIRPERSON:** But the question is a different one as I understand it.

**MR MOTHIBE:** Yes Chair I am – I was going to give the ground Chair.

**CHAIRPERSON:** Oh okay. Alright.

**MR MOTHIBE:** And had the information come to our attention do our audit would certainly have taken a view on that and following it through Chair. Because there are  
10 issues there at risk anyway.

**ADV HOFMEYR:** If you had followed.

**CHAIRPERSON:** I am sorry.

**ADV HOFMEYR:** Apologies Chair.

**CHAIRPERSON:** Please you will just have to raise your voice.

**MR MOTHIBE:** I shall do so Chair.

**CHAIRPERSON:** I have asked them to switch off the air conditioner so that one – I will see whether we will be as cold as we were yesterday and two hopefully, I can hear you  
20 better. Please just repeat the points you were making and raise your voice.

**MR MOTHIBE:** Chair just – the closing one Chair to say that had the information come to our attention we would have – we would have raised red flags and would have responded on that Chair.



**ADV HOFMEYR:** Mr Mothibe do you accept that this article sets out important information about what was going on at SAA?

**MR MOTHIBE:** The article does set out important information Chair.

**ADV HOFMEYR:** Do you agree that those letters that National Treasury and the DTI wrote to SAA would have been something you ought to have considered if you had been aware of this coverage?

10 **MR MOTHIBE:** There has been of interest to us Chair.

**ADV HOFMEYR:** And do you accept that if you had implemented the procedure in the financial year ending 31 March 2016 to consider media reports this would likely have come to your attention?

**MR MOTHIBE:** Chair as I indicated despite the fact that it is not a requirement of the – of the standards had it been there Chair and had the team identify the article it would have been of interest to us Chair.

20 **CHAIRPERSON:** How easy would it have been for your team to come across this article if they had done the gathering of information from media articles? Would there have been – is there any – big chance that you might not have come across it, do you know?

**MR MOTHIBE:** Chair...

**CHAIRPERSON:** Having its – bearing in mind its source who

published it and so on?

**MR MOTHIBE:** Chair I cannot say whether it would have been easy or not. Safe to say Chair we – there is a big [indistinct] of media articles out there and if they had searched Chair it may have come up as part of the search.

**CHAIRPERSON:** You might wish to take that further Ms Hofmeyr.

**ADV HOFMEYR:** Thank you Chair.

10 **CHAIRPERSON:** But – and you may have been intending to anyway.

**ADV HOFMEYR:** Yes.

**CHAIRPERSON:** But it is also important to see what the chances are that they would have missed it if they had done this exercise.

20 **ADV HOFMEYR:** I would like to suggest the chances are extremely slim Chair. And the reason I say that is because in the six pages that comprise the media reports that they picked up for the previous financial year there are numerous reports from both News24 and Fin24 and I stand corrected but my understanding is Fin24 does publish the Money Web articles. So it was clearly on their radar to collect these particular news items. I suspect you can assist me Mr Mothibe the way that they might have done it is a general review each month. It seems to be monthly that they pull out important media reports that come from – that relate to SAA,

is that correct?

**MR MOTHIBE:** Chair I am not too sure if they can necessarily say it is a monthly process but I just say if you go into the internet and you search. You will get – you might get quite a lot but I would – they did not do that on a monthly basis, no Chair. This is not how they approached it.

**ADV HOFMEYR:** Chair I must indicate I asked my learned friend Ms Armstrong to check me on my assumption that Fin24 publishes for Money Web that is not the case. But  
10 there are numerous publications in the six pages of media reports from the previous year and so my proposition to Mr Mothibe stands. I put to you Mr Mothibe that it is very unlikely that an article with this in-depth attention to SAA published online by Money Web would not have been an article that came to the attention of your team if they were doing this work. What is your response to that?

**MR MOTHIBE:** Chair as Ms Hofmeyr said earlier in reviewing the previous years a lot of them Fin24, News24 and there is not much from Money Web any. So Chair I think  
20 I can say Chair do a – done a search and whether it will be picked up or not Chair I cannot – I honestly cannot say Chair.

**CHAIRPERSON:** Did your team or would your team have taken notes of how Nkonki had done this before – in the year before and maybe checking the sources that they had used

or would that not be something that your team would have checked? I am just thinking that if somebody else has been doing a job the previous year and you come in you might wish to see how they went about things and if you came across the fact that they have also used – they gathered information from the media you might look at the sources that they were using – you know looking at all the main newspapers or TV or whatever and then saying, well are we going to do the same, look at the same sources or we  
10 choose some of the sources? Or you might see that for example maybe Business Day appeared to have been very helpful to your predecessors and therefore you might wish to – to ensure that Business Day or the Star is one of those that you look at?

**MR MOTHIBE:** Chair off the top of my head I would not think that it would be one of the steps they would have taken. Chair the work that [indistinct] we performed have been subject to a considered view and we importantly focus on the significant issues first before you look... And in my  
20 experience Chair if you follow through a process, I would not think that this would necessarily be that high up on the list.

**CHAIRPERSON:** Hm;

**ADV HOFMEYR:** Thank you Chair. Mr Mothibe you clarified for us yesterday that you only saw the board resolution relating to this contract at some point between April and 30

September 2016, is that correct?

**MR MOTHIBE**: My recollection Chair is that the – there was a review of board minutes which had been delegated and I had access to extras of those board minutes and the full resolutions Chair.

**ADV HOFMEYR**: Apologies but somebody in your team would have looked at it, is that correct?

**MR MOTHIBE**: Somebody in my team would have looked at some of the board minutes Chair.

10 **ADV HOFMEYR**: Yes but I understood your evidence yesterday to be you had received this particular board minute – at least resolution related to this decision. Did I have your evidence correct?

**MR MOTHIBE**: Chair yes I did receive it Chair as Ms Hofmeyr indicated but the review was then delegated Chair, I did not do the review myself.

**ADV HOFMEYR**: And the person who was doing the review in your team would that be the person who was looking at all relevant board minutes and board resolutions?

20 **MR MOTHIBE**: Chair I would have to look at the file because it would have been more than one person because there is different minutes that we had access to and Chair they would have looked at samples of those as there – as and when required Chair.

**ADV HOFMEYR**: You see if that team was doing this work in

reviewing the minutes and the resolutions and were communicating with each other I want to suggest to you that they would have noticed that when the board usually takes procurement decisions the resolution talks about the process that has been followed. It talks about the BAC recommendation because the usual procurement process is coming from BAC to the board and then the board confirms whether it approves or disapproves the BAC's decision. Is that something you are familiar with in the governance structure at SAA?

10

**MR MOTHIBE**: That is correct Chair.

**ADV HOFMEYR**: And then they would have found this resolution of the 14 March 20 – sorry 14 March 2016 and would have seen that it reads quite differently. So I would like to take you to it. It is at page 132 in the same bundle that you are busy in DDC at 132.43, 43.

**MR MOTHIBE**: I have it Chair.

**ADV HOFMEYR**: Do you have that Mr Mothibe?

**MR MOTHIBE**: I have it Chair.

20 **ADV HOFMEYR**: So this is a resolution of the SAA board of directors and it is entitled Request for SAA board to approve the terms and conditions for the Swiss Port SAA contract and note the contract duration period effective from 1 April 2016 until 31 March 2021 for ground handling services and cargo services to be rendered at Johannesburg, Cape Town,

Durban, Port Elizabeth and East London. It says the board by Round Robin 2016/ - I think that is B05 as of 14 March 2016 resolved too. And then the resolutions are as follows: Approve the contract to be entered into with Swiss Port SA for the duration of five years commencing on 1 April to 31 March 2020 and then it stipulates what it covers and then...

**CHAIRPERSON:** Ms Hofmeyr.

**ADV HOFMEYR:** Yes.

**CHAIRPERSON:** I do not think you mentioned the year or  
10 after April and the 31<sup>st</sup>.

**ADV HOFMEYR:** Oh apologies sounds like.

**CHAIRPERSON:** And I think you said after March 2020 instead of 2021.

**ADV HOFMEYR:** Apologies let...

**CHAIRPERSON:** If we are looking at the same  
...[intervenes]

**ADV HOFMEYR:** My error. Let me go again. So what they resolved to do was to approve the contract to be entered into with Swiss Port South Africa for the duration of five years,  
20 commencing on 1 April 2016 to 31 March 2021, covering ramp handling, PAU's, wheelchairs, GPU's and air site crew transport to be rendered at Johannesburg, Cape Town, Durban, Port Elizabeth and East London with the following conditions.

A. Swiss Port South Africa to acquire all the GPU

equipment that has been purchased by SAAT.  
(That is South African Airways Technical).

B. Swiss Port South Africa to enter into a contract with a BBBEE company that has representation of black women, youth, military veterans and disabled persons from which Swiss Port will purchase all their equipment required for the SAA contract.

And 2 reads:

10 “To note the feedback of the negotiations and approve the execution of the contract with Swiss Port South Africa...”

Mr Mothibe, I want to put it to you that if your team had looked at this resolution, it would have stuck out as different to the ordinary resolutions where the board takes a decision on procurement because it traverses none of that procurement procedure that you would usually find in such a resolution. Do you accept that?

**MR MOTHIBE:** Chair, having not seen or at least all the other resolutions, I am not too sure I can necessarily  
20 comment on that Chair.

**ADV HOFMEYR:** Well, you accepted earlier what the procurement process was in SAA. Is that correct?

**MR MOTHIBE:** That is correct.

**ADV HOFMEYR:** And if I say to you, you must take it as assumed for this, that other resolutions of the board when



that procurement process is followed, is specific about “We approve the BAC recommendations which record that the award of the tender should go to whoever”.

If that is what the standard resolution looks like and a member of your team gets this resolution, do you accept that this resolution would read differently?

**MR MOTHIBE**: That will be correct.

**ADV HOFMEYR**: And if your team had been reading the Moneyweb article, then the reference to the BBBEE company  
10 that is going to be getting a portion of this contract, might have raised a flag for it, might it not?

**MR MOTHIBE**: If we had sight of the article. Yes, Chair.

**ADV HOFMEYR**: But that article was explaining how National Treasury and the DTI had demanded that SAA seize with immediate affect its endeavours to set aside 30% of its contract outside of the procurement framework. Did you see that in the article?

**MR MOTHIBE**: In that article as shared with us today here. Yes, Chair.

20 **ADV HOFMEYR**: Thank you. Now Mr Mothibe, you have indicated that there were no processes followed in the financial year ending 31 March 2016 to review media. I accept that.

But can you tell me what your processes are for dealing with subsequent events that comes to your attention after

the end of an audit year that you are doing the audit on?

**MR MOTHIBE:** Chair, the Audit Standards require that we consider all subsequent events that impact the numbers of the financial year that the present financial year, to the extent that what has not yet signed ...[indistinct]

**ADV HOFMEYR:** But if something comes to your attention, despite the fact that your team was not looking at the media reports, but if somewhere between 1 April 2016 and 30 September 2016, when you signed the audit report about  
10 this contract and the concerns about it, would that have required your attention?

**MR MOTHIBE:** That will be correct Chair.

**ADV HOFMEYR:** Did this contract and its irregularity come to your attention in that period?

**MR MOTHIBE:** It did not come to my attention Chair.

**ADV HOFMEYR:** Did you in the course of your processes look at what Internal Control within SAA was saying about the contract that it entered into?

**MR MOTHIBE:** I am not too sure I understand the question  
20 Chair.

**ADV HOFMEYR:** Apologies. The Internal Control Department within SAA would regularly review its own processes, would it not?

**MR MOTHIBE:** That should be correct Chair.

**ADV HOFMEYR:** And did you look at Internal Controls when

you were doing your audit work?

**MR MOTHIBE:** Chair, when we... from the audit of South African Airways and as part of the requirements of the standards, we did an assessment at company level, looking at the issues Chair relating to governance, management, competency and the controls that they have in place.

And we have, after review Chair, consider that and we could not allow Internal Controls and their approach adopted. South African Airways was a substantive audit approach Chair.

**ADV HOFMEYR:** And did you ever ask for the Internal Audit Team's own findings on regularity, procurement and contract management to be fed through to your team?

**MR MOTHIBE:** The Internal Audit Reports Chair were provided to us. It is one of the audit steps that we undertake and they were also included in the minutes of the Audit Committee.

**ADV HOFMEYR:** So were you aware of the Internal Audit Team's report on the 15<sup>th</sup> of September 2016 that found that the Swiss Port contract had been concluded irregularly because no competitive process was followed?

**MR MOTHIBE:** Chair, I am trying to recall Chair if in September 2016 we had received those minutes Chair.

**ADV HOFMEYR:** No, you were filing on the 30<sup>th</sup> of September. Should you not have contented yourself

that those documents had been made available to you before you signed off?

**MR MOTHIBE:** Chair, we reviewed what was made available to ourselves and what were requested. Hence, Chair I am trying to recollect whether or not that... at the time of the year, we had access to those minutes.

Chair, the... one of the biggest issues that occupied us as we got to close to signature of the Audit Opinion then it occupied both partners and both audit teams, time was  
10 needed... the challenge around who it concerns.

Where we critical ...[indistinct] stage Chair where we part of raising ...[indistinct] because we obviously just something always had with the cash-flow issues and the ...[indistinct] status.

And Chair, 15 September Chair if memory serves me right Chair, I cannot recall having read those minutes but I stand to be corrected Chair.

**ADV HOFMEYR:** Well, let me just take you to them. It is the report that you find, it is next to the ...[indistinct] report. You  
20 will find at page... in the same bundle, DD19C at page 132.53.1.

**CHAIRPERSON:** Ms Hofmeyr.

**ADV HOFMEYR:** H'm.

**CHAIRPERSON:** You might confuse the reader of the transcript in due course. You have now been referring to the

bundle as 19C. [laughs]

**ADV HOFMEYR:** Chair, the file is actually 19C but that is because of the method we used yesterday and I am sorry it does not accord with what is on your spine. So ...[intervenes]

**CHAIRPERSON:** Yes, but what I am saying is. I think it is more accurate if you say exhibit rather than bundle ...[intervenes]

**ADV HOFMEYR:** Indeed.

10 **CHAIRPERSON:** ...because ...[intervenes]

**ADV HOFMEYR:** No, no. That is where the error is.

**CHAIRPERSON:** ...when you say bundle, people will look on the spine.

**ADV HOFMEYR:** Oh, that is fine.

**CHAIRPERSON:** Ja.

**ADV HOFMEYR:** Absolutely Chair. I do apologise.

**CHAIRPERSON:** Ja.

**ADV HOFMEYR:** And to correct the record. It is EXHIBIT DD19C at page 143.53.1.

20 **CHAIRPERSON:** H'm.

**ADV HOFMEYR:** So this is an excerpt of the report from a member of Internal Audit to... well, the Head of Procurement at that stage at SAA, Mr Lester Peter. That is where we have picked it up in an email circulated on the 15<sup>th</sup> of September 2016. I will take you to that in a moment

Mr Mothibe.

But this is the report that is attached to that email and what it is headed there at the top of the page at page 132.53.1 under the paragraph 11.1 is, “Contravention of Treasury Regulations and SAA SC and Policy (Swiss Port Contract)”.

And the audit finding rating is high. And then what this document does is, that it sets out the legal requirements, Treasury Regulation 16A.6.1. It records the resolution of the  
10 board in that block that says finding.

And then if you go over the page to page 132.53.2, you will see in the block third from the bottom that is entitled “Risk/Implication”.

What the Internal Audit Team of SAA had determined was the risk related to this contract. It reads as follows:

“None-compliance with the Treasury Regulations with departments trading entities, constitutional institutions and public entities of March 2005...”

And the next bullet reads “Exclusion of Competitive Bids  
20 or Pricing”. And you will see in the next block of that table, there is a heading “Route Course”.

And they identify that the route course is that SAA Port and Swiss Port could not agree on the transformation aspect of the contract.

And then under the section headed “Recommendation”

right at the bottom, the first bullet reads:

“The services should have been procured through a competitive bidding process in line with the DOA Approval and Reporting Process...”

So do I take it Mr Mothibe that you did not see that report before you signed your audited opinion on the 30<sup>th</sup> of September 2016?

**MR MOTHIBE:** Chair, that will be correct. If my memory serves me right, the last audit committee meeting that we had was sometime in August and I would not have been aware of this ...[indistinct] minute before I signed.

And as I did indicate Chair that we... at that time we were all invested in trying to get ...[indistinct] comfort on the growing concerns ...[indistinct] of South African Airways because it was quite a big critical issue at the time Chair.

**ADV HOFMEYR:** Do you accept ...[intervenes]

**CHAIRPERSON:** I am sorry Ms Hofmeyr.

**ADV HOFMEYR:** Sorry.

**CHAIRPERSON:** I may have missed something. Is this... does this come from PwC report?

**ADV HOFMEYR:** This comes from... no. From the Internal Audit Team within SAA.

**CHAIRPERSON:** Oh, okay.

**ADV HOFMEYR:** So they were reviewing their own tender compliance ...[intervenes]

**CHAIRPERSON:** Yes, okay.

**ADV HOFMEYR:** ...and in September 2016, that internal audit... Internal Control Team ...[intervenes]

**CHAIRPERSON:** Yes.

**ADV HOFMEYR:** ... is saying, this ...[indistinct] [coughing] did not follow procurement processes.

**CHAIRPERSON:** Yes.

**ADV HOFMEYR:** And my question to Mr Mothibe was, did it come to his attention? And he has indicated in his evidence  
10 it did not. I think further, in fairness Chair.

Mr Mothibe, you make the point that your last... the last Audit and Risk Committee meeting had occurred in August. So this comes later. It is 15<sup>th</sup> of September 2016. So it was not brought to your attention in the August meeting. Is that right.

**MR MOTHIBE:** If memory serves me right, that is correct.

**ADV HOFMEYR:** H'm.

**CHAIRPERSON:** Would it be correct to say, had it been available much earlier, there is no way you would have  
20 missed it?

**MR MOTHIBE:** If it had been available earlier Chair, we would not have missed it and it is one of those items that would had to then be reported under none-compliance with laws and regulations.

**CHAIRPERSON:** Ja, my logic says to me. If your External



Auditors to an entity, it is to be expected but I could be quite wrong. It could be expected that you would look at whatever the Internal Auditors have been doing. See what they can give you. What they have picked up.

Obviously, assess if they have, you know, picked up everything that should be picked up. Still do your job independently but it could assist. If you ignore what they have done, could miss something quite important.

**MR MOTHIBE:** Chair, we do engage with Internal Audit  
10 ...[intervenes]

**CHAIRPERSON:** Ja.

**MR MOTHIBE:** ...on their work. They assist us in identifying areas of risks where we should be focussing on because... So yes, Chair. Internal Audit is ...[indistinct] ...[intervenes]

**CHAIRPERSON:** Is an important step?

**MR MOTHIBE:** ...that we did talk ...[indistinct]

**CHAIRPERSON:** Ja, okay.

**ADV HOFMEYR:** And if that would come to your attention, would you have confidently resolved that... this R 1,8 billion  
20 contract constituted irregular expenditure?

**MR MOTHIBE:** Chair, it would not have resulted in an irregular expenditure because the contract had just been entered into. So if there has been none-compliance with law and regulations in that... in the supply chain, management process not been followed.

It is only when they start expanding on that that it becomes irregular expenditure. So that would have been... because the contract is from 1 April 2016 the subsequent year.

In that year, it then becomes irregular expenditure. So at the end, it would only have been none-compliance with laws and regulations.

**ADV HOFMEYR:** Is expenditure not incurred when the liability is incurred for the entity?

10 **MR MOTHIBE:** Chair, if I read this correctly. This is a contract that takes... whose term starts on the 1<sup>st</sup> of April. So it is a commitment to procure senses(?) from Swiss Port.

So what they will do is. Depending on the contract, whether it be on a monthly basis, they will then issue invoices.

So it is only when the... if... when the expense is then incurred that that becomes irregular expenditure.

**ADV HOFMEYR:** But the liability... there is a liability for five years on a stipulated bases and that liability was incurred  
20 when the contract was concluded on the 15<sup>th</sup> of March 2016.

**MR MOTHIBE:** Chair, it is not a liability Chair. It is a commitment. It only becomes a liability when the services have been provided and all settlement then it is an expense but ...[indistinct] Chair the matter(?) is not a liability in terms of the accounting framework is a commitment.

**CHAIRPERSON:** Just to see if one can look what appears to be a difference in approach between yourself and Ms Hofmeyr. Are you saying from an auditor's point of view a liability, which Ms Hofmeyr is talking about and the commitment which you are talking about.

You are saying you cannot talk about an irregular expenditure from an auditor's point of view or as you understand it the position unclear or there has been... until there has been payment, until there has been expenditure on  
10 that commitment or that liability. Is that what you are saying?

**MR MOTHIBE:** That is correct Chair. It cannot be an irregular expenditure because there has been no spent.

**CHAIRPERSON:** Because there has been no expenditure as yet.

**MR MOTHIBE:** That is correct Chair.

**CHAIRPERSON:** Yes, okay.

**ADV HOFMEYR:** So each year of those five years when payments were made in terms of the contract, it would then  
20 have constituted irregular expenditure, correct?

**MR MOTHIBE:** Yes, from the time that it becomes expenditure, yes. It then becomes irregular expenditure. In the subsequent years we were not auditors Chair ...[indistinct]

**ADV HOFMEYR:** And Mr Mothibe, if we can then go through

the elements of the reportable irregularity obligation on you as the auditor in respect of this Swiss Port Contract. You remember the first is that there is an unlawful act.

I understand your evidence to be that you have already accepted that this contract was entered into in a manner that was not compliant with the PFMA. Is that correct?

**MR MOTHIBE**: That is the case Chair.

**ADV HOFMEYR**: And it would then have constituted an unlawful act, correct?

10 **MR MOTHIBE**: Chair, it is an unlawful act.

**ADV HOFMEYR**: And was it committed by a person responsible for the management of an entity... of the entity.

**MR MOTHIBE**: Chair, it was committed by the board which was management before governance of entity Chair.

**ADV HOFMEYR**: And then after remaining three alternative requirements for the reportable irregularity. I would like to focus on the material breach of judiciary duty aspect.

Mr Mothibe, we have looked at the media articles that flagged this 30% set-aside policy which was in the view of  
20 National Treasury and the DTI an unlawful step for the company to take. You accepted that was what the media reporting at the time, correct?

**MR MOTHIBE**: If one looks at the article. That is what... that is correct Chair.

**ADV HOFMEYR**: And you may have noticed in that article

that Mr Meyer who was the CEO... CFO at the time at SAA, had warned particularly about the risks for SAA if it would continue to embark on this policy because it would have damaging consequences for the reputation of the entity, as well as, potentially expose it to adverse Audit Opinions. Did you see that?

**MR MOTHIBE**: I saw it in the article Chair.

**ADV HOFMEYR**: And you did not ever actually see those National Treasure and the Department of Trade and Industry  
10 letters?

Because there you have early informed the Commission that you were charged with disciplinary proceedings by the Regulatory Board of Auditors.

And you have consented to accepting breaches of the Auditors Code and your obligations under the Auditing Professions Act. Is that correct?

**MR MOTHIBE**: Chair, that is correct.

**ADV HOFMEYR**: And if we go to your supplementary statement, you will find it in EXHIBIT DD19B which is in the  
20 first file that we are still working in and you will pick it up at page 30.2. Three, zero point two.

**MR MOTHIBE**: I have it Chair.

**CHAIRPERSON**: Yes, I have got it too.

**ADV HOFMEYR**: So at paragraph 7, you are referring to the draft charges that you received from IRBA and you are

explaining here the basis for your entering into a consent order with IRBA. Did that consent order include an acknowledgement of the fact that you have breached relevant provisions?

**MR MOTHIBE:** Chair, the consent order is in relation to what I considered to that... Chair, we should have as auditors disclosed a none-compliance with law and regulations in the Audit Opinion.

10 It was immediately(?) identified when we performed our work and reported to management and that we also reported to the Audit Committee.

**ADV HOFMEYR:** So what you first accept is that your failure to disclose material none-compliance with Legislation and Internal Control deficiencies for the year 2014 and 2015. Is that correct?

**MR MOTHIBE:** That is correct Chair.

20 **ADV HOFMEYR:** And you accept that you do not distance yourself from your obligations as a joint auditor for those two years or be it that Nkonki performed the audit work on those aspect, correct?

**MR MOTHIBE:** Chair, that will be correct.

**ADV HOFMEYR:** And you have also accepted that there was none-compliance with legislations in Internal Control in the 2016 year. Is that correct?

**MR MOTHIBE:** Chair, that is correct.

**ADV HOFMEYR:** And the consequences of those concessions Mr Mothibe is that the Audit Opinions for all three of those years were incorrect. Is that right?

**MR MOTHIBE:** Chair, what... and maybe to put it... emphasise Chair. That when you carry out the audit, there were two parts.

The first part Chair is the audit in terms of the International Standards of Auditing, where we were having a look at the numbers to show that we... the financial  
10 statements fairly presented ...[indistinct] operations for the period under review and the cash-flows.

Chair, that work was performed and we were able to obtain sufficient comfort numbers in the financial statements were properly(?) disclosed Chair and that there was no material mistake in those numbers Chair.

The area where this concern audit relates to Chair. It relates purely on the compliance side of the audit in that we have identified areas of... or areas where there were deviations from required ...[indistinct] processes which  
20 should have been elevated to the ...[indistinct]

As I indicate Chair, we did raise these matters with the... with management and with the Audit Committee but we omitted to include them in the Audit Opinion.

So Chair, in a nutshell, the Audit Opinion as far as it relates to the fair presentation of the numbers Chair, we still

stand by that.

Chair, we are happy that we have done sufficient work. It is only as it relates to the compliance of laws and regulations that we could have did(?) more Chair.

**ADV HOFMEYR:** Mr Mothibe, I try to make a note of exactly how you put it in your answer. You said the aspects of compliance with legislation accept and Internal Control should have been elevated to the Audit Opinion. Did I get that right?

10 **MR MOTHIBE:** That is what I am saying Chair.

**ADV HOFMEYR:** I want to put it to you that it is worth and it simply should have been elevated and it was not elevated but that suggests there was something that should have been there that was not.

In fact, what was there was false because you gave a clean bill of health on compliance with Legislation and Internal Control.

20 So the outside reader of this auditor's report for 2016, gets a false impression of the state of compliance with Legislation and Internal Control at SAA. Do they not?

**MR MOTHIBE:** Chair, it is important to note that at one never give assurance on the Internal Controls. We would not do that Chair. Neither... if you look at Audit Opinions of any enterprise, the auditor never gives assurance on Internal Controls.



You give input where on controls that you have reviewed specific areas that relates to do audit work or areas that we were auditing. One can never give Chair assurance on Internal Controls Chair.

**ADV HOFMEYR:** Mr Mothibe, that was not my question. My question was, when an outside reader of your 2016 audit report reads:

10 “We have performed procedures to obtain evidence that the public entity has complied with applicable laws and regulations regarding financial matters, financial management and other related matters and we did not identify any instances of material non-compliance with specific matters in applicable laws and regulations set out in the general notice...”

They would get the wrong impression because there were, as I understand your concession, material non-compliances with applicable laws and regulations, were there not?

20 **MR MOTHIBE:** There were ...[indistinct]... there were items that were identified Chair ...[indistinct] as I talked to earlier.

**CHAIRPERSON:** Well, what do you say to the suggestion by Ms Hofmeyr that whoever would read the audit report would therefore be mislead by that? What do you say to that?

**MR MOTHIBE:** Chair, to the extent that the reader would be looking at the compliance law and regulations part of it

...[indistinct] Chair.

**CHAIRPERSON:** H'm.

**MR MOTHIBE:** The... what were disclosed was not accurate  
Chair.

**CHAIRPERSON:** H'm.

**ADV HOFMEYR:** And what you disclosed in relation to  
Internal Control was also not accurate, correct?

**MR MOTHIBE:** Chair, as we indicated... as we have  
indicated in our ...[indistinct] audit, we believe that after  
10 going through the review Chair we could have included more  
in terms of ...[indistinct] in that regard

**ADV HOFMEYR:** Yes. Let us talk about when the errors in  
our auditing came to your attention because what is  
noteworthy Mr Mothibe is that it is only in your  
supplementary statement before this Commission that you  
have indicated your acceptance of these deficiencies in your  
audit work.

Now I want to probe with you why you did not make that  
known earlier on in the process? Because the evidence of  
20 the auditor general was that when the auditor general moved  
in for the 2016/2017 audit year, they took steps to engage  
with you and your colleague, Ms Masasa about the work that  
you have done.

And in the course of those interactions, the evidence of  
Mr Sokombela for the Auditor General was that, the

deficiencies in your approach to Supply Chain Management were brought to your attention. Do you accept that?

**MR MOTHIBE:** Chair, when we engaged with Mr Sokombela, we... his office performs work on procurement and contract management on a regular basis.

And if I can use the word, they were experts in that area and they give that... in looking at the work that were performed, they would like to do a bit more work Chair.

Compliance... procurement and contract management is  
10 a complicate scene(?). It is that where ...[indistinct]

**ADV HOFMEYR:** Mr Mothibe, I want to suggest to you that it was not simply that there was slight disagreement or a difference between the manner in which you had approached Supply Chain Management and the approach taken by the auditor general.

And I want to refer you to an email that Mr Sokombela prepared, recording the outcome of meetings that he had with you and Ms Masasa. And for that purpose, Chair and Mr Mothibe, we need to move to a new set of files which is  
20 Mr Sokombela's files.

But Chair, I think just before the tea adjournment, maybe it is convenient for us to take it now and then we can get the new files arranged for you so that we do not have to take the time later.

**CHAIRPERSON:** Yes, let us do that. We will take the tea

adjournment now. Shall we resume at twenty-five-past which is fifteen minutes?

**ADV HOFMEYR:** Certainly.

**CHAIRPERSON:** Or just how...?

**ADV HOFMEYR:** Well maybe half-past will be fine.

**CHAIRPERSON:** Maybe half-past so that ...[intervenes]

**ADV HOFMEYR:** Thank you, Chair. Just for a bit more time.

**CHAIRPERSON:** Ja. Yes, okay. Alright. We will take the tea adjournment and resume at half-past eleven. We

10 adjourn.

**INQUIRY ADJOURNS:**

**INQUIRY RESUMES**

**CHAIRPERSON:** Okay, alright, thank you. Let us proceed.

**ADV HOFMEYR:** Thank you, Chair. What we did over the break is just made available to you the files containing Mr Sokombela's evidence. Now his evidence is contained in EXHIBIT DD20. There are four files in DD20 and we have asked that what gets placed before is DD20D. So, Mr

20 Mothibe, if you will take at DD20D and ...[intervenes]

**CHAIRPERSON:** But I see on this file it says 23 and then on the first page inside it says 3.

**ADV HOFMEYR:** That is incorrect.

**CHAIRPERSON:** It says EXHIBIT DD20C on the inside but outside it is 20D.

**ADV HOFMEYR:** Chair, just so that I can check the numbering, what page number does it commence within the file?

**CHAIRPERSON:** The first page is 1296.

**ADV HOFMEYR:** Ja, that is not correct.

**CHAIRPERSON:** It is not the correct one?

**ADV HOFMEYR:** No, we must have the last one. Alright, no, I might just have moved my pages slightly. What I need to take you to is page – let me just see here. Page

10 1804.

**CHAIRPERSON:** 1804?

**ADV HOFMEYR:** Yes. My learned friend indicated to me it should be in the file in front of you.

**CHAIRPERSON:** 1804 are the two emails.

**ADV HOFMEYR:** Correct, Chair.

**CHAIRPERSON:** Is that the correct one?

**ADV HOFMEYR:** That is the correct page.

**CHAIRPERSON:** So it is the correct bundle but there might be ...[intervenes]

20 **ADV HOFMEYR:** There is some page at the front that should not be there.

**CHAIRPERSON:** Ja.

**ADV HOFMEYR:** So we will sort that out over lunch, if we may?

**CHAIRPERSON:** Okay.

**ADV HOFMEYR:** Mr Mothibe, do you have page 1804?

**MR MOTHIBE:** I have it, Chair.

**ADV HOFMEYR:** Thank you. So I was suggesting to you before the break, Mr Mothibe, that there was not, as we understand the records of the meetings between the AG's office and yourselves and Nkonki Inc, a small deviation between the approach that your teams took to the supply chain management and the approach that the Auditor-General was taking to it and the reason why I say that is  
10 because what you find at page 1804 is in the bottom of the page, bottom half of the page, an email from Mr Polani Sokombela, he is the auditor at the Auditor-General's office who gave evidence before the Commission, it is an email sent on Wednesday 13 September 2017 to, amongst others, yourself, is that correct?

**MR MOTHIBE:** That is correct, Chair.

**ADV HOFMEYR:** And you will see if you go to the beginning text of the email he records there:

“Dear Pule and Thuto”

20 Thuto is a reference to Ms Masasa, is that correct?

**MR MOTHIBE:** That is correct, Chair.

**ADV HOFMEYR:** He then records:

“Our meeting dated 5 September 2017 refers.”

And he goes on and says:

“We have since visited PwC and Nkonki on the 11

September 2017 to relook at the audit file in an attempt to resolve significant matters that were not evident on file regarding SAA opening balances.”

And then he says:

“Below is the detailed feedback of our review.”

And if you then go after because there are numerous topics he traverses, aircraft parts, furniture and equipment, etcetera, but then if you go over to page 1806 you get towards the end of his email and you will see just above  
10 the last paragraph of his email which is just below halfway down there is a heading Share Trust and then entered under that is the text:

“No evidence of audit work performed on the share trust.”

And then comes the sentence I want to draw to your attention, there is recording there:

“Regarding SCM we agreed that there was not much work that was performed in your file...”

And underlined:

20 “...we will not rely on this work.”

Do you dispute the record that Mr Sokombela places there in his email?

**MR MOTHIBE:** Chair, as I initially mentioned before we went into the tea break, we did have interaction with Mr Sokombela and in that discussions he did indicate that the

office of the AG is an expert when it comes to the audit of a supply chain, procurement and contract management and therefore they would be able to do – if I can – because they excel in that area, they would be doing bit more work in that area, Chair, and that is how the discussions and the speed of discussions were – in our session, Chair.

**CHAIRPERSON:** Well, the question is, do you dispute the – what Mr Sokombela is placing on record here?

**MR MOTHIBE:** Chair, that statement does not necessarily  
10 fully capture what we had discussed.

**CHAIRPERSON:** Well, maybe Ms Hofmeyr you want to take him point by point factually?

**ADV HOFMEYR:** Yes, indeed. So when he states that they would not rely on your work is that false?

**MR MOTHIBE:** Chair, he did indicate that they would want to do much more work that we had performed.

**ADV HOFMEYR:** So is it false that he said he would not rely on your work?

**MR MOTHIBE:** The email says that, Chair, but in our  
20 discussions, Chair, the discussions were more to say they were experts in the area, they excel and therefore they would to do much more work, Chair. At this stage, Chair, when I received this email – because one reflected on the spirit of the discussions in the defence(?) 08.52 I did not take this on further, Chair.



**ADV HOFMEYR:** Did that – I am just trying to understand what your last comment means. Does that mean you did not respond to say you are wrong, Mr Sokombela?

**MR MOTHIBE:** I did not respond, Chair, to this.

**ADV HOFMEYR:** And is that because you accepted it?

**MR MOTHIBE:** Chair, as I indicated, I reflected on the spirit of the discussions that we had with Mr Sokombela and as I indicated that the office of the AG does this kind of work on a regular continuous basis and that he would  
10 certainly want to do much more than what we had performed.

**CHAIRPERSON:** Okay, let us go straight to the point. Mr Sokombela seems to be saying here or seems to be suggesting that PwC did not do their job in regard to certain matters and in regard to this particular one. Is that your understanding of what he is saying as well?

**MR MOTHIBE:** Chair ...[intervenes]

**CHAIRPERSON:** Or did not do it properly?

**MR MOTHIBE:** Chair, if I read it, Chair ...[intervenes]

20 **CHAIRPERSON:** Ja, you can have a look at it to satisfy yourself because you need to reflect before you say you agree with my understanding or you do not agree.

**MR MOTHIBE:** Chair, I am not in full agreement with the Chair's understanding because if you look at it, Chair, it says that we have not done much work. Not in the sense

that we did not do any work, Chair.

**CHAIRPERSON:** Yes.

**MR MOTHIBE:** And I think importantly, Chair, if we had not done any work, we not have been able to identify ...[intervenes]

**CHAIRPERSON:** No, no, no, I do not think anybody is saying you did not do any work, as such.

**MR MOTHIBE:** Oh.

**CHAIRPERSON:** Nobody is saying that. In regard to this  
10 particular task that he is talking about under Share Trust,  
that sentence:

“Regarding SCM we agreed that there was not much  
work that was performed.”

So he is not saying you did not do any work at all but I  
think he is saying you did very little or a little, maybe not  
very, but little work. And then he, in terms of what they  
could see in your file, and he says in effect whatever you  
did was such that they were not going to rely on it and that  
suggests to me that what you did was not going to be  
20 useful to them.

In other words, they could not build upon what you  
had done, they had to like start afresh in terms of that  
aspect. That is my understanding of what he says when he  
says it was agreed that you had not done much work and  
we will not rely on this work. Do you agree with that

interpretation of what he is saying?

**MR MOTHIBE:** Chair, the way that the Chair put that is acceptable.

**CHAIRPERSON:** Okay, I am sorry, I did not hear that?

**MR MOTHIBE:** I said, Chair, the way that you interpreted – you mentioned it now that he looked at the work that we had performed, compared it to how – he probably would have compared it to the amount of work that he would perform and said he would like to – he would not rely on  
10 that. And, Chair, you mentioned that he would start afresh. Chair, the norm would always be that he will still have to perform his own work anyway, Chair. Even placing reliance does not mean that he will not do any work altogether. He will still have preferred to perform some work to – be the opinion that we would have given would relate to our financial year and he would have to do work to satisfy himself – that in his financial year. So he would always have had to perform his own work anyway, Chair.

**CHAIRPERSON:** Yes, but in terms of what he says here.

20 **MR MOTHIBE:** Ja, no...

**CHAIRPERSON:** Apart from what may be happening in practice, in terms of what he says here, it seems to me that he is saying whether it is because of how little work was that you did or whether it is because of the quality, maybe poor quality of the work, whatever reason, he

concludes that I cannot rely on this work. That is my understanding of what he says.

**MR MOTHIBE**: Chair, I think I had agreed to that, Chair.

**CHAIRPERSON**: You agreed to that.

**MR MOTHIBE**: Yes.

**CHAIRPERSON**: Ja, okay.

**ADV HOFMEYR**: Mr Mothibe, at the beginning of your evidence yesterday I have it that you accepted that when an external auditor like PwC comes into audit a state-  
10 owned enterprise it does that in a sense on behalf of the auditor general. Did I have your evidence correct?

**MR MOTHIBE**: That is correct, Chair.

**ADV HOFMEYR**: Because the Auditor-General is the default auditor for state owned enterprises, correct?

**MR MOTHIBE**: Chair, that is correct.

**ADV HOFMEYR**: But now in your evidence you have emphasised that the Auditor-General has particular expertise in an area and I want to put it to you that that is not an answer to limit or reduce your obligations as  
20 external auditors of state owned enterprises because you stand in for the Auditor-General. Do you accept that you must do as much as they must do when they audit state owned enterprises?

**MR MOTHIBE**: Chair, just a correction, Chair, I did not say that the Auditor-General was an expert, I think I said

that when we engaged with Mr Sokombela, he said that they were experts and they do this on a continuous basis, Chair. I think that clarity, I think it is important, Chair, but I did not ...[intervenes]

**CHAIRPERSON:** No, no, that is fine but I may have heard what Ms Hofmeyr heard at some stage, I thought you said earlier in effect that, you see, the AG's office, when it comes to auditing public enterprises they are the experts or they have the required expertise, they are the experts  
10 and my understanding of what you were saying was that you were suggesting that look, you should not be surprised if when the AG's office comes in they identify certain things that we might not have identified. Maybe that it not what you intended but that was my understanding. I thought that you sought to say, you know, those people do – or audit public enterprises all the time, they are experts so we are not surprised if they see certain things where we might not have done things as well as they would have done. That was my impression but this is the opportunity  
20 for you to clarify if that was not what you intended to say.

**MR MOTHIBE:** Chair, I think I said earlier to clarify that.

**CHAIRPERSON:** Yes.

**MR MOTHIBE:** Because if I – what I will say is that when we engaged with Mr Sokombela, when we spoke about – we spoke about the issues of supply chain and could have

mentioned that, he indicated that he did do that on a continuous basis, they are experts. They said that, Chair, it was not my – this is what I was putting forward to the Commission, Chair, and I certainly agree that, Chair, when we perform work on the audit, Chair, we do our work, we should do it properly and diligently, Chair.

**CHAIRPERSON:** Yes, so whatever expertise the AG's office may have you are not suggesting that when you, as PwC, come in and do an audit of a public enterprise on  
10 behalf of the AG's office you are not suggesting that you are not able as PwC to perform to the same standards. That is not what you are saying.

**MR MOTHIBE:** Chair, that is not what I am saying, Chair.

**CHAIRPERSON:** Ja.

**MR MOTHIBE:** We would not accept an appointment if we could not deliver it, Chair.

**CHAIRPERSON:** No, I think that is helpful because I was going to say PwC is a very big, you know, auditing firm and one would not expect that in terms of the quality of its work  
20 that it would not be able to – it should not be judged on any standard that any auditing firm or even the AG's office could be judged on. Okay, Ms Hofmeyr, I may or may not have helped.

**ADV HOFMEYR:** No, indeed you have. Thank you, Chair, I am indebted. Mr Mothibe, that was an email referring to

a meeting that you had had on the 5 September.

If I understand it, there was a further meeting that was held on the 18 January 2018 and I would like to take you to the minutes of that meeting, it is in the same file, that is EXHIBIT DD20D at page 1825. So it is a little bit further on in the file. You will see that first page indicates minutes of a meeting, meeting with predecessor auditors dated 15 January 2018 and if you look at the attendees it is reflected that you were attendance. Can you confirm  
10 that?

**MR MOTHIBE:** That is correct, Chair.

**ADV HOFMEYR:** And can you just – do you recall this meeting, what was the purpose of the meeting?

**MR MOTHIBE:** This was, Chair, the meeting after the AG had completed his audit of South African Airways and the aim of the meeting, Chair, they were taking us through the final results, he raised a number of qualifications that they included in the audit opinion and, if I recall, Chair, it was courtesy meeting from the AG because at that stage, Chair,  
20 they were – were about to sign off the financial statements and they had to go and present to parliament.

**ADV HOFMEYR:** And if I understand it as it is recorded under item 3 on page 185 the main purpose of the meeting was to discuss, amongst others, the audit outcomes of SAA which may have regressed since the AGSA – that is

referring to the Auditor-General of South Africa, is that correct?

**MR MOTHIBE:** That is correct, Chair.

**ADV HOFMEYR:** So which may have regressed since the Auditor-General took over the audit in the 2016/2017 financial year.

The fact that there may have been questions from the users of SAA AFS, that is audited financial statements, that might be asked why the opinion regressed and to try  
10 to formulate an answer to that question together as the AGSA and previous auditors, that is PwC and Nkonki. Is that a fair recordal?

**MR MOTHIBE:** Chair, if my memory serves me right, Chair, yes, we had a meeting and the outcomes of the audit were shared with us and then – I think business executive was Mr Eugene Zungu, he is the national leader, because was responsible for signing the audit opinion.

The idea was to familiarise PwC and Nkonki of the final outcomes and that they were ready for signature, they  
20 were going to parliament. I was not a meeting to – for PwC or Nkonki to give input because the audit was already finalised and they were meant to go and present to parliament.

So it was a courtesy for them to share the outcomes of the audit.



**ADV HOFMEYR:** Yes, to share the outcomes but also to discuss with you the likely questioning that would come as a consequence of their audit findings because of this regression that had taken place. Is that not so, Mr Mothibe?

**MR MOTHIBE:** Chair, in the meeting the discussion focused on what was the outcome of the meeting. The meeting did not last – if my memory serves me right, Chair, I think – I am trying to think back, Chair, if you – probably  
10 about an hour or so, Chair, or a half. As I indicated it was a courtesy meeting because they had finalised the audit, they were going to parliament.

**ADV HOFMEYR:** But the Auditor-General was concerned, was it not, that stakeholders would have a number of questions to ask of the previous auditors based on what the Auditor-General had found in its audit of the 2016/2017 year. Is that not correct?

**MR MOTHIBE:** That will be correct.

**ADV HOFMEYR:** Yes and so they in fact discussed with  
20 you what they thought the big areas were that stakeholders who received the Auditor-General's audit report for that year would likely raise because there was this discrepancy between the clean audits that had been received for five years and now a qualified audit opinion. Is that a fair summary?

**MR MOTHIBE:** That will be a fair summary, Chair.

**ADV HOFMEYR:** Yes, I am emboldened in putting that summary to you because it is actually a paraphrase of what you see on the next page at page 1826. If you turn over the page at 1826, what the minutes record there from the second paragraph is that:

“What was discussed was key matters to note that may be asked by the stakeholders. They include, amongst others...”

10 And then there is a list of what you at that meeting with the Auditor-General were discussing would be the likely issues raised. The first is:

“Irregular expenditure has significantly increased.”

The second is:

“Why the audit outcome has regressed from a clean audit to a qualified audit opinion.”

And the third is:

20 “Why the significant matters reported by the AGSA in 2016 and 2017 audit were not reported in prior years.”

And then there is a reference to the State Capture report, Chair, and the particular interests in the TNA Media contract but that is a matter that we have traversed extensively elsewhere.

But those three items, that irregular expenditure

has significantly increased, that there would be questions about why the audit outcome had regressed from a clean audit to a qualified audit opinion, why the significant matters reported by the Auditor-General were not reported in previous years, did this cause you concern when you were at this meeting and you saw such a different outcome for the Auditor-General's report as compared with yours?

**MR MOTHIBE:** Chair, in appreciating that the Auditor-General came through to SAA more than a year after we  
10 had been there, Chair, some of the issues that would be raised were peculiar to the years under their review and not necessarily issues that related to the year that we audited.

If I give an example, Chair, one of the concerns that they had relating to – or [indistinct] was relating to the valuation of aircraft. In the year that we audited, Chair, we did some work in that area and we were comfortable in the outcomes of that audit process.

The office of the AG had a challenge in the year  
20 that the performed the work, Chair, so it was very well understood that some of these issues were peculiar to the period that they audited, Chair.

Also importantly, Chair, in that – and even when you talk to the issues of irregular expenditure. Concerns were raised that the number had increased significantly. It

is important to note that, Chair, throughout our tenure, at South African Airways as auditors.

The Auditor-General was part of the audit committee meetings, they stay invitees, they had access to all the reports that were put together, they had a good understanding of what was transpiring, Chair, and at no time were there any concerns raised, Chair, this on the outcomes of our audits.

So, Chair, the issues are raised in the meeting and  
10 also some of the qualifications are peculiar to 2017. As I indicated, Chair, we are still comfortable that after we performed our audit in terms of the ISAs, Chair, the International Standards on Auditing, the numbers for the years 2014, 2015 and 2016 are correct. The financial statements were free of material misstatement.

Chair, we have made a concession relating to issues relating to compliance with laws and regulations and irregular expenditure which is an issue that was – that has been identified in this meeting, Chair.

20 **CHAIRPERSON:** Well, you see, Mr Mothibe, this is quite an important part of the Commission's investigation, the role of auditors in the different SOEs that the Commission has been focusing on. Indeed, we may also be looking at the role of lawyers as well.

Now with regard to auditors, when I heard evidence

about what had been happening at SAA – was it earlier this year or last year?

**ADV HOFMEYR:** Both.

**CHAIRPERSON:** I can tell you, Mr Mothibe, that one of the questions that came to my mind and, I probably articulated it at the hearing, was that when I was told that I think from 2011 or is it 2010? 2011, 2012 financial year for SAA up to I think 2016 that throughout that that period the auditors who were doing the work gave SAA a clean bill  
10 of health.

I said but how could it be in the light of what I was hearing? How is it possible that year in, year out for four years, five years auditors could not find anything wrong when on what I am hearing there were serious irregularities that were happening, how is it possible that they did not pick these things up?

So I am just giving you my reaction at the time. I am not an auditor.

**MR MOTHIBE:** I appreciate it, Chair.

20 **CHAIRPERSON:** I am not an auditor but I just want to say if you feel that PwC during those years that it was auditing SAA that we are looking at did a good job or that whatever it did does not deserve criticism, feel free to defend it, this is your opportunity to do so. It may be that some of the things that someone like me who is not an auditor is

surprised by are things that I am surprised by because I am not an auditor.

If I was an auditor maybe I would understand better but it is important that you make sure that these things are explained if they are explicable in a proper way, but as I sit here what is in my mind is still the question that I asked earlier this year or last year to say how was it possible that for four years or more auditors could not pick up at least some of these things because I do understand that auditors  
10 work on the basis of samples and so on, so I am just giving you this picture so that you just reflect properly on what you – how you – what you will defend, what you will not defend with an understanding of where I am coming from which might or might not be the same perspective that Ms Hofmeyr has.

**MR MOTHIBE:** Thank you Chair I appreciate that.

**CHAIRPERSON:** I think you could continue to answer the questions that Ms Hofmeyr can put to you but if, in response to the remarks I've made, there's something you  
20 want to say, feel free to say it. If you say you'll wait for the question, that's fine.

**MR MOTHIBE:** Chair, thank you Chair I think, Chair, I do appreciate where the Chair is coming from, Chair the issues that have been identified at South African Airways as I previously mentioned Chair, during our tenure we did

look at procurement and contract management, we did identify deviations. We sought responses from Management to understand how – what has happened so that we can appropriately report on that. We elevated the matters with those charged with governance, the Audit Committee throughout our tenure at South African Airways, Chair. What we have included, Chair, in our supplementary statement is that we acknowledge that we should have probably – we should have included these – that

10 compliance matters in the Audit report as required in the paragraph under compliance with laws and regulations Chair. So, Chair, it is important to know that we did the work, we identified these issues Chair, it is the reporting element right at the end where, Chair, I think judgement, Chair, we got incorrect and that is the supplementary submission that we have made to the Commission, Chair. Chair as I emphasised earlier, these matters relate to the compliance side on the numbers, Chair, we performed sufficient work, we did proper assessment, identified

20 certain areas that required attention, we followed substantive audit approach because we could not rely on the controls, Chair and we were able to get comfort that the numbers included in the financial statement fairly present the position at South African Airways Chair and that the financial statements were free of material mistakes

made.

**ADV HOFMEYR:** Mr Mothibe you're aware that Mr Sokombela's evidence was that once they'd looked back and received your audit files and looked at the work that you'd done, they could not rely on the closing balances you had determined it, for the 31 March 2016 year as their opening balance for their auditing purposes?

**MR MOTHIBE:** Chair, as part of the review of opening balances we – the office of AG engaged with us and they  
10 requested access to our files to get an understanding of the numbers. There were areas where they felt they could not rely on opening balances because they felt they could not perform some of the work that we had done. We engaged with Mr Sokombela and shared with him the fact that – remember we had been auditors of South African Airways for a number of years and in certain areas – because we've been doing them for consecutive years. We also took comfort on the work that was performed in previous years in some of the key areas and he, in his  
20 discussions with us, was only – and rightly so I suppose Chair, he was only prepared to look at the 2016 file and not look at all the other files because, Chair, had that been possible we definitely would have been able to get comfort on those numbers Chair.

**CHAIRPERSON:** I mean, I'm not sure if that answered the



question.

**ADV HOFMEYR:** No.

**CHAIRPERSON:** So maybe you might have to repeat. Just listen carefully to the question Mr Mothibe.

**ADV HOFMEYR:** Are you aware that the evidence of Mr Sokombela, before this Commission, was that he could not rely on your closing balance for the purposes of his opening balance?

**MR MOTHIBE:** I'm aware of Mr Sokombela's evidence in  
10 that regard.

**ADV HOFMEYR:** Do you disagree with his approach?

**MR MOTHIBE:** There were elements in the discussions where we did not find each other Chair, but it is the approach of the Auditor General, Chair, I cannot question the way they performed their work Chair, I'm not in a position to do that.

**ADV HOFMEYR:** Mr Mothibe if you would turn to page  
1826 we were looking at the aspects that the Auditor  
General's office had said stakeholders would be interested  
20 in and then in the middle of the page, I hadn't quite got to  
it yet, there's another recordal of what the Auditor  
General's office notified you of, it reads as follows:

“The previous auditors were notified that there is a huge risk on SCM, that stands for Supply Chain Management”,

Is that correct?

**MR MOTHIBE:** That is correct Chair.

**ADV HOFMEYR:** “And SCOPA might need answers from the previous auditors on why this matter was not reported in prior years. The previous auditors need to prepare themselves, especially on SCM if they’re called to do a presentation by SCOPA or Parliament,  
Do you see that?”

10 **MR MOTHIBE:** I see that Chair.

**ADV HOFMEYR:** So, this was in a meeting of January of 2018 where it was brought to your attention that there was a huge risk on Supply Chain Management, is that correct?

**MR MOTHIBE:** That is correct Chair.

**ADV HOFMEYR:** And when you started engaging with the Commission, do you recall that the Commission indicated to you that one of their key areas of focus was SCM compliance?

**MR MOTHIBE:** That is correct Chair.

20 **ADV HOFMEYR:** So why didn’t you, in your first interactions with the Commission, come clean and say, yes there were deficiencies on SCM, we did not adequately check for whether SAA was complying with relevant laws and regulations?

**MR MOTHIBE:** Chair, when the Commission started, it

was after the office of the AGS and of their opinion, and we – after that, Chair, the Regulator had accessed the report and was making enquiries, investigating the PwC and Nkonki with regards to work that they had performed. At that stage, Chair, we were happy, we were comfortable that what we had done would have been sufficient. It was only when the regulator completed his work, and in fact Chair, it's only this year in March that when we looked at the input from the Regulator and we took that and read that  
10 with Mr Sokombela's evidence that we accepted that this is an area that would have required – we should have had ...[intervenes].

**CHAIRPERSON:** You realised that, that's an area where you fell short?

**MR MOTHIBE:** That is correct Chair.

**ADV HOFMEYR:** But Mr Mothibe in September of 2017 the Auditor General said he would not rely on your work on SCM, in January of 2018 the Auditor General said there is a huge risk on Supply Chain Management and SCOPA is  
20 likely to be asking questions of how we could have gone from a clean audit opinion to a qualified audit opinion in the space of one year and despite all of that, is it your evidence before this Commission, that you only came to realise that there was Supply Chain Management deficiencies in your work, by March of this year?

**MR MOTHIBE:** Chair as I indicated before Chair, the issue that was, again was there the lack of reporting of the issues that were identified when we performed work on Supply Chain Management Chair, it is not that it was not performed it is the failure to report these deviations in the audit opinion, it's not to say that no work was performed earlier Chair and I think Chair, the question that has come from SCOPA is that this – the opinions say there's no – there's not enough compliance. Subsequent to that there  
10 is a lot of non-compliance, what has happened, what is the gap and that is where we acknowledge, Chair, that much as we had done the work we had failed to report that to the shareholders Chair and that is that last link that was outstanding.

**CHAIRPERSON:** Isn't that leg a very important leg?

**MR MOTHIBE:** Chair it is an important leg Chair.

**CHAIRPERSON:** Yes, but the way you testify around it, and I think that has been the case in regard to other areas where you acknowledged that you fell short, one gets the  
20 impression that you are trying to give the impression that where you fell short in relation to something important, you say – you emphasise, we did the work, where we failed or we fell short is reporting that, as I understand it and I think you concede that reporting is very important isn't it, it is part of your job and it's very important is it not?

**MR MOTHIBE:** Chair I understand where the Chair – where Chair is coming from, I think it is, for me, also very important to recognise that work was performed Chair, I do appreciate that Chair.

**CHAIRPERSON:** Yes.

**MR MOTHIBE:** I think Chair, I needed to clarify.

**CHAIRPERSON:** Yes, you didn't intend to say, it's not important.

**MR MOTHIBE:** Definitely Chair that was never my  
10 intention.

**CHAIRPERSON:** Yes okay.

**MR MOTHIBE:** I do appreciate our role...[intervenes].

**CHAIRPERSON:** Ja okay.

**ADV HOFMEYR:** I just want to pick up on the point that the work was performed. Mr Mothibe you accept, in your supplementary statement that there were limitations placed on the scope of your audit because of, for example, the lack of tender files, correct?

**MR MOTHIBE:** Chair I do agree with that insofar as it  
20 relates to Supply Chain and Contract Management.

**ADV HOFMEYR:** So, then the work that you performed could not adequately determine, for example, whether the amount stipulated for irregular expenditure in the financial statements was accurate, could it?

**MR MOTHIBE:** Chair, that should be correct Chair.

**ADV HOFMEYR:** I'd then like to look at what the Auditor General's report for the 2017 financial year gave as it's important elements and how they dealt with aspects like irregular expenditure and then I'm going to compare that to the audit report for the 2016 year which you signed off on and to do that exercise, Chair and Mr Mothibe, we'll need to go – and if your registrar can just assist, just to give you, Chair Exhibit DD2B, we've been working in D you can put it away now I won't go back there we're going to  
10 Exhibit 2...[intervenes].

**CHAIRPERSON:** Before you do that...[intervenes].

**ADV HOFMEYR:** Oh sorry.

**CHAIRPERSON:** Before we take this off ja.

**ADV HOFMEYR:** I actually think I need to be in D, so please keep D but please go-ahead Chair, thank you.

**CHAIRPERSON:** Okay let's go back Mr Mothibe to page 1826, that's the last page you were looking at I think – oh you have put it away, ja let's go back page 1826, that's the minutes of the meeting between yourselves and the AG.

20 **MR MOTHIBE:** I have got it Chair.

**CHAIRPERSON:** Yes, now that sentence that Ms Hofmeyr read to you earlier on in the middle of the page, the previous auditors were notified that there's a huge risk on SCM and SCOPA might need answers from – it must have intended to say there's a huge risk that, on SCM SCOPA

might need answers, I think that is probably how it should read, from the previous auditors on why this matter was not reported in prior years. That suggests that the non-reporting was not confined to one year, you agree?

**MR MOTHIBE:** That is correct Chair.

**CHAIRPERSON:** Yes, how many years did the non-reporting in regards to this aspect relate to?

**MR MOTHIBE:** Sir I was a vision partner for three years.

**CHAIRPERSON:** Three years yes, so they say there's a  
10 huge risk, that seems to me that they are talking about something regarded as really very serious in the failure to do work that PwC was supposed to do, is that the same understanding you get from this, at least their perspective?

**MR MOTHIBE:** Chair I would say – I wouldn't say failure to do work but rather to say failure – I wouldn't say it's a failure, I think from ...[indistinct 16.39] they lack to understand why there has been such a deterioration.

**CHAIRPERSON:** Yes, yes but after they had said this, I  
20 would have thought that you would have taken time to look at this aspect and PwC's role or failure to report and you would have made an assessment to see whether there is justification in any criticism of PwC's work in relation to the failure to report in this regard, did you do that after becoming aware what they were saying, did you reflect and say, really did we – can we be criticised or can we not be

criticised on this?

**MR MOTHIBE:** Chair at the time Chair the view that we were taking is that we had done sufficient work Chair, and if there was a need for us to appear before SCOPA Chair, we should be in a position to appear and explain what we have done.

**CHAIRPERSON:** Now you may have taken that view before you heard what the AG was saying but after the AG had said this, did you continue with that position after  
10 reflecting or did you not reflect and look at the work again and still to the same position?

**MR MOTHIBE:** Chair, at that stage Chair, if I recall the manager or senior manager who was responsible for performing this work had previously worked for the office of the AG and in that regard Chair, one had comfort that, with his background we should be able to cover all the critical areas, there was a comfort that I had at least Chair, to the extent that this will reflect the 2016 financial year that we audited, the 2014 and 2015 financial years where these  
20 areas were mentioned by Nkonki Chair, there had been this fairly ...[indistinct 19.17] at other big enterprises Chair. The view was that we should be able to demonstrate that we had done sufficient work Chair.

**CHAIRPERSON:** But was the view – did you accept, at that stage that you had not, as PwC reported what you



should have reported or were you – did you think that you had reported at a factual level. When the AG said there was this huge risk that SCOPA might need answers from you on why this matter was not reported in prior years, not in one year, in prior years, was your view that, factually, you had not reported or was your view that you had reported and I don't even know whether it's a view, I think it's factual? Had you reported in prior years on this matter, at least now you accept that you have not reported, I think, 10 you accept but as at the time of this meeting, did you accept that you had not reported this matter in the prior years?

**MR MOTHIBE:** Chair, apologies, I'm trying to...[intervenes].

**CHAIRPERSON:** Trying to go back but...[intervenes].

**MR MOTHIBE:** Trying to go back Chair, so...[intervenes].

**CHAIRPERSON:** No I understand but that's why I was saying to you, I would have expected you, when the AG's office says this about your work, that the least you would 20 do is go back and say, is there something that we have missed, let us check, did we do our work properly?

**MR MOTHIBE:** And I think, Chair – hence I say Chair, part of the comfort that one had was that we had allocated this part of work to somebody who had, in fact, spent time in the office of the Auditor General and that they

understood...[intervenes].

**CHAIRPERSON:** But checking whether you had reported this or not would be an easy thing isn't it, it shouldn't even take ten minutes, I'd imagine you'd just go to the reports and check or is it more complicated than somebody that's not an auditor, like me, thinks? Is it not a matter of getting those audit reports for those years and checking whether you had reported or not?

**MR MOTHIBE:** Chair I do believe we knew what we had  
10 reported, it was based on the work that had been performed, Chair, and as I did indicate, understanding what we had reported we were comfortable at that stage that the work performed supported what had been reported Chair.

**CHAIRPERSON:** Yes, but my question is, here the AG is saying there's a huge risk that SCOPA might need answers from you on why this matter was not reported in prior years, so I'm saying when the AG says that, the first thing sitting in that meeting that should have crossed your mind is, did we not report in the prior years and you'd either  
20 know that you did report it or didn't report or if you didn't know you would want to go and check at the earliest opportunity, maybe after the meeting to say, did we report this, because if you did not report, the next thing is, is it something we should have reported and if we – if it is something that we should have reported and we didn't

report, then if we must take responsibility we must take responsibility if we can defend it then we'll defend it. So my question is, at that stage did you know whether you had reported this during those years or not?

**MR MOTHIBE:** Chair like I said I was aware that we had not reported.

**CHAIRPERSON:** You were aware that you had not reported?

**MR MOTHIBE:** Yes Chair.

10 **CHAIRPERSON:** Yes, and at that stage did you think it was something that you should not have reported?

**MR MOTHIBE:** And I think Chair, what I was alluding to was that, based on the work that had been performed, the level of people that had performed and the experience of people that had performed, we were comfortable that we had done enough work to support what is in the audit report Chair.

**CHAIRPERSON:** Ja okay, let me make sure we understand each other. As I say I'm not an auditor, you  
20 are an auditor, as I understand there are certain things that must be reported.

**MR MOTHIBE:** That is correct Chair.

**CHAIRPERSON:** There are certain things that don't need to be reported.

**MR MOTHIBE:** Yes Chair.

**CHAIRPERSON:** Now the AG says, here is something that should have been reported in prior years but was not reported, according to the – that’s how I understand this.

**MR MOTHIBE:** Chair I understand it, maybe slightly differently Chair in that when the AG performed his work on Supply Chain Management, he had identified deficiencies which he then was reporting and the amount of deficiencies identified compared to the fact that nothing was reported in the previous year, as recorded earlier Chair, why is there  
10 such a big difference. So Chair it’s not to say maybe, because he had reported we should have reported but rather why is there such a differentiation and my view then was, the work that we have performed supported – if the AG Chair, has reported it was reported based on the work that he has performed and therefore it supports the kind of report we had given Chair.

**CHAIRPERSON:** You see, what I’m looking at is, whether, when something was pointed out to you at that meeting as I understand it, as needing answers, whether at that stage  
20 there was a basis for you to think you did have a proper answer because you said you thought you were satisfied that you had done the job and you could answer, that’s how I understand you but I think you are agreeing, and you must tell me if I misunderstood you, you are agreeing that, as a matter of fact you ought to have reported in those

years but you did not report, you accept that?

**MR MOTHIBE:** Yes Chair, that is what is in the supplementary statement.

**CHAIRPERSON:** Yes but you accept that as of today as you sit there, my next question is whether, at that time when the AG said this, you knew as a matter of fact that you had not reported or you did not know?

**MR MOTHIBE:** I knew at that time that I had not reported Chair.

10 **CHAIRPERSON:** And did you think you had an acceptable answer for not having reported?

**MR MOTHIBE:** That is correct Chair.

**CHAIRPERSON:** And what was that answer?

**MR MOTHIBE:** Chair it is based on the work that we have been performed that we had employed somebody in that area who had experience in performing this kind of work and the result that were fed through to us, we did consider, we applied our judgement and at that stage we did not believe that they should be – we did not believe that it  
20 should be in the audit opinion.

**CHAIRPERSON:** Well – so is your – was your answer, at that time that you would say, we were not supposed to report during those – to report this matter during those years or was your answer, we accept that we should have reported but we have an explanation why we did not

report?

**MR MOTHIBE:** Chair at the time, based on what we had done and the judgement we had applied at the time Chair, we did not think we should have reported.

**CHAIRPERSON:** You did not think you should have reported.

**MR MOTHIBE:** At that time Chair.

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

**ADV HOFMEYR:** Thank you Chair. So just to clarify, for  
10 the whole of 2018 you held the view that SAA had complied with relevant laws and regulations for the three years that you audited them, is that correct?

**MR MOTHIBE:** Based on the work that we had done and the judgement that we had applied.

**ADV HOFMEYR:** And then in 2019 you continue to hold that view, correct?

**MR MOTHIBE:** As I indicated Chair, the work was subject to investigation, however, and Chair at this stage we – when we handled the file, we believed that we had done  
20 sufficient Chair.

**ADV HOFMEYR:** And then...[intervenes].

**CHAIRPERSON:** Sorry Ms Hofmeyr maybe for the benefit of the transcribers you can just spell that abbreviation of IRBA for them.

**ADV HOFMEYR:** Of Course, indeed.

**CHAIRPERSON:** Otherwise they'll write something ...[intervenes].

**ADV HOFMEYR:** It's I-R-B-A, thank you. So, we clarified 2018 you held the view that SAA had complied with laws and regulations, 2019 you were telling us that an investigation by IRBA started, so what was your position in 2019, had SAA complied?

**MR MOTHIBE:** Chair when the investigation was – there  
10 was – IRBA, put to us questions, we responded, they came back and asked more questions there were areas where we had – were able to give them responses, Chair and it was only – that process was only finalised this year in March.

**CHAIRPERSON:** So, is the answer that during the investigation by IRBA you continued to believe that SAA had complied with legislation until the outcome of the IRBA investigation that's when you were convinced that you should have reported?

**MR MOTHIBE:** Chair at this stage, Chair we said there  
20 was no material non-compliance Chair. So Chair the – that is always absolute assurance but we said – we said to our viewers that there was no material non-compliance Chair.

**ADV HOFMEYR:** And then the commission received Mr Sokombela's evidence in March and I – as I understood your evidence earlier that helped to focus the mind. Sorry

they received Mr Sokombela's evidence in February and then that helped to focus the mind and by March of 2020 you accepted that those indications that there had been compliance were incorrect. Is that right?

**MR MOTHIBE:** Chair after – we got responses from the Regulator and their view was the Regulator's view was that we had not complied and the view from the [indistinct 00:00:49] was that to me concerned and after reading the Regulator's response we looked at other information Mr  
10 [indistinct 00:01:00] and chair the view that we took was that there was probably a non-compliance which we had identified but had not included in the audit opinion and we should have done that.

**ADV HOFMEYR:** Ms Mothibe in fairness to you I think I must put this for your response. That passage of events suggests at least to me and I invite your comment on this that for two years until the shoe started to pinch, until the public exposure of the deficient auditing work by PwC – PwC was content not to come clean about the errors it had  
20 made. And it was only when there was public disclosure in the court at this – in the course of this commission's work that you then had another think and have made the concessions that you have made. Do you have a response to that?

**MR MOTHIBE:** Chair the concession was made after the



review by our Regulator. Chair the process was ongoing and Chair one does not want to anticipate outcomes of a – of a process. Secondly Chair we do know that the processes unfortunately it does take a bit of time Chair and when we initially issued our opinions, we applied our mind we applied our judgment on the outcomes Chair. As I deemed – I have already indicated Chair these matters were identified and they were elevated to the Audit Committee and Management so it was not a – I am not sure if I am  
10 using the right words that Ms Hofmeyr says a failure because work was performed it is easily identified so – and I do not want to – and I think Chair as you mentioned earlier I do not want to make it sound like it is not a – it is a reporting [indistinct 00:02:57] but that is where we fell short Chair.

**CHAIRPERSON:** Hm. What is it that the Regulator said that you had not been aware of that made you accept that there had been a failure in a certain respect on PwC's part? In other words what was new that they said which you had  
20 not thought about that – that made you see things differently after the outcome of their investigation?

**MR MOTHIBE:** Chair the Regulator went through the – requested our files went through a thorough process and it was Chair the Regulator's view was that the items that he identified would not require a judgment Chair which we have

– the views that we should have reported them – the matters would have been material because the – I am trying to use the rights words Chair. An indication when we could not get – when we could not receive the – in some of the areas the files that we were looking for which would – should have said that the – there is material non-compliance and should have been reported Chair. And the Regulator also read it with the – the Auditor Generals Guide on how they approach these matters Chair. And it was that – the problem Chair was that  
10 the judgment – the [indistinct 00:04:49] judgment Chair got it wrong we should have reported these matters where we did not report them Chair.

**CHAIRPERSON:** You know you said earlier on please Ms Hofmeyr do not forget your line.

**ADV HOFMEYR:** Not at all.

**CHAIRPERSON:** You said earlier on and you have emphasised that you identified did you say the non-compliances?

**MR MOTHIBE:** Yes Chair which are non-compliance.

20 **CHAIRPERSON:** Yes but did you not report that?

**MR MOTHIBE:** That is correct Chair.

**CHAIRPERSON:** And the reason why you did not report them is that you did not think they were material non-compliances?

**MR MOTHIBE:** Chair at this stage...

**CHAIRPERSON:** Is that right?

**MR MOTHIBE:** At that stage Chair that is what we thought.

**CHAIRPERSON:** At that stage?

**MR MOTHIBE:** Yes Chair.

**CHAIRPERSON:** Ja. Now my logic suggests that if you have identified the non-compliances and you do not report them, we should look at when is a non-compliance material and when is it not material. How could you have thought that these non-compliances were not material? Can you deal  
10 with that for my benefit? When is it material – when is it not material? Why did you take the view at that time that in this case these non-compliances with legislation were not material?

**MR MOTHIBE:** Chair as I indicated Chair we – we only looked at those matters Chair because the judgment that we had applied and Chair as I think I mentioned I did refer to that in there Chair that one of the biggest things that occupies one's minds when we came to sign the [indistinct  
00:06:52] was the work we were doing around a going  
20 concern at – at South African Airways that took up a lot of time Chair during and after hours Chair and there was if I could say Chair one of the biggest things that occupied our minds it was the most [indistinct 00:07:18] thing.

**CHAIRPERSON:** But – but will not – that will not answer the question of what is material and what is not material is it

not?

**MR MOTHIBE:** Chair I think what I am [?] Chair we have had heavy focus in that area. The – and we not applied a judgment. One might have focussed so much on this area Chair that – and that is where – one we have erred in applying our minds correctly in determining whether or not those items were material enough to be included in the audit opinion.

**CHAIRPERSON:** Yes but you cannot use the fact that you  
10 spent most of your time focussing on a certain part of the work and not a certain other part of the work as justification for saying, we thought that other part was not material. That does not seem to be logically to me. You can use it seems to me your pre-occupation with that other part of the work to say I am sorry I did not get time to do that other work because my focus was on that other. That I can understand.

**MR MOTHIBE:** But Chair I thought that is what I was relaying Chair if it did not come out.

**CHAIRPERSON:** Oh okay. Okay. No. But if that is what  
20 you meant that is fine but it does not answer my question. My question is, you said you were aware that you did not report but you had taken the view that this was not the non-compliance with legislation that was involved here was not material therefore your non-reporting was justifiable or was acceptable. That is my understanding of what you are

saying and then I said so when is a non-compliance with legislation material and when is it not material? That was my question.

**MR MOTHIBE**: Chair in terms of the guidance in the – from the AG Chair there is a threshold that I have said for each different [indistinct 00:09:39] when should you report and when one should not report. And [indistinct 00:09:45] I indicate that having reached the threshold and how material is it then – and Chair as I said Chair the area where one was  
10 aware of that judgment and considered Chair that we got it wrong.

**CHAIRPERSON**: But what – did you have a proper basis or the view that the non-compliance with legislation was not material? What was the basis that you had at that time for taking that view? Had – did you – did you look at the – at the criteria set by the AG and said well this is what it says and you looked at the non-compliances that were involved and said well it does not meet the cusp so it is non-material. Or did you – that is not what happened?

20 **MR MOTHIBE**: Chair for the years 2013 and 2014 – apologies 2014 and 2015 if you recall Chair this work was performed [indistinct 00:11:00] fine so the – yes we had – we reviewed the – we [indistinct 00:11:07] view of – and at that stage Chair we identified areas of non-compliance which we [indistinct 00:11:15] audit committee and to management and

by the time it came to preparing the audit report which was long since we had finalised the – we have presented to the audit committee and to management we [indistinct 00:11:33] the act – for 2014 Chair the opinion was only signed in 2015 in January. For 2015 it was signed in 2016 early September which was more than a year after the required date Chair and the other one Chair was signed off none – is it eight months – in September the 30 – it was three years apart Chair. With the passage of time one was the preoccupation  
 10 of everything either get what was focussing on was focussed on the – on the going concern because Chair that was the one area which was going to cause material issues where there was a RI and we were preoccupied in resolving those issues. So when it came to preparing the audit opinion Chair and as I said also in my submissions Chair the – have consideration as to whether or not those items should have come to – of opinion Chair. Because back then we would not see this as material Chair we...

**CHAIRPERSON:** Can I – Mr Mothibe...

20 **MR MOTHIBE:** We erred – we erred in not considering that Chair.

**CHAIRPERSON:** Mr Mothibe. Can I take it – can I take it that on reflection you are able to say you did not have a proper basis for the view that the non-compliance with legislation was not material? I am putting this to you

because I have asked you a few times that what I am looking for is the basis or the view you took at the time that the non-compliance with legislation was not material. We have spent some time I do not seem to understand that you are able to give me the basis or that view so my question now is, can I take it that on reflection you are able to say looking back our view did not have a proper basis? You nod is that yes?

**MR MOTHIBE**: Yes Chair.

**CHAIRPERSON**: Yes.

10 **MR MOTHIBE**: I nod yes.

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

**ADV HOFMEYR**: Thank you Chair. I would like to now go to the Auditor General's Report for the year that they moved in and Chair you will...

**CHAIRPERSON**: I am sorry. I interrupted you when you moving to another file.

**ADV HOFMEYR**: Okay. So before we move.

**CHAIRPERSON**: Is that where you are going?

**ADV HOFMEYR**: Before we move.

20 **CHAIRPERSON**: Oh okay.

**ADV HOFMEYR**: I would like to ask you just to get out of Exhibit DD20D which is in front of you. The report of the Auditor General for the 2017 year and you will find that commencing at page 1672.

**CHAIRPERSON**: 1672.

**ADV HOFMEYR:** Yes and Chair in this [indistinct 00:14:46] we are going to need to compare it to the report that PwC and Nkonki produced for the prior year. So my suggestion is maybe just to take it out of the file. We can ensure that we insert it again for you over the break and if you were to extract it you would take out pages 1672 to page 1678. You will see that page 1678 has the signature of the Auditor General at the bottom.

**CHAIRPERSON:** I am sorry are you suggesting that we take  
10 it out of the file?

**ADV HOFMEYR:** Yes so that when we move to the next file you will have the two next to one another Chair.

**CHAIRPERSON:** Oh okay.

**ADV HOFMEYR:** Just because of the comparison exercise.

**CHAIRPERSON:** Okay. Okay.

**ADV HOFMEYR:** And then we will make sure we insert it.

**CHAIRPERSON:** Okay. Okay. And then which other file must we have?

**ADV HOFMEYR:** Then you will have in front of you DD19D  
20 which is the second file of Mr Mothibe's evidence. And just to be clear that is Exhibit DD19D and there you will pick up page 601. So what you should now...

**CHAIRPERSON:** Yes.

**ADV HOFMEYR:** Both have before you is the Auditor General's Audit Report for the 2017 financial year and we



will be able then to compare it to PwC and Nkonki's audit report for the prior year. But before we do that comparison, I do just want to do a little bit of background based on Mr Sokombela's evidence before the commission.

And it may be...

**CHAIRPERSON**: I am sorry.

**ADV HOFMEYR**: Sorry Chair.

**CHAIRPERSON**: Before you do that.

**ADV HOFMEYR**: Yes.

10 **CHAIRPERSON**: Which one is whose report between the two?

**ADV HOFMEYR**: Okay. Indeed. So the one that has come out of DD20, Exhibit DD is the Auditor General's. You will see at the top it is entitled Report of the Auditor General.

**CHAIRPERSON**: Yes.

**ADV HOFMEYR**: So that is the one that is ...

**CHAIRPERSON**: Oh the other one is Auditors Report.

**ADV HOFMEYR**: Yes.

**CHAIRPERSON**: Oh okay.

20 **ADV HOFMEYR**: So that you write PwC.

**CHAIRPERSON**: Oh okay.

**ADV HOFMEYR**: If you want.

**CHAIRPERSON**: Okay.

**ADV HOFMEYR**: Okay. So – but as a precept to going to the comparison between those two I would like to just remind

us about what Mr Sokombela's evidence was of what they found when they looked at procurement processes in SAA. Because we spent some time in his evidence looking at a table Chair you might recall it. It was a table in the more extensive audit report where he identified the number of contracts that they tested, the number in respect of which they had found non-compliance, the numbers in which they identified irregular expenditure. I do not suggest it is necessary for the both of you to have it in front of you I am  
10 going to just tell you what the highlighted facts are there. Mr Mothibe if you want to go to it at any point you will let me know. But the upshot of the Auditor General's evidence was that when they did the Supply Chain Management compliance work for the purposes of their audit, they selected using the method that he described first high-risk contracts and then contracts pursuant to a sampling exercise. And the total number of contracts that they selected for review was 96 contracts. And that was to a value of R7.5 billion just a bit more but I am rounding off for  
20 now. And in the course of that analysis of those awards they found that 80 of them – 80 – 80 of the 96 were awards, tender awards, contract awards where non-compliance was identified. And that came to a total of R6.6 billion. So 83% of the contracts that they selected for consideration were not compliant with legislation. And then of those there were 62

of the 96 contracts where irregular expenditure had been identified. So we understood from him that non-compliance was broader than simply irregular expenditure. There is of course fruitless and wasteful expenditure as well and other non-compliance issues but of that portion 62 of the 96 were – which is 64% were irregular expenditure. And Mr Mothibe despite having done that rigorous work and establishing that 83% of the contracts that they reviewed were not in compliance with legislation they still identified a limitation of  
10 scope. Are you aware of that?

**CHAIRPERSON:** I think – ja I was going to say move the microphone closer – towards you – yourself.

**MR MOTHIBE:** See Chair I read that in the audit opinion Chair.

**ADV HOFMEYR:** Yes because what they did was they – despite looking at those 96 contracts they were still not satisfied that they had obtained sufficient appropriate audit evidence to verify the amount of irregular expenditure. And what does not come through in the audit report is the actual  
20 figure that they regarded as unverifiable of the procurement process and that was to the total of R279 million worth of the awards simply could not be verified because they could not obtain sufficient appropriate audit evidence. So – Mr Sokombela that is the background to – sorry Mr Mothibe that is the background of Mr Sokombela's evidence to what he

then ends up saying in his report and what I would like to then compare with what you disclosed in your report the year earlier. And that for that purpose we will go first to the Auditor General's Report that is in Exhibit DD20D at page 1672. You will see there at the bottom there is a heading Irregular – well let us start – sorry. There is a heading, Report on the Audit of the Consolidated and Separate Financial Statements, do you see that?

**MR MOTHIBE:** I see that Chair.

10 **ADV HOFMEYR:** And then under that there is a heading Qualified Opinion, do you see that?

**MR MOTHIBE:** That is correct Chair.

**ADV HOFMEYR:** Now the Auditor General gave a qualified opinion you gave an unqualified opinion in the previous three years, is that correct?

**MR MOTHIBE:** That is correct Chair.

**ADV HOFMEYR:** We will come in a moment to what the difference is between those two. But what then happens as I understand the report is the next heading is Basis for  
20 Qualified Opinion. So now the Auditor General is telling us why did he regard it as appropriate to give a qualified opinion. Am I understanding it correctly?

**MR MOTHIBE:** That is correct Chair.

**ADV HOFMEYR:** And before we go on just in terms of qualified and unqualified audit opinions can you help us with

the following? As I understand it but I like the Chair am not an auditor so we are going to rely on your expertise here. An auditor will give a qualified audit in two scenarios and for this I am relying on ISA 705 and I just want to check that you and I agree on this. The first is where he has or she I would like to add sufficient appropriate audit evidence but regards there to be material misstatements in the financials. Does that accord with your understanding? That is the one circumstance.

10 **MR MOTHIBE**: That is correct.

**ADV HOFMEYR**: And then the second circumstance is when the auditor is unable to obtain sufficient appropriate audit evidence on which to base the opinion but concludes that the possible effect on the financial statements of undetected misstatements could be material but not pervasive, is that an accurate understanding?

**MR MOTHIBE**: That is correct Chair.

**ADV HOFMEYR**: So for a layman like me this seems to suggest to me that there are two situations. The one is you  
20 have got sufficient audit evidence but you conclude that there are material misstatements in the financials and that is to be compared with where you do not manage to get suitable appropriate or sufficient appropriate audit evidence. The consequence of which is that you actually not able to detect whether there are misstatements of a material nature

in the financials. Is that a fair summary Mr Mothibe?

**MR MOTHIBE:** That sounds fair Chair.

**ADV HOFMEYR:** Thank you.

**CHAIRPERSON:** And – of the two scenarios that Ms Hofmeyr has alluded to from an auditor's point of view and from the point of you maybe of the users of financial statements and auditor's reports which one is the worst situation or is the position that either could be worse than the other depending on the circumstances. In other words,  
10 in the one where there are misstatements it might depend on the nature of the misstatements it could be quite a bad situation. Or is the position that where you do not get given the information that is actually regarded as the most serious of the crimes so to speak?

**MR MOTHIBE:** Chair I must admit I have never thought of it.

**CHAIRPERSON:** In that way?

**MR MOTHIBE:** In the way that you ask me because we cannot Chair as auditors, we...

**CHAIRPERSON:** Ja.

20 **MR MOTHIBE:** We perform your work and we will then issue appropriate audit opinion Chair.

**CHAIRPERSON:** Yes. Ja but all situations are bad? Are bad.

**MR MOTHIBE:** Chair I would think...

**CHAIRPERSON:** Generally speaking.

**MR MOTHIBE**: I would think that any entity would especially qualified Chair it might – it – you do not go down [indistinct 00:25:43]

**CHAIRPERSON**: It is unacceptable.

**MR MOTHIBE**: Depending on the – on the nature of the – of the qualification Chair.

**CHAIRPERSON**: Yes.

**MR MOTHIBE**: There could be qualification as a result of an error. If it is an error say general error then you will be able  
10 to explain it but it is the qualification. So I think Chair the circumstances – it is difficult to respond to your question.

**CHAIRPERSON**: Okay. No. But of course, if you do not have the information it means you are – there is incompetence or you might deliberately be concealing information. You – there is incompetence or negligence in keeping the records properly or you are – you may be deliberately concealing the information from the auditors.

**MR MOTHIBE**: Is that a fair statement to say why an entity might not be able to – to give the auditors material  
20 information and documentation?

**MR MOTHIBE**: Chair that is a difficult...

**CHAIRPERSON**: Oh okay. Oh am I too harsh?

**MR MOTHIBE**: Yes I think the Chair – it is a bit of a difficult Chair.

**CHAIRPERSON**: No that is alright – okay. Ms Hofmeyr.

**ADV HOFMEYR:** Thank you Chair. So if we commence with the report of the Auditor General, we were at Exhibit DD20D at page 1672 we – we are in the section on that page where he sets out the basis for the qualified opinion and the one I would like to turn to is under paragraph 7 which is headed Irregular Expenditure.

**MR MOTHIBE:** I have got that Chair.

**ADV HOFMEYR:** You have got that. And you see it references the relevant section of the PFMA, the is Section  
10 55(2)Bi and it is recorded that that section of the PFMA requires the SAA group to include particulars of irregular expenditure and the notes to the financial statements. The SAA group did not establish adequate controls to maintain complete records of irregular expenditure. I was not able to obtain sufficient appropriate audit evidence to confirm the amount of irregular expenditure to be disclosed by alternative means. Consequently, I was unable to determine whether any adjustment to irregular expenditure disclosed in  
20 Note 42 to the consolidated and separate financial statements was necessary.

Now what is – I want to just focus on in that recordal there is that the statement that the SAA group did not establish adequate controls to maintain complete records of irregular expenditure because there was a point yesterday in your evidence Mr Mothibe where I understood you to be



trying to emphasise well the Auditor General comes in in another year and what he finds might be different to what we had in front of us. Did I understand you to make reference to that?

**MR MOTHIBE:** Chair that is correct.

**ADV HOFMEYR:** You see this was the point that the Chair took up quite regularly with Mr Sokombela in his evidence because part of what we were trying to probe was exactly that. Is it just that something strange happened in the 2017  
10 financial year that meant there was suddenly no records? I mean maybe we were after some sort of massive fire in the building or some such thing. Or was it the case that this was an endemic situation? And I want to remind you of what Mr Sokombela's evidence was there. Chair I will just give the references to the transcript.

So the first thing that Mr Sokombela said was that the contract register was entirely inaccurate and most contracts reflected there simply did not exist. That is his evidence on the 21 February 2020 page 16 lines 1 to 5. He then said this  
20 problem must have been going on for many years because of the magnitude of the problem. And he said that on the same day page 15 line 16 to 24. And he went on to explain that when they asked for tender documents to be located, they had to deploy an entire team to search for months and he described words as systematic and you will find that in the

transcript of the 21 February 2020 page 67 lines 8 to 10.

So Mr Sokombela what I am interested in is certainly – Mr Mothibe what I am interested in is Mr Sokombela's evidence before this commission is it was not a once off. It was a systematic failure, they could not even find the existence of contracts that were reflected in the contract register. What is – what was your experience? Did you just have a completely different situation when you were there?

**MR MOTHIBE:** Chair I will again make reference to our  
10 supplementary submission in that in the [indistinct  
00:00:0047] performed we did identify our deficiencies. There were issues raised where there was a preliminary contract register and we raised these matters Chair to management and to the Audit Committee as I indicated Chair and we have got – in our concerns to the IRBA Chair it talks to the same that there were challenges related to the [indistinct 00:01:17] governance and we concede – we agree Chair we should have – it should have been in the audit committee which we had unfortunately done Chair. We erred  
20 in that Chair. So the challenges that Mr Sokombela encountered we did see them also Chair.

**CHAIRPERSON:** Now you will have heard from what Ms Hofmeyr said when referring to what Mr Sokombela testified that his evidence included that he thought that the problem was so big that it must have been there in the previous

years. And my question is, was the explanation for PwC not picking up such a big problem for three years?

**MR MOTHIBE:** Chair ordinarily when one goes into perform work on – on contracts you would initially focus on new contracts. If you had been auditing an entity for some time Chair you would have – you take comfort on the work that you have done previous years on – on – because you would of in the previous year’s selected new contracts for review and to the extent that you are provided with those contracts  
10 you have done sufficient audit work and those contracts would have – would run for a particular time. So when we performed our audit Chair the initial focus it is on a new significant contracts. That said Chair I think Chair that said as I indicate Chair, we did identify deficiencies. We did identify challenges with regards to the contract register and there were elements where we could not be provided with contracts that were – that we had requested for audit purposes. We raised the matter with the – with management and with the Audit Committee and Chair those deviations as I  
20 indicate should have been included in the audit – in these matters - we should have included them in the audit report. So we did identify those issues Chair.

**CHAIRPERSON:** Ms Hofmeyr.

**ADV HOFMEYR:** Chair I see we have just gone past one.

**CHAIRPERSON:** Yes.

**ADV HOFMEYR:** I...

**CHAIRPERSON:** I know we have taken much longer than we both thought but ...

**ADV HOFMEYR:** Not at all.

**CHAIRPERSON:** I think it has all been important.

**ADV HOFMEYR:** Indeed.

**CHAIRPERSON:** Evidence so it was not wasted and I know we still have another witness.

**ADV HOFMEYR:** We do.

10 **CHAIRPERSON:** But it seems to me that – it seems to me that we should just take normal lunch for now and come back at two.

**ADV HOFMEYR:** Indeed.

**CHAIRPERSON:** And then try and finish with Mr Mothibe and then move onto the next witness ja.

**ADV HOFMEYR:** Indeed. Chair I – I think that will work.

**CHAIRPERSON:** Yes.

**ADV HOFMEYR:** And we will complete both today.

20 **CHAIRPERSON:** Ja. Ja. Okay let us take the lunch adjournment we will resume at two. We adjourn.

**REGISTRAR:** All rise.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES:**

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

**ADV HOFMEYR:** Thank you, Chair. Chair, before the break

we have spent some time in the auditor general's report or the financial year ending 31 March 2017.

And Mr Mothibe had made certain concessions in relation to the approach that PwC and Nkonki had taken for the three prior years.

Mr Mothibe, what I would like to go to now is your auditor's report for the financial year ending 31 March 2016 and I ask you to have that in front of you before. That was in EXHIBIT DD19D page 601. That is where it starts.

10 **CHAIRPERSON:** Sorry. I see the noise of the aircon is back. Did we say it will come back or did we will decide?

**ADV HOFMEYR:** I think we were going to try it.

**CHAIRPERSON:** Okay and see how it goes.

**ADV HOFMEYR:** Yes, indeed.

**CHAIRPERSON:** Okay let us see how it goes.

**ADV HOFMEYR:** If it is creating an interference, we will ...[intervenes]

**CHAIRPERSON:** I am very aware of the fact that I have a certain benefit [laughs]

20 **ADV HOFMEYR:** Ja. [laughs]

**CHAIRPERSON:** ...which other people do not have. Okay.

**ADV HOFMEYR:** At least, it keeps us focussed. [laughs]

**CHAIRPERSON:** Okay.

**ADV HOFMEYR:** Thank you, Chair. But please do let us know if it becomes an interference. Then we will just ask for

it to be ...[intervenes]

**CHAIRPERSON:** No, that is fine. The part... part of the problem is that sometimes it makes noise in such a way that I cannot hear the witness properly but it is not all the time.

**ADV HOFMEYR:** Okay.

**CHAIRPERSON:** So let us see how it goes.

**ADV HOFMEYR:** Let us see how it goes. Indeed.

**CHAIRPERSON:** Ja.

**MR MOTHIBE:** Chair, I will make sure that I will raise my  
10 voice.

**CHAIRPERSON:** [laughs] Okay. In order to make sure that we do not switch it off. [laughs]

**ADV HOFMEYR:** [laughs] Thank you, Mr Mothibe.

**CHAIRPERSON:** Okay.

**ADV HOFMEYR:** So we are going to turn to your auditor's report and what I would like to focus on in that report is on the second page that is the paginated page 602 because it is recordables on this page, which I understand from your supplementary statement, you have accepted ought to have  
20 been different. Is that correct?

**MR MOTHIBE:** That is correct Chair.

**ADV HOFMEYR:** So let us pick up on irregular expenditure.

**CHAIRPERSON:** I am sorry, Ms Hofmeyr. I missed that.

**ADV HOFMEYR:** Apologies.

**CHAIRPERSON:** You said something and he agreed and I

did not get what-what?

**ADV HOFMEYR:** Yes. Sorry, let me traverse that again. What I said is your focus on the second page of the auditor's report because there are recordables there which I understand Mr Mothibe in his supplementary statement to have conceded should have been different.

For example, where they identify under compliance with legislation that they did not identify instances of material none-compliance.

10 He has now accepted that should have read differently. Is that correct Mr Mothibe?

**CHAIRPERSON:** That is correct Chair.

**ADV HOFMEYR:** I would like to start the heading "Irregular Expenditure and Fruitless and Wasteful Expenditure" on that page. It is just above the middle of the page in capitals.

And what you record there when you... and you have signed this off on the 30<sup>th</sup> of September 2016 is:

20 "Without raising a material finding, we draw attention to the disclosure note 46 to the annual financial statements on page 166, Irregular Expenditure to the value of R 5,4 million and Fruitless and Wasteful Expenditure to the value of R 7,3 million that have been identified and reported in terms of Section 55(2)(b)(i) of the Public Finance Management Act..."

Now just before the break, you will recall we looked at

the auditor general's comments under that topic in the audit report from the year later and he took the view that there were not adequate controls to maintain complete records of irregular expenditure and further had been a limitation of scope.

He simply was not in a position to confirm the amounts of irregular expenditure. Now, as I understand it Mr Mothibe and you can find this in your supplementary statement in EXHIBIT DD19B at page 50.30.4.

10 Chair, I do not suggest it is necessary for you to go there unless you want to look at the particular wording.

But you acknowledge there at the bottom of the page that your entry under Irregular Expenditure and Fruitless and Wasteful Expenditure for the 2016 year should have been different. Is that correct?

**MR MOTHIBE:** That is what is in my supplementary submission Chair.

**ADV HOFMEYR:** And what should you have said as you record it hear?

20 **MR MOTHIBE:** Shall I read it out Chair?

**ADV HOFMEYR:** Thank you, yes.

**MR MOTHIBE:**

“Irregular Expenditure and Fruitless and Wasteful Expenditure: Section 55(2)(b)(i) ...[intervenes]

**CHAIRPERSON:** Raise your voice. [laughs]



**MR MOTHIBE:** Oh. I am competing with the...

“Section 55(2)(b)(i) of the PFMA requires the SAA Group to include particulars of irregular expenditure in the notes to the financial statements.

The SAA Group did not establish adequate controls to maintain complete records of irregular expenditure and fruitless and wasteful expenditure.

We are not able to obtain sufficient appropriate audit evidence to confirm the completeness of the amounts of irregular expenditure and fruitless and wasteful expenditure disclosed in the ...[indistinct] report for the 2014 financial year and note 46 and 45 of the consolidated and separate financial statement for the 2015 and the 2016 financial years...”

**ADV HOFMEYR:** Now Mr Mothibe, as I read your now revised statement of what should have been contained in your report. It applies to the 2014/2015 and 2016 financial years. Is that correct?

**MR MOTHIBE:** That is correct Chair.

20 **ADV HOFMEYR:** And there a limitation of scope in all of those years, correct?

**MR MOTHIBE:** Chair, that will be correct.

**ADV HOFMEYR:** And as a consequence of that limitation placed on the scope of the audit, you were not in a position to confirm the completeness of the amounts of irregular,

fruitless and wasteful expenditure? Is that correct?

**MR MOTHIBE:** That is how my supplementary statement reads Chair.

**ADV HOFMEYR:** Thank you. It is also... you confirm that you... you confirmed that the contents of your supplementary statement are true and correct. That means, you support what is stated there as having been the necessary revision to the auditor's report. Is that correct?

**MR MOTHIBE:** That is correct Chair.

10 **ADV HOFMEYR:** Okay. It is just because when you answer "that is what is in my statement" it is not as clear that you support the revision in those terms. So that is just why I am questioning. Thank you. So then I want to ...[intervenes]

**CHAIRPERSON:** Well, I am sorry. Well, I do not want to forget this because I forgot it earlier. When we look at the auditor general's report and we look at Mr Sokombela... Is it Sokombela?

**ADV HOFMEYR:** Certainly. Sokombela.

20 **CHAIRPERSON:** Ja, ja. When we look at his evidence and it transpires that... and we... we look at your own evidence today and yesterday where you say during those three years of whatever period that PwC was involved in auditing the SAA, you identified some of the problems.

You did not include them in the report but you identified them. Is there something I have said that you want to

correct?

**MR MOTHIBE**: No, Chair.

**CHAIRPERSON**: Oh, no. Okay, alright. You understand?

**MR MOTHIBE**: I am attentive Chair.

**CHAIRPERSON**: Okay, alright. I would have assumed that if in the first year of your term at SAA, auditing SAA, you picked up certain problems, including the failure by the SAA Management to give your files and whatever other documents and information that were important for you to do  
10 a proper job.

I would imagine that when you come the following year, you would look back and say, “what problems did we identify last year? Have they fixed those problems now?”

Because if they fix them, then that is fine but if they have not fixed them that might be something to look at quite seriously to say, “but we told management last year that this needs to be fixed. This here is still not fixed”.

And then if in the third year you still have the same thing, you would not fail to see that they have not addressed  
20 it and by then it might be difficult to say, “why did you not include it in your report because it is persisting year in and year out?”

That is what I would like you to comment on. That is what comes to my mind. That one would expect that when you come the following year, having done the work the

previous years, your starting point would be “what was wrong last year?. Has it been fixed? Blah-blah-blah”.

**MR MOTHIBE:** Chair, thank you for the question and I do understand where Chair is coming from. Chair, as I have indicated, we performed the work and when it came to the ...[indistinct] of the Audit Opinion there was significant time that had passed.

And when we then ...[indistinct] opinions Chair, you then to go back and look at what... what had been identified, what  
10 is material and what is not material.

When we received the first draft of the Audit Opinion Chair, because we had delegated that... and as partners we reviewed that. Nothing had been highlighted by our team to indicate that there were additional(?) issues that need to come to the Audit Opinion.

Chair, we had ...[indistinct] the matters in the management(?) report and in the Audit Committee documents. And I do have to ...[indistinct] that once we have also gone back and also do that to ensure that  
20 everything has been included.

Chair, in the 2014 year, in the first year, those matters would at that stage ...[indistinct] Chair, we had... we had... based on our professional(?) judgment Chair and review, we had thought they were not material.

And I do believe that could have also influenced the

view in subsequent years to say this matters had appeared, they were deemed immaterial and therefore in subsequent years, unless ...[indistinct] Chair, then probably(?) the conclusion was they are not material.

And that is Chair one of the things why that could have happened the way it happened Chair. And Chair, and I think... I do believe I have touched on it earlier Chair, that we also had the benefit of having attending all Audit Committee meetings.

10 A representative of the office of the auditor general who also had access to all these reports and there is a summary that we did consult when there were difficult issues.

For example, on the matter of the growing concern. In fact, there were times where we did not necessarily agree because they felt... there was a view at some stage that we might be a little bit harsh.

So when these matters came through Chair, we were also aware and they also did not... it did not come out from the former discussion that these matters... maybe we need to  
20 consider elevating them because they were also in a way a soundboard for us when we performed this work Chair.

I do understand where the Chair is coming from and it is correct that we would consider previous matters when you ...[indistinct] for what.

But Chair as I have indicated, when that report was put

together, because for the first year we did not deem them as material.

Incorrectly so, as I admitted Chair in subsequent years, because they were not material. It probably(?) influenced the way the team would have thought about them. And in applying a ...[indistinct] judgment Chair. That is where we could have got it wrong Chair.

**CHAIRPERSON:** Ms Hofmeyr.

**ADV HOFMEYR:** Thank you, Chair. Mr Mothibe, I was going  
10 to pick it up earlier but then I have left it but you have made the point again. So I do just want to get clarity on this.

You referenced twice the fact that at these Audit and Risk Committee meetings there was a representative of the auditor general's office. Is that correct?

**MR MOTHIBE:** That is correct.

**ADV HOFMEYR:** Mr Mothibe, you do not give that evidence before the Commission to suggest that the auditor general is responsible for the errors in your audit report, do you?

**MR MOTHIBE:** Chair, we are the appointed auditors as  
20 PricewaterhouseCoopers and Nkonki in the ...[indistinct] opinion and therefore we are responsible for that. I think that ...[indistinct]

**ADV HOFMEYR:** Thank you. Then I would like to go in your statement. Oh, just before we move off your revised wording for the audit report.

I focused initially on the irregular expenditure and fruitless and wasteful expenditure but you also recognised that your statement in respect of compliance with legislation should have been different, correct?

**MR MOTHIBE**: Chair, that is correct.

**ADV HOFMEYR**: And you also identified in relation to your audit work on compliance with legislation that there were limitations placed on the scope of your work. Is that correct?

10 **MR MOTHIBE**: That is correct Chair.

**MR MOTHIBE**: And as a consequence of that you say that you were unable to obtain sufficient and appropriate audit evidence. That the SAA Group maintained an appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost-effective. Is that right?

**ADV HOFMEYR**: Chair, that is correct.

**MR MOTHIBE**: But then I would like to go over the page, if we may, in your supplementary statement. Chair, I am going to focus some attention on the language that Mr Mothibe  
20 uses.

So I suggest that it might be useful for you to have it in front of you. You will find it in EXHIBIT DD19B which is in the first file.

**CHAIRPERSON**: B, yes?

**ADV HOFMEYR**: Yes.

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

**ADV HOFMEYR:** But that is the section that starts with page 30.5. So you will need... so I am just worried. If you got B on the spine that is the second file. You will need A on the spine.

**CHAIRPERSON:** Oh, okay.

**ADV HOFMEYR:** But within it, you will go to page 30.5.

**CHAIRPERSON:** You are not going to come back to this report?

10 **ADV HOFMEYR:** No.

**CHAIRPERSON:** Okay.

**ADV HOFMEYR:** No.

**CHAIRPERSON:** You say here... you say B but ...[indistinct] ...[intervenes]

**ADV HOFMEYR:** I know. I know.

**CHAIRPERSON:** ...with A on the spine but it might be the correct one. [laughs]

**ADV HOFMEYR:** Well, I need page 30.5. Three zero point five.

20 **CHAIRPERSON:** Let me see. It probably is the right file. [laughs]

**ADV HOFMEYR:** Oh, excellent!

**CHAIRPERSON:** I have got 30.5.

**ADV HOFMEYR:** Excellent.

**CHAIRPERSON:** Ja, okay.



**ADV HOFMEYR**: That is within Mr Mothibe’s supplementary statement Chair. And we are looking... I want to focus on paragraph 11 Mr Mothibe because what you did in paragraph 10, as I understand your supplementary statement is, you made the concessions about what the errors were in the previous audit reports for the three years.

And you actually give us the language of what ought to have been reflected in those reports. Is that correct?

**CHAIRPERSON**: That is correct Chair.

10 **ADV HOFMEYR**: And then what you are doing in paragraph 11 as I read it, it effectively sum up the impact of the concessions that you have made about those errors.

And what you say there and I will read it into the record, is:

“In view of the failure to comply with the directive issue in terms of the PPAA, I have indicated, however, that IRBA, my preparedness to accept the proposed consent order in relation to the first three draft charges.

20 The matter is currently with Urban(?). I am advised that the proposed consent order will be tabled at the next Urban(?) Disciplinary Advisory Committee Meeting...”

So that is, first of all, telling us what is going to happen next and then this is the part where I say you sort of capture

the conclusion as I read it. You say that:

“However, I remain of the view that despite these omissions, the financial statements for those financial years were in terms of IFRS, (locally referred to as *IFRiS*), free of material statement and that...”

And these are the words I want to focus on:

10 “...sufficient audit work was performed and appropriate audit evidence was obtained to support the audit opinions...”

Do you see that?

**CHAIRPERSON:** That is correct Chair.

**ADV HOFMEYR:** Do you stand by that statement?

**MR MOTHIBE:** Chair, as I have indicated earlier that with respect to the numbers in the financial statements, we had done sufficient work.

We obtained the necessary audit evidence and that the numbers, as far as they are disclosed in the financial statements, are free of material statement Chair.

20 And the Audit Opinion in terms of those numbers Chair is correct and I do stand by that Chair.

**ADV HOFMEYR:** But there were numbers for irregular expenditure and fruitless and wasteful expenditure that you could not verify.

**MR MOTHIBE:** Chair, the numbers in the financial

statements relate to actual expenditure that has gone through Chair, and those numbers are correct.

Hence, the statement that I made that I am of the view that despite the omissions, the financial statements fairly present or for those years, fairly present what happened at SAA ...[indistinct] statement and sufficient audit was done.

With respect to irregular and fruitless expenditure there. Chair, it is more the... should I say... I hope it is the right word, is the quality of the numbers, not the quantum.

10 So the fair presentation here is the quantum that... if we say, for example Chair, if we only(?) said... Let us say expenses ...[indistinct] or let us say for refreshments was R 2 million. That fee of R 2 million is correct.

When you talk about the irregular expenditure it is then whether or not those refreshment were required using the appropriate CM process.

20 So the disclosure of that number as a... under fruitless and wasteful expenditure or irregular, might be... might not be correct but in your income statement, that disclose is correct.

Because Chair, the expenditure was incurred. There were invoices for that. They went through the appropriate payment processes and they were settled.

So from origination to liquidation, they have gone through the necessary process. Hence, I am able to... I am

comfortable that my statement in my supplementary submission is correct Chair and I stand by it Chair.

**CHAIRPERSON:** Now just to make sure. So does that answer mean that you stand by this sentence as is or you are qualifying what is written here?

**MR MOTHIBE:** No, Chair. As I said that I stand by the statement that I have made.

**CHAIRPERSON:** As is?

**MR MOTHIBE:** As it is Chair.

10 **CHAIRPERSON:** Okay, okay.

**ADV HOFMEYR:** Mr Mothibe, I am going to come back to the amount of irregular expenditure that needs to be disclosed in the financial statements but the words in the sentence I want to focus on is. You say you are satisfied that sufficient audit work was performed.

I think you have already conceded before the Commission that sufficient audit work was not performed because there was a final step in the process that you did not complete. Is that correct?

20 **MR MOTHIBE:** Chair, I respectfully disagree with what Ms Hofmeyr is saying. As I do explain Chair. The work we performed on the numbers in terms of that we... ISIS and in compliance with IFRS, International Financial Reporting Standards, that was adequate.

The numbers that I disclosed in the financial statements

are correct. The work that we do around procurement and supply chain management and all irregular and fruitless expenditure.

Chair, that is on the compliance side and it relates to the quality of the numbers. But on the quantum of the numbers Chair, I stand by my statement I have made ...[indistinct]

**CHAIRPERSON:** Now, you did explain the... you begin to explain the difference between the quantum of numbers and the quality of numbers but I do not think I got a full picture.

10 You made the example about the amounts spent on drinks and you said if... you said R 2 million or... was spent on things.

The statement that R 2 million was spent on drinks remains valid, okay? Now would that be the quality of numbers?

**MR MOTHIBE:** It is the quantum Chair.

**CHAIRPERSON:** That is the quantum?

**MR MOTHIBE:** And that is what ...[intervenes]

**CHAIRPERSON:** And the quality?

20 **MR MOTHIBE:** The quality is... then the question that you ask is, will you then address the compliance with a supply chain management Chair. You say ...[intervenes]

**CHAIRPERSON:** Oh, that is where quality would...?

**MR MOTHIBE:** Yes. How was it acquired in the ...[indistinct] process.

**CHAIRPERSON:** Yes.

**MR MOTHIBE:** Even if you did not follow due process.

**CHAIRPERSON:** Yes.

**MR MOTHIBE:** You might find that of the R 2 million... let us say half a million ...[indistinct] ...[intervenes]

**CHAIRPERSON:** Yes.

**MR MOTHIBE:** And therefore, you will then disclose half a million under irregular expenditure.

**CHAIRPERSON:** Yes, yes.

10 **MR MOTHIBE:** But the fact that the money was spent on refreshments that will change. If you still spend on that, there was a service provider who delivered.

You have got the invoice. You paid them. It has gone through the ...[indistinct] of the payment process. There is going ...[indistinct] [coughing] authorisations and it has been paid.

**CHAIRPERSON:** H'm. But if... with reference to procurement. You do not do enough work for you to state that the entity has been put at the risk of being sued for  
20 millions of rands.

You do not say that because you did not do enough work to be able to say that, whether it is because files were not given to you or because you were focussing on something else.

Then that would go to the quantity of work. Where

would that fit in?

**MR MOTHIBE**: Chair, those are... that ...[indistinct] Chair that it is on the supply chain.

**CHAIRPERSON**: Supply chain.

**MR MOTHIBE**: Supply Chain.

**CHAIRPERSON**: Yes.

**MR MOTHIBE**: It ...[intervenes]

**CHAIRPERSON**: Ja, in regard to supply chain. That you said [laughs] supply chain a section of the work you were  
10 supposed to do. Did you accept that in regard to that you did not sufficient work?

**MR MOTHIBE**: Chair, we said that we had done sufficient work. We reported to the Audit Committee and to Management but we did not report to the shareholders.

**ADV HOFMEYR**: H'm.

**MR MOTHIBE**: So... and I think that we should clarify Chair. We did sufficient work. The error that we made Chair is in the report... on the reporting side Chair. And I do not know if Chair ...[indistinct] ...[intervenes]

20 **CHAIRPERSON**: Okay. No, do not go back ...[intervenes]

**MR MOTHIBE**: Yes.

**CHAIRPERSON**: I think your point is. We did the work but we did not do the leg relating to reporting.

**MR MOTHIBE**: That is correct Chair.

**CHAIRPERSON**: And that we did not do the leg relating to

reporting, does not make the work that we did insufficient.

**MR MOTHIBE**: That is correct.

**CHAIRPERSON**: That is the point you are making.

**MR MOTHIBE**: That is correct Chair.

**CHAIRPERSON**: Ms Hofmeyr.

**ADV HOFMEYR**: Mr Mothibe, I have traversed that with you yesterday. So I am not going to go over it again. And I stress the importance of that last step. But it is not possible to redo it today.

10        So what I would like to just get your point on is. Section 55(2) of the PMFA makes it a requirement that the financial statements of a public entity must include the particulars of any irregular expenditure and fruitless and wasteful expenditure.

Now as I understand it. Part of an auditor's job is to determine whether the disclosed amounts of irregular expenditure and fruitless and wasteful expenditure are accurate. Have I understood that correctly?

**MR MOTHIBE**: That is correct Chair.

20        **ADV HOFMEYR**: Right. And your changes to what your report should have said previously, concede that you were unable to perform that task because you had insufficient appropriate audit evidence. Is that correct?

**MR MOTHIBE**: That is correct Chair.

**ADV HOFMEYR**: Yes. So then why do you say in the



sentence we are focussing on that you are satisfied that you had appropriate audit evidence? Do you see those words?

**MR MOTHIBE**: I do see those words. And Chair, maybe if I read this sentence again.

“However, I remain of the view that despite these omissions, the annual financial statements for those financial years in terms of IFRS are free of material statement and that sufficient audit work was performed and appropriate audit evidence was  
10 obtained to support the audit opinions...”

So Chair, I do not know if I am repeating myself Chair, but I hear where Ms Hofmeyr is coming from but those areas Chair that she is talking to are not areas of ...[indistinct] of the IFRS of the ISIS.

Those are areas of compliance with law and regulations. They do not impact your balance sheet, your income statement and your statement of cash-flows.

And hence I am saying Chair, the ...[indistinct]... the numbers were correct in ...[indistinct] statement Chair.

20 And I consider that irrespective(?) of irregular expenditure and wasteful expenditure the... that portion of the Audit Opinion should have read differently.

**ADV HOFMEYR**: And should it have been qualified your Audit Opinions for those three years?

**MR MOTHIBE**: Only with respect to fruitless and wasteful

expenditure Chair.

**ADV HOFMEYR:** But we looked at ...[intervenes]

**MR MOTHIBE:** And irregular expenditure.

**ADV HOFMEYR:** Because we looked at the requirements for a qualified audit and we went through them previously. I think it is ISIS 705.

And one of the requirements for giving a qualified audit is. When you have insufficient appropriate audit evidence, the consequence of which is, that there is a limitation of  
10 scope.

And you have accepted that both in relation to compliance with legislation and in relation with irregular expenditure and fruitless and wasteful expenditure, you had difficulties in the audit work, correct?

**MR MOTHIBE:** Chair, the limitation of scope as it was does – was not in relation to the numbers disclosed in the financial statements. It related to – specifically to the area of irregular and fruitless expenditure. So on that basis, Chair, the whole set of financial statements would not be  
20 qualified in that regard then.

**ADV HOFMEYR:** No, I understand you fairly, Mr Mothibe, to say it required qualification in respect of the areas of fruitless, wasteful expenditure and irregular expenditure and in the area of compliance with legislation, is that correct?

**MR MOTHIBE:** That is correct.

**ADV HOFMEYR:** Right. So I understand the emphasis you place in paragraph 11 on IFRS and its standards and its focus but you have no difficulty accepting that there ought to have been a qualified opportunity in relation to those areas that you make the concessions on, correct?

**MR MOTHIBE:** Chair, it is also important note that whilst – I understand where Ms Hofmeyr is coming from, Chair, one then needs to assess the materiality of that in relation  
10 to the financial statements as a whole. So by just taking them as a whole, Chair, cannot be qualified, Chair, on the basis of those two matters.

Chair, if I look at the audit opinion of the AG, Chair, if you will just give me a second? I just wanted to look at they have worded this, Chair, because in line with how I have worded my opinion. Chair, when you qualify financial statements it is based on the fair representation or whether there is a material misstatement on the numbers as a whole. So if on a whole the financial statements are not  
20 materially misstated, Chair, then it is not qualifying, we might qualify an aspect of it.

This statement, Chair, I make here, I stand by it, I do not believe that what I – that on the numbers is incorrect, Chair. I am comfortable that those numbers were fairly stated and that, as I indicate in my summary

statement, that on irregular and fruitless expenditure, I did not – there were limitations and therefore I would not have been able to give the opinion that I initially gave, Chair. I should have said – indicated that I was not able to obtain sufficient evidence because of the fact that SAA did not have in place sufficient controls to determine fruitless and wasteful expenditure.

**ADV HOFMEYR:** So is it your evidence that the extent to which limitations of scope – limitations were placed on the  
10 scope of your audit in relation to irregular expenditure and in relation to compliance with legislation, those were not material enough for you to have qualified the audit?

**MR MOTHIBE:** No, there were never [indistinct] **03.27** qualified whole audit, Chair, no.

**ADV HOFMEYR:** How do you ...[intervenes]

**MR MOTHIBE:** Not on their own, Chair, no.

**ADV HOFMEYR:** And how do you make that conclusion or judgment, give that judgment today without having properly assessed the extent to which those failures and  
20 insufficiency of the appropriate audit evidence you obtained what the materiality of them were? How do you manage to do that today?

**MR MOTHIBE:** Chair, as I indicated, when I explained the difference between the qualitative and quantitative, say on the quantities that are included in the financial statements

are correct. We did sufficient work on that, we obtained sufficient audit evidence, Chair.

It is the – the quantities matters on supply chain management, that is where there were challenges, Chair. So that, Chair, that on its own, can never lead to the qualification of the audit opinion unless you say – unless on the numbers included in the financial statements there were areas where there was limitation and ones that are not able to obtain sufficient evidence and importantly,  
10 Chair, whether it is pervasive or it is material or not and whether it is limited to specific areas, Chair.

**ADV HOFMEYR:** Mr Mothibe, the other aspect that the PFMA requires you to consider is the quality of internal controls in the state-owned enterprise that you are auditing, is that correct?

**MR MOTHIBE:** That is correct, Chair.

**ADV HOFMEYR:** And in the three years 2014 to 2016 your audit reports indicated that the internal controls were adequate, is that correct?

20 **MR MOTHIBE:** Chair, I make a reference to my audit opinion, if you... Chair, as I did mention earlier that importantly, one will never give assurance on internal controls because we do not audit internal controls – well, audit all controls for the entity, then we only comment on the internal controls that are relevant and to the audit and

ones that we have tested and in the opinion we see that we did not identify any deficiencies in internal controls that we considered significantly or significant for inclusion in the report. So, Chair, it is important to say we are not giving assurance and we are not saying that there were no internal control [indistinct] but then when we give the opinion, we said we [indistinct] that were sufficiently significant for inclusion, Chair.

**ADV HOFMEYR:** So you may have found some but what  
10 you conveyed to the reader of your audit report is that you did not identify deficiencies in internal control that were sufficiently significant. Is that a fair statement?

**MR MOTHIBE:** That is a fair statement, Chair.

**ADV HOFMEYR:** Now, were you aware – do you know who Mr Siyakhula Vilakazi is?

**MR MOTHIBE:** Yes, I do know Mr Vilakazi.

**ADV HOFMEYR:** Do you recall what position he held at SAA?

**MR MOTHIBE:** He was the Chief Audit Executive, pardon,  
20 let me call it, the Head of Internal Audit, Chair.

**ADV HOFMEYR:** Right.

**MR MOTHIBE:** And do you know that there was a tender for dry snacks which was initially awarded to Mantelli's Biscuits in 2014 but subsequently cancelled?

**MR MOTHIBE:** That is correct, Chair.

**ADV HOFMEYR:** And you are aware that that tender was irregularly cancelled? That award was irregularly cancelled is that correct?

**MR MOTHIBE:** Chair, I am aware of the issues around that tender and what transpired.

**ADV HOFMEYR:** And are you aware that there were complaints lodged with IRBA and with the Internal Audit Regulatory bodies as a consequence of the irregularity in that tender award?

10 **MR MOTHIBE:** Chair, I am aware of complaints that were made to IRBA in that regard.

**ADV HOFMEYR:** And so you do not have knowledge of the Internal Audit Regulatory body, is that right?

**MR MOTHIBE:** Yes, I am also aware of that, Chair.

**ADV HOFMEYR:** You are aware.

**MR MOTHIBE:** Yes.

**ADV HOFMEYR:** Good because in that process Mr Vilakazi provided an affidavit to the Institute of Internal Auditors of South Africa in which he gave an account of the  
20 state of internal auditing at SAA. Are you aware of that affidavit?

**MR MOTHIBE:** Chair, I am aware that there were issues in there, Chair, but I am trying to recall if I had seen that, Chair, but I am aware that there was investigation there, Chair.

**ADV HOFMEYR:** You see because Mr Vilakazi's – and the competency of the internal audit function at SAA was raised in this complaint and in response to the complaint he produced an affidavit which we have subsequently obtained as the Commission and what that account that Mr Vilakazi, the head of internal audit at SAA discloses, is the following. I am going to summarise for you in the interest of time but if you would like me to go to the affidavit you can request that, Mr Mothibe.

10           What Mr Vilakazi says in that affidavit is that during April 2014 the SAA internal audit department was only one year and nine months old and most of its processes were still being formalised. He said that in that affidavit that general documentation and filing processes regarding all the audits were far from perfect.

          He explains that towards the end of 2014 an independent audit firm was appointed to do quality assurance on the internal audit work at SAA. Were you aware of that firm that was appointed to do that assurance  
20 work?

**MR MOTHIBE:** Chair, I am aware that there was assurance done on internal audit department SAA.

**ADV HOFMEYR:** Did you call for that report of that independent audit firm?

**MR MOTHIBE:** Chair, that report was discussed at one of



the audit committees.

**ADV HOFMEYR:** And then were you were aware that they had found significant weaknesses in the audit working papers, documentation and filing?

**MR MOTHIBE:** It was discussed at the audit committees, yes, Chair.

**ADV HOFMEYR:** And that was attributed to the inexperience of staff and the failure of more senior members within internal audit to take full accountability for  
10 their work. Were you aware of that?

**MR MOTHIBE:** That is correct, Chair.

**ADV HOFMEYR:** To the outside observer, Mr Mothibe, I am putting myself in that category, that does not sound like an internal audit department that is functioning well. Is that a fair observation for me to make?

**MR MOTHIBE:** Chair, as Ms Hofmeyr had mentioned earlier, it was a fairly new internal audit department and it was in a developing stage. So, Chair, I would not categorise as not necessarily functioning well but  
20 obviously because it was new, developing, there would significantly have been room for improvement in a lot of areas, Chair.

**ADV HOFMEYR:** Do did you regard it as your job to then check each year whether it was improving?

**MR MOTHIBE:** Chair, that is not within the scope of

external audit, Chair.

**ADV HOFMEYR:** So when you state positively at the end of 2016 that you were not able to identify any deficiencies in internal control is that because you did not look at it? Because you did look at it and you did not identify any deficiencies.

**MR MOTHIBE:** Chair, internal audit, first of all, Chair, if one looks at the control environment that we have looked at for audit purposes, Chair, it is the business processes and the management processes. Internal audit is an assurance provider not too dissimilar from what we provide, Chair. So when it comes to internal controls, Chair, they do not necessarily form the core of internal controls in the business, we look at the work that internal audit has performed which helps us identify areas that we needed to focus on from a risk perspective, Chair, but as an actual control, Chair, on its own, internal control, Chair, it is not the sole indicator, Chair, if I can say that, of strong internal controls. It is management, it is best processes that has been documented and like us, there are assurance providers and they look at that, Chair.

**ADV HOFMEYR:** Mr Mothibe, we have looked at the provisions of the PFMA previously. Do you accept that under Section 51 of the PFMA 1(a)(i) it is a requirement that the accounting authority of a public entity such as SAA

must ensure that it has and maintained internal control.  
You do not have a difficulty with that, do you?

**MR MOTHIBE**: That is correct, Chair.

**ADV HOFMEYR**: And that it is also required to have and maintain a system of internal audit under the control and direction of an audit committee complying and operating in accordance with the regulations prescribed in terms of Section 76 and 77, is that correct?

**MR MOTHIBE**: That is correct, Chair.

10 **ADV HOFMEYR**: And because you are required to consider the internal control environment in the state-owned enterprises that you audit it forms an item in your audit report, is that not correct?

**MR MOTHIBE**: Can I ask you to repeat that, Chair?

**ADV HOFMEYR**: Yes, you see, your answers to these questions about internal control, Mr Mothibe, as I am understanding, tends to suggest that internal control is not really something you are required to look at in the course of your auditing of a state owned enterprise which has  
20 PFMA obligations to maintain and have internal control systems in place. Have I – am I unfair to you in your evidence that you are trying to suggest that is not a requirement of your obligations?

**MR MOTHIBE**: I think you are being unfair because that is definitely not what I am suggesting.

**ADV HOFMEYR:** Okay, so you accept that you do have to look at internal controls?

**MR MOTHIBE:** I accept that we look at internal controls and that we comment where we identify significant weaknesses but importantly, Chair, as I mentioned, that we do not give assurance for internal controls.

**ADV HOFMEYR:** Mr Mothibe, I accept you do not give assurance on those controls but you include a positive statement in your audit report for three consecutive years  
10 that you did not identify any deficiencies in internal control. Do you accept that?

**MR MOTHIBE:** Chair, the statement say we did not identify any sufficiently significant to report, Chair, not to say we did not identify any [inaudible – speaking simultaneously]

**ADV HOFMEYR:** No, I can read you the words. It says:

“We did not identify any...”

Oh, I see.

“We did not identify any deficiencies in internal  
20 control that were considered sufficiently significant for inclusion in the report.”

I accept that. So you looked at them and you did not identify any that were sufficiently significant to include, correct?

**MR MOTHIBE:** That is what we said, Chair.

**ADV HOFMEYR:** And then I put you but in 2014 that system at the admission of Mr Vilakazi seems to have been inadequate and I understood your answer to be it was in its infancy and it was improving, is that correct?

**MR MOTHIBE:** That is correct, Chair.

**ADV HOFMEYR:** And then did you trust that it was improving in the consecutive years for 2015 and 2016?

**MR MOTHIBE:** Chair, as I indicated we do receive reports of internal auditor, we do have sight of them and they  
10 assist us in identifying areas of risk and what we can focus on and certainly, Chair, if one looks at the reports of internal audit over the years, Chair, the quality thereof, there was an improvement, Chair.

**ADV HOFMEYR:** You see, the reason why I asked whether you were tracking the improvement is because you finish in 2016, the Auditor-General comes in in 2017 and the Auditor-General found significant internal control deficiencies. Is that because the whole environment had changed within a year?

20 **MR MOTHIBE:** Chair, again, it is difficult for me to comment on environment that the Auditor-General found versus when we were there, Chair.

**ADV HOFMEYR:** Okay, so let me ask whether you found any of the significant internal control deficiencies that the Auditor-General spent many, many paragraphs of his audit

report recording. Under leadership there had been instability experienced in the entity which resulted in suspensions and resignations in key leadership positions, instability in leadership contributing to the overall decline in the internal control environment. Did you not encounter any of that in your years?

**MR MOTHIBE:** Chair, if I reflect, we had the same CFO from the time I became audit partner who left at the end of 2015 replaced by one individual who was there when we  
10 left. Chair, the positions –the other positions, Chair, the position of CEO was filled at all times when we were there. The positions of Chief Commercial Officer was filled when we were there. Even, Chair, the important positions of head of procurement, they were not taken, there were persons occupying those positions and, Chair, what was important to us was their ability to deliver and, Chair, we did not find challenges in that regard.

**ADV HOFMEYR:** And did you find that leadership had adequately established policies and procedures to enable  
20 and support the understanding in execution of internal audit objectives, processes and responsibilities?

**MR MOTHIBE:** Chair, there were documented policies and procedures at SAA.

**ADV HOFMEYR:** And that the audit and risk committee had mandated implementing various IT aspects which then

were not adequately put in place. You had no difficulties with that?

**MR MOTHIBE:** Chair, in our mentioned reports and report to audit committee, whilst we identified we did have issues in the IT space but there was a head of IT who was I would like to think competent, Chair, and attended all audit committee meetings and reported back at every meeting, Chair, and audits that they were running and how they were tracking, Chair.

10 **ADV HOFMEYR:** And unlike the Auditor-General you did not find that leadership had failed to implement effective processes to ensure that sufficiently skilled individuals were held accountable for non-performance?

**MR MOTHIBE:** Chair, as I indicated, all the key positions that were [indistinct] those offices were occupied at all times when we were at South African Airways. Issues were raised and in the audit committee meetings, as far as I can remember, Chair, there were questions asked of them to understand why matters have not been dealt with, Chair.

20 **ADV HOFMEYR:** But not enough for you to regard them as significant departures from the requirements for internal control, is that correct?

**MR MOTHIBE:** Chair, I did indicate earlier that when we determined our audit approach for South African Airways we did a risk assessment, we looked at the company, the

structure, its complexity to understand how everything fits together, Chair, and at a stage we determined that we were going to adopt substantive audit approach because we were not going to fully rely on controls, Chair. So I do not know if that answers Ms Hofmeyr's question.

**ADV HOFMEYR:** That is fine for my purposes, Mr Mothibe. Chair, that brings me to the end of my questions unless there are further from you. You will recall that we were going to ask just for a bit time before the next  
10 witness to get everything ready.

**CHAIRPERSON:** Now looking back at the years that PIC (sic) was involved in auditing SAA those particular years and looking at the AG's report and looking at Mr Sokombela's evidence and remembering what I said, my reaction was to the evidence about SAA namely how could the auditors who preceded the AG during those years, namely Pricewaterhouse and Nkonki, how could they not have picked up all of these serious problems?

As you sit there are you able to say, looking back  
20 and knowing what I know now, I accept that we should have picked up those problems and we felt shocked insofar as we did not pick them up, those that we did not pick up or those that we picked up but did not include in the report which we should have included, we accept we fell short in that regard.



Or is your position that maybe my reaction is simply because I am not an auditor and that there is no need to be alarmed at how Pricewaterhouse and Nkonki could not have picked these things up which the AG was able to pick up? What are you able to say knowing what you know now?

**MR MOTHIBE:** Thank you, Chair. Chair, I think for starters, from PwC's side and I do think it probably applies the same for Nkonki that we would never on an assignment  
10 that we are not able to deliver on and that we are competent to deliver on. Chair, we did work, we identified deficiencies, we raised them with management, we also raised them with the audit committee and we have conceded that we should have elevated them in the audit report because I think, Chair, if they were elevated the report would have had the same as the AG's report reads.

So I am confident, Chair, that both firms have done the work. The work was done, definitely, Chair. There was fairly delivered. What we had erred in was not elevating  
20 those last elements as I said including into the audit opinion.

Chair, in as far as whether we should have seen some of these ones that we did not see, Chair, there is an inherent limitation, Chair, of audit sampling where – and I think I alluded to it earlier that this was the approach from

the – the ones that we saw we did report. The ones that we did not see, because of audit sampling, Chair, there are important issues, had we seen them we would have definitely, Chair, followed the – in short that they are reported appropriately, Chair. So I do not know if that covers the question, Chair.

**CHAIRPERSON:** Okay. No, that is fine. Unless there is anything, there is nothing?

**ADV HOFMEYR:** No, thank you, Chair.

10 **CHAIRPERSON:** Mr Mothibe, thank you very much for coming to give evidence, we appreciate it. You are now excused.

**MR MOTHIBE:** Thank you very much, Chair, for your indulgence, thank you for the time.

**CHAIRPERSON:** Thank you. Ms Hofmeyr, you would like about five minutes?

**ADV HOFMEYR:** Maybe ten, Chair.

**CHAIRPERSON:** Ten, ja.

20 **ADV HOFMEYR:** Because we just have to check the communication with our next witness.

**CHAIRPERSON:** Oh, yes.

**ADV HOFMEYR:** And we do not want to call you in and then have it...

**CHAIRPERSON:** Yes, yes.

**ADV HOFMEYR:** Could I do it on this basis, as soon as I

have been given the green light we can indicate to your registrar.

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

**ADV HOFMEYR:** Thank you so much.

**CHAIRPERSON:** Okay, we adjourn.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** Yes Ms Hofmeyr?

**ADV HOFMEYR:** Thank you Chair, if I can just indicate to  
10 Mr Mkwanazi and your attorney Mr Mkhwanazi, we have  
commenced the session and I am going to do an  
introduction and then I am going to hand over to my  
learned friend with your leave Chair.

**CHAIRPERSON:** Okay.

**ADV HOFMEYR:** Chair the next witness we intend to call  
is Mr Mafika Mkwanazi, his evidence is important and  
spans two State owned enterprises as well as the topic of  
the New Age, which is an aspect that we have been looking  
at in some detail in the Commission.

20 Chair as I indicated the evidence will be presented  
by my learned, Ms Amy Armstrong. Mr Mkwanazi will be  
giving evidence today via video link from a location within  
South Africa and Chair he will be visible to us on the  
screen on my right, your left. He will be able to see Ms  
Armstrong and to the extent that he wishes to you we have

indicated to him he should get a device to stream the proceedings.

Oh, apologies, there has actually been another device set up so he can see both you on his screen as well as Ms Armstrong, and Chair just to remind ourselves of Mr Mkwanzazi's evidence is going to fit in, Mr Mkwanzazi was a member of the so-called old Eskom Board, that was the Board before the change in 2014 and it was the Board who had to deal with the TNA contract that the former Chief  
10 Executive Officer, Mr Majila, had entered into for 43million, when that contract was flagged as a reportable irregularity by the auditors of Eskom.

Now the Commission has previously received evidence from Mr Pamensky as one of the new Board members who ultimately had to take the decision to ratify that contract. It has also heard the evidence of Mr Tsotsi, who was the Chairman of the Eskom Board and so who transitioned from the old Board to the new Board, but what we haven't yet heard is a representative of the position of  
20 the old board, and it is Mr Mkwanzazi who fills that position for us today, and so there will be some aspects of his approach to the TNA contract while an old Board member of Eskom that will be probed.

Mr Mkwanzazi was also at Transnet when as his statement indicate he was approached for a meeting with a

member of the Gupta Family regarding advertising spend with the New Age, and Chair Ms Armstrong will spend some time probing that because that meeting happened at a time and in circumstances that bear a number of similarities to other accounts that this Commission has received in evidence about those interactions in early 2011 and late 2010.

Chair three Rule 33 Notices were issued in respect of Mr Mkwazi's statement that was way back earlier this year, because Mr Mkwazi had been waiting expectantly to give his evidence before the Commission.

There has only been one response Chair and that is from Mr Malusi Gigaba, it is not an application to cross-examine Mr Mkwazi, he supplies an affidavit setting out his version and as we have done previously when we have been fortunate enough on our timing to receive an affidavit before a witness gives evidence Ms Armstrong will traverse pertinent aspects of Mr Gigaba's version with Mr Mkwazi this afternoon.

Chair Mr Mkwazi is one of those witnesses whose evidence, relevant to the Commission, spans more than will be addressed with him today. As we have had to do previously with our focus on TNA withstands a number of SOE's we focused in on the TNA aspects, we focused in with any associated meetings, we will look at TNA in

Transnet and in Eskom, with Mr Mkwanazi but other aspects where he may have relevant evidence, particularly in relation to Transnet will be left for the Transnet work stream to deal with.

Chair the last point from me before I hand over to Ms Armstrong is to request that Mr Mkwanazi's statement be entered as Exhibit MM7, it should be directly in front of you.

Now Chair it is a very short statement, which is  
10 then accompanied by ...[intervenes]

**CHAIRPERSON:** That will be together with its annexures, is that right?

**ADV HOFMEYR:** It actually doesn't have annexures, it is so short and sweet that it comprises only two pages.

**CHAIRPERSON:** Oh, what about the A, B and C that ...[intervenes]

**ADV HOFMEYR:** Yes, so let me explain that is in what we have previously been calling the other document section and it comprises the affidavit from Mr Gigaba, which is  
20 going to be put to Mr Mkwanazi today, and so those are the attachments to Mr Gigaba's affidavit, and then certain additional documents.

Chair my learned friend was mindful of the approach you took yesterday to want him to separately to identify the documents, so what we are going to suggest

for today is we enter as Exhibit MM7 the statement of Mr Mkwanzazi and then for referencing purposes, and that will be A, it will be MM7A will be the statement and then as Ms Armstrong leads you through today she will use primarily the pagination number to get to you to the right page but then she will give an exhibit number to each of the documents, because there are only a few and so she can do that actually while she is giving – asking the questions, if that is suitable to you Chair.

10 **CHAIRPERSON:** Ja no that is fine. Mr Mkwanzazi's statement is it a statement or affidavit?

**ADV HOFMEYR:** It is actually a statement, it is only signed.

**CHAIRPERSON:** Okay. Excuse me – will be admitted and marked as Exhibit MM7, is that right?

**ADV HOFMEYR:** Correct Chair.

**CHAIRPERSON:** Ja, okay.

**ADV HOFMEYR:** Thank you so much, I am just going to quickly sterilise because I am about to ...[intervenes]

20 **CHAIRPERSON:** Before you do that we haven't done this before other than when we – when I heard evidence from the international experts right at the beginning of the hearings in August 2018, so it is necessary that we don't confuse the public about what we do and what we don't do.

**ADV HOFMEYR:** Yes, of course, yes.

**CHAIRPERSON:** I understand that Mr Mkwanazi made a request ...[intervenes]

**ADV HOFMEYR:** He did indeed Chair.

**CHAIRPERSON:** That his evidence be heard via Zoom or is it Zoom or is it ...[intervenes]

**ADV HOFMEYR:** It is actually Zoom today.

**CHAIRPERSON:** Ja, okay. I have allowed, I have granted leave to that, I understand and you must just tell me your understanding, I understand that he had concerns  
10 about travelling because of Covid-19.

**ADV HOFMEYR:** Yes, there is a concern about him falling into a risk category and with the escalating infection rate at the moment his request to the Commission was that he remain at his home as I understand where he is currently located and give the evidence from there.

**CHAIRPERSON:** Yes.

**ADV HOFMEYR:** It was particularly related to health concerns.

**CHAIRPERSON:** Yes, but you indicated that for a long  
20 time he has been available and ready to come and ...[intervenes]

**ADV HOFMEYR:** Yes indeed, since February Mr Mkwanazi was sitting here many days.

**CHAIRPERSON:** Yes, so it is the Commission that has not been able to give him the opportunity so I have decided to



allow that we – I hear his evidence in this way on condition that at a certain time when maybe the Covid-19 situation has subsided sufficiently he would be able to come before the Commission in person and confirm under oath in front of me the evidence that will have been transcribed by then.

**ADV HOFMEYR:** Indeed Chair.

**CHAIRPERSON:** So can I confirm that the recording will be fine, we will get a transcript.

**ADV HOFMEYR:** We have confirmed that and that  
10 stipulation Chair has been communicated to Mr Mkwanazi.

**CHAIRPERSON:** Yes, and he said ...[intervenes]

**ADV HOFMEYR:** And he is comfortable with it.

**CHAIRPERSON:** He is comfortable.

**ADV HOFMEYR:** Indeed.

**CHAIRPERSON:** Mr Mkwanazi do you understand all of that?

**MR MKWANAZI:** Chairman I do, thank you very much.

**CHAIRPERSON:** Yes, okay no thank you very much, and  
20 thank you for making yourself available to give evidence to the Commission.

**ADV HOFMEYR:** The last just procedural aspect that I always forget is Mr Mkwanazi is legally represented, his legal representatives did introduce themselves to you way back when, but I wonder if they could just place themselves on record, they are also on the Zoom platform.

**CHAIRPERSON:** Oh, okay. Is he with Mr Mkhwanazi or is he somewhere else?

**ADV HOFMEYR:** He is not with him, he is at a separate location, you will see him second from the end on the top row of – second from the left hand side, so Mr Mkwanzazi comes in the frame on the left and then next to him is also Mr Mkhwanazi but spelt with an H, as is legal representative.

**CHAIRPERSON:** Okay.

10 **MS HOFMEYR:** Mr Mkhwanazi can I ask you to place yourself on record.

**ADV MKHWANAZI:** Good afternoon Chair, good afternoon colleagues. Thank you very much for affording us this opportunity finally to appear before the Chair we are here with one sole purposes, which is to help the Commission to achieve its objectives in terms of the investigations and also to mention to you Chair and specifically to thank you for your indulgence in allowing us to appear before you on this medium, which clearly is becoming a permanent  
20 feature of our going forward, so thank you very much for that indulgence, and also to state Chair that the reason that as my – the advocate just mentioned now, our statement is so short and sweet the words she used, it is because of the amount of time we have spent consulting with the Commission, starting initially with the forensic

investigators and of course subsequent to that with the legal team and the Commission. We specifically initially requested that we be given questions that we should focus on, and as we went through the motions we kept on you know correcting and making our statement much more user friendly and it is for that reason it is as short as it is, but I must also mention Chair that with regards to Transnet in particular there were a number of requests that we had made to the previous Company Secretary at Transnet to  
10 see if we could access any Board information that were being referred to by the Commission and unfortunately we could not get any information from Transnet. I believe that Company Secretary is no longer there and there is a change of guard and so forth.

But I also want to confirm Chair that the issues in the main that Mr Mkwanazi will be talking to today, both in terms of Transnet and of Eskom, are issues specifically relating to the TNA and of course you would recall Chair that both the Transnet and of course Eskom, and many  
20 other institutions had agreements there and of course Mr Mkwanazi is ready, willing and able to cooperate with you, so thank you very much Chair and we spent the whole day waiting for you, so we have discussed as much as we could with Mr Mkwanazi so I will just give you know give him the floor obviously through you and you Chair will

...[intervenes]

**CHAIRPERSON:** No thank you very much Mr Mkhwanazi.

**ADV MKHWANAZI:** If I have a question, I will just raise my hand, so thank you very much Chair and colleagues.

**CHAIRPERSON:** No thank you very much.

**ADV MKHWANAZI:** Oh and my name is Ronnie Mkhwanazi and I am the Director at Mkhwanazi Incorporated. Mr Mkwanzazi and I are in the same building but of course he is in the boardroom and I am in another  
10 office, just to make sure we observe all protocols relating to Covid 19, so thank you very much Chair and also just to ask for your indulgence in advance, that in the event, and you will guide us Chair in terms of the procedures of the Commission, if we are allowed to in fact request for some time out, if I need to discuss something with Mr Mkwanzazi we will be entirely in your hands in that regard Chair, so thank you very much for being here today.

**CHAIRPERSON:** Yes, no, no that is fine, no thank you very much. I do hope that nothing will happen that we  
20 require that we interrupt Mr Mkwanzazi's evidence for anything but if something does arise, we will deal with it at that stage.

I do want to say you mentioned you made reference to Transnet and Mr Mkwanzazi the fact that he has tried to obtain some documents, or you have tried to get some

documents. I do know that soon the Commission will be communicating with Mr Mkwanazi with regard to some of the issues at Transnet and there are some documents that the Commission has asked for and obtained from Transnet, so there may be others that you may have wanted and you didn't get or you did get, but I just thought I must just let you know that I am aware that the Commission will be in communication with Mr Mkwanazi in regard to some of the Transnet issues, and I am happy that his commitment to  
10 cooperate with the Commission and to assist the Commission has been reiterated by you as well.

Okay, thank you.

**ADV HOFMEYR:** Thank you Chair, if I may then hand over to my learned friend, Ms Armstrong.

**CHAIRPERSON:** Yes thank you.

**ADV ARMSTRONG:** Thank you.

**CHAIRPERSON:** I must just say that we will have an oath or affirmation administered to Mr Mkwanazi even though at some stage in the future he will take an oath in person  
20 here but we will do one today as well.

Thank you very much, I think then if we can have Mr Mkwanazi the witness appearing now on the screen. Where is the person who is controlling, oh, okay, so it might not be as quick as one thinks.

**ADV ARMSTRONG:** Mr Mkwanazi can you – could you just

– thank you, thank you.

**CHAIRPERSON:** Okay?

**MR MKWANAZI:** Is that fine?

**CHAIRPERSON:** Yes, if you can rise and then either an oath or an affirmation will be administered, I think you can just listen.

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

**MR MKWANAZI:** Mafika Edmund Mkwanazi.

**REGISTRAR:** Do you have any objections in taking the  
10 prescribed affirmation?

**MR MKWANAZI:** I do not have any objection.

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

**MR MKWANAZI:** I truly affirm.

**MR MAFIKA MKWANAZI:** [d.s.s.]

**CHAIRPERSON:** Thank you very much, you may be seated.

20 **MR MKWANAZI:** Okay, alright, thanks.

**ADV ARMSTRONG:** Thank you Chair.

**CHAIRPERSON:** Yes Ms Armstrong?

**ADV ARMSTRONG:** Thank you Chair.

**CHAIRPERSON:** Do you want to properly place yourself on record for the first time?

**ADV ARMSTRONG:** Yes thank you Chair, indeed.

**CHAIRPERSON:** Okay.

**ADV ARMSTRONG:** Chair so I am Amy Armstrong, I am part of the legal team of the Commission, and before we get started given the nature of the medium if there are means to pin Mr Mkwanazi – there you go – I would just like to confirm three things with Mr Mkwanazi about where he is given that we are using this medium. The first thing I wanted to confirm is indeed as we heard from his legal  
10 representative, can you confirm Mr Mkwanazi that you are by yourself in the room?

**MR MKWANAZI:** Yes it is only myself, nobody else.

**ADV ARMSTRONG:** Okay. And can you confirm that you will not be receiving any messages during your testimony and if you do receive messages to please bring it to the attention of the Chair.

**MR MKWANAZI:** No I will not be receiving messages, naturally except for the documents that you forwarded to me.

20 **ADV ARMSTRONG:** Indeed, and that is the third thing I would like you to confirm is just that you will only be looking at the documents and exhibits that have been provided to you and no other documentation, can you confirm that?

**MR MKWANAZI:** That is correct.

**ADV ARMSTRONG:** Thank you very much Mr Mkwanazi. So just to orientate Chair you and Mr Mkwanazi about the exhibits and files we will be using, so the first and the main will be Mr Mkwanazi's statements and other documents in MM7. Then we will be turning to two other files, only two other files, one being EXHIBIT MM3, which was Mr Pamensky's evidence and the other one will be MM6 which was Mr Tsotsi's evidence before the Commission and Mr Mkwanazi you have all three of those  
10 files with you, is that correct?

**MR MKWANAZI:** That is correct.

**ADV ARMSTRONG:** Okay. As my learned friend, Ms Hofmeyr, indicated I have created a list of the different documents in the order that they appear in this file, and I have given them labels, and I will not necessarily be referring to them in the order in which they appear in here but as I go to them I will read what the label is into the record as to what the exhibit is called.

**CHAIRPERSON:** Yes, we have already done Mr  
20 Mkwanazi's statement but for any other documents as and when you have to refer to them you will have to deal with them at that stage.

**ADV ARMSTRONG:** Thank you Chair, so we call the first one MM7, could I correct that just to call it MM7A, this statement on page 1 and 2.



**CHAIRPERSON:** Well we said MM7, is that because you intend to make the others MM7B and onwards?

**ADV ARMSTRONG:** Indeed Chair.

**CHAIRPERSON:** Okay, we will then amend what I said earlier on, Mr Mkwanazi's statement will be Exhibit MM7A, okay.

**ADV ARMSTRONG:** Thank you Chairman. So before we begin Mr Mkwanazi could you just explain what your qualifications are?

10 **MR MKWANAZI:** I have two university degrees, one from the University of Zululand which is a BSC in Mathematics and Applied Mathematics and the second one is a degree from the University of Natal in Electrical Engineering, and then I do have a couple of diplomas from – it is from Wits University etcetera, but those are short duration diplomas.

**CHAIRPERSON:** Well on a lighter note I don't know about you Ms Armstrong but I went to the same two universities too

20 **ADV ARMSTRONG:** My goodness, yes, that is interesting Chair. So then Mr Mkwanazi if you could explain, you're obviously as was stated earlier you are going to be going to be giving testimony in your capacity, your involvement in both Transnet and Eskom.

**MR MKWANAZI:** That is correct.

**ADV ARMSTRONG:** But let us just begin with Transnet.

Could you just explain your role at Transnet?

**MR MKWANAZI:** Advocate Amy you – I have been with Transnet maybe 19 or 20 years because I started there in 1996 as an Executive Director, then I left in 2003 being a Group CEO. Then I rejoined Transnet in December 2010 and I left in December 2014, so I have had different types of roles the latest one being that of being non-executive Chairman from 2010 to 2014.

**ADV ARMSTRONG:** Thank you Mr Mkwanazi, so can I just  
10 take you in this MM7 bundle, I would like to take you to page 27.

**MR MKWANAZI:** That would be MM027?

**ADV ARMSTRONG:** That is correct.

**MR MKWANAZI:** Am I correct, okay. Okay, I have got a computer in front of me, scrolling down, let me see I am on page 25, 27, yes I am there.

**ADV ARMSTRONG:** Thank you Mr Mkwanazi. The purpose of this is just to indicate Chair this has been labelled in my file which we will ensure is in all the files,  
20 this is Exhibit MM7D.

**CHAIRPERSON:** Is this letter an exhibit on its own or is it an attachment?

**ADV ARMSTRONG:** Indeed, it is an exhibit on its own

**CHAIRPERSON:** So you would like it to be admitted as Exhibit MM7D.

**ADV ARMSTRONG:** 7D, that is correct.

**CHAIRPERSON:** Is it dated 16 ...[intervenes]

**ADV ARMSTRONG:** December 2010, indeed.

**CHAIRPERSON:** The letter on Transnet letterhead appearing at page 27 is it a letter or just a note.

**ADV ARMSTRONG:** It is an announcement by Transnet.

**CHAIRPERSON:** It is a statement?

**ADV ARMSTRONG:** Yes.

**CHAIRPERSON:** Ja, the statement on Transnet letterhead  
10 appearing at page 27 will be admitted as Exhibit MM7D, is  
that right?

**ADV ARMSTRONG:** It is MM7D.

**CHAIRPERSON:** Ja, okay, that's fine.

**ADV ARMSTRONG:** Thank you and Mr Mkwanazi the  
purpose of showing that to you is just as a reminder that  
this is an announcement from Transnet on 16 December  
2016 saying that a new Chairman was to – and that would  
be you Mr Mkwanazi, is to assume executive  
responsibilities until a permanent CEO is appointed. And  
20 then it states ...[intervenes]

**MR MKWANAZI:** Yes.

**ADV ARMSTRONG:** ...in the first paragraph:

“You will be tasked with that additional  
responsibility of Group Chief Executive with effect  
from 16 December 2010.”

Is that correct?

**MR MKWANAZI:** That is correct yes.

**ADV ARMSTRONG:** Okay and ...[intervenes]

**CHAIRPERSON:** I'm sorry, just to connect this with something else, would it be correct Mr Mkwanazi to say when you became a non-executive director, chairman of the board in 2010, you were coming in together with a new board of Transnet?

**MR MKWANAZI:** That is correct Chair.

10 **CHAIRPERSON:** Yes okay, thank you.

**ADV ARMSTRONG:** So just to confirm Mr Mkwanazi you are a non-executive Chairman of the Board from December 2010 to 2014, but you have a brief period from December 2010 as being the – an Executive, Acting Executive of the Chief – Group Chief Executive is that correct?

**MR MKWANAZI:** That is correct.

**ADV ARMSTRONG:** And then ...[intervenes]

**CHAIRPERSON:** I'm sorry, the proper title would have been Acting Chief Executive or Acting Group Chief Executive?  
20

**MR MKWANAZI:** Acting Group Chief Executive.

**ADV ARMSTRONG:** Acting Group Chief Executive, thank you. I am indebted. And then in 16 February 2011 I believe that a Mr Brian Molefe was appointed, does that accord with your memory as the Group Chief?

**MR MKWANAZI:** Ja, it is that time yes.

**ADV ARMSTRONG:** Okay so it is just in that period from December to February 2011 that you were serving as the Group Chief Executive.

**MR MKWANAZI:** That is correct.

**ADV ARMSTRONG:** Okay, thank you. And then Mr Mkwanazi just your role at Eskom.

**MR MKWANAZI:** Yes?

**ADV ARMSTRONG:** What was that?

10 **MR MKWANAZI:** I was non-Executive Director, I had been there before by the way in the late nineties, I was on the Board of the Eskom Council then, they were called Eskom Council, it could have been 1995 or 1996, it was for a brief period, maybe two years. Then in 2011, June - ja 2011, around June, the Minister appointed me to the Board of Eskom as a non-Executive Director.

**ADV ARMSTRONG:** And do you recall the end of your tenure on the Board, the date?

**MR MKWANAZI:** I think it was December 2014.

20 **ADV ARMSTRONG:** That is my understanding, thank you Mr Mkwanazi. So let us begin then with your evidence regarding Transnet and that is – let's go back to your statement which is page 1 of that bundle that you are looking at.

**MR MKWANAZI:** Yes.

**ADV ARMSTRONG:** That is MM7A, Exhibit. And then Mr Mkwanzazi can you just turn to the second page where your signature appears

**MR MKWANAZI:** Yes.

**ADV ARMSTRONG:** Can you just confirm that that is your signature?

**MR MKWANAZI:** Yes it is my signature.

**ADV ARMSTRONG:** Okay and then Mr Mkwanzazi I see at the top of the beginning of the statement your surname is  
10 spelt incorrectly, it has got an “h” in it, just the very first page, Mkhwanazi, so I take it that is incorrect?

**MR MKWANAZI:** Yes.

**ADV ARMSTRONG:** We must just correct that.

**MR MKWANAZI:** No, no that is incorrect, there is no “h”.

**ADV ARMSTRONG:** Great, and then besides ...[intervenes]

**CHAIRPERSON:** But just out of curiosity is the position that whether it is written with an h or without an h it is the same people, so in other words ...[intervenes]

20 **MR MKWANAZI:** It is the same family Chair, because in my family there are four children, two of the children have an “h”, two of the children do not have an “h”, it was the Home Affairs that decided what.

**CHAIRPERSON:** I was about to ask whether it was a Home Affairs error. Okay, alright.

**ADV ARMSTRONG:** Thank you Mr Mkwanazi so besides that correction do you have any other corrections at the outset you would like to make to this statement?

**MR MKWANAZI:** No

**ADV ARMSTRONG:** Okay so then do you confirm that under oath that this statement is true and correct?

**MR MKWANAZI:** It is yes.

**ADV ARMSTRONG:** Thank you. Okay so as my learned friend, Ms Hofmeyr explained any meeting with a member  
10 of the Gupta Family is of great interest to the Commission and we would like to just expand upon the – what you – the content of this statement and make sure that that we understand in detail everything that happened on each of the two meetings that you deal with in this statement, so I am going to be taking you through those events step by step.

**MR MKWANAZI:** Okay.

**ADV ARMSTRONG:** And of course, Mr Mkwanazi I know this was a long time ago, the statements starts in January  
20 2011, but just if you could give us as much detail as you can recall we would appreciate that. So ...[intervenes]

**MR MKWANAZI:** Yes.

**CHAIRPERSON:** Well maybe let us say Mr Mkwanazi did you ever meet with the Guptas?

**MR MKWANAZI:** Yes I have Chairperson.

**CHAIRPERSON:** Ja, do you remember how many times you met with them?

**MR MKWANAZI:** Ja, I have Chairman, I met them twice around that time when they were talking me going to their house, then when we say Guptas it is an interesting family, yes I met them that.

**CHAIRPERSON:** Ja, interesting family.

**MR MKWANAZI:** But then I met them at some of their events, if I can call them like at the TNA breakfasts, I met  
10 their employees, not necessarily the Gupta Family.

**CHAIRPERSON:** Yes, okay, let's talk about the times when you met them in their house, in their residence.

**MR MKWANAZI:** Yes.

**CHAIRPERSON:** Tell us about the first visit to their house, if you visited their house, tell us how it came about and give me as much information about what you discussed with them as possible.

**MR MKWANAZI:** Yes, I got a call in January 2011 from a  
20 Mr Tony Gupta who indicated to me that he had got my cell phone number from Minister Gigaba and requested to see me. I agreed to see him or – and then they gave me details of where they stayed and I – we agreed on a date, I don't recall the date exactly and I went to visit them at their house somewhere in Saxonwold if I recall, and yes on arrival at that gate we met the security, then I come



through the gate and then I drive through something like a drive through where I then stop the car, told to stop the car in front of an entrance, get out of the car, then walk up the stairs because the protocol there seemingly was you drive your car in, then they drive the car to where they park it. You don't know where exactly they park it.

So then I got into the house and there was another protocol, I recall I think I had to take off my shoes and then went to this venue where this meeting was going to be held.

10 And in that room, I then got introduced to the people I was going to meet. One of them was Tony Gupta and the other was Duduzane Zuma. Upon meeting them we had what I would call general discussions or pleasantries. They introduced themselves told me that they were involved in mining, computers. They employed well over 10 000 people in the country in terms of whatever they were doing and of course I had reciprocate I told them that no I am an entrepreneur and at that time I was working on a project to

20 of property development and therefore we shared that and then we came to the main purpose of the discussion which was – they made me aware that they are friends of President Zuma which is fine and then they made me aware that they are aware that Transnet has a marketing budget of R1 billion. I am not sure where they got that from and they

therefore wanted to be allocated 30 – 50% of that marketing budget. And of course, I told them that Transnet has got a method of procuring anything through a procurement manual. They issue RFI's, RFQ's and RFP's – request for proposals etcetera before they take decisions on things like those as a matter of principle. But also, me as an individual even though I was seeing them at that time you need to understand I might have been acting GCE but I did not behave like an acting GCE I behaved like a non-  
10 executive Chairman. So I made them aware that hold it you are actually talking to the wrong person. Because I am non-executive chairman. People who get involved in procurement matters are executives and in that case whatever their levels are but it is executives in the various areas of the organisation. And of course they then went about telling me how close they are to the President. They – they meet him once a week. He comes to their social functions and yes also as he comes to their social function you could see that these people are deep friends with the  
20 President. They even shared that at virtually a week he visits their house etcetera, etcetera. And therefore, in terms of the – they entertaining that they do they claim that occasionally the President sings for them Umshini Wami, Umshini Wami. Naturally whatever they were saying I – well did not go down well with me. I felt they were abusing their

friendship with the President and – but I did ask Duduzane to confirm if these people are actually friends of your father and he did confirm. And that in a nutshell would be how we met but it did not – the meeting did not end on a good note because they – they were too boisterous as if they control a lot of things that I knew they were lying about ja. So yes that was my first meeting with them on that first occasion. Then post that meeting.

**CHAIRPERSON:** Maybe ..

10 **MR MKWANAZI:** Because the – let me pause.

**CHAIRPERSON:** Okay ja maybe let us deal with that first meeting and finish before we move to the next meeting.

**ADV ARMSTRONG:** Indeed Chair.

**CHAIRPERSON:** Ms Armstrong.

**ADV ARMSTRONG:** Thank you Chair. So just a few details I would like you just orientate us in times. So this is January 2011 which means you have just been appointed as a Non-Executive Chair you are acting Group Chief Executive and this is just after that and you arrive at – first of all you get a  
20 phone call. I just want to confirm. Do you recall exactly what Mr Tony Gupta said to you in that call?

**MR MKWANAZI:** Ja he confirmed that you are Mr Mkwanazi etcetera, etcetera. I said ja. And he said we have been given your number by Mr Mahlusi Gigaba and we would like to meet you. Then I said okay fine I can meet you. It is not

a big issue. Ja.

**ADV ARMSTRONG:** Had you heard of Mr Gupta before this phone call?

**MR MKWANAZI:** Yes I had read about them in terms some of their involvement with the some of the black business people in the country around that time. Yes I had read about them.

**ADV ARMSTRONG:** So why did you ...

**MR MKWANAZI:** But I did not know which one in terms of –  
10 it was just like the Gupta family who deal with various people at the time. Some big names in the BEE space if I can use the word.

**ADV ARMSTRONG:** Thank you. And why did you agree to attend this meeting? I mean for so – there are summoning you to – to their home and is – was that normal? Why did you feel that you should attend that meeting?

**MR MKWANAZI:** Do not forget I felt I should attend this meeting because you cannot quote my Minister and then I do not respond in a particular way. So yes I felt I should attend  
20 that meeting because somehow, I already knew that these are important people. I read about some of the investments that they had done in the country. So yes I felt I had to meet them.

**CHAIRPERSON:** Before you proceed Ms Armstrong. You said that Mr Gupta – Tony Gupta said he got your cell phone

number from...

**MR MKWANAZI:** My details.

**CHAIRPERSON:** From your – your details from Minister Gigaba, is that right?

**MR MKWANAZI:** That is correct.

**CHAIRPERSON:** Is it true that at that time Minister Gigaba was Minister of Public Enterprises?

**MR MKWANAZI:** That is correct Chair.

**CHAIRPERSON:** Under which Transnet fell? Public  
10 Enterprises.

**MR MKWANAZI:** Yes Chair. Yes.

**CHAIRPERSON:** And Transnet fell under Public Enterprises Department, is that right?

**MR MKWANAZI:** That is correct Chair. Yes.

**CHAIRPERSON:** Yes. Now had you given Mr Gigaba your cell phone number before?

**MR MKWANAZI:** Yes.

**CHAIRPERSON:** Tony Gupta.

**MR MKWANAZI:** Mr Chairman I had.

20 **CHAIRPERSON:** You had given it to him.

**MR MKWANAZI:** Because I had met Mr Gigaba around October of that year. I had known Mr Gigaba while he was in the ANC Youth League.

**CHAIRPERSON:** Yes.

**MR MKWANAZI:** So yes.

**CHAIRPERSON:** You had given him your number.

**MR MKWANAZI:** He has got my numbers.

**CHAIRPERSON:** Yes.

**MR MKWANAZI:** That – my numbers for – yes.

**CHAIRPERSON:** Yes. Okay alright. And you were speaking to Mr Tony Gupta as far as you know for the first time when he called you on this occasion or you had had some interactions with him before?

**MR MKWANAZI:** No I had never spoken to him before.

10 **CHAIRPERSON:** Before. Okay thank you.

**ADV ARMSTRONG:** Thank you Chair.

**CHAIRPERSON:** Ms Armstrong.

**ADV ARMSTRONG:** And I just want to talk a bit about what the house in Saxonwold looked like to you. So from the outside when you approached it do you have any memory of what it looked like to you?

20 **MR MKWANAZI:** All I recall I think it was a white painted house or light grey. It had big gates with very high pillars on both sides and I think it had a guard house as well somewhere in there. And naturally I only saw a portion of the house maybe 5% of the house. I did not see the rest of it because all I saw was how to get in, drive to the entrance that is basically it. In the house and then into the meeting room.

**ADV ARMSTRONG:** Thank you. And Mr Mkwanazi when you

– you got out the car and you handed over your keys to the valet were there any other security protocols that took place?

**MR MKWANAZI:** Not too many but all I can indicate it looked like a highly guarded home. Because even as you entered there was maybe two security at the gate – two security personnel. And of course, you entered but what was interesting about just a strange observation I do not think I saw a black security guard and I do not think I saw a black  
10 worker inside who gave tea or things like those. So yes that is how I remember the house. And then I went inside and went into that board room where we were offered Coke Cola to drink etcetera. Ja but that is it.

**ADV ARMSTRONG:** Thank you. And Mr Mkwanazi did you keep your cell phone on you at all times?

**MR MKWANAZI:** My cell phone was on me at all times. They did not demand it or something like that ja.

**ADV ARMSTRONG:** Thank you. And when you walked into the meeting room – so – could you just explain. You get to  
20 the entrance of the house and then how do you – how does it look when you walk in the door?

**MR MKWANAZI:** That was how many years ago. Chair I am not sure now.

**CHAIRPERSON:** About ten years ago.

**MR MKWANAZI:** Frankly...

**ADV ARMSTRONG:** Indeed 10 years.

**CHAIRPERSON:** Ja.

**MR MKWANAZI:** You are asking me a difficult question.

**ADV ARMSTRONG:** No indeed.

**MR MKWANAZI:** The next thing you will ask me was there a portrait, what was the colour of the wall? How many corners were there when you turned right or turned left? I do not recall.

**ADV ARMSTRONG:** Indeed.

10 **CHAIRPERSON:** Okay.

**ADV ARMSTRONG:** Indeed Mr Mkwanazi.

**CHAIRPERSON:** Let us ask you another question. At this meeting apart from Mr Tony Gupta and Mr Duduzane Zuma and yourself was there anybody else?

**MR MKWANAZI:** No there was nobody and it was just the three of us.

**CHAIRPERSON:** Yes. Okay alright. You have already told me up to a certain point that you exchanged pleasantries.

**MR MKWANAZI:** Ja.

20 **CHAIRPERSON:** Or – general discussion but then Mr Tony Gupta then raised the issue of – or said that they were aware of Transnet's marketing budget, is that correct?

**MR MKWANAZI:** That is correct.

**CHAIRPERSON:** Of R1 billion. That is what they said, is that right?



**MR MKWANAZI:** Yes that is correct.

**CHAIRPERSON:** Was it factually correct that that was the marketing billion – marketing budget of Transnet at the time?

**MR MKWANAZI:** Chair – I did not know then but that was so incorrect and false. Why I would know because at some stage I was on the South African Airways board and the entity within Transnet at the time that spent a lot of money on marketing was actually SAA. And in 2010 or 2011 SAA was out of Transnet by that time so this figure of R1 billion  
10 was a thumb suck.

**CHAIRPERSON:** Oh that is quite interesting because with regard to GCIS I heard evidence last year I think it was or it might have been towards the end of 2018 that from Mr Themba Maseko who was Chief Executive Officer of GCIS at a certain stage that when he met with Ajay Gupta in Saxonwold in 2010 Ajay Gupta told him exactly the correct amount budget that his department namely GCIS had and he was surprised at that. But I think you are saying that certain what Tony Gupta said was not the correct budget for  
20 Transnet?

**MR MKWANAZI:** Chairman it would not have been even though I – at that time I had not even checked what amount the budget was. But my knowledge of that entity was deep enough to know that this figure of R1 billion is just a thumb suck.

**CHAIRPERSON:** Okay. Yes. Now..

**ADV ARMSTRONG:** Sorry Chair just on that issue.

**CHAIRPERSON:** Yes.

**ADV ARMSTRONG:** May I just direct Mr Mkwanazi to an affidavit that we have procured at page 37 of the bundle and that is from Mr Livhumhuwami Makhode.

**CHAIRPERSON:** I am sorry page 37?

**ADV ARMSTRONG:** 34.

**CHAIRPERSON:** 34?

10 **ADV ARMSTRONG:** That is correct. 34.

**MR MKWANAZI:** Is that MM?

**CHAIRPERSON:** MM34.

**ADV ARMSTRONG:** MM34 of that same bundle.

**CHAIRPERSON:** You will find that most of the time Mr Mkwanazi we will not mention MM we will just say 34 but we will be meaning MM34.

**MR MKWANAZI:** Oh.

**CHAIRPERSON:** Yes.

**MR MKWANAZI:** I am on that page yes.

20 **CHAIRPERSON:** Ja okay.

**ADV ARMSTRONG:** Thank you. And Chair this is an affidavit that does not seem to be contentious but we seek it to be provisionally admitted.

**CHAIRPERSON:** Yes this would be Exhibit.

**ADV ARMSTRONG:** This is Exhibit MM7E.

**CHAIRPERSON:** The affidavit of Livhumwami Tommy Makhode, L-i-v-h-u-m-h-u-w-a-m-i Tommy Makhode, M-a-k-h-o-d-e which appears at page 34 will be admitted and marked as Exhibit MM20 – no.

**ADV ARMSTRONG:** MM7

**CHAIRPERSON:** MM7

**ADV ARMSTRONG:** E.

**CHAIRPERSON:** E. Okay thank you.

**ADV ARMSTRONG:** Thank you.

10 **CHAIRPERSON:** Yes.

**ADV ARMSTRONG:** And Mr Mkwanazi if you turn to the next page the budgets are set out there for Transnet's marketing and advertising and you will see that in 2010 the total marketing budget was R27 005 399.00 and in 2011 the total spend marketing budget was R95 530 394.00. So you were correct to be sceptical about those figures. They are off by a factor of at least 10 in 2011 and by more than that for 2010.

**CHAIRPERSON:** Yes.

20 **MR MKWANAZI:** Thank you for that clarification.

**CHAIRPERSON:** Yes. Ms Armstrong.

**ADV ARMSTRONG:** Thank you Chair.

**CHAIRPERSON:** On that first meeting do you still have questions?

**ADV ARMSTRONG:** Thank you Chair. Mr Mkwanazi I just

want to ask if when you entered the room and Mr Duduzane Zuma and Mr Gupta were there did they introduce themselves and did you know who they were before you entered that room from Mr Zuma in particular as you indicated you had not heard from Mr Gupta before?

**MR MKWANAZI:** Duduzane I knew the name but we had never met.

**ADV ARMSTRONG:** Okay thank you.

**MR MKWANAZI:** So yes I met him and Tony Gupta I heard  
10 the names – even right now they – that two of them I am not sure what their names are but one is light complexion, the other one is a little bit darker. So yes I met Tony Gupta then and that is it.

**ADV ARMSTRONG:** Thank you.

**MR MKWANAZI:** And of course, I did meet Duduzane again at a different second meeting.

**ADV ARMSTRONG:** Thank you. And did they – when they were – when Mr Gupta was speaking about his relationship to President Zuma did, he mention any other relationship to  
20 members of Parliament or Cabinet, anything else about his influence?

**MR MKWANAZI:** They did try to – to indicate that they are friends with cabinet Ministers and members of Parliament etcetera, etcetera and ja but in my view they were like trying to portray a figure of, we are these important people that we

are friends with your cabinet Ministers. It did not intimidate me or anything. Even when they said they are friends with the President I was not at all intimidated.

**ADV ARMSTRONG:** And when you mentioned your business development in KZN did you – did they indicate that they were interested at all in investing in that business?

**MR MKWANAZI:** Sort of – they said they would like to look into it but not that they would invest. Ja they – he said they would like to know more about it but that whole thing did not  
10 get off the ground whatever I was trying to do in KZN.

**ADV ARMSTRONG:** And when they asked you about the marketing budget of Transnet and they asked to have – I think you said 30 – 50% allocated to the New Age Newspaper.

**MR MKWANAZI:** Yes to them ja.

**ADV ARMSTRONG:** Was this – what was the tone this? Was this a request? Something they expected? How did you interpret it?

**MR MKWANAZI:** Do not forget in my interpretation of their  
20 approach they had no clue about how business works – zero clue. They behaved as if Transnet is like a spaza shop who when somebody comes and say give me 30% of this we just give. So they had no clue about business protocols, how to run businesses. So which is why then even when they came with that figure of R1 billion they asked for this 30 – 50% I

could see that for some reason these people have never been in business and now I must educate them that this is how an organisation like Transnet procures for services whatever services they are. And of course, I did indicate to them that we – Transnet procures in a particular way following a – a procurement manual.

**ADV ARMSTRONG:** And did you suggest during the course of the meeting or at the end that you wanted to have a second meeting?

10 **MR MKWANAZI:** Yes I did because from where I sat I felt that the loop is not properly closed. I personally wanted that somebody from within the Department be present to hear what I call these dreamers talking about R1 billion marketing budget and asking for 30 – 50% of that. So I did say I would like to have a second meeting with you guys.

**ADV ARMSTRONG:** Okay thank you Mr Mkwanzazi. So after that meeting so you want...

**CHAIRPERSON:** Before...

**ADV ARMSTRONG:** Yes certainly Chair.

20 **CHAIRPERSON:** Before we move onto the next meeting you – did you say that they said that Mr Zuma who was President at the time used to visit their house once a week?

**MR MKWANAZI:** Almost weekly yes.

**CHAIRPERSON:** Almost weekly?

**MR MKWANAZI:** Ja.

**CHAIRPERSON:** That is what they said.

**MR MKWANAZI:** They said that yes.

**CHAIRPERSON:** Yes. Now in terms of the discussion there you have been using they I think most of the time.

**MR MKWANAZI:** Oh it is one guy.

**CHAIRPERSON:** Was it both of them.

**MR MKWANAZI:** It is Tony.

**CHAIRPERSON:** Was it both of them speaking namely to ...

**MR MKWANAZI:** No, no. Duduzane never uttered a word.

10 **CHAIRPERSON:** He never uttered a word?

**MR MKWANAZI:** Never uttered a word.

**CHAIRPERSON:** Well it was Tony Gupta who was talking?

**MR MKWANAZI:** Tony Gupta was talking. At some stage I had to ask Duduzane are these people telling the truth about their relationship with your father. That is the only time he opened his mouth and he confirmed it that they are friends with the President.

20 **CHAIRPERSON:** Yes. Well that is interesting that you say that because I have had quite a few – I have heard evidence from quite a few people who said they had been to meetings with the Tony – Mr Tony Gupta and Mr Duduzane Zuma at the Gupta residence and most if not all of whom have said during the discussions that they had at such meetings Mr Duduzane Zuma was silent and did not say much. One of such witnesses was Mr Jonas who said he had a meeting

with Duduzane Zuma and of course in his case there was also Mr Hlongwane and on his version that is Mr Jonas' version there was also a Gupta brother there. He could not say which one but it would appear that if there was – well actually I think Mr Duduzane Zuma and Mr Hlongwane said that on the occasion when they met with Mr Jonas Tony Gupta was the only Gupta brother who was around. So Mr Jonas said during his meeting with them Mr Duduzane Zuma did not say much. Mr Dukwana a former MEC from the Free State also gave evidence of a meeting which he said he had at the Gupta residence with Mr Tony Gupta and Mr Duduzane Zuma. He too said Mr Duduzane Zuma did not say much in that meeting. There must – I think there is another third person maybe even fourth who have given evidence along the same lines also that at these meetings Mr Duduzane Zuma would be very quiet and Mr Tony Gupta would be the one doing the talking. So you are giving evidence to the same effect about Mr Duduzane Zuma. Is that right?

**MR MKWANAZI:** That is correct Chair. He was abnormally silent.

**CHAIRPERSON:** Yes. Now one of the things that you have said and you must just confirm in case I did not understand. Did you say that they and I assume now I must say Mr Tony Gupta because you say Mr Duduzane Zuma was quiet most of the time.



**MR MKWANAZI:** That is correct.

**CHAIRPERSON:** Did you say Mr Tony Gupta said that sometimes when Mr Zuma would be in their house they would ask him to sing Umshini Wami for them, is that what you say he said?

**MR MKWANAZI:** Yes I said so that when I say in their house, at their functions. I do not know what functions that there is.

**CHAIRPERSON:** Oh at their functions ja. Yes.

10 **MR MKWANAZI:** It is like maybe they entertain a lot, call people to a hall or gatherings, yes he did.

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

**ADV ARMSTRONG:** Thank you Chair.

**CHAIRPERSON:** We can move then to the second meeting. Tell me about the second meeting that you had with them?

**MR MKWANAZI:** Thank you Chair. Naturally as I indicated post this meeting when I got the request then to that second meeting, I did brief Advocate – the good advocate Mhlangu that Mhlangu look I have been – I have a first meeting with  
20 Tony and I want you to be present because...

**CHAIRPERSON:** But tell us who?

**MR MKWANAZI:** I want you to – I want to have a witness.

**CHAIRPERSON:** Just tell us who Advocate Mhlangu was?

**MR MKWANAZI:** He was the advisor to Minister Gigaba.

**CHAIRPERSON:** Okay alright and before you proceed just

tell us once again – tell me once again how the second meeting came about? I seemed to hear earlier on that you were saying you asked for the second – another meeting? So just tell me how it came about.

**MR MKWANAZI:** Yes the first meeting Chair did not go very well because somehow, I got angry when – in my interpretation they were beginning to denigrate my President. So I got very agitated. So the first meeting did not go very well. Then they suggested that we meet again  
10 and I agreed because in my mind then I knew that I wanted to bring a witness to see these types of business people. So I did brief Advocate Mahlangu that there is a meeting I want you to come to it to be a witness at – so that you see how some people behave under the guise of being sent by – or being – having got my phone numbers from Minister Gigaba. So yes he agreed to join me at that particular date.

**ADV ARMSTRONG:** Sorry Mr Mkwanzazi you say in your statement I was contacted for a second meeting. So did somebody call you just to...

20 **MR MKWANAZI:** Yes they did. They did and I said I am coming and I am going to bring a witness with.

**ADV ARMSTRONG:** And who was that that called you?

**MR MKWANAZI:** Tony Gupta.

**ADV ARMSTRONG:** Thank you. Thank you Chair. So you took the Minister's special advisor with you.

**MR MKWANAZI:** That is correct.

**ADV ARMSTRONG:** Yes. Why did you not speak to Minister – former Minister Gigaba about this directly?

**MR MKWANAZI:** You know maybe I am a strange individual. I do not elevate what I can call nonsensical stories to the Minister. To me these people were talking nonsensical stories which is why I just needed somebody. It could have been another person as long as maybe that somebody was at Public Enterprises. If in case it is true that the Minister gave  
10 these people my number so that is why then I asked Mahlangu – Advocate Mahlangu to accompany me.

**ADV ARMSTRONG:** And then at the second meeting did you drive together with Mr Mahlangu?

**MR MKWANAZI:** No, no. We – no we did not drive together. I used my car and most probably used his as well. Because we would not have come from the same direction.

**ADV ARMSTRONG:** So did he do – thank you. Did he join you at the beginning of the meeting?

**MR MKWANAZI:** I am not sure if I found him there or if he  
20 found me there but we were both at that meeting at around about that time that was set for the meeting. And then we – ja.

**ADV ARMSTRONG:** Was that attended again by the same people or different people?

**MR MKWANAZI:** No, no Tony Gupta and Duduzane Zuma.

**ADV ARMSTRONG:** Thank you. And – so what was the content of this meeting? What did you discuss?

**MR MKWANAZI:** No it is a follow up and I explained why Advocate was there so that in front of an official of the Department who works for the Minister I am explaining to you guys as whatever the company TNA or Sahara whatever they are called that this is how Transnet procures. They did repeat their request that they are requesting this 30 – 50% of the marketing.

10 **BREAK IN RECORDING – WITNESS INAUDIBLE**

**MR MKWANAZI:** [Indistinct]

**ADV ARMSTRONG:** Sorry, Mr Mkhwanazi. You say in our statement “I was contacted for a second meeting”. So did somebody call you just to confirm that?

**MR MKWANAZI:** [Indistinct]

**ADV ARMSTRONG:** And who was that who called you?

**MR MKWANAZI:** [Indistinct]

20 **ADV ARMSTRONG:** Thank you. Thank you, Chair. So you took the minister’s special advisor with you. Why did you not ...[intervenes]

**MR MKWANAZI:** [Indistinct]

**ADV ARMSTRONG:** Yes. Why did you not speak to minister... former Minister Gigaba about this directly?

**MR MKWANAZI:** [Indistinct]

**ADV ARMSTRONG:** And then at the second meeting, did

you drive together with Mr Mahlangu?

**MR MKWANAZI:** No, no. [Indistinct]

**ADV ARMSTRONG:** So did he ...[intervenes]

**MR MKWANAZI:** [Indistinct]

**ADV ARMSTRONG:** Thank you. Did he join you at the beginning of the meeting?

**MR MKWANAZI:** I am not sure ...[indistinct]

**ADV ARMSTRONG:** And with...[intervenes]

**MR MKWANAZI:** [Indistinct]

10 **ADV ARMSTRONG:** Was that attended again by the same people or different people?

**MR MKWANAZI:** No, no, no. [Indistinct]

**ADV ARMSTRONG:** Thank you. And so what was the contents of this meeting? What did you discuss?

**MR MKWANAZI:** [Indistinct]

**ADV ARMSTRONG:** Did you mention again about the relationship with President Zuma?

**MR MKWANAZI:** Not in so much detail but he did confirm that, yes. [Indistinct]

20 **ADV ARMSTRONG:** And what was Mr Mahlangu's reaction to this?

**MR MKWANAZI:** [Indistinct]

**ADV ARMSTRONG:** So once again, Mr Mkhwanazi, you are saying that Mr Duduzane Zuma remained silent throughout the meeting?

**MR MKWANAZI:** [Indistinct]

**ADV ARMSTRONG:** And ...[intervenes]

**CHAIRPERSON:** And... and ...[intervenes]

**ADV ARMSTRONG:** Sorry.

**CHAIRPERSON:** When you say no comment, you mean there was no comment from him? You are not saying you are not commenting to the question? [laughs]

**MR MKWANAZI:** [laughs]

**ADV ARMSTRONG:** [laughs] No, Chair.

10 **MR MKWANAZI:** [laughs]

**CHAIRPERSON:** [laughs] You say there was no comment from him during the meeting?

**MR MKWANAZI:** [Indistinct]

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

**ADV ARMSTRONG:** Thank you, Chair.

**CHAIRPERSON:** Was the purpose of the second meeting well-know to both sides, namely yourself and Tony and Mr Duduzane Zuma? Did you have a common purpose as to what the purpose of the...

20 Did you have a common understanding as to what the purpose of the meeting was? Or is the position that arrangements were made to meet and then we met and we talked what we discussed?

**MR MKWANAZI:** [Indistinct]

**CHAIRPERSON:** Okay, okay, okay.

**ADV ARMSTRONG:** And... Thank you, Chair. And Mr Mkhwanazi, what was your response again to the request?

**MR MKWANAZI:** No, same response that all that, now it is four of us. It is myself, it is Advocate Mashala, Duduzane and Tony. That this is how... of course, I did not know the marketing budget of Transnet net or even in the first meeting.

I did not know because I am only here at Transnet maybe two months. Then I have got to know all these  
10 budgets, et cetera, et cetera. It is impractical.

So I still made them aware that frankly I do not know how big that budget is. Also, the process is you follow a RFP, RFI or RFQ through executives in the company. Not through a non-executive chairman.

**ADV ARMSTRONG:** And what was their reaction to this? What was Mr Gupta's reaction to this?

**MR MKWANAZI:** That they accepted my explanation.

**CHAIRPERSON:** In the first meeting, how did Mr Tony Gupta take your response to their request?

20 **MR MKWANAZI:** I do not think they took it well in the first meeting. That is why then the suggestion was we need to meet again. But even myself, their approach, I did not take it well because they were waving the flag of being friends of the president rather than talking what they want to talk and I was terrible annoyed, ja.

**CHAIRPERSON:** H'm. Okay.

**ADV ARMSTRONG:** Thank you, Chairman. Out of this meeting, did you again speak to the minister about what had meeting at this meeting?

**MR MKWANAZI:** No, [laughs] I did not. As I indicate, I am not a person who speak to the minister every week or every month. I do not do that. I have an agenda and a meeting scheduled if I need to speak to the minister.

**CHAIRPERSON:** So the outcome of the second meeting was  
10 simply that, at least to you, it appeared that they accepted namely Tony to... Tony Gupta and Mr Duduzane Zuma, they accepted that you could not be of assistance to them?

**MR MKWANAZI:** Yes, sort of. But at least I achieved something as well in terms of the fact that I now brought somebody who is close to government, who has explained to these gentlemen that that is not how state-owned entities operate.

**ADV ARMSTRONG:** Did Mr Siyabonga Mhlango... It was Siyabonga Mhlango? Yes.

20 **MR MKWANAZI:** Yes, yes. It is so, ja.

**CHAIRPERSON:** Did he confirm to them that how Transnet procures goods or services, was exactly the way you had stated?

**MR MKWANAZI:** Chairman, I do not think you would have confirmed anything because I doubt if he would have known



himself to.

**CHAIRPERSON:** Oh, okay. Okay.

**MR MKWANAZI:** In terms of how things are done.

**CHAIRPERSON:** Okay.

**MR MKWANAZI:** Because he is an outsider.

**CHAIRPERSON:** Yes, okay.

**MR MKWANAZI:** Ja.

**CHAIRPERSON:** But he was there. He observed. He witnesses what was discussed.

10 **MR MKWANAZI:** He did observe, yes.

**CHAIRPERSON:** He did not say much himself. And the meeting ended.

**MR MKWANAZI:** Ja. Yes, Chair.

**CHAIRPERSON:** Thank you.

**ADV ARMSTRONG:** Thank you. And Mr Mkhwanazi, did you note any change in your relationship with Minister Gigaba after this meeting?

20 **MR MKWANAZI:** No, there was no change because the things that we do... there are certain meetings that we hold, almost like quarterly meetings with him or once in six months meeting with him under certain conditions. Those meetings went ahead. I did not see any change whatsoever in him.

**CHAIRPERSON:** Did you say earlier on before you became a non-executive chairman of the Transnet Board, you had known Minister Gigaba for quite some time and you had

known him quite well?

**MR MKWANAZI:** Yes.

**CHAIRPERSON:** And you knew him quite well? Reasonably well?

**MR MKWANAZI:** Maybe not quite well Chair but I knew him, yes.

**CHAIRPERSON:** But you knew him? Ja, okay.

**ADV ARMSTRONG:** Thank you, Chair. And just before I move to another page. Mr Mkhwanazi, that second meeting,  
10 how long after the first meeting was it?

**MR MKWANAZI:** Maybe two weeks.

**ADV ARMSTRONG:** Thank you. Then Mr Mkhwanazi, I just want to direct you to a news article and that is on page MM37.

**MR MKWANAZI:** Okay.

**ADV ARMSTRONG:** Chair, this MM37, I would like to label EXHIBIT MM7F.

**CHAIRPERSON:** H'm. It is not just labelling.

**ADV ARMSTRONG:** I would like to enter it into the record.

20 [laughs]

**CHAIRPERSON:** You must ask that it be admitted ...[intervenes]

**ADV ARMSTRONG:** Admitted as an exhibit ...[intervenes]

**CHAIRPERSON:** ... as an exhibit MM7...

**ADV ARMSTRONG:** MM7F. Thank you, Chair.

**CHAIRPERSON:** EXHIBIT MM7... What is the letter?

**ADV ARMSTRONG:** F, Chair.

**CHAIRPERSON:** F for fool?

**ADV ARMSTRONG:** That is indeed so. [laughs]

**CHAIRPERSON:** Okay, okay. The Business Day article at page 37 will be admitted as EXHIBIT MM7F.

**ARTICLE IN BUSINESS DAY NEWSPAPER IS HANDED UP AND MARKED AS EXHIBIT MM7F**

**ADV ARMSTRONG:** Indeed Chair.

10 **CHAIRPERSON:** Ja.

**ADV ARMSTRONG:** Thank you.

**CHAIRPERSON:** H'm.

**ADV ARMSTRONG:** So Mr Mkhwanazi, this is dated the 9<sup>th</sup> of June 2011 in the Business Day and the headline is... and it is written by Peter Bruce. The headline is "Chairman of Transnet, Eskom and Denel to go." Are you familiar with this article?

**MR MKWANAZI:** Yes, I am.

20 **ADV ARMSTRONG:** Did you read it when it came out in the Business Day?

**MR MKWANAZI:** [laughs] To read it is an understatement. It was a shocker.

**ADV ARMSTRONG:** Okay. [laughs]

**MR MKWANAZI:** Ja, it is.

**CHAIRPERSON:** [laughs] Well, before we proceed. Ms

Armstrong, I cannot read a word.

**ADV ARMSTRONG:** Oh, okay. Well, Chair ...[intervenes]

**CHAIRPERSON:** In this... in this... on this page.

**ADV ARMSTRONG:** Okay. I think Chair, then we will have this replaced I think in the record but I have... I can read out the relevant portions on the record if that might be helpful now?

**CHAIRPERSON:** That is fine. Do that but see if it is possible later on to ...[intervenes]

10 **ADV ARMSTRONG:** To be replaced.

**CHAIRPERSON:** ...get a clearly legible article in and obtain that ...[intervenes]

**ADV ARMSTRONG:** Indeed, Chair. Indeed. We will do that Chair.

**CHAIRPERSON:** Ja. Okay. So I will rely on you to tell me what the relevant parts says.

**ADV ARMSTRONG:** [laughs] Thank you, Chair. So Mr Mkhwanazi, it starts by saying:

20 "The chairmen of three of South Africa's most ...[intervenes]

**CHAIRPERSON:** I am sorry. Before you do that. Just identify the article. What date, Business Day? What date and so on?

**ADV ARMSTRONG:** So that is the 9<sup>th</sup> of June 2011 in Business Day.

**CHAIRPERSON:** Okay. Alright. Continue.

**ADV ARMSTRONG:** And... thank you, Chair. And it states in the first paragraph:

“The chairmen of three of South Africa’s most powerful state-owned companies, Transnet, Eskom and Denel, are to be removed soon in a dramatic show of force by Public Enterprises Minister Malusi Gigaba...:

Then it says:

10 “The changes were approved at a Cabinet meeting in Cape Town yesterday...”

So that would be on the 8<sup>th</sup> of June 2011.

“Business Day understands that Transnet’s Chairman, Mafika Mkhwanazi will be invited to move to the Board of Eskom as an ordinary member...”

And then I am just skipping to the last paragraph in the article on that page because the rest is about the other SOE’s.

20 We turn to the next page in MM37(1), where the article is finalised. It is just the end of it and it reads:

“It is understood, nevertheless, that Mr Gigaba did not have it all his own way at the Cabinet meeting yesterday.

His proposal to replace Mr Mkhwanazi at Transnet with Iqbal “Rafiq” Sharma was shot down and a new

candidate will have to be found...”

Do you recall this article? Sorry, this conclusion and your reaction to this when you read this?

**MR MKWANAZI:** Yes, I do recall that article and the conclusion. And also, my understanding was that somehow some of the cabinet members were not privy to that plan. And they only read about it on the day of that meeting whatever Cabinet meeting it was. So they felt that it should have been discussed in more detail, some Cabinet ministers.

10 **ADV ARMSTRONG:** Indeed. Because Mr Mkhwanazi, how I understand this is... what I understand the article to be saying is that Mr Gigaba recommended your removal as Chair of the Board of Transnet and that you would be replaced with Mr Sharma but while he was successful in the Cabinet meeting at removing you, he was not successful in replacing you with Mr Sharma. Is that also how you understand this article?

**MR MKWANAZI:** Hold it. I am not sure if he was successful in removing me because I was not removed at Transnet.

20 **ADV ARMSTRONG:** No, indeed. I am saying what the article says, not what in fact happened. Sorry, if I just can remind you.

**MR MKWANAZI:** Ja, okay.

**ADV ARMSTRONG:** Ja.

**CHAIRPERSON:** Ms Armstrong, did you mean successful in

getting the approval of Cabinet?

**ADV ARMSTRONG:** Indeed. Indeed Chair.

**CHAIRPERSON:** Okay. So you want to repeat your question and repeat it ...[intervenes]

**ADV ARMSTRONG:** Indeed. So ...[intervenes]

**CHAIRPERSON:** ...with regard to that.

**ADV ARMSTRONG:** So Mr Mkhwanazi, my understanding of this article, not what happened in reality, that my understanding of what the Business Day is saying is that Mr  
10 Gigaba attempted to have you removed and recommended this to Cabinet and that he was successful in having you removed but not in having you replaced with Mr Sharma. That is my understanding of this article.

**CHAIRPERSON:** No, I am... we may be at cross-purposes. I think Mr Mkhwanazi is going to still give you the same answer. As I understand what he is saying. He is saying, he does not think that Mr Gigaba succeeded in having him removed because he was not removed.

**ADV ARMSTRONG:** Indeed.

20 **CHAIRPERSON:** But what I thought what you intended to say is that the article suggests that Mr Gigaba succeeded in ...[intervenes]

**ADV ARMSTRONG:** Indeed Chair.

**CHAIRPERSON:** ... in getting approval ...[intervenes]

**ADV ARMSTRONG:** Indeed Chair.

**CHAIRPERSON:** ...he be removed.

**ADV ARMSTRONG:** Indeed.

**CHAIRPERSON:** Whether or not he was actually removed is another matter.

**ADV ARMSTRONG:** Indeed Chair. So ...[intervenes]

**CHAIRPERSON:** Okay.

**ADV ARMSTRONG:** Exactly. And I am just pointing out. Mr Mkhwanazi, that you would have read this.

**MR MKWANAZI:** I would have.

10 **ADV ARMSTRONG:** [laughs] And would have been... it would have been quite a reaction because, as you point out, in reality you were not removed. The cabinet did not approve that recommendation. Is that correct?

**MR MKWANAZI:** That is correct Chair.

**CHAIRPERSON:** Maybe let us... just tell me what you understood the article to be saying and what your reaction was?

**MR MKWANAZI:** Chair, I understood what the article was saying, particularly the headline. Chairman of Transnet,  
20 Eskom and Denel to go.

**CHAIRPERSON:** H'm.

**MR MKWANAZI:** And naturally why somehow it was a big shock. This has never been discussed with me that I would leave Transnet. But other things in various meetings with the minister and other key ministers, we had discussed in my



presence the question of SOC Board Chairman sitting in various state-owned entity boards for certain collaborations by state-owned entities.

So I was not surprised that I was going to be proposed to go Eskom but what surprised me was that then I was going to be fired from Transnet and yet at a strategy discussion that we would have had a few months before, we did discuss these issues of Chairman of SOC Boards.

So that you said you get certain collaborations owning  
10 between certain types of SOC's.

**CHAIRPERSON:** H'm.

**MR MKWANAZI:** Yes.

**CHAIRPERSON:** So prior to this article appearing, there had been discussions in which you had participated where the idea that chairpersons of the boards of various SOE's could have a forum where they could discuss matters of mutual interest. Is that correct?

**MR MKWANAZI:** That is correct, Chair. We did have a forum like that. And the two key ministers who used to  
20 attend was Minister Gigaba and Minister Patel and occasionally two other Cabinet Ministers.

**CHAIRPERSON:** Yes. And these discussions that you are talking about where this issue was discussed, did Minister Gigaba attend some of those discussions?

**MR MKWANAZI:** He was the chairman of those meetings,

Chairman.

**CHAIRPERSON:** Of those meetings. Yes. So, but what was new to you when you read this article was that you were going to be removed as Chairperson of Transnet Board.

**MR MKWANAZI:** That was new, Chairman.

**CHAIRPERSON:** Yes. Okay.

**ADV ARMSTRONG:** Thank you.

**CHAIRPERSON:** H'm.

**ADV ARMSTRONG:** Thank you. And... so Mr Mkhwanazi, let  
10 me take you to the cabinet recommendation. The memo that was sent to Cabinet by Mr Gigaba. And that you will find the following page which is page MM38.

**MR MKWANAZI:** Okay.

**CHAIRPERSON:** You want that to be admitted?

**ADV ARMSTRONG:** Indeed Chair. As MM7G.

**MR MKWANAZI:** MM38. I have got that.

**ADV ARMSTRONG:** Thank you so much.

**CHAIRPERSON:** That will be the letter or the memorandum  
20 dated 25 May 2011, on the letterheads of the Ministry of Public Enterprises appearing at page 38 will be admitted... it is written "Cabinet Memorandum Number 4 of 2011" will be admitted as EXHIBIT MM7G.

**CABINET MEMORANDUM NUMBER 4 OF 2011 IS HANDED UP AND MARKED AS EXHIBIT MM7G**

**ADV ARMSTRONG:** Thank you, Chair. So Mr Mkhwanazi,

paragraph 2.2 indeed does say:

“Further for Cabinet to concur with the appointment of Mr Iqbal Sharma as Chairperson, a non-executive Director of the Transnet Board...”

So that was the recommendation regarding the chair position of Transnet. And then in paragraph 3.2 which is on the following page, page MM39:

10 “In addition, it is recommended that two non-executive Directors of the Transnet Board not be reappointed at the Annual General Meeting of Transnet to be held on the 24<sup>th</sup> of June, and in their place two nominees are recommended to be considered for appointed to Transnet as non-executive Directors.

Furthermore, it is recommended that Mr Iqbal Sharma, a current member of the Transnet Board, be appointed as the chairperson, a non-executive Director of the Transnet Board to replace Mr Mafika Mkhwanazi, the current Chairperson...”

20 So Mr Mkhwanazi, this was indeed the proposal for Cabinet. And Mr Mkhwanazi, do you recall... do you know what transpired at that meeting, what the outcome was?

**CHAIRPERSON:** Which meeting?

**MR MKWANAZI:** [laughs] I have got no idea.

**CHAIRPERSON:** Which meeting now?

**ADV ARMSTRONG:** This Cabinet meeting to deliberate on these recommendations?

**MR MKWANAZI:** [laughs] I have got no idea.

**CHAIRPERSON:** Ja.

**ADV ARMSTRONG:** And the outcome Mr Mkhwanazi for you? The outcome of the meeting?

**MR MKWANAZI:** The outcome?

**ADV ARMSTRONG:** Yes.

**MR MKWANAZI:** No, the outcome. I was not replaced.

10 **ADV ARMSTRONG:** Okay. So ...[intervenes]

**CHAIRPERSON:** Did Mr Gigaba and you speak about this article after it had appeared in the Business Day?

**MR MKWANAZI:** Chairman, we did talk about the article after it had appeared and his response was somebody had leaked something which was work in progress and therefore it was leaked in a wrong way.

**CHAIRPERSON:** Did you ...[intervenes]

**MR MKWANAZI:** We did discuss it.

20 **CHAIRPERSON:** Did you ask him whether it was true that he sought Cabinet approval for your removal from... as Chairperson of the Board of Transnet? Or maybe you did not put it like that but in effect, did you ask him to confirm whether that is true?

**MR MKWANAZI:** Chairman, I did not ask him ...[intervenes]

**CHAIRPERSON:** Directly?

**MR MKWANAZI:** ...as straightforward, as you say.

**CHAIRPERSON:** Yes.

**MR MKWANAZI:** But his response was there was work in progress within his department and it was leaked to the press.

**CHAIRPERSON:** Did that response suggest that he was saying he had not as yet asked the Cabinet to approve your removal from Transnet? I just want to make sure I understand clearly what he told you or what your  
10 understanding was of what he told you.

**MR MKWANAZI:** Chairman, what he told me is different to what had been submitted to Cabinet.

**CHAIRPERSON:** Yes.

**MR MKWANAZI:** But I am not privy to the Cabinet debate ...[intervenes]

**CHAIRPERSON:** Of course, yes.

**MR MKWANAZI:** ...around the ...[intervenes]

**CHAIRPERSON:** Yes.

**MR MKWANAZI:** ...why Mr Iqbal Sharma should become  
20 chairman.

**CHAIRPERSON:** Yes, yes. But based on what he told you, was your understanding that he was saying he had not as yet asked Cabinet to approve your removal from... or is that something that ...[intervenes]

**MR MKWANAZI:** No, Chairman. [laughs]

**CHAIRPERSON:** H'm.

**MR MKWANAZI:** No, Chair. Because he had done it. It is just that he did not get the approval of that resolution at Cabinet level. He had already done it. As I see in terms of this Cabinet memo.

**CHAIRPERSON:** Yes. No, I understand that. And when you answer these questions, feel free to reflect properly because it is many years ago, so that when you answer you are comfortable with your answer.

10        So leaving out what we know because we are looking at these documents now but bearing in mind what the article in the Business Day had said.

          When you spoke to him, he did not say anything to suggest he had not made the approach to Cabinet that the Business Day article suggested in terms of what he told you and how you understood what he said?

**MR MKWANAZI:** Well, after this article had appeared... I am not privy to... it is the first time I am see this document. Thank you very much. This Cabinet memo.

20        **CHAIRPERSON:** Oh, okay.

**MR MKWANAZI:** I have never seen it. So post the article, because also other board members were now asking me questions that we have read that you have been fired. So that is why then I had to go to him to try and find out but “Minister, what is this article about?”

Then he said no... He did not sound as if he had already pushed through a Cab memo or something which then might have been rejected.

He said no, maybe... it goes like, there was work in progress on changing boards inside the public enterprises and that then something got leaked, et cetera, et cetera.

But I was aware there is a process within public enterprises to formulate this Strategy-U of chairman of various entities sittings elsewhere to get certain  
10 collaboration on various topics. Local manufacturing, exporting, training...

There were a few key strategy topics that we wanted to try and address by this sharing of board members in that particular forum, ja.

**CHAIRPERSON:** Okay, thank you. Ms Armstrong.

**ADV ARMSTRONG:** Thank you, Chair. So just to clarify. Mr Mkhwanazi, but you were aware in this time in 2011 that Minister Gigaba had recommended your removal?

**MR MKWANAZI:** I was not aware. It is only when I read is  
20 this article.

**ADV ARMSTRONG:** Did you at all attribute the attempts to... by Minister Gigaba to recommend to have you removed, to be related in any way to your meeting with Tony Gupta and Duduzane Zuma?

**MR MKWANAZI:** Not really but maybe there could be. I do

not know.

**CHAIRPERSON:** H'm.

**ADV ARMSTRONG:** I see.

**CHAIRPERSON:** When you read the article and when you spoke to Mr Gigaba insofar as in your mind you remained with the idea that if he might or Cabinet might be wishing you to be removed from Transnet, did you think that the reason might be... the forum that had been discussed or did you think it might be some other reason that you did know?

10 Did you think about why would they want to remove me or not really?

**MR MKWANAZI:** Chair, I do not know but the forum where these things were discussed... we did not discuss in that detail ...[intervenes]

**CHAIRPERSON:** Yes.

**MR MKWANAZI:** ...because it was more high-level strategy forum ...[intervenes]

**CHAIRPERSON:** Yes, yes.

**MR MKWANAZI:** ...of discussing these issues.

20 **CHAIRPERSON:** Yes.

**MR MKWANAZI:** Yes.

**CHAIRPERSON:** Yes, okay. Thank you.

**ADV ARMSTRONG:** Thank you, Chair. So when you were having these discussions with Minister Gigaba, did he indicate at all that Mr Mhlango had relayed anything about



your meetings to him?

**MR MKWANAZI:** No, we did not discuss that.

**ADV ARMSTRONG:** And did you speak to anybody else about the meetings with Mr Gupta and Mr Duduzane Zuma?

**MR MKWANAZI:** I would have discussed that with some board member or something like that but in passing. Not in detail.

**ADV ARMSTRONG:** And then, can I take you to another article? That is at page ...[intervenes]

10 **CHAIRPERSON:** But maybe before you do so Ms Armstrong.

**ADV ARMSTRONG:** Yes, Chair.

**CHAIRPERSON:** As I understand it, this Business Day article was in June 2011. Is that right?

**ADV ARMSTRONG:** That is correct.

**CHAIRPERSON:** So that was ...[intervenes]

**MR MKWANAZI:** That is correct.

**CHAIRPERSON:** That means that you had been with the Transnet Board only for about six, seven months. Is that right?

20 **MR MKWANAZI:** That is correct Chair. Yes.

**CHAIRPERSON:** You had been a member of various boards over a long period in different companies by this time. Is that not so?

**MR MKWANAZI:** That is correct.

**CHAIRPERSON:** And when you have been a member of a

board of a company for six months it seems to me that it is quite a short time to be removed.

**MR MKWANAZI:** It is short.

**CHAIRPERSON:** Are you able to comment on that? It is short.

**CHAIRPERSON:** Yes. Yes, okay, thank you.

**ADV ARMSTRONG:** Thank you, Chair. Then let us move to page MM23 of that bundle.

**ADV ARMSTRONG:** So Chair, again I ask that this be  
10 admitted as an exhibit as MM7C.

**MR MKWANAZI:** You said 23?

**ADV ARMSTRONG:** That is correct, Mr Mkwanazi.

**MR MKWANAZI:** Yes, I have got it, yes.

**CHAIRPERSON:** What is this document, just identity it, Ms Armstrong?

**ADV ARMSTRONG:** So this document is an article from the Mail & Guardian entitled “Going off the rails” dated 4 March 2011.

**MR MKWANAZI:** Yes.

20 **CHAIRPERSON:** Ja, the article from the Mail & Guardian appearing at page 23 titled “Going off the Rails” will be admitted and marked as EXHIBIT MM7C.

**MAIL & GARDEN ARTICLE “GOING OFF THE RAILS”  
HANDED IN AS EXHIBIT MM7C**

**ADV ARMSTRONG:** Thank you, Chair. And, Chair, I have

just been alerted that a larger and clearer copy of the Business Day article that we looked at has been prepared and will be brought up to be replaced in our files.

**CHAIRPERSON:** Okay, okay. Well, if it is with you right now?

**ADV ARMSTRONG:** Not yet, Chair.

**CHAIRPERSON:** Oh, not yet?

**ADV ARMSTRONG:** It is being prepared now.

**CHAIRPERSON:** Okay, alright.

10 **ADV ARMSTRONG:** So, Mr Mkwanazi, then just turn please to the next page in the article on page 24. The portion that is highlighted.

**MR MKWANAZI:** Yes.

**ADV ARMSTRONG:** It says:

“Mkwanazi, who drove the appointment process...”

This is a reference to Mr Brian Molefe’s appointment.

**MR MKWANAZI:** Yes.

**ADV ARMSTRONG:**

20 “...admits he has a personal relationship with the Guptas and has met them to discuss private business interests but denied this influenced Mr Molefe’s appointment.”

Mr Mkwanazi, did you have an opportunity to comment on this article? Did you see it before it was published?

**MR MKWANAZI:** When I say to comment no, but meaning

the fact that they wrote what they wrote, I must have spoken to them based on the questions that they were asking, Yes.

**ADV ARMSTRONG:** So this description of you having a personal relationship with the Guptas ...[intervenes]

**MR MKWANAZI:** Yes.

**CHAIRPERSON:** Do you want to first, Ms Armstrong, just read into the record the relevant part and then ask him? The highlighted parts.

10 **ADV ARMSTRONG:** Okay, sorry, Chair, I will read it again.

“Mkwanazi, who drove the appointment process admits he has a personal relationship with the Guptas and has met them to discuss private business interests but denied this influenced Mr Molefe’s appointment.”

And so, Mr Mkwanazi, you described your relationship to Mail & Guardian as a personal relationship with the Guptas, is that correct?

20 **MR MKWANAZI:** I did describe it like that but to say is that correct, it is correct that I met them on the day that I met them at the house but then, you know, the media is a strange animal because I would not like to discuss certain matters of how I run companies through the media, which is why I responded this way.

**ADV ARMSTRONG:** But just to me, having met briefly on two occasions with the Guptas sounds...

**MR MKWANAZI:** Yes.

**ADV ARMSTRONG:** A personal relationship sounds a bit of an overstatement to me.

**MR MKWANAZI:** It is a strong word, yes, I must say, yes.

**ADV ARMSTRONG:** But there was no – there is no additional relationship that you had except for those two meetings?

10 **MR MKWANAZI:** No. No.

**CHAIRPERSON:** Well, let us deal with this head-on. So you admit that you did say to the journalist who wrote the article or whoever may have spoken to you from Mail & Guardian that you had a personal relationship with the Guptas, is that right?

**MR MKWANAZI:** Yes, I met them, yes.

**CHAIRPERSON:** Yes. You – as we speak today, do you stand by that description that you had a personal relationship with the Guptas or do you not?

20 **MR MKWANAZI:** Chairman, personal relationship is too strong a word for two meetings I had which maybe lasted an hour and a half in total, both of them.

**CHAIRPERSON:** But why did you use those words?

**MR MKWANAZI:** No, at the time I used it because I wanted to dismiss the media off my back. They were onto

too many issues, if I can use the word.

**CHAIRPERSON:** But that does not sound right that you would say you have personal relationship with them to dismiss the media if in fact you did not have a personal relationship with them. What do you say to that?

**MR MKWANAZI:** Chairman, you know, the use of the English language when you are a Zulu-speaking person gets a little bit tricky. But yes, I did have two meetings with them and I did say that I had a personal relationship  
10 with them.

**CHAIRPERSON:** Yes, okay, alright. Ms Armstrong?

**ADV ARMSTRONG:** Thank you, Chair. The article goes on to say:

“Asked what the business interests were and whether they were disclosed to the board Transnet said: All our board members are required to disclose their private interests at each and every board meeting. Mr Mkwanazi has no existing has no existing business interests with the Gupta  
20 family. The discussions he has with them were exploratory and did not result in a partnership.”

So again, Mr Mkwanazi, your testimony was that there was a brief mention in the general discussions in your meeting.

**MR MKWANAZI:** Yes.

**ADV ARMSTRONG:** About a property development you

had in KZN, is that correct?

**MR MKWANAZI:** That is correct, yes.

**ADV ARMSTRONG:** Sounds – exploratory discussions that did not result in a partnership, once again sounds like a more significant discussion on that topic than what you have mentioned.

**MR MKWANAZI:** Yes, I am not sure why have that in - you know, as if it is a quotation but that matter was never ever touched on again of what I was trying to do there in  
10 KZN because it never happened, it fell through almost that same week or two weeks later.

**ADV ARMSTRONG:** And so, Mr Mkwanzazi, you have told the Mail & Guardian journalist that you had these meetings with the Guptas, is that correct?

**MR MKWANAZI:** Ja.

**ADV ARMSTRONG:** And that you spoke about private business interests, is that correct?

**MR MKWANAZI:** That is correct.

**ADV ARMSTRONG:** But you do not seem to have – or did  
20 you mention anything about what Mr Tony Gupta had asked you about ...[intervenes]

**MR MKWANAZI:** No, I did not.

**ADV ARMSTRONG:** About procurement and the allocation to the New Age?

**MR MKWANAZI:** No, I did not.

**ADV ARMSTRONG:** And why not?

**MR MKWANAZI:** It is not in my nature to start discussing what I can call board issues or company issues with the media. There are many of other issues, by the way, in the past 20 years, 21 years I have been at Transnet that I have never discussed with the media in terms of whatever they might have been.

**ADV ARMSTRONG:** Did you disclose what had been discussed with the board of Transnet?

10 **MR MKWANAZI:** What had been discussed?

**ADV ARMSTRONG:** With Mr tony Gupta about the question of dedicating 30 to 50%?

**MR MKWANAZI:** No, I did not discuss that with the board. You need to understand one strange thing about state owned entities. In a year when you are like a Chairman or Group Chief Executive you get hundred proposals or calls from people who want to procure something from your organisation. It is so common and it includes everybody. At times it starts even with the President himself..

20 **CHAIRPERSON:** So the point you are making is you cannot be telling the board about all of these ...[intervenes]

**MR MKWANAZI:** Exactly, exactly, Chair.

**CHAIRPERSON:** ...many occasions when somebody or other has some discussion with you that does not end



anywhere, that does not lead anywhere. Is that the point you are making?

**MR MKWANAZI:** That is correct, Chair. Just another example, at these TNA breakfasts, which attended 8 to 10, whatever the number is, people would queue to talk to me and ask for business opportunities in Transnet. Of course, as a civil servant I would stand in a queue, they would come or they want to talk. This one goes, this one goes. Ja, it is part of my job.

10 **ADV ARMSTRONG:** But, Mr Mkwanazi, what might perhaps be a bit unusual was that your number in this case was provided to Mr Tony Gupta by the Minister himself.

**MR MKWANAZI:** Yes, it was unusual, yes.

**ADV ARMSTRONG:** And so that unusual aspect you did not mention that to the journalist at Mail & Guardian.

**MR MKWANAZI:** No, I did not.

**ADV ARMSTRONG:** Or to the Transnet board.

**MR MKWANAZI:** No, I did not.

**ADV ARMSTRONG:** So even though that was unusual why  
20 did you decide not to include that information in your statements to them?

**MR MKWANAZI:** Include which information?

**ADV ARMSTRONG:** So even though it was – that aspect of the interactions was unusual, that they got your number from Minister Gigaba, why did you ...[intervenes]

**MR MKWANAZI:** No, I did not. I did not see a need to do that, ja..

**ADV ARMSTRONG:** Why did you not see a need?

**MR MKWANAZI:** No, I did not.

**CHAIRPERSON:** He did not see a need – if you want to say ...[intervenes]

**MR MKWANAZI:** You can see they are fishing..

**CHAIRPERSON:** If – Ms Armstrong, if you think that there was – there were grounds for him to have seen a need you  
10 can explore those grounds.

**MR MKWANAZI:** I could have, ja.

**CHAIRPERSON:** But otherwise...

**ADV ARMSTRONG:** Indeed, Chair.

**CHAIRPERSON:** If he says he did not see a need, he did not see a need.

**ADV ARMSTRONG:** Indeed, Chair.

**CHAIRPERSON:** But if you say what about this, what about this, what about this, did not all of this show you that there was need? That is different, then you can do that.

20 **ADV ARMSTRONG:** Thank you, Chair. I think the elements, the unusual element is of the Minister giving Mr Gupta your number is the only – is the aspect that I just wanted to probe further because, Mr Mkwanazi, your answer was that you did not feel the need to tell the board or the media about this meeting because you get many

requests, they are very usual, and I was just probing that there was in fact an unusual aspect of it which was that the Minister had, according to Mr Gupta, connected you and put you in touch and that was – I was probing whether that that unusual aspect might have prompted you to treat it differently and perhaps alert somebody else.

**MR MKWANAZI:** No.

**ADV ARMSTRONG:** Thank you. Thank you, Mr Mkwanazi. And were you aware of other officials at the time?

10 **CHAIRPERSON:** I am sorry, I am sorry...

**ADV ARMSTRONG:** Thank you, thank you.

**CHAIRPERSON:** Mr Mkwanazi, did you ever have occasion to ask Minister Gigaba whether Tony Gupta was correct in saying he got your details from him?

**MR MKWANAZI:** Chairman, we have never discussed that matter.

**CHAIRPERSON:** You have never discussed, yes. Okay.

**MR MKWANAZI:** Even today or – we have never discussed that.

20 **CHAIRPERSON:** Yes, okay, thank you.

**ADV ARMSTRONG:** And did you hear at the time about any other people or officials being approached in this way by members of the Gupta family to have a meeting?

**MR MKWANAZI:** No, I was not aware of any – I only became aware of these approaches once the Commission

was set up and Maseko and others and a lot of other people did come to the Commission to make inputs. Then to my mine it was – this thing was quite common at the time, ja. I did not know.

**ADV ARMSTRONG:** And did you, before you approached by the Commission to give evidence, did you feel the need to come forward and disclose the meetings that you had?

**MR MKWANAZI:** No.

**ADV ARMSTRONG:** And why not?

10 **MR MKWANAZI:** Do not forget – maybe let me put it differently, the answer is no because at some stage, if you recall, the Secretary General of the ruling party did ask people to come to Luthuli House, etcetera, etcetera. I felt that these people are not honest. They themselves know what is happening, so I did not even go there.

**ADV ARMSTRONG:** Thank you, Mr Mkwanazi.

**CHAIRPERSON:** Well, I am going to ask you to just repeat. I think what you are saying may be important. You are saying the ruling party did invite people to go to the  
20 ruling party and disclose what they knew and you say you felt that you were not going to go there. I just want you to say once again why you felt like that?

**MR MKWANAZI:** Chairman, yes, I was not going go. If I recall, maybe it is only Themba Maseko who went to see Mr Gwede Mantashe at the time but I felt that whatever the

Gupta family is doing, it is a well-known thing within the ruling party.

**CHAIRPERSON:** Okay, thank you.

**ADV ARMSTRONG:** Thank you, Chair. Then, Mr Mkwanazi, I am not going to ask you too much about the New Age breakfasts, we have already heard extensive evidence about those, but you do say in your statement that you attended a number of these breakfasts , is that correct, the New Age breakfasts ?

10 **MR MKWANAZI:** That is correct.

**ADV ARMSTRONG:** And in your statement you indicate that you do not have any idea of how much was spent in respect of those breakfasts.

**MR MKWANAZI:** That is correct, yes.

**ADV ARMSTRONG:** But of course – so we have had testimony, so for example from Mr Phatlane has explained that from 2012 to 2017 over R122 million was spent on the New Age breakfasts .

20 Now, Mr Mkwanazi , in light of the fact that you were contacted and asked by Mr Tony Gupta to dedicate between 30 and 50% of the Transnet advertising budget to the New Age breakfasts and we know – and you went to a number of those breakfasts.

**MR MKWANAZI:** I did, yes.

**ADV ARMSTRONG:** And you saw that they were occurring

and we know there were – so at that time were you at all concerned that what you had been asked in a way that did not comply with procurement procedures was now being in effect that you were attending these breakfasts that they were happening. Did that not concern you?

**MR MKWANAZI:** No, it did concern me. You somehow need to understand the procurement systems of state owned entities whereby they have various committees to procure things up to a certain amount and then up to the  
10 CEO level. In this case it would have been Brian Molefe.

Brian Molefe had the full authority to procure certain things, whatever they might be, up to a certain limit and then above a certain amount of above a certain timeframe, then those things needed to be elevated to the board.

The fact that, yes, I was now going to these breakfasts, yes, it is true but the CEO would have then applied his mind whether is it worth that - using his discretion and his delegated authority.

20 **ADV ARMSTRONG:** Oh dear, I think the screen has frozen.

**CHAIRPERSON:** Oh.

**ADV ARMSTRONG:** Okay. Sorry, Mr Mkwanazi, the screen is freezing so we are missing your ...[intervenes]

**MR MKWANAZI:** I am not sure what...

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

**MR MKWANAZI:** Did you pick that up?

**ADV ARMSTRONG:** Unfortunately, not, Mr Mkwanazi, we have missed now a portion of what you were saying.

**CHAIRPERSON:** Yes, they are attending to it and then we will ask you to repeat what you said but they are just attending to it.

**MR MKWANAZI:** So can I repeat?

**CHAIRPERSON:** Or just repeat. .

10 **ADV ARMSTRONG:** Yes, thank you.

**CHAIRPERSON:** Ja, repeat, ja.

**MR MKWANAZI:** Advocate, can you repeat your ...[intervenes]

**CHAIRPERSON:** The question.

**ADV ARMSTRONG:** Indeed.

**MR MKWANAZI:** Then I will respond again.

20 **ADV ARMSTRONG:** So, Mr Mkwanazi, your testimony was that you were approached and you were asked by Mr Gupta to dedicate 30 to 50% of the Transnet advertising budget to the New Age. You said this is an inappropriate way of doing things, this is not how we do business. But then you then attend yourself a number of these breakfasts so you see that in fact Transnet is spending budget on the New Age. Did this not concern you given your previous approach by Mr Gupta?

**CHAIRPERSON:** No, I think he said earlier on his response to the Guptas was you are talking to a wrong person.

**ADV ARMSTRONG:** Yes.

**CHAIRPERSON:** You must go to management, executive management. That is what he said.

**ADV ARMSTRONG:** Indeed.

**CHAIRPERSON:** And therefore, if they went to management and management granted them whatever they  
10 wanted it would not necessarily be inconsistent with what he said.

**ADV ARMSTRONG:** Indeed.

**CHAIRPERSON:** That is my recollection. Is that what you said, Mr Mkwanazi?

**MR MKWANAZI:** That is correct, Chair, yes.

**CHAIRPERSON:** Yes, yes.

**ADV ARMSTRONG:** Okay. So, Mr Mkwanazi, you were not concerned, if I understand you correctly, because you imagined that they had – you assumed they had gone  
20 through those correct channels.

**MR MKWANAZI:** They had followed the processes, yes.

**ADV ARMSTRONG:** Thank you, Mr Mkwanazi. Then, Chair, I see that the time is already five o'clock.

**CHAIRPERSON:** Yes, we should try and finish because Mr Mkwanazi has waited for this time for a long time.



**ADV ARMSTRONG:** Indeed.

**CHAIRPERSON:** And I think - certainly from my side I think we can finish. I assume that we should not be more than 30 minutes more or am I too ambitious?

**ADV ARMSTRONG:** Unfortunately, chair, I just need to deal with ...[intervenes]

**CHAIRPERSON:** How much time do you think we need?

**ADV ARMSTRONG:** I think approximately an hour, Chair.

**CHAIRPERSON:** About an hour?

10 **ADV ARMSTRONG:** We have to deal with the Eskom evidence.

**CHAIRPERSON:** Mr Mkwanazi , from your side you are happy for us to continue?

**MR MKWANAZI:** Chairman, I am happy to continue.

**CHAIRPERSON:** Yes, let us ...[intervenes]

**MR MKHWANAZI:** I can confirm, Chair, just to put it on record that we are prepared and ready to continue, Chair, thank you.

20 **CHAIRPERSON:** Thank you very much. Then let us continue, I am hoping it will not take an hour.

**ADV ARMSTRONG:** Okay.

**CHAIRPERSON:** But let us continue.

**ADV ARMSTRONG:** I will certainly do my best, Chair.

**CHAIRPERSON:** Ja.

**ADV ARMSTRONG:** Okay. So just to ...[intervenes]

**CHAIRPERSON:** We may or may not – we may at some stage need a short break. What time did we start? How long have we been...?

**ADV ARMSTRONG:** About quarter past three I believe we began.

**CHAIRPERSON:** So we are close to two hours.

**ADV ARMSTRONG:** That is correct, Chair.

**CHAIRPERSON:** Maybe it might be the convenient time to take a short break.

10 **ADV ARMSTRONG:** Thank you, Chair.

**CHAIRPERSON:** We will take a short break, Mr Mkwanazi, and then we are going to resume. Ten minutes should be okay?

**ADV ARMSTRONG:** Indeed, Chair.

**CHAIRPERSON:** We will take ten minutes. My watch says it is ten past five. So twenty past five we will resume. We adjourn.

**ADV ARMSTRONG:** Thank you, Chair.

#### **INQUIRY ADJOURNS**

20 **INQUIRY RESUMES**

**ADV ARMSTRONG:** So Mr Mkwanazi I just want to wrap up the feedback.

**CHAIRPERSON:** Let's get him to be settled. Mr Mkwanazi are you settled, are you okay?

**MR MKWANAZI:** I am settled Chair.

**CHAIRPERSON:** Okay, alright.

**ADV ARMSTRONG:** Thank you Chair. So, in order to just finalise the Transnet evidence, I just want to put to you the essential points that Mr Gigaba has raised in his affidavit in response to our Rule 33 notice and that is in the file, in MM7 at page 8.

**MR MKWANAZI:** When you say page 8 can you use the MM's is it MM8?

**ADV ARMSTRONG:** MM08.

10 **MR MKWANAZI:** Okay.

**CHAIRPERSON:** Whenever she says page 8 or page whatever without mentioning MM you must know it's still MM.

**MR MKWANAZI:** Ja I've got it.

**ADV ARMSTRONG:** Thank you Chair. So, there are just three main aspects of what Mr Gigaba has said in response to your statement that I'd just like to put to you so you have an opportunity to respond Mr Mkwanazi.

**MR MKWANAZI:** Yes.

20 **ADV ARMSTRONG:** The first thing that Mr Gigaba says is that he did not provide Mr Tony Gupta with your number, do you have a comment?

**MR MKWANAZI:** I've got no comment.

**CHAIRPERSON:** I'm sorry just repeat that Ms Armstrong I didn't hear the question?

**ADV ARMSTRONG:** Mr Gigaba says that he never provided Mr Tony Gupta with Mr Mkwanazi's cell phone number.

**CHAIRPERSON:** Yes I guess when you say you have no comment, Mr Mkwanazi, you mean you actually don't know whether what Tony Gupta told you is true but what you have told me is, you had given Mr Gigaba your...[intervenes].

**MR MKWANAZI:** I said – Chairman I said no comment  
10 because I don't know whether it's true or not true.

**CHAIRPERSON:** Yes, no, no, that's what I'm saying that's the reason why you're saying, no comment but what you have said is Mr Gigaba did have your contact details, you had given him them to him, your contact details. Let me repeat that, what you have said to me is that you had given Mr Gigaba your contact details is, that right?

**MR MKWANAZI:** Oh yes, man years ago Chair.

**CHAIRPERSON:** Ja, prior to this – ja prior to this call by Tony Gupta.

20 **MR MKWANAZI:** Yes.

**CHAIRPERSON:** Okay.

**ADV ARMSTRONG:** And the second main point there Mr Gigaba makes is he says that he was – that you never spoke to him about the meetings which accords with your testimony today but that he's surprised, because if you

were not comfortable you could have spoken to him about the first or second meeting and you chose not to, do you have any comments to that statement?

**MR MKWANAZI:** No comment still, because I'm not the type of person who reports almost minor things to a Minister, to me that was minor.

**CHAIRPERSON:** Okay it can't be no comment because you do have comment which you have just made, is that right? You are providing a reason why you would not have  
10 raised the issue with him, is that right?

**MR MKWANAZI:** Yes.

**CHAIRPERSON:** Yes, so what I'm saying is, when you say, no comment it means you have nothing to say about his version but from what you have said I think you do have something to say and what you have to say, is you have an explanation why you did not raise the issue with him and that is, you are not the type of person who would raise this kind of issue with the Minister, is that right?

**MR MKWANAZI:** That is correct Chair.

20 **CHAIRPERSON:** Ja okay.

**ADV ARMSTRONG:** Thank you Chair for that and the final point that Mr Gigaba makes that I'd like to raise with you is that he says, he was not aware that Mr Siyabonga Mahlangu, his special advisor, attended the meeting with you and Mr Gupta, do you agree or disagree with that

statement?

**MR MKWANAZI:** I don't know but I didn't tell the Minister that I'm taking Siyabonga to that meeting it was something I raised between myself and Siyabonga.

**ADV ARMSTRONG:** Thank you Chair, Chair I apologise I didn't enter that as an Exhibit, so Chair would it be possible to admit from page MM4 to the end of that affidavit which is MM22 as Exhibit MM7B?

**CHAIRPERSON:** Does it have Annexures?

10 **ADV ARMSTRONG:** It does.

**CHAIRPERSON:** It does?

**ADV ARMSTRONG:** Yes, so the affidavit that begins at page 4, MM4 and the Annexures end at page MM22.

**CHAIRPERSON:** Well tell me where the Annexures start first.

**ADV ARMSTRONG:** The Annexures begin from page MM17 – sorry I beg your pardon that's another affidavit...[intervenes].

**CHAIRPERSON:** What's 15?

20 **ADV ARMSTRONG:** It's MM14 is the end, so MM15 you're correct Chair.

**CHAIRPERSON:** That's a confirmatory affidavit and then there is Annexure B and Annexure C, we'll have to say the statement by Mr Malusi Knowledge Nkanyezi Gigaba appearing at page four – oh that's the notice, that at page

four, the actual statements starts at page six but the notice and the statement will be admitted and marked as Exhibit MM7 – what's the letter?

**ADV ARMSTRONG:** That is B.

**CHAIRPERSON:** B and that is the statement plus it's Annexures.

**ADV ARMSTRONG:** Indeed Chair, thank you.

**CHAIRPERSON:** Okay, thank you.

**ADV ARMSTRONG:** Thank you Chair. Chair that  
10 concludes the evidence on Transnet, so Mr Mkwanazi I'd just like to move to the evidence about your time at Eskom on the Board which was – which began on June 2011 and came to an end in December 2014 and in particular I'd like to ask you about that end part of your tenure on the Board, so November/December of 2014 and in particular I'd like to ask you about this contract that Eskom had concluded with the New Age and that was a contract for R43million, do you have any memory of that Mr Mkwanazi?

**MR MKWANAZI:** Yes, and I, in terms of the  
20 documentation is there something I must open up?

**ADV ARMSTRONG:** Not yet.

**MR MKWANAZI:** Of the three documents?

**ADV ARMSTRONG:** Not yet Mr Mkwanazi.

**MR MKWANAZI:** No we can talk off the cuff ja.

**ADV ARMSTRONG:** Yes, yes.

**CHAIRPERSON:** Maybe before you proceed Ms Armstrong, from what date did you become a Director, a non-Executive Director of Eskom to what date?

**MR MKWANAZI:** I think it was June 2011 to December 2014.

**CHAIRPERSON:** Okay, so going back to that Business Day article you did join the Board – you did join the Eskom Board as a non-Executive Director, the only difference is that you're not removed from the Transnet Board?

10 **MR MKWANAZI:** That is correct Chairman.

**CHAIRPERSON:** Yes, okay, alright.

**ADV ARMSTRONG:** Indeed, thank you Chair. So, the R43million rand contract between Eskom for advertising in the New Age – so you indicate you were aware of that contract?

**MR MKWANAZI:** That is correct Advocate.

20 **ADV ARMSTRONG:** And do you recall that towards the end, in November and December of your tenure 2014, on the Eskom Board you were considering that contract, do you recall that?

**MR MKWANAZI:** That is correct after the people – the forensic people had finished their work, yes.

**ADV ARMSTRONG:** That's quite right and that is a report by SNG, there was a forensic report done on this particular contract, is that what you're referring to Mr Mkwanazi?



**MR MKWANAZI:** That is correct Chairman.

**ADV ARMSTRONG:** Do you recall, in general terms what that report concluded about the contract?

**MR MKWANAZI:** At the high level Chair it concluded on two issues or two individuals it concluded that the R43million contract was irregular and it concluded that the clause – the exit clause that was supposed to be there which was removed by somebody, that was wrong of that somebody to do that and it concluded that the acting CEO  
10 at the time did not have the authority to conclude that contract because there was no budget and they also – there was not proper approval because such contracts, above say R3million, was supposed to be approved by the EXCO of Eskom and that was not done.

**ADV ARMSTRONG:** Thank you, so that Chief Executive that was Mr Colin Matjila, is that correct?

**MR MKWANAZI:** That is correct Chair, ja.

**ADV ARMSTRONG:** And the other individual you referred to is that Mr Choeu?

20 **MR MKWANAZI:** Yes, it's Chose Choeu, that is correct Chair.

**ADV ARMSTRONG:** Thank you Mr Mkwanazi and so then I'd just like to move to – there were three Board meetings that then took place towards the end of that year at which this issue was discussed. I'd just like to take you, Mr

Mkwanazi to the very last minute and that will require us to go to file – to leave our file MM7 and to move to Exhibit MM3 and that was the Exhibit in respect of Mr Mark Pamensky's evidence.

**MR MKWANAZI:** Yes, what page Chair.

**ADV ARMSTRONG:** I'll just make sure that the Chair has that file.

**CHAIRPERSON:** I don't think he heard, so you must tell him again what Exhibit.

10 **ADV ARMSTRONG:** Okay that's MM3, Mr Mark Pamensky's evidence, thank you.

**CHAIRPERSON:** Are you going to come back to this or not?

**ADV ARMSTRONG:** No Chair, thank you. Then if we could just turn to page 349 of this bundle.

**CHAIRPERSON:** Did you say 349?

**ADV ARMSTRONG:** 349 that's correct Chair.

**CHAIRPERSON:** 349?

**ADV ARMSTRONG:** That's right, thank you.

20 **CHAIRPERSON:** When you are looking away from me I won't hear you properly.

**ADV ARMSTRONG:** My apologies Chair, that's correct, 349, thank you Chair.

**CHAIRPERSON:** Yes.

**ADV ARMSTRONG:** So, here are the minutes of a

meeting of the 8<sup>th</sup> of December 2014, now this must have been, Mr Mkwanazi, right before the end of your – this must have been one of the last Board meetings you attended, is that correct?

**MR MKWANAZI:** That's correct Chair.

**ADV ARMSTRONG:** Thank you and I confirm that you were at this meeting, it says you were present, is that correct?

**MR MKWANAZI:** That is correct yes.

10 **ADV ARMSTRONG:** Okay, and I just want to move to page 351 in the second last paragraph of that page it says,

“The lawyers were of the opinion that Mr Matjila's conduct constituted a wilfulness conduct in terms of the PFMA...[intervenes].

**CHAIRPERSON:** I'm sorry where about on 351 are you reading?

**ADV ARMSTRONG:** Sorry Chair, it's the second last paragraph.

**CHAIRPERSON:** Oh okay.

20 **ADV ARMSTRONG:** The first sentence okay so,

“The lawyers were of the opinion that Mr Matjila's conduct constituted a wilfulness conduct in terms of the PFMA. The National Treasury Regulations stated that if there were a financial misconduct by an employee then the Board must ensure that an

investigation was conducted and relevant disciplinary action taken. Furthermore, the Board had to advise the relevant Minister, National Treasury and Auditor General thereof. In respect of a reportable irregularity is reported to external auditors and had to make a disclosure”,

And then, Mr Mkwanazi you'll see the next paragraph says,

10 “With respect to the definition of fruitless and wasteful expenditure it was stated that the Board had to take a view whether the contract had value or not”,

So, let's stop there and discuss that. So, Mr Mkwanazi, you mentioned earlier that the forensic report had mentioned two key actors, that was Mr Matjila and Mr Choeu and so did you understand that...[intervenes].

**CHAIRPERSON:** Just give the spelling for Mr Choeu for the convenience of the transcribers.

**ADV ARMSTRONG:** That is C-H-O-E-U.

20 **CHAIRPERSON:** Ja.

**ADV ARMSTRONG:** Thank you Chair. So, in light of this paragraph about – that Mr Matjila's conduct constituted misconduct in terms of the PFMA, did you understand that the Board had an obligation to act on that information, Mr Mkwanazi?

**MR MKWANAZI:** That's my understanding yes.

**ADV ARMSTRONG:** And that corrective action had to be taken in that regard?

**MR MKWANAZI:** That is my understanding.

**ADV ARMSTRONG:** Now, Mr Matjila, after this, was no longer the Chief Executor of the Board but do you still understand that the – was the Board of Eskom of the view that action still had to be taken against Mr Matjila?

**MR MKWANAZI:** That's my understanding because still he  
10 was within the scope, I think he reverted back to a non-Executive Director position.

**ADV ARMSTRONG:** And then, Mr Choeu, he was, if I'm not mistaken, still an employee of Eskom is that correct?

**MR MKWANAZI:** That is correct.

**ADV ARMSTRONG:** So, was it your understanding, as a member of the Board that disciplinary action was going to be taken against these parties?

**MR MKWANAZI:** That's my understanding yes.

**ADV ARMSTRONG:** The second point that I mentioned  
20 was fruitless and wasteful expenditure, what do you understand that to mean?

**MR MKWANAZI:** You need to go back to the actual PFMA and in this case it was irregular yes because he exceeded the delegation they did not fall – had an exit clause etcetera. Now, whether it was fruitless and wasteful,

somebody else then – a specialist in analysis of what value did the company get out of that R43million needs to be done and then based on that then the Board can then define it as a fruitless and wasteful expenditure unless you've got somebody doing that analysis, at the time we had not done that analysis as a Board.

**ADV ARMSTRONG:** Thank you Mr Mkwanazi, that's very important. So, at this time there had been no analysis into commercial value of the contract.

10 **MR MKWANAZI:** Yes.

**ADV ARMSTRONG:** But did you understand that, that was still going to be done at some future date?

**MR MKWANAZI:** The irregularity is a given and the wrong clause is a given they shouldn't have done that but whether then, as auditors and as an Audit Committee how do you then define this, you need to apply your mind. Yes, it would have been irregular in a particular way unless regularised by a Board but then conditional regularisation on condition that you take action against the two  
20 Executives involved.

**ADV ARMSTRONG:** Okay I...[intervenes].

**CHAIRPERSON:** I'm sorry, as I understand it, wasteful and fruitless expenditure is when an entity's money is spent in vain as it were, the entity doesn't derive any material value from that expenditure, would that be your

understanding as well?

**ADV ARMSTRONG:** Chair that is my understanding, being a person – an Engineer, typically if you build a bridge and then you get the full payment and the bridge is not built or even one brick is laid, that's fruitless and wasteful.

**CHAIRPERSON:** Yes, or the bridge is built halfway so that it can't be used, that would still be...[intervenes].

**MR MKWANAZI:** I agree Chair, yes that's fruitless and wasteful.

10 **CHAIRPERSON:** Okay, alright, so you're saying that what you were sure about at this stage was that this was irregular expenditure because the necessary approvals had not been obtained?

**MR MKWANAZI:** That is correct Chair, there was no budget.

**CHAIRPERSON:** But whether it was wasteful and fruitless was something that you could only arrive at after a certain exercise had been done and at that stage that exercise had not been done yet?

20 **MR MKWANAZI:** That's correct Chair.

**CHAIRPERSON:** Ja okay.

**ADV ARMSTRONG:** Thank you Chair, that's very helpful for me. So, Mr Mkwanazi, let's then turn to the next page, it's page 352. So, in the first major paragraph, the first complete paragraph, we see here that the discussion is

about a decision about Matjila's guilt or innocence and there was a discussion about fruitless and wasteful expenditure and then we see the statement, halfway down the paragraph it starts with the sentence – it's about six lines down, the sentence starts with,

“The Chairman stated that the Board had to be convinced that the contract was not a bad one”,

And then if you go on to the end of that paragraph it says,

10 Ms Luthuli stated that the handover report had to reflect the Board had considered whether or not the contract was a bad one and had concluded that the contract was not a good one at this time”,

Could you just explain, what do you understand by a good or a bad contract meaning?

**MR MKWANAZI:** I can't explain that, also my understanding it would be difficult to – it was irregular that's it, ja.

**ADV ARMSTRONG:** Okay, so when they talk about – when  
20 the Board talks about the minutes reflect that this was not a good contract, we see it in a number of places, again in that same page on the second last paragraph, they were of the opinion that the contract was not a good contract, so are you saying, you're not sure what that means?

**MR MKWANAZI:** To a certain extent I know, how can you



have a contract with no exit clause, that's a bad contract.

**ADV ARMSTRONG:** Okay, so...[intervenes].

**CHAIRPERSON:** Well you...[intervenes].

**MR MKWANAZI:** That's a bad contract.

**CHAIRPERSON:** You could have a contract without an exit clause, I'm now talking in general, let's leave out this one provided when you look at its entire – you look at it in its entirety and the value you are going to derive from it is a party to that contract is good, the value you derive from  
10 it is good and you have built into the contract enough checks and balances to safeguard your interests it happens all the time, does it not, for example that you – an employer has a fixed-term contract with an employee and normally what that kind of contract means is neither the employer nor the employee can get out of that contract before the expiry of the fixed period except if there's a breach of the contract. In the case of an employee, except if the employee conducts – misconducts himself or herself but other than that you are stuck there, both of you but it  
20 may be that as an employer you say, this employee has got very rare skills and he or she is in high demand they want him in other companies so I want to secure him or her for this period, are you more or less in agreement with that, that you can have that situation?

**MR MKWANAZI:** That is correct Chair.

**CHAIRPERSON:** Yes, but you are saying in certain circumstances, you need an exit clause, that's the point you're making?

**MR MKWANAZI:** Chair that is correct but in this instance, because there was an exit clause in a preliminary contract.

**CHAIRPERSON:** Yes, yes.

**MR MKWANAZI:** Then somewhere along the line somebody decided that, I don't like this exit clause then you make it a bad contract.

10 **CHAIRPERSON:** Yes.

**MR MKWANAZI:** And also, the fact that there was no budget for this thing at all and at that time Eskom was experiencing financial problems and then you go out there with no budget and you try and spend R43million, that's a bad contract.

**CHAIRPERSON:** Of course even with this kind of contract that I was talking about, that is my putting an exit clause even though I normally think it doesn't make sense but sometimes they can do that but I think that from your point  
20 of view the point you are making is, an exit clause in this type of contract would have given you – or gave Eskom in the in the one before, some comfort that they could get out of it if there was a problem.

**MR MKWANAZI:** That's correct Chair.

**CHAIRPERSON:** And from your point of view, the moment

the exit clause wasn't there it was a bad contract apart from the fact...[intervenes].

**MR MKWANAZI:** That is correct Chair.

**CHAIRPERSON:** Also, because it was concluded when there was no budget for it, that's another reason why you say it was a bad contract.

**MR MKWANAZI:** That's correct.

**CHAIRPERSON:** Ja, alright.

**ADV ARMSTRONG:** Thank you so much Chair and Mr  
10 Mkwanazi you also raised the financial position that Eskom was in at the time, you say, so when it concluded this contract what was its financial position?

**MR MKWANAZI:** Please, was not in a good position we were beginning to make losses if I recall also the Regulator was on our back about cutting down on expenses etcetera, etcetera.

**ADV ARMSTRONG:** And this was R53million contract for advertising for a State-owned entity?

**MR MKWANAZI:** That's correct Chair.

20 **ADV ARMSTRONG:** So, in light of the financial position of Eskom at the time could that be another reason why it was not a good contract at that time?

**MR MKWANAZI:** That is correct Chair, ja.

**ADV ARMSTRONG:** And they emphasise that Mr Luthuli emphasises here that it must be in a handover report to the

new Board, is that your recollection?

**MR MKWANAZI:** That's my recollection because we were preparing to handover to the new Board and that is why she insisted that, that be captured.

**ADV ARMSTRONG:** It was captured that it was a bad contract, it was not a good contract?

**MR MKWANAZI:** That's correct ja.

**ADV ARMSTRONG:** Thank you.

**CHAIRPERSON:** Can I ask this, you have been in the  
10 Boards of a number of companies and you had been before your time at Transnet and Eskom based on what you said earlier on from the mid 1980's you were already involved ..[intervenes].

**MR MKWANAZI:** Ja that's correct Chair.

**CHAIRPERSON:** Now, do you know of any circumstances under which a contract which has got financial implications for a company which is concluded when there's no budget for it would still be regarded as good?

**MR MKWANAZI:** Chair, you need to have a budget for  
20 every line expenditure in your organisation.

**CHAIRPERSON:** Yes.

**MR MKWANAZI:** That's why this, frankly, was not correct.

**CHAIRPERSON:** So, if there's no budget for it, it should be regarded as a bad contract?

**MR MKWANAZI:** That's correct Chair.

**CHAIRPERSON:** Ja, okay.

**ADV ARMSTRONG:** Thank you Chair.

**ADV MKHWANAZI:** Excuse me Chair, if I can just come in there, I'm still here, just to correct something that the counsel said before you intervened Chair.

**CHAIRPERSON:** Yes.

**ADV MKHWANAZI:** The – Ms Luthuli did not suggest that the Board should handover to the new Board to say that the contract was bad, her recommendation, rather was that  
10 the Board had conceded or not whether the contract was a bad one. I just wanted to make sure that we correct that Chair, so that you know, we don't get confused in terms of what the recommendation was in this instance.

**CHAIRPERSON:** Yes.

**ADV ARMSTRONG:** Let's read out the full statement.

**CHAIRPERSON:** Ja just read out the full statement.

**ADV ARMSTRONG:** So, on page 352 it says,

20 "Mr Luthuli stated that the handover report had to reflect that the Board had considered whether or not the contract was a bad one and had concluded that the contract was not good at this time".

**CHAIRPERSON:** At least now it has been read in full, I think the next thing would be to just double check with Mr Mkwanazi, the witness, whether that changes anything in terms of the response that he has given.

**MR MKWANAZI:** Chairman it does not change anything because this is a record of that last Board, which then would have been handed over to the new Board which started in January 2015 and there – in the resolution below on that there are clear statements that indicate that there are certain irregular things that did happen. And whether but the contract was there – yes – but it is the technicality of irregular, no exit clause, no authority etcetera that must be handed over to the new board.

10 **CHAIRPERSON:** I understand this statement too by Ms Luthuli to mean that she was saying

1. Let us make sure as a board that the report reflects that we as the board did consider this contract.
2. Having considered this contract or the report must reflect that having considered this contract we concluded that this contract is not good at this time.

That is my understanding of what she is saying. Is that your understanding as well Mr Mkwanazi?

**MR MKWANAZI:** That is my understanding Chair.

20 **CHAIRPERSON:** Okay alright thank you.

**ADV ARMSTRONG:** Thank you Chair. So then in summary Mr Mkwanazi as a member of the so-called old board before the new board had to make its decision you have said that – am I correct that the old board was not going to determine whether to ratify the contract or not?

**MR MKWANAZI:** At that particular meeting but do not forget if that old board had had one more meeting because that was an issue of the auditors as well putting pressure on us to fix this irregular expenditure. So the old board in my interpretation having articulated what we had done would have ratified that contract conditionally to disciplinary action being taken against the two gentlemen who were basically the authors of this document. But that old board did not get the time to – to actually come to that point because now it  
10 was handing over.

**CHAIRPERSON:** Okay I think Mr Mkwanazi your understanding of the concept of ratifying might be different from Ms Armstrong's understanding. Now when you – you say the old board if it had time would have ratified the contract by taking disciplinary action against the two persons concerned, is that right?

**MR MKWANAZI:** Chair yes it would have been a conditional ratification because do not forget in the external auditors would have defined it fully as irregular – it has not been  
20 ratified. So you ratify it that we understand it was irregular etcetera and we have taken these steps so we now adopt it as board that this contract can continue to its termination.

**CHAIRPERSON:** Oh okay. Maybe – maybe I was wrong to think you have a different understanding but let me – let me tell you what I understand when you say the board – the old

board was going to ratify the contract if – conditionally if it had had time.

**MR MKWANAZI:** Ja.

**CHAIRPERSON:** Now for me what that means is that you were going to approve the contract and of course you say conditionally. We can talk about conditionally in due course.

**MR MKWANAZI:** That is correct.

**CHAIRPERSON:** Is that what you mean? Is that what you mean that you would not approve.

10 **MR MKWANAZI:** That is correct Chair.

**CHAIRPERSON:** Yes. Now how – how can you say the old board was going to approve the contract when you do not know or you did not know what the outcome was going to be of the exercise that you talked about of establishing whether Eskom would get value out of this or not?

**MR MKWANAZI:** Chair in other words let me clarify.

**CHAIRPERSON:** In other words my understanding is you would want to first find out is this contract worth anything to Eskom when it is worth anything serious and if you  
20 concluded or the exercise concluded that Eskom is going to get no value of this there is no way you would approve the contract. That is what I think but you must tell me what it means.

**MR MKWANAZI:** Chair these types of contracts particularly in the issue of marketing and marketing contracts. The



definition of value is quite difficult because you – you then need to quantify the number of hours that you got on exposure through television and you must quantify it in numbers that per flitting of an ad or anything and also you – at the time if you recall there was a special messaging that Eskom was going to the public with – in terms of trying to talk about the load shedding and all the other things and people saving electricity. So there was an element of value but the issue is was that value worth R43 million that is the  
10 exercise that needed to be done. But there was value in Eskom trying to have this publicity in terms of what they were trying to achieve as an organisation. Because they were talking about the advertisements that was flitted. They will talk about illegal [indistinct 00:06:11] and all the other things that are wrong which are happening out there affecting Eskom infrastructure.

**CHAIRPERSON:** But let us assume that the board undertook that exercise of establishing what value Eskom was going to derive from this contract of R43 million and the outcome of  
20 that exercise was that the value that Eskom was going to derive from this contract was R3 million. Is the position that that therefore the R40 million would be viewed as...

**MR MKWANAZI:** Could have been defined as mismanagement.

**CHAIRPERSON:** As fruitless and wasteful expenditure, is

that right? You agree?

**MR MKWANAZI:** Ja. No, not fruit.

**CHAIRPERSON:** Yes. So my question then is, how do you approve the contract – how was the board going to approve the contract before doing that exercise rather than do that exercise first depending on the outcome you might approve?

**MR MKWANAZI:** Chair there are two issues here. One is the irregular contract that the board would have ratified.

**CHAIRPERSON:** Yes.

10 **MR MKWANAZI:** But the fruitless and wasteful part of it would have required more work.

**CHAIRPERSON:** Yes. Yes.

**MR MKWANAZI:** To determine if there was any value that Eskom got out of that contract.

**CHAIRPERSON:** Yes. Now if you approve the contract before you know how much value you are going to derive from the contract and whether it commensurates with R43 million or even close to it what happens if later on you find that the value is negligible are you not in trouble for having  
20 approved it already?

**MR MKWANAZI:** Chair there are two issues here maybe you are confusing the issues.

**CHAIRPERSON:** Ja please help me.

**MR MKWANAZI:** There was a board that ended its term in December.

**CHAIRPERSON:** Yes.

**MR MKWANAZI:** We are talking about that board.

**CHAIRPERSON:** Yes. Yes.

**MR MKWANAZI:** I was part of that board.

**CHAIRPERSON:** Yes.

**MR MKWANAZI:** Then there – there is a new board that took over in January it was chaired by Zola.

**CHAIRPERSON:** Tsotsi.

**MR MKWANAZI:** By Zola.

10 **CHAIRPERSON:** Zola Tsotsi.

**MR MKWANAZI:** And the – subsequent to that there was on the board chaired by Doctor Ben Ngubane.

**CHAIRPERSON:** Yes.

**MR MKWANAZI:** It is those two boards that then took a different view on what to do with this contract. This board that I was part of was still evaluating the options.

**CHAIRPERSON:** Hm.

**MR MKWANAZI:** It did not execute the ratification.

**CHAIRPERSON:** Hm. That I understand.

20 **MR MKWANAZI:** Yes.

**CHAIRPERSON:** I think my questions arise from your statement earlier on that if your – if the board of which you were part had had enough time it would have approved.

**MR MKWANAZI:** Yes.

**CHAIRPERSON:** This contract conditionally. I think that is

where – that is where my questions come from. So I am saying.

**MR MKWANAZI:** Yes Chair.

**CHAIRPERSON:** How do you – how do you say this board was going to approve conditionally before that exercise is done?

**MR MKWANAZI:** No there are two approvals Chair that are needed.

**CHAIRPERSON:** Yes.

10 **MR MKWANAZI:** On a contract like this. The one approval is the irregular that we could have done because then...

**CHAIRPERSON:** It is the processional one.

**MR MKWANAZI:** You avoid ...

**CHAIRPERSON:** That is the processional affect.

**MR MKWANAZI:** This board – my board could have done that Chair.

**CHAIRPERSON:** Yes.

20 **MR MKWANAZI:** But the approval of fruitless and wasteful even my board would not have been able to get it until a different report would have come out on what value did you get out of this contract.

**CHAIRPERSON:** Yes. I understand the two issues and maybe we – maybe we will not go further but if I was in a board such as the one in which you were in December – is it 2016?

**MR MKWANAZI:** 2014.

**CHAIRPERSON:** 2014 I would say well before we – we approve anything on this contract I want to know fully about it. What – why are we getting into this contract? What are we going to get as Eskom? That is where my questions are because I would want to say, this board must have nothing to do with this contract if I am satisfied that there is no value. I would not even want to – to say I approve the – I condone the irregularity about procedure. I would want to say, this  
10 board has got nothing to do with this contract. The person who entered into it without authority must face the music. Do you think I was going to be too harsh?

**MR MKWANAZI:** Chair you are not too harsh but at the time...

**CHAIRPERSON:** I must just understand certain things.

**MR MKWANAZI:** I am thinking [indistinct 00:11:41] things the – they get caught up with the certain processes. The external auditors were putting pressure on us because they wanted to finalise their annual financial statements.

20 **CHAIRPERSON:** Okay. Okay.

**MR MKWANAZI:** So for that to fix the irregularity.

**CHAIRPERSON:** Yes.

**MR MKWANAZI:** Would have been helpful.

**CHAIRPERSON:** Yes.

**MR MKWANAZI:** But mentioning that there is potential

fruitless and wasteful expenditure coming.

**CHAIRPERSON:** Yes.

**MR MKWANAZI:** And it is normal in companies that it actually comes after – almost at the conclusion because of the project.

**CHAIRPERSON:** Yes.

**MR MKWANAZI:** You then say, hold it this project – this is the value I was supposed to get but I only get this value.

**CHAIRPERSON:** Yes.

10 **MR MKWANAZI:** So the difference is that yes there would have been a fruitless and wasteful expenditure.

**CHAIRPERSON:** Yes.

**MR MKWANAZI:** In another board.

**CHAIRPERSON:** Yes.

**MR MKWANAZI:** In another audit.

**CHAIRPERSON:** Yes.

20 **MR MKWANAZI:** To say that matter you fix the irregularity but fruitless and wasteful expenditure yes it is recognise it because it is something carefully wants you to articulate would have done that.

**CHAIRPERSON:** Okay. Okay. But ordinarily when say a Group CEO approaches the board about a contract that might need to be signed one of the things that the board would look at is, what value will our entity get from this, is that right? At – even at that stage.

**MR MKWANAZI:** That is correct.

**CHAIRPERSON:** Yes, okay thank you. Ms Armstrong.

**ADV ARMSTRONG:** Thank you Chair. So then Mr Mkwanazi so I understand then to summarise that the board at that point had reserved its judgment on ratification. It was still exploring options that was your testimony.

**CHAIRPERSON:** There I think – I think his testimony is on the irregular [indistinct 00:13:35] board.

**MR MKWANAZI:** If I – handover board.

10 **ADV ARMSTRONG:** Yes.

**CHAIRPERSON:** Ja on the irregular expenditure he says they were going to approve that.

**MR MKWANAZI:** Yes. We could have.

**CHAIRPERSON:** Ja. They could have.

**ADV ARMSTRONG:** Yes you could have.

**CHAIRPERSON:** They could have if they had time.

**MR MKWANAZI:** Ja.

**CHAIRPERSON:** Ja.

**ADV ARMSTRONG:** Okay.

20 **CHAIRPERSON:** But they did not because of time.

**ADV ARMSTRONG:** Okay.

**CHAIRPERSON:** But the other one was still going to be investigated about fruitless and wasteful expenditure.

**ADV ARMSTRONG:** Indeed.

**CHAIRPERSON:** Ja.

**MR MKWANAZI:** The fruitless and wasteful would have been dealt with following that.

**CHAIRPERSON:** Ja okay.

**ADV ARMSTRONG:** Okay. Thank you. And then finally the issue of the corrective action or the disciplinary action against Mr Cheou and Mr Matjila that is also something you expected the new board to deal with.

**MR MKWANAZI:** That is correct.

**ADV ARMSTRONG:** Okay. And with all these very important  
10 things for the new board to consider and an emphasis in the minutes about at the very least the fact that this was a – not a good contract being conveyed and then also you pointed out Mr Mkwanazi in the resolutions that Ledwaba Mazwai Attorneys and the company secretary were going to prepare a summary and final resolution on the discussions and the decisions around the New Age sponsorship contract for signing by the Chairman of the board, Chairman of the Audit and Risk Committee for inclusion handover report to the new board. So all of these discussions were now going to be  
20 passed over in its handover report was that your understanding?

**MR MKWANAZI:** That is correct yes.

**ADV ARMSTRONG:** So with all of these important considerations would – would you have considered it good corporate governance to convene a live board meeting to



discuss these issues before the board took further action?

**MR MKWANAZI:** We waited – which board now took ...

**ADV ARMSTRONG:** The new board. The new board.

**MR MKWANAZI:** My board or the new board?

**ADV ARMSTRONG:** The new board when they took over would you accept it to be good corporate governance for them to convene a meeting to discuss all of these issues.

**MR MKWANAZI:** Chair if I – if I –

**ADV MKWANAZI:** If I may come in Chair and then...

10 **CHAIRPERSON:** Yes. Mr Mkwanazi the lawyer ja.

**ADV MKWANAZI:** I think arising out of this is that the – the timelines between you know the vacating of office of the board at that time and the new incoming board was so slim that for someone who is not you know close to the process may actually think they were on the same board at the same time. So it is just for clarity for example Chair. Mr Pamensky was never on the same board with Mr Mkwanazi. In fact, he came in I think two or three months after that – after the board that Mr – the old board as he referred to it  
20 had already made the recommendations insofar as how the irregularity and the expenditure should be dealt with in that regard. So I think it would not be fair to you know ask a question of that nature to Mr Mkwanazi whose terms at the time had already expired. So I think Chair it is important that we brought that line and make sure that Mr Mkwanazi

only answers for the questions you know that relate to his term of office. So whether or not it is good corporate governance for a board to have a Round Robin etcetera, etcetera I think that depends from board to board and organisations as well as the communications policy that that particular board had in that instance.

**CHAIRPERSON:** Yes.

**ADV MKWANAZI:** All I am asking for Chair is that let us – let us speak to the term of office of Mr Mkwanazi and  
10 anything beyond that would only be supposition Chair and consequently with the [indistinct 00:17:25] taking the forum's time. Thank you Chair.

**CHAIRPERSON:** Yes thank you. I think one concern I had with the question is you did not lay a basis for asking for Mr Mkwanazi's opinion on whether it would be a good governance practice or not so if there is no basis that is laid there might be a problem with that.

**ADV ARMSTRONG:** Indeed Chair and the basis that I was hoping to point out to Mr Mkwanazi was there were so many  
20 important issues that still needed to be determined by the new board with respect to a large contract sponsorship of the New Age, with respect to disciplinary action that had to be taken with two of the employees, with identifying fruitless and wasteful expenditure and the...

**CHAIRPERSON:** Maybe – I am sorry. Maybe – maybe your

problem is the reference to good corporate governance.

**ADV ARMSTRONG:** Indeed Chair.

**CHAIRPERSON:** Maybe if you just ask a question.

**ADV ARMSTRONG:** Indeed Chair. What was the – what would have been Mr Mkwanazi your expectation perhaps of a member of the old board?

**CHAIRPERSON:** Okay. Hang on. Mr Mkwanazi the lawyer – ja I think you understand maybe she is going to put the question in a different way.

10 **ADV ARMSTRONG:** Indeed Chair.

**CHAIRPERSON:** Yes.

**MR MKWANAZI:** We will give you indulgence Chair.

**CHAIRPERSON:** Yes. Yes okay thank you.

**MR MKWANAZI:** [indistinct]

**CHAIRPERSON:** Yes.

**MR MKWANAZI:** Can I respond?

**CHAIRPERSON:** Yes. Yes.

**MR MKWANAZI:** It is an opinion. Now the old board had two reports the Dedoro Muswayo [?] Report and the Gomoto  
20 Report [?] and those reports were clear. Anybody who would have taken those two reports and read them thoroughly now being the new board. I am not sure how they have arrived at a different conclusion. I am really not sure. Now even in terms of say can you do this telecom or Round Robin firstly to read the two reports before you can commit to a telecom

or a Round Robin on an important subject like this because it is not easy to discipline a Chief Executive of an organisation. It is quite a process. So yes they needed the two reports and the two conclusions before they would have taken the decision, they took in June 2015 to ratify a contract yes.

**CHAIRPERSON:** So – so you certainly can say they had an obligation to apply their minds to the issues that you had flagged as the – as the old board?

10 **MR MKWANAZI:** Chair may I yes.

**CHAIRPERSON:** Thank you.

**ADV ARMSTRONG:** Thank you. And of course, Mr Mkwanzazi you would have expected a handover report to contain a summary of your discussions at these meetings as is included in this resolution, is that correct?

**MR MKWANAZI:** I think they were handed over. That is correct Chair.

**ADV ARMSTRONG:** So in the – I asked you earlier Mr Mkwanzazi about this resolution and your last meeting which  
20 stated that there needs to be a summary prepared of what had been discussed and that would be included in the handover report. So what I am asking you – and you would have in addition to the two reports, the forensic and the legal reports would you have also expected that summary of your discussions in the board meetings, the opinion of the old

board to be conveyed to the new board before voting on a contract?

**MR MKWANAZI**: That is correct. That is correct Chair.

**ADV ARMSTRONG**: Thank you Mr Mkwanazi. Chair thank you. Those are our questions about – from Eskom and from our side.

**CHAIRPERSON**: Okay no thank you. Thank you very much Mr Mkwanazi the witness and thank you very much to Mr Mkwanazi the lawyer.

10 **ADV MKWANAZI**: Thank you Chair.

**CHAIRPERSON**: It appears that we have reached the end of the proceedings for today. Of course, I am – I have no doubt you will come back Mr Mkwanazi to assist the commission further on other matters but for now thank you very much to both of you and thank you for being able to stay until late. And thank you to the commission's legal team and everybody who has stayed on so that we could at least finalise this part of Mr Mkwanazi's evidence. On Monday just in case the media are still here or are listening on Monday the  
20 commission will hear the evidence of a former Minister Ms Nonvula Mokonyane in regard to allegations involving Bosasa and during the week we will also hear other persons who were implicated in Mr Agrizzi's evidence and some of them are Magistrate Naya of Pretoria. I think Mr Linda Mti who was Commissioner of Correctional Services is

scheduled also to come next week. There might be one or two others. Mr Vincent Smith was meant to come but arrangements have been made – he has been released. He will come some other time. And I think on Friday we will hear the – I will hear evidence from Judge Makhubela of the High Court in relation to PRASA matters. So I thought I must just indicate that so that where we are able to, we indicate which witnesses we will be having and which work streams we will be dealing with. Okay.

10 **ADV ARMSTRONG**: Thank you Chair. Sorry Chair could I just hand up that Business Day clearly of the article.

**CHAIRPERSON**: Oh yes.

**ADV ARMSTRONG**: Thank you that our files are completed.

**CHAIRPERSON**: Yes.

**ADV ARMSTRONG**: Thank you. Mr Mkwanazi you would have had an electronic version.

**MR MKWANAZI**: Thank you Chair.

**CHAIRPERSON**: Thank you very much.

**MR MKWANAZI**: I have got an electronic one.

20 **ADV ARMSTRONG**: Yes.

**CHAIRPERSON**: Ja. Okay.

**MR MKWANAZI**: Thank you very much I thank you.

**CHAIRPERSON**: Thank you very much. Okay we adjourn.

**ADV MKWANAZI**: Thank you Chair, thank you colleagues.

**CHAIRPERSON**: Thank you. We adjourn.

**ADV ARMSTRONG:** Thank you Chair.

**INQUIRY ADJOURNS TO 20 JULY 2020**

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