

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

02 NOVEMBER 2020

DAY 296



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Recording & Transcriptions

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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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PROCEEDINGS RESUME ON 02 NOVEMBER 2020

CHAIRPERSON: Good morning Ms Hofmeyr, good morning everybody.

ADV HOFMEYR: Good morning Chair.

CHAIRPERSON: Yes are you ready?

ADV HOFMEYR: We are indeed Chair.

CHAIRPERSON: YES.

ADV HOFMEYR: Thank you.

CHAIRPERSON: Yes.

10 **ADV HOFMEYR:** Chair this week marks the culmination of the aviation work streams investigation barring a few loose ends that still need to be wrapped up with certain witnesses.

This week is the week where really two years of investigative work will come to a conclusion. And Chair that might – the files behind me might be some indicator of the extent of those investigations. We have to have the files installed with us this week because the two witnesses who will be appearing this week are first Ms Yakhe
20 Kwinana who was a non-executive board member of SAA for some many years; the Chair of the SAA Technical board and also the Chair of the Audit and Risk Committee at a point during her tenure at SAA.

Also this week the commission will receive the evidence of Ms Duduzile Myeni. Again who served for a

considerable period on the SAA board and for many years as its Chairperson?

And much of the evidence that has been received by this commission prior to this week has involved Ms Kwinana or Ms Myeni in various ways and so there is a need to the course of their evidence this week to take them to other evidence that has been received in order to give them an opportunity to respond.

CHAIRPERSON: Hm.

10 **ADV HOFMEYR:** Chair the commission has received over the course of the aviation work streams evidence presentation. Considerable evidence that points to state capture, corruption and fraud having taken hold in the state owned enterprises in respect of which Ms Kwinana and Ms Myeni served on the boards.

And Ms Kwinana who will testify today and tomorrow herself has been implicated in corrupt acts and in creating a climate of fear and intimidation against those SAA employees and managers who sought to resist
20 unlawful acts.

And so today and tomorrow really offers Ms Kwinana an opportunity to tell her side of the story so that this commission is in a position in due course to make findings, having weighed all the evidence that has been presented to it.

Chair Ms Kwinana is represented by Ms Mbanjwa whom you have met before. I would like to ask that Ms Mbanjwa just places herself on record if we could?

CHAIRPERSON: Yes. Good morning Ms Mbanjwa. Switch on your microphone. Oh I think that might be a wrong one.

ADV HOFMEYR: Oh it is.

CHAIRPERSON: I think you might have to sit...

ADV HOFMEYR: Ms Mbanjwa the ones that are active are the ones in the row behind. So if you could take up a
10 position there.

CHAIRPERSON: Yes. Well maybe what – maybe what we will say because I do hear you, you confirm your appearance for Ms Kwinana, is that right? Maybe I will just place it on record for you. You do not have to go and do that. Okay. Okay.

ADV HOFMEYR: Chair I was going to request that the witness be sworn in so if there is something Ms Mbanjwa would like to address you on now would be an appropriate time.

20 **CHAIRPERSON:** Yes sure ja. Is your microphone working Ms Mbanjwa? Yes, Yes. Okay.

ADV MBANJWA: Sorry Chair. Chair there has already been a remark by Ms Hofmeyr concerning Ms Kwinana who is a witness here today. There is a small address that Ms Kwinana wants to make. I am just asking permission for

her to make it. Yes.

CHAIRPERSON: When she starts her evidence?

ADV MBANJWA: Yes. Before she starts – before Ms Hofmeyr.

CHAIRPERSON: Before the questioning?

ADV MBANJWA: Yes.

CHAIRPERSON: Before the questioning? No that is fine.

ADV MBANJWA: Thank you Chair.

CHAIRPERSON: Okay alright. Yes Ms Hofmeyr are you

10 done?

ADV HOFMEYR: Yes.

CHAIRPERSON: Do you want to...

ADV HOFMEYR: Yes indeed.

CHAIRPERSON: Yes.

ADV HOFMEYR: I am done and we – if we can swear Ms Kwinana in?

CHAIRPERSON: Yes.

ADV HOFMEYR: Thank you.

CHAIRPERSON: Okay. Please administer the oath or
20 affirmation.

REGISTRAR: Please state your full names for the record.

MS KWINANA: Yakhe Kwinana.

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

MS KWINANA: No.

CHAIRPERSON: Do you consider the oath to biding on your conscience?

MS KWINANA: Yes.

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

ADV HOFMEYR: So help me God.

REGISTRAR: Thank you.

10 **CHAIRPERSON:** Thank you. You may be seated Ms Kwinana. I understand from your attorney that you would like to say something before the questioning starts. Is that right?

MS KWINANA: Yes Chair.

CHAIRPERSON: How much time are you asking for?

MS KWINANA: Maybe less than two minutes.

CHAIRPERSON: That is fine okay.

ADV HOFMEYR: Chair may I suggest that Ms Kwinana just brings the microphone a bit closer to her because the
20 recording will require that to be amplified.

CHAIRPERSON: Yes, yes thank you. You may proceed then Ms Kwinana.

MS KWINANA: Thank you Chair.

CHAIRPERSON: I think you may have to raise your voice or come closer to the microphone. Only that one seems to

be the right on, only that microphone.

MS KWINANA: This one?

CHAIRPERSON: Yes.

MS KWINANA: Thank you Chair. Chair before Ms Hofmeyr with her questions I would like to put on record the following:

On two separate occasions Ms Hofmeyr stated that I was in a corrupt relationship whilst I was a director at SAA and a Chairperson of SAAT. In that I received kickbacks
10 and bribes. She also said that I received an amount of R4.3 million.

I instructed my attorney to write a letter to the commission requesting Ms Hofmeyr to name the basis of those allegations. No reply was received to the first letter nor to the second letter which we also wrote.

I was advised by my attorney of record that I would apply for recusal of Ms Hofmeyr on the grounds that she is biased against me because basically she said on more than one occasion she puts it to the witness that I am involved
20 in corrupt activities without even being interviewed; without even being given an opportunity to sit here. I am happy Chair today that I am sitting here.

I however decided that I should come to the commission so that I put the record straight and in putting the record straight I would like to state the following facts

which were brought to the attention of the investigators of the commission and also contained in Open Water Report which is with the commission that for some unknown reason are not being dealt with in the proceedings of the commission.

Chair I would first like to talk generally about the financials of SAA. I had an opportunity of looking at the financials for eighteen years from 2000 up to 2017. I wanted to go further to 2018/19/20 March and I requested
10 those financials but they – I understand they are not yet available.

But I want to bring it to the attention of the South Africans that since 2000 the year that I started to review the financial statements there is not a single year from 2000 up to 2017 there is not a single year that SAA incurred operating profits.

What I mean by operating profits I mean where the revenue of SAA is enough to cover the expenses of SAA without selling any other item. We all know that in
20 2000/2001 all the fleet of SAA was sold to finance operating activities.

We know – we all know the story of Colman Andrews that he went away with R250 million in golden handshake despite the fact that SAA never incurred any profits from 2000 up to 2017 and I am sure even the

financials of 2018 that are not yet out will also show exactly the same thing.

Now let me go to the specifics Chair. In June 2016 SAAT under my leadership as a Chairperson instituted investigations into spare parts that were bought and sold immediately some of them at zero rands. They were be purchased at a higher rate and sold at the companies that are known to the SAAT employees. We know that. It is in the newspapers.

10 And in fact Chair because I arrived early here I had an opportunity of looking at all these files. None of these names that I am going to mention here as are here they were never investigated. Nothing like that.

CHAIRPERSON: And why did you not give the names to the commission? We – I have been telling – asking the public from 2018 to say anyone who is aware of corruption or acts of state capture must please bring that information to the commission?

MS KWINANA: Chair the reason why I am going to
20 mention them today is because all these names are in the Open Water Reports and they are all Open Water Reports are here with the state commission. Yes so now if the Open Water Report is here and in fact the reason why I am here is because of the Open Water Report I do not understand why ...

CHAIRPERSON: I do not know about you being here because of the Open Water Report because I believe you are here because there have been a number of witnesses who have mentioned your name in certain contexts in regard to the work of the commission.

MS KWINANA: Okay alright thank you Chair. So what I am saying Chair is that the names that are in the Open Water Report the report that the commission has. You are Chair investigating the state capture, the corruption, 10 allegations of fraud and bribery, all those things and all that information Chair is in the those reports that you have.

I will just mention for – that the report has got a lot of people Chair and the reason why I mention it is because they are in the report that you have.

I will start Chair with Leon Roberts. Leon Roberts was the Chairperson of FST – PSFT.

CHAIRPERSON: Sorry Ms Kwinana.

MS KWINANA: Yes.

CHAIRPERSON: You see if you want to mention other 20 people should you not have prepared an affidavit and submitted it to the commission mentioning those people so that they could be given Rule 3.3 Notices and be warned that you intend mentioning them in the commission?

MS KWINANA: As I said Chair.

CHAIRPERSON: So that they – they could protect their

rights as well.

MS KWINANA: As I said Chair I will then – then I will not mention the name but I will mention the positions. But as I said the names including the positions.

CHAIRPERSON: Ja but sometimes you – if you do not mention my name but you say the Chairperson of the commission everybody knows who the Chairperson of the commission is. If you say the President of South Africa in 2020 everybody knows who that is.

10 **MS KWINANA:** Chair I do not – I do not intend to write an affidavit here. What I intend – What I would do is to say to Andrew you investigator why are you ignoring this report that you already have? That is what I would say because all these names are in that report.

CHAIRPERSON: You see if you – if you want to say – if you want to write to the commission and say there is evidence that so and so and so and so was – or was involved or is involved in acts of corruption and state capture and here is that evidence or that evidence is to
20 found in a certain document you may do so and the commission would look – look at that.

The one thing which I want to mention to you is that when you have failed to do that over the past two and a half years that this commission has been working and you mention it now which when we are at the tail end of the

work of the commission we might not be able to – to look into that because we are at a stage now having this commission has been sitting and hearing oral evidence from August 2018.

We are at a stage where even some of the investigators have left because in terms of the work that we have got to do they have done – they have done their part and we are working on what we have received in the past.

10 So when we receive something new that has not been there there may be those challenges. It may be that it is something that we regard as so important that we can see what plan we can make to pursue it. But generally speaking we are in November 2020 the aim was to complete oral evidence by end this year so that January, February and March next year which would be the only other months when the commission is allowed to continue.

 It is not for not the hearing of oral evidence. So I am alerting you to this so that you can understand if you
20 give us something at this late stage and we are not able to do anything it might be because of the timing. If you had brought to our attention much earlier there might have been time to pursue it.

MS KWINANA: Thank you for that Chair. Your investigator Andrew Kirkland was told about these and in fact he was

told that all that is in the Open Water. And what he said – he said no, we are looking for specific people. In fact that is what he also confirmed in the Zoom interview that was held on 28 September that they focussed on two issues. The GPU's and components because they were looking for specific people.

So which means therefore that your investigation team was told about these people that are in the report but they did not do anything about that because they were
10 looking at specific people which means therefore that your investigation team was told about these people that are in the report but they did not do anything about that because they were looking at specific people.

CHAIRPERSON: Yes you see – well I do not know the context in which he may have said that but what I can tell you that we cannot look everybody in South Africa who against whom there are allegations of corruption. We cannot because we do not have enough time for that. To do that you would need years and years and years okay.
20 And if you have – if you have been following the work of the commission you will know that already when the commission applied at the end of last year to the high court for the extension of its lifespan it was reported that I had said that we would narrow our focus even more in order to finish within the time that we have.

There are many people that may be transactions that we – maybe we should have investigated – we may have – that may have deserved to be investigated. We have not gone into municipalities you know. We have not gone into all government departments. There is just not enough time and not enough capacity.

So those who responded to the call of the commission early when we said please South Africans if you know of somebody who has been involved in acts of state capture or corruption here get give – get us – give us the information.

Those who responded early and if what they told us appeared credible and appeared important that was identified and followed. We could not follow everything. You understand?

MS KWINANA: I understand Chair but I have a challenge when a report with so much damning evidence that the commission has and the commission decides to pick and choose so to say. And Chair if there is no time for the people who are already mentioned in the reports that you have then I really do have a problem.

CHAIRPERSON: Well some of the matters that we are not able to follow because of time constraints and you know will be handed over to Law Enforcement Agencies to investigate further.

MS KWINANA: Thank you Chair. So what I am going to do because I really feel strongly – strongly about this and in fact the reason why I feel strongly about this is when I instituted this investigation my aim which basically I did not know that basically I am more or less acting against the tide of looting at SAA Technical.

And on the other hand the evidence is there and in fact there is not a single decision Chair that I regret I made when I was the Chairperson of South African
10 Technical – when I was the Chairperson of the Audit Committee and when I was a board member of SAA I can stand with all the decisions that I made.

I tried by all means in respect of this investigation we even found out that an asset of about R175 million was given away for free. To whom was it given for free? It was given to the entities that are linked to SAA Technical. I mean really why would your investigators not look into that.

CHAIRPERSON: Did you give us an affidavit with that
20 information?

MS KWINANA: Chair – Chair as I said this information is with the commission. So I did not see a reason for me to see – to give evidence – or to give an affidavit on the information that your investigators have.

CHAIRPERSON: Yes, no Ms Kwinana we are not going to

talk in circles now. We have had this engagement. It has been more than ten minutes. Please wrap up.

MS KWINANA: Thank you Chair.

ADV HOFMEYR: Thank you Chair.

CHAIRPERSON: Yes.

ADV HOFMEYR: Chair there were a few aspects that I just need to address in response to what Ms Kwinana has said. If you will just give me a moment to hand a note to my...

CHAIRPERSON: Yes, yes.

10 **ADV HOFMEYR**: Right. So Chair as I have it Mr Kwinana began by stating that on two previous occasions here attorney Ms Mbanjwa had asked for details about the allegedly corrupt relationship she was in, the kickbacks she received and the R4.3 million that was referenced in Mr Ndzeke's evidence. And she said clearly that has been no response to that when that request was made.

Chair that is false. There was a detailed response sent to her attorney on the 28 October – sorry earlier than that – let me find the right one. On the 30 September and
20 Chair that letter is quite an important letter because Ms Kwinana's already...

CHAIRPERSON: You might wish to either read it into the record.

ADV HOFMEYR: I will read it into the record if I may Chair.

CHAIRPERSON: All the relevant parts yes.

ADV HOFMEYR: It is just correspondence.

CHAIRPERSON: Because I cannot for some reason she might not be aware of it.

ADV HOFMEYR: Indeed.

MS KWINANA: I am aware of it.

CHAIRPERSON: Yes.

MS KWINANA: It did not address what we were addressing Chair.

10 **ADV HOFMEYR:** Right so...

CHAIRPERSON: Okay alright.

ADV HOFMEYR: What happened is Monday the 28 September this year there was a Zoom meeting held with Ms Kwinana and Ms Mbanjwa. That was the first meeting that the commission was able to secure with Ms Kwinana despite inviting her as far back as the 28 November 2019 to meet with the commission.

20 She was repeatedly requested to provide an affidavit to the commission. Neither of that took place until Monday the 28 September this year when a Zoom meeting was conducted with Ms Kwinana, Ms Mbanjwa and members of the legal team and investigation team of the commission.

That meeting I can only say deteriorated quite rapidly. It was a meeting that was really to vent a series of

attacks from Ms Kwinana and Ms Mbanjwa at me; at the investigators etcetera.

Luckily we have a transcript of that meeting which we will make available if necessary because since that meeting there have been repeated claims made about what was said at that meeting which again are just false.

But what Ms Kwinana and Ms Mbanjwa got on the 30 September was a response to this very issue. We began with the Open Waters Reports in the response
10 because as Ms Kwinana has done today reference was made to other Open Waters Reports. And repeated statements were made...

ADV MBANJWA: Chair today I really do not want to object therefore what I will do is to simply place on record the manner of presenting evidence. And I would beg Ms Hofmeyr to please deal with that.

CHAIRPERSON: No, no, Ms Mbanjwa Ms Hofmeyr is still addressing me. I will give you a chance after she has finished.

20 **ADV MBANJWA:** But Chair he led us again with that...

CHAIRPERSON: You will respond after she has finished. She allowed your client at your request – we allowed your client to address me. She addressed – Ms Hofmeyr never interrupted her when she was addressing me. Ms Hofmeyr never interrupted you when you made a request. Why are

you interrupting her when she is addressing me? Ms Hofmeyr.

ADV HOFMEYR: Thank you. Chair the issue of the Open Waters Report came up in that Zoom meeting. There was an allegation that the Open Waters Report was the – the everything to the commission. That is was the beginning and end of our investigations.

We made it repeatedly clear in that meeting that we look at whatever comes to us, we assess it but it does not
10 dictate our investigative methods. The role of the commission is to take what previous forensic investigators and others have done and probe further and that is what we have done.

And then what happened was we clarified that the day after in the 30 September letter and then there was also the response to the request about well where was Ms Kwinana implicated and how?

And this is what was said Chair and I think it is important just to read this part into the record. And Chair I
20 do not want to delay time in this commission. We have so little.

CHAIRPERSON: Yes, yes.

ADV HOFMEYR: But Chair there are just repeated allegations both that I behave inappropriately and should be recused. I will come to that in a moment. That the

investigators act in a biased and unprincipled manner. Last week the Secretariat of the commission got told by Ms Mbanjwa that it acts with bad faith. So it a litany of attacks on this commission, its Secretariat, its investigators and its legal team and there comes a point I submit Chair where it actually needs to be put to bed so that we can proceed with matters of great importance to this country.

CHAIRPERSON: Ja.

10 **ADV HOFMEYR:** This is what was said.

“In correspondence prior to the meeting”

That is a reference to the Zoom meeting.

“You asked the commission to indicate the respects in which Zano Spark Pty Limited had been implicated in the evidence presented before the commission.”

Chair you will recall the R4.3 million comes from JM Aviation Ms Hendricks into Zano Spark’s account.

20 “In response to this request the commission sent you a link of the transcript of the evidence of Mr Vuyisile Ndzeke who testified before the commission on the 26 August. Mr Ndzeke’s testimony about that Zano Spark is clearly reflected in the transcript. At Monday’s meeting you

demanded that the commission point out the specific parts of the transcript where Zano Spark was implicated. This is not the role of the legal team of the commission particularly where a party against whom a summons has been issued is legally represented. Nonetheless we draw your attention the fact that the evidence pertaining Zano Spark appears from pages”

10 And then we give all the pages referenced in the transcripts. We then go on;

“These passages from Mr Ndzeku’s testimony dealt with the fact that after JM Aviation made a R6 million profit on the sale of GPU’s to Swiss Port South Africa an aggregate amount of R4.3 million was paid by Mr Ndzeku to JM Aviation and his wife Ms Hendricks to Zano Spark. This money was then paid out to Ms Kwinana’s personal account. While Mr Ndzeku claimed that this money had been paid in order for Zano Spark

20 to invest money in forex trading on his behalf the bank statements show that the money was instead paid directly to Ms Kwinana. In fact Zano Spark did not have any licence to trade in forex or any licenced financial service provider, which it would have required if it were to have been legally investing money on Mr

Ndzeku's behalf.

Zano Spark, therefore, appeared to have been used to direct funds from JM Aviation to Ms Kwinana shortly after she seized to be a member of both SAA and SAA Technical.

This implicates Zano Spark as a potential congruent for kickback payments from one of SAAT's suppliers to its former chairperson, Ms Kwinana."

Chair, nothing could be clearer, I submit to you today, than
10 precisely what the implication was. Precisely what Ms Kwinana is going to be asked about in her question today.

So the suggestion that we are playing cat and mouse in some way by not being upfront with Ms Kwinana about the allegations against her is again simply false.

Chair, Ms Kwinana then just made reference in the passing to the fact that she has been advised that there will be an application for my recusal today. Well, there is no application before you.

20 And Chair, because of the repeated attacks on me throughout our interactions in the correspondence with Ms Mbanjwa, what the secretariat eventually did on the 28th of October, which was last week, was made it very clear, that if there was to be a recusal application it would need to be brought timeously and appropriately.

Let me just read that letter into the record. It is the letter of the 28th of October at paragraph 7. It says:

“Finally, your letters contain numerous allegations of bias and improper conduct on the part of the Commission’s evidence leader, Ms Hofmeyr.

If you regard her conduct as in any way compromising Ms Kwinana’s rights, you are invited to make any application you deem necessary to the Chairperson of the Commission.

10 Please ensure that such application complies with the rules of the Commission and is made out notice of motion supported by an affidavit.”

The response to that came, I think it was the next... No, even on the same day. And the response from Ms Mbanjwa on the same day was:

“Thank you for the legal advice on how to handle Ms Hofmeyr. Please advise us what we should do about your prejudicial conduct.”

20 This is writing to the secretariat towards Ms Kwinana i.e. withholding of the evidence bundle. There was an issue of an evidence bundle. I take it to be resolved because Ms Kwinana did not raise it today.

So Chair in summary. Ms Kwinana was invited to engage this Commission as far back as November of 2019. She provided no affidavit nor did not meet with the

Commission until the 28th of September this year. Thereafter, she still failed to provide an affidavit despite being requested to do so and invited to do so.

And eventually when no affidavit was forthcoming Chair, you issued a Regulation 10(6) directive to Ms Kwinana to ask her to please finally give this Commission her account on various aspects. That affidavit was furnished. I will deal with it today. It is brief.

Subsequent to that, there was a request from
10 Ms Kwinana to provide her with all of the Open Water's reports. We did so and we asked her in preparation for today to draw the Commission's particular attention to any parts of those reports to which she wanted to make specific reference today.

She was invited to produce her own evidence bundle from the hundreds of documents, pages of documents that she requested and was provided with an no evidence bundle has to this moment been received by Ms Kwinana.

So Chair with that background in place, there is no
20 recusal application in respect of me before you today and so my submission is that we get on with the work of this Commission. Thank you, Chair.

CHAIRPERSON: Okay. Ms Mbanjwa, Ms Hofmeyr was responding to Ms Kwinana's address. If you want to say something, not both of you can talk, namely Ms Kwinana and

yourself. Only one will respond. You must decide whether it will be Ms Kwinana who responds or you will respond but only one of you will be allowed to respond.

MS MBANJWA: With your permission Chair, it will be me who will respond.

CHAIRPERSON: Okay.

MS MBANJWA: Yes.

CHAIRPERSON: Okay.

MS MBANJWA: And if I can begin responding now?

10 **CHAIRPERSON**: Yes.

MS MBANJWA: You see Chair, the unfortunate part about this is. There has been a statement that the allegation that there was no response to the specific letters in support. You did point out Chair that, that letter which was in response should that it has been shown to Ms Kwinana and to myself.

CHAIRPERSON: She says she knows the letter. Ms Kwinana said she knows the letter.

MS MBANJWA: If I recall well Chair. What was Ms Kwinana said. She said: You are referring to an
20 incorrect letter.

CHAIRPERSON: Yes.

MS MBANJWA: Be that as it may be. And this is what I was objecting to in the beginning and I was saying. I am placing the objection so that it covers all objections. Whenever a person is referred... Whenever a document is

placed in evidence, and I am saying this, well-aware that the Commission is not a Court of Law but ...[intervenes]

CHAIRPERSON: Let me... Ms Mbanjwa, let me just tabulate to me first what the points are you want to respond to so that I can weight them and see whether there is really a need for us to delay the commencement of Ms Kwinana's evidence.

MS MBANJWA: That is also our difficulty Chair. When Ms Hofmeyr talks, she is free to floor. And when we place
10 something – and I think we are ...[indistinct]

CHAIRPERSON: No, it is ...[intervenes]

MS MBANJWA: ...as legal representative ...[intervenes]

CHAIRPERSON: No, Ms Kwinana was ...[intervenes]

MS MBANJWA: [Indistinct] Chair.

CHAIRPERSON: No, no, no. No, no. Ms Kwinana was allowed to talk. You are allowed to talk. You have previously been allowed to talk ...[intervenes]

MS MBANJWA: No, Chair I was not allowed ...[intervenes]

CHAIRPERSON: But I do not want you to take too long.

20 **MS MBANJWA:** Okay.

CHAIRPERSON: I want to know and advance the points.

MS MBANJWA: Let us put it on record now Chair.

CHAIRPERSON: Ja.

MS MBANJWA: I have not been allowed to talk because what I am here to do is to represent Ms Kwinana. And the

first thing I asked is not even ...[intervenes]

CHAIRPERSON: Ms Mbanjwa... Ms Mbanjwa, I am not going to actually allow you to waste this Commission's time. Tell me the points on which you want to respond.

MS MBANJWA: It is ...[intervenes]

CHAIRPERSON: Then I can assess whether it is necessary for me to give you time to respond on those points.

MS MBANJWA: It is the letters Chair.

CHAIRPERSON: What about the letters? What is the point
10 about the letters?

MS MBANJWA: We did not receive a response to the letters.

CHAIRPERSON: That is fine. You did not receive the...
Ja, that is fine. It is on record. You have now said it. What else?

MS MBANJWA: [No audible reply]

CHAIRPERSON: What other point you want to address me on?

MS MBANJWA: It is the fact that it is not correct to say we
20 received the response to this letter. That is what I was addressing.

CHAIRPERSON: That is fine. If you say you did not receive the letters. As far as I am concerned, at this stage, I am not even sure what is important about those letters for purposes of today. If you say you did not receive those

letters and Ms Hofmeyr says you received the letters
...[intervenes]

MS MBANJWA: Can I address to say on the important
...[intervenes]

CHAIRPERSON: For purposes of today, what is the
importance of that – of your response to that?

MS MBANJWA: Thank you, Chair. Thank you, Chair. The
importance of these letters and the reasons why they were
written and the reason why a direct answer was needed is
10 because we are taking the view that, what Ms Hofmeyr does
is to make conclusions on evidence that has not been tested
and sometimes even incorrect.

It is for that reason why we even provided the page on
the letter to say this is what we say. Please find the source
of the argument.

But in any event, what we are going to do Chair. The
reason why we needed to put this thing on record is because
we are going to ask for your assistance that whenever a
conclusion is made.

20 And that conclusion is not based on evidence but it is
based on speculation or on the opinion of Ms Hofmeyr, we be
allowed to object to that evidence.

CHAIRPERSON: No, you see Ms Mbanjwa. Ms Hofmeyr is
not the Chairperson of the Commission. Ms Hofmeyr is an
entitled to put certain propositions to a witness and give the

witness an opportunity to respond to that.

The witness is entitled to say: But your proposition has got no foundation, no factual foundation because of A, B, C, D. The witness gets that opportunity.

Later on when you get an opportunity to either present argument or make written submissions with regard to client's evidence, you be able to say: The following propositions made by – put to my client to the witness by Ms Hofmeyr were incorrect. Blah-blah-blah.

10 And when you re-examine your client, you are entitled to go to re-examine her on those propositions. So there is really, most of the time, no need to interrupt the proceedings because I will give you a chance to re-examine.

And the purpose of re-examination is, is to clarify things that might not have been clarified during the questioning. So you will get that chance.

MS MBANJWA: One last response Chair. This is the second witness I am coming with to the Commission. You will recall that we have a witness who testified Chair in
20 February. Up until today, we have not even received the date for the re-examination. That is number one.

And secondly, the other prejudice which we suffer is this. When Ms Hofmeyr makes these depositions which we are of the respectful view that they are unfounded and we are not allowed to respond. Let us say for argument sake,

because with the last witness, she took five days.

And then when we ask for a chance to re-examine, we were told that we will only re-examine for two days. Now if Ms Kwinana is going to be here for two days, using basic mathematical whatever, I think that we will only be given 50-minutes to re-examine.

It is for that reason why we are asking. Chair, please. When a document is given to the witness, can she first before a conclusion is made about the document
10 ...[intervenes]

CHAIRPERSON: No, no, no. Ms Mbanjwa, you are not going to dictate to the evidence leader how to do her job. I now you stop you addressing me. I have asked you on what issues you want to address. I now stop you from addressing me on those issues. I have heard enough of you. We need to move on. Ms Hofmeyr, go ahead and start questioning Ms Kwinana.

ADV HOFMEYR: Thank you, Chair. Ms Kwinana, I would like to... Oh, just before we begin. Ms Kwinana's evidence
20 bundle Chair. If we could enter it into the record as Bundle BD33? And as we have done previously. When I go to specifics documents, we will identify them as the BD33 exhibits and we will enter them individually with your leave.

CHAIRPERSON: Yes, the file that we are going to use of the evidence of Ms Kwinana will refer to as BUNDLE BD33.

**REFERENCE BUNDLE USED IN MS YAKHE KWINANA'S
EVIDENCE IS MARKED AS BUNDLE BD33**

ADV HOFMEYR: Thank you, Chair. And the first of those documents in the bundle is in fact the affidavit that Ms Kwinana did provide to the Commission in response to your Regulation 10(6) directive and it commences at page 1 and it runs to page 10 with a single annexures, a memorandum of understanding annexure.

CHAIRPERSON: Yes.

10 **ADV HOFMEYR:** And if so if that can be Item 1 and Item 2?

CHAIRPERSON: It goes up to – the affidavit goes up to page...

ADV HOFMEYR: Ten.

CHAIRPERSON: Oh, I see that this bundle appears to have only red numbers.

ADV HOFMEYR: Yes, it does.

CHAIRPERSON: Or my one, at least.

ADV HOFMEYR: And there should ...[intervenes]

20 **CHAIRPERSON:** Ja. Does yours also have only red pagination?

ADV HOFMEYR: Mine was printed at my computer at home which does not have colour printing.

CHAIRPERSON: Oh.

ADV HOFMEYR: So I have lost any colour but I suspect everyone else's bundles have the red ...[intervenes]

CHAIRPERSON: Ms Kwinana, the bundle in front of you.

The page numbers at the top, have you got both written in red and those written in black or they have got only one colour?

MS KWINANA: Only red Chair.

CHAIRPERSON: Only red?

MS KWINANA: [No audible reply]

CHAIRPERSON: Is that the same with you Ms Mbanjwa?

MS MBANJWA: Thanks, Chair. Thank you. And we
10 understand the numbering. There was a gentleman here who explained the numbering to us before we commenced.

CHAIRPERSON: Ja. No, it is just that for quite some time now the bundles have been coming with two paginations, black and white.

ADV HOFMEYR: Oh.

CHAIRPERSON: And we have been using black.

ADV HOFMEYR: Oh, right. For us it will be red.

CHAIRPERSON: Now ...[intervenes]

ADV HOFMEYR: As I have it.

20 **CHAIRPERSON:** So... Anyway, that is the... We will use the only pagination that there is.

ADV HOFMEYR: Indeed Chair.

CHAIRPERSON: Ja, okay.

ADV HOFMEYR: Indeed.

CHAIRPERSON: Okay alright. So it goes to... The

affidavit goes up to...[intervenes]

ADV HOFMEYR: Page ten.

CHAIRPERSON: ...page ten.

ADV HOFMEYR: Correct.

CHAIRPERSON: Yes, okay. Ja.

ADV HOFMEYR: Thank you. Ms Kwinana, if I can then just commence with a bit about your background? As I understand it you are an auditor. Is that correct?

MS KWINANA: Yes, Chair.

10 **ADV HOFMEYR:** And what qualifications do you hold?

MS KWINANA: I am a qualified Chartered Accountant.

ADV HOFMEYR: Ms Kwinana, I think you just need to move a bit closer.

CHAIRPERSON: Ja, please face this side and do not speak too far from the microphone so that I can hear you properly.

MS KWINANA: I am a Chartered Accountant.

CHAIRPERSON: You are a Chartered Accountant. Okay.

ADV HOFMEYR: And are you registered with any professional bodies?

20 **MS KWINANA:** Yes.

ADV HOFMEYR: And which are they?

MS KWINANA: SAICA and IIA.

ADV HOFMEYR: IIA. Thank you. Just for the record. And ...[intervenes]

CHAIRPERSON: I am sorry. Just for the record also. Just

give the full name of SAICA and IIA?

MS KWINANA: South African Institute of Chartered Accountants (SAICA) and Institute of Internal Auditors(IIA).

CHAIRPERSON: Thank you.

ADV HOFMEYR: And... Sorry, I did not just catch your degree, is which degree?

MS KWINANA: Bcom Accounting.

ADV HOFMEYR: Bcom Accounting. And where did you obtain it?

10 **MS KWINANA:** UNISA.

ADV HOFMEYR: UNISA. And when ...[intervenes]

MS KWINANA: No, I obtained my Bcom at UNITRA(?) and Bcom Honours at UNISA.

ADV HOFMEYR: And in what year was that?

MS KWINANA: Bcom 1985. Bcom Honours 1990.

ADV HOFMEYR: And you joined the Board of SAA in December of 2009. Is that correct?

MS KWINANA: Yes, Chair.

20 **ADV HOFMEYR:** And do you recall how long the appointment was for?

MS KWINANA: Sorry?

ADV HOFMEYR: Do you recall how long that first appointment was for?

MS KWINANA: The appointments are normally for three years subject to renewal.

ADV HOFMEYR: And then you were reappointed on the 19th of September 2012. Is that correct?

MS KWINANA: I do not remember the dates Chair. The reason being that there have been resignations and appointments and so on.

ADV HOFMEYR: But you did serve a second three-year term, did you not?

MS KWINANA: Yes, I did.

ADV HOFMEYR: And that would have been from 2012 if
10 your first appointment was 2009, correct?

MS KWINANA: H'm.

ADV HOFMEYR: If you will just say yes into the microphone so that the transcribers can pick it up.

MS KWINANA: Yes, Chair.

ADV HOFMEYR: And then in October of 2014 – so that is just short of the end of your second three-year term – you were retained on the Board of SAA when a number of members of the Board of SAA were not retained. Do you recall that?

20 **MS KWINANA:** Yes, Chair.

ADV HOFMEYR: Yes. The six members who were not retained were six members who had for many months been trying to engage the minister about their concerns regarding Ms Myeni's leadership of the board. Do you have knowledge of those events?

MS KWINANA: No, Chair.

ADV HOFMEYR: You do not?

MS KWINANA: No.

ADV HOFMEYR: Did you attend a meeting with Ms Lynne Brown shortly after she was appointed as the Minister of Public Enterprises to replace former Minister Gigaba in the middle of 2014 about these issues that the six board members were raising, concerning Ms Myeni's conduct?

10 **MS KWINANA:** No, Chair.

ADV HOFMEYR: And you have no recollection of Ms Myeni responding to the board members who were criticising her management and leadership-style in the early part of 2014?

MS KWINANA: In the meeting with the minister?

ADV HOFMEYR: No, you have confirmed for me, you were not at the meetings. So then I would like to move to the fact that there was a letter of complaint with the minister and Ms Myeni in January of 2014. And then there was a response to that by Ms Myeni sent to all the board members,
20 which I assume would have included you. Were you not aware of that issue and her response?

MS KWINANA: If you can show me Chair, I would be able to say yes or no, I was in that meeting or I did receive it.

ADV HOFMEYR: Okay. But as you sit here now, you do not have any independent recollection that six members of the

Board of SAA in early 2014 were very concerned about the leadership of Ms Myeni as the chairperson of the board?

MS KWINANA: I know that there has been some complaints but I would not say when was that.

ADV HOFMEYR: Thank you. And when did you – when were you appointed to the Board of SAA Technical?

MS KWINANA: I will not have the date Chair.

ADV HOFMEYR: Do you have a year?

MS KWINANA: Maybe 2014 or 2015.

10 **ADV HOFMEYR**: Right. And do you recall when you were appointed as the chairperson of the Audit and Risk Committee at SAA?

MS KWINANA: No, but I think the company secretary would be in a position to give you all those dates. I really do not have that.

ADV HOFMEYR: That is fine. We will go to pertinent documents when it becomes relevant.

MS KWINANA: H'm. H'm.

20 **ADV HOFMEYR**: I was just getting a sense of the landscape of your background at SAA at this point.

MS KWINANA: H'm.

ADV HOFMEYR: I would then like to move to your relationship with Mr Vuyisile Ndzeku. Now this is something that you did address in your affidavit in response to the Chairperson's Regulation 10(6) directive and we can pick

that up at page 8 of Exhibit BD33 in front of you.

CHAIRPERSON: Oh, Ms Hofmeyr. Unless I did not hear you. It looks like you may have forgotten to ask Ms Kwinana to confirm that this is her affidavit and to ask me to admit it as an exhibit.

ADV HOFMEYR: We did admit it as an exhibit DCJ but that then I missed actually asking her to confirm her signature. So we issued it as the ...[intervenes]

CHAIRPERSON: Well, I ...[intervenes]

10 **ADV HOFMEYR:** ...Exhibit 1, pages 1 to 10. I think.

CHAIRPERSON: You may have asked me and I did not hear. Because I did not mark it.

ADV HOFMEYR: Oh.

CHAIRPERSON: Normally, when I admit it, I mark it.

ADV HOFMEYR: Indeed Chair.

CHAIRPERSON: Ja.

ADV HOFMEYR: Well, let us do that. Apologies.

CHAIRPERSON: But has she confirmed? Or she has not confirmed that...[intervenes]

20 **ADV HOFMEYR:** No.

CHAIRPERSON: Ja, let us get her to confirm it ...[intervenes]

MS KWINANA: That is my affidavit.

CHAIRPERSON: ...and her signature. Then I can admit it.

ADV HOFMEYR: So if we turn to page 10. Can you confirm

that that is our signature, the first signature at page 10 at the top of the page?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: And that this is your affidavit that you deposed to on the 14th of October?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: And you confirm the correctness and truths of the averments in that affidavit?

MS KWINANA: Yes, Chair.

10 **ADV HOFMEYR**: And then Chair, if we could enter it as Exhibit 1 in Bundle BD33?

CHAIRPERSON: H'm.

MS KWINANA: Thank you, Chair. Apologies for missing that.

CHAIRPERSON: I am not sure whether... Maybe we should not just Exhibit 1 even if it is in this bundle.

ADV HOFMEYR: Yes.

CHAIRPERSON: I think what one would try do is, so that, if possible, every exhibit is ...[intervenes]

20 **ADV HOFMEYR**: Correct ...[intervenes]

CHAIRPERSON: ...and the different number. No matter which bundle it falls under.

ADV HOFMEYR: Yes, yes.

CHAIRPERSON: So maybe, we might say Exhibit BD33.1?

ADV HOFMEYR: Yes, certainly.

CHAIRPERSON: Yes.

ADV HOFMEYR: And Chair, actually, if you go to the index, that is precisely how it has been arranged on the index.

CHAIRPERSON: Yes, yes okay.

ADV HOFMEYR: So the document managers(?) were very helpful in that regard.

CHAIRPERSON: Yes.

ADV HOFMEYR: So it will always be BD33 point something.

CHAIRPERSON: Yes.

10 **ADV HOFMEYR:** And this will be BD33.1. So the index will cover.

CHAIRPERSON: Ja, so this – will this be 33, ja?

ADV HOFMEYR: 33.

CHAIRPERSON: 33.

ADV HOFMEYR: Indeed. Point 1. Thank you, Chair.

CHAIRPERSON: 33.1.

ADV HOFMEYR: I might have said B1. I am sorry Chair.

CHAIRPERSON: The affidavit of Ms Yakhe Kwinana starting at page 1 is admitted as Exhibit BD33.1.

20 **AFFIDAVIT OF MS YAKHE KWINANA IS ADMITTED AND MARKED AS EXHIBIT BD33.1**

ADV HOFMEYR: Thank you, Chair.

CHAIRPERSON: Ja.

ADV HOFMEYR: And we will follow that approach for the remainder.

CHAIRPERSON: Yes, okay.

ADV HOFMEYR: And then we were going to go to page 8 of that bundle and Exhibit BD33.1 Ms Kwinana because then you were asked by the Chairperson of the Commission to explain your relationship and interactions with Mr Ndzeke before, during and after your period on the board. Can you tell us what the nature of your relationship was at various stages?

MS KWINANA: We have a professional relationship.

10 **ADV HOFMEYR:** Not a personal one?

MS KWINANA: No.

ADV HOFMEYR: No. And a professional relationship arising out of SAA and SAA Technical? Is that right?

MS KWINANA: Let me phrase it differently. As I said in my affidavit. I did not know Mr Ndzeke before I joined SAA. And I got to know him during the road shows when we were doing the BEE(?) road shows at SAA. And my relationship, professional relationship continued after I left SAA.

ADV HOFMEYR: So it started with Mr Ndzeke at SAA
20 ...[intervenes]

MS KWINANA: Yes.

ADV HOFMEYR: ...pursuant to the road shows.

MS KWINANA: Yes.

ADV HOFMEYR: And those road shows occurred in 2015.
Correct?

MS KWINANA: Yes.

ADV HOFMEYR: And it persisted while you were at SAA Technical and SAA and then it continued afterwards. Is that correct?

MS KWINANA: Yes, yes.

ADV HOFMEYR: And prior to road shows, you had no other relationship with him?

MS KWINANA: No.

ADV HOFMEYR: And it only remained a professional
10 relationship, correct?

MS KWINANA: Yes.

ADV HOFMEYR: Even while you were at SAA and SAA Technical?

MS KWINANA: Yes.

ADV HOFMEYR: You had dealings with him around the Swissport Ground Handling Contract, did you not?

MS KWINANA: Not really.

ADV HOFMEYR: No, is... Explain not really. Did you or did you not?

20 **MS KWINANA:** I will not say yes or no but let me explain.

ADV HOFMEYR: H'm.

MS KWINANA: The only time that I met with him in respect of Swissport was when they wanted some like... The Swissport Contract basically was – had a problem. It was irregular. And it had been extended for multiple periods of

time. And the extension resulted in that contract being more expensive for SAA. It was expensive, firstly.

And secondly, it was tedious because after six months, there was the submission from management. After every six months, submission from management and it became expensive.

And therefore, when we wanted to regularise it because also again, if you are paying a contract a service without the proper contract, then that is an audit query.

10 So during those meetings, there were also these road shows that I was talking about where basically we were saying SAA is open for business to get people.

And then I remember him in one meeting with the CEO of Swissport. And in fact, that meeting did not even take five minutes.

So basically that was the only time. In fact, that was the only time that I met him and the CEO of Swissport.

ADV HOFMEYR: Thank you. And did you have any other interactions with him, telephonically or otherwise?

20 **MS KWINANA:** Oh, yes. We had many telephone calls. Yes.

ADV HOFMEYR: Why?

MS KWINANA: You see, the BEE issue at SAA has been a problem and people do not know and did not know how to implement it. We also did not know exactly how to

implement it.

Hence, at some stage, we sought guidance from National Treasury to say: How do we implement this BEE? So also in the road shows that we were doing, we were getting a lot of questions as to how do we intend doing this?

Because basically, no one knew exactly what is it that needed to be done. And therefore, many people wanted guidance including him.

ADV HOFMEYR: And at that meeting that you refer you
10 where the CEO of Swissport was present and Mr Ndzeke was present. Who was the Swissport representative that you were dealing with namely?

MS KWINANA: No, I was not dealing with the Swissport person. We were in that meeting trying to tell them that we are going to go out to tender because the contract is irregular and therefore we need to make sure that – because Swissport is also an important service provider of SAA.

And therefore, there is no way that we would just not have a formal meeting to tell them. But I do not remember
20 why – did the meeting take such a short period of time.

And I have been trying to find out why did it happen like that. I really cannot remember why did it happen like that. And as a result, if the CEO of Swissport can come to identify then.

ADV HOFMEYR: So why were you then dealing with Mr

Ndzeku? I thought that he had been present at that meeting because he was a Swissport representative.

MS KWINANA: Yes.

ADV HOFMEYR: Is that correct?

MS KWINANA: He was a Swissport representative. However, when we talked on the phone we would talk about not necessarily Swissport, we would talk about BEE in general. Yes. So – and I understand Mr Ndzeku is responsible for many companies and therefore he would
10 not say I am phoning on behalf of Swissport but he would say tell me, how does this BEE work? What is it that we should do for this BEE to work? Give us the direction. So basically, that is more or less what we would ...[intervenes]

ADV HOFMEYR: And did you give him direction?

MS KWINANA: As to the extent that I knew. Remember that this BEE 30% set aside, we did not know exactly how to implement it, much as it was our desire to do it but we did not know. So basically I would say let me go and consult and find out how do we do this thing because no
20 one knew exactly how to implement the 30% set aside. Hence there was a whole lot of media hype from Bidvest who was complaining and we – they reported us to National Treasury and they reported us to DTI that we are implementing the 30% set aside and in fact this 30% set aside, you know, much as we did not implement it, that is

one of the things that I feel sad about them because I strongly feel that 30% set aside for the black people who represent 70% of South Africa is still not enough. However, that pronouncement was made at the State of the Nation at the time but we did not know how to implement it and no one knew how to implement it but because of the will to want to empower black people, we had to make sure that we do start and unfortunately, it did not happen until I left. And, therefore, the 30% set aside was not
10 implemented during my time, unfortunately.

CHAIRPERSON: Sorry, Ms Mbanjwa, please switch off your mic. Yes, thank you.

ADV HOFMEYR: Thank you, Chair. Ms Mbanjwa, my question was ...[intervenes]

CHAIRPERSON: Ms Kwinana.

ADV HOFMEYR: Apologies, Ms Mbanjwa just turned off her microphone. Ms Kwinana, my question was about your conversations with Mr Ndzeke and you said he was seeking BEE guidance and then you said to him you did not know
20 all that much because it was difficult to know how you were going to implement the 30% set aside and so you said to him you would go and consult with others and come back to him. Do I have your evidence correct?

MS KWINANA: Yes.

ADV HOFMEYR: And then did you go back to him?

MS KWINANA: Yes, I would go back him. I go back to everyone. When I said I will go back, I do go back.

ADV HOFMEYR: And what did you tell him when you went back?

MS KWINANA: I would tell him the information that I have, one person who would know some bit here and the other person would know some bit, the other person would know – or say I do not know about this portion. So basically ...[intervenes]

10 **ADV HOFMEYR:** So you were advising him on bids.

MS KWINANA: On?

ADV HOFMEYR: Bids, did you say bids?

MS KWINANA: No, I am saying ...[intervenes]

ADV HOFMEYR: Apologies.

MS KWINANA: Bits and bits of information.

ADV HOFMEYR: Oh sorry. Bits, I see. Sorry, I did not hear that correctly. So you gave him a bit of information here and a bit of information there about BEE suppliers and SAA and SAA Technical, is that right?

20 **MS KWINANA:** No necessarily at SAA and SAA Technical. As I am saying, he would not say how do you apply it at SAA? He would say tell me about this BEE, not necessarily – he would not specifically say at SAA.

ADV HOFMEYR: But I thought you had only a professional relationship with him.

MS KWINANA: Yes, we had a professional relationship, remember that ...[intervenes]

ADV HOFMEYR: Arising from SAA and SAA Technical?

MS KWINANA: Remember that I was not only a board member of SAA and he was not only servicing SAA. So basically – and therefore, I would assume that when he wants the information on BEE and when I give him the information on BEE, I would not give him the information that I got at SAA, I would get the information from DTI, I
10 would get the information from National Treasury, I would get the information from our other clients how do you implement BEE and therefore I would say as far as I know, this is what is happening where, this is what is happening is where, this is where we are at SAA. So basically I do not want you to limit what you are saying to SAA because he is a business person who is responsible for other companies other than SAA and I am also a business person responsible for other companies other than SAA. So basically when you say the BEE at SAA, that does not
20 correctly reflect our conversation.

ADV HOFMEYR: So your professional relationship extended – ah, Chair, I see we are at the tea adjournment time. Should we take the break now?

CHAIRPERSON: Yes, we can take right now unless you particularly wanted to ask that [inaudible – speaking

simultaneously]

ADV HOFMEYR: No, no, there is going to be a bit more to explore.

CHAIRPERSON: Okay.

ADV HOFMEYR: So we can take the break.

CHAIRPERSON: Let us take the tea break. I am going to take a longer tea break than normal to attend to something, we will try and make up for our late start this morning and this extended tea break in the afternoon. I
10 am available to sit beyond four and beyond five. I can sit up to six if we need to. Let me check now. Ms Mbanjwa, would that be fine with you? Okay. Ms Kwinana, would that be fine with you?

MS KWINANA: Yes, Chair, thank you.

CHAIRPERSON: Okay, thank you very much. We will take the tea adjournment now and we will resume at quarter to twelve.

ADV HOFMEYR: Thank you, Chair.

CHAIRPERSON: We adjourn.

20 **INQUIRY ADJOURNS**

INQUIRY RESUMES

CHAIRPERSON: Okay, let us proceed.

ADV HOFMEYR: Thank you, Chair. Chair and Ms Kwinana, I have just been notified by the sound people that it is sometimes to pick up your speaking, Ms Kwinana, so if

you will just make sure that you move as close to the microphone as possible and feel free to leave the microphone on at all times.

Ms Kwinana, just before the break we were just talking about your interactions with Mr Ndzeke and I understood you to say you had been to one meeting with him and that was the meeting with the Swissport CEO, is that correct?

MS KWINANA: H'm.

10 **ADV HOFMEYR:** If you will just say yes for the record.

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Thank you. And that, was that the meeting on the 10 February 2016?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Thank you. And there were no other meetings with Mr Ndzeke.

MS KWINANA: No that I remember.

ADV HOFMEYR: But could there have been?

MS KWINANA: Ja.

20 **ADV HOFMEYR:** And at the ...[intervenes]

CHAIRPERSON: Well, let us check whether that is better for the sound people.

ADV HOFMEYR: Yes. Oh, it seems to be better, I think I see a thumbs up, is that correct?

CHAIRPERSON: Yes.

ADV HOFMEYR: Good.

CHAIRPERSON: Yes, okay. I think, Ms Kwinana, your voice seems to be naturally soft or low so do try to raise it. Okay, alright.

ADV HOFMEYR: Thank you. And at that meeting on the 10 February 2016, I understand you to say Mr Ndzeku was there and Mr Kohl, the CEO of Swissport, was there. Were there any other representatives from any other entities there?

10 **MS KWINANA:** I think there were also people from Bidvest.

ADV HOFMEYR: Right.

MS KWINANA: And then there was also the CFO of SAA, Rolf Meyer.

ADV HOFMEYR: Right. And Mr Daluxolo Peter, was he there?

MS KWINANA: No, I would not confirm.

ADV HOFMEYR: Do you know Mr Daluxolo Peter?

MS KWINANA: Yes, Chair.

20 **ADV HOFMEYR:** And how do you know him?

MS KWINANA: From the road shows.

ADV HOFMEYR: From the road shows as well. What company did he represent?

MS KWINANA: He was going with Swissport people.

ADV HOFMEYR: How?

MS KWINANA: I do not know.

ADV HOFMEYR: You do not know. Do you know what company he was representing?

MS KWINANA: No. My understanding was that he was part of Swissport.

ADV HOFMEYR: Part of Swissport?

MS KWINANA: H'm.

ADV HOFMEYR: So somewhere in the Swissport structure, is that correct?

10 **MS KWINANA:** H'm.

ADV HOFMEYR: Not somebody outside of Swissport.

MS KWINANA: Yes.

ADV HOFMEYR: And then just your conversations with Mr Ndzeku. You said – we were sort of probing quite what they involved and you said you would speak to him quite regularly on the phone, is that correct?

MS KWINANA: Yes.

ADV HOFMEYR: And it was not confined to his role at Swissport, is that correct?

20 **MS KWINANA:** No.

ADV HOFMEYR: You mentioned other companies in which he was involved, correct?

MS KWINANA: I know that he is involved in other companies, so I said when we spoke he would not say now I speak on behalf of Swissport.

ADV HOFMEYR: No, certainly.

MS KWINANA: Yes.

ADV HOFMEYR: But he had other companies like JM Aviation, is that correct?

MS KWINANA: Yes.

ADV HOFMEYR: And any other companies that he would ever mention?

MS KWINANA: I do not know of any other companies.

ADV HOFMEYR: Okay, so if you were speaking at all
10 about his business dealings it was likely to be Swissport or JM Aviation, correct?

MS KWINANA: I said, Chair, he would not say I am now speaking for Swissport and I am now speaking for JM.

ADV HOFMEYR: But you knew him only as affiliated with those two companies, correct?

MS KWINANA: Yes.

ADV HOFMEYR: Thank you.

CHAIRPERSON: And would he have had any reason to
20 phone you and speak to you in the context of any other company other than SAA or SAAT in terms of his interaction with you? Could he approach you to talk about some other company of which you were not a board member?

MS KWINANA: Yes, Chair, sometimes he would phone and ask some financial advice, that he is buying something

or maybe he is a buying a business somewhere and so on and so on. So basically that would not be Swissport or...

CHAIRPERSON: So he would call you sometimes in regard to either his – in regard to his other personal matters or other business dealings in which he was involved that had nothing to do with SAA or such.

MS KWINANA: Yes.

CHAIRPERSON: Okay, alright. Would that have been in your capacity as a chartered accountant, auditor, or what
10 was your understanding of why he would be talking to you about such matters?

MS KWINANA: I would say in my capacity as a chartered accountant because like for instance he would say I am in the process of buying this business, I want you to advise me on - basically that would be financial matters because he knew that I am a chartered accountant.

CHAIRPERSON: Yes. Were there only a few of such requests or which had nothing to do with SAA?

MS KWINANA: There would be, there would be a few.

20 **CHAIRPERSON:** There would be a few.

MS KWINANA: H'm.

CHAIRPERSON: Was it on the basis that you would charge him fees or was it on the basis of just doing him a favour?

MS KWINANA: No, I would not charge him fees because

maybe he would speak briefly, like say maybe one minute or two minutes and therefore I really would not – I would not charge fees. I did not charge him anything.

CHAIRPERSON: Okay, alright. Ms Hofmeyr?

ADV HOFMEYR: Thank you, Chair. And, as I understand it, you indicated earlier that you do not have a very good recollection of that 10 February 2016 meeting, is that right?

MS KWINANA: Yes.

10 **ADV HOFMEYR:** And – but you did say it was over in about five minutes, is that correct?

MS KWINANA: Ja, I think it was a very short meeting.

ADV HOFMEYR: Right. Mr Kohl, the CEO of Swissport, has provided an affidavit to the Commission. That was dealt within the previous evidence of Ms Memela. I would like to take you to what he says about meeting and for that purpose I am going to ask you to be assisted and Zwelihle, the Chair's registrar, if he would not mind assisting the Chair. We are going to need EXHIBIT DD25A. Thank you.

20 **MS KWINANA:** May I ask, Chair, why is that not included in my bundle?

ADV HOFMEYR: Because, Ms Kwinana, you were referred to the fact that you would be in addition to your bundle referred to the evidence of other witnesses. Your lawyer was given a list of all of those witnesses. She was told the

exact days on which they testified and she was told where their bundles could be obtained. So you were given forewarning that I would take you to other bundles.

CHAIRPERSON: Have you got the page number?

ADV HOFMEYR: Yes, we will turn to page 300, Chair.

CHAIRPERSON: Okay.

ADV HOFMEYR: 300. And just before we go further, Ms Kwinana, I would just like to get a sense of how much of the Commission's proceedings you have watched. Did you
10 watch Mr Nzeko's evidence?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Yes. And how you watched Ms Memela's evidence before the Commission?

MS KWINANA: Some of that.

ADV HOFMEYR: Some of it. She gave evidence both in February and then more recently on the 1 October. Which of those did you watch?

MS KWINANA: No, I would not be able to say I watched this one. No, I definitely will not be able to do that.

20 **ADV HOFMEYR:** Okay, but you have seen some of Ms Memela's evidence, is that correct?

MS KWINANA: Yes.

ADV HOFMEYR: Thank you. And you have confirmed you did see Mr Ndzeke's. Right, so let us go to page 300. Now, Chair, we have already dealt with this email because

it was an email that we dealt with – well, let me go back a bit. Mr Kohl's affidavit was dealt with both in Mr Ndzeke's evidence and in Ms Memela's evidence. It appears in Ms Memela's bundle, DD25, which is why we have it in front of us at the moment.

CHAIRPERSON: Yes.

ADV HOFMEYR: And what this is, is this is an email that Mr Kohl writes on the 12 February 2016 which is two days after the meeting on the 10 February 2016. You can
10 confirm, Ms Kwinana, that the meeting took place on the 10 February 2016, is that correct?

MS KWINANA: You know, I do not even think that I would call it a meeting.

ADV HOFMEYR: Oh, right. Yes, five minutes
...[intervenes]

CHAIRPERSON: Encounter.

ADV HOFMEYR: Encounter.

CHAIRPERSON: Does encounter make it appropriate?

MS KWINANA: Okay. Well, Mr Kohl thought that it was a
20 meeting. So let us go to paragraph 5 on page 300 of his email of the 12 February and he is sending the
...[intervenes]

CHAIRPERSON: I am sorry, so just to – let us record just who this email is from.

ADV HOFMEYR: Yes, certainly, thank you.

CHAIRPERSON: Who it is to and what the subject matter was.

ADV HOFMEYR: Thank you, Chair.

CHAIRPERSON: Yes.

ADV HOFMEYR: So this is an email from Mr Peter Kohl dated the 12 February 2016 sent at 6.58 in the morning and it is send to Andres Alvez, Johan Joose or Josse, probably, Ibrahim@waterfall.co.za, Yahya@waterfall.co.za, what appears to be Eric Bourne, Vuyo Ndzeku and also
10 Werner@waterfall.co.za and the subject is

“SAA: Critical situation”

And it is recorded as having high importance and it is addressed to:

“Dear Board Members of Swissport South Africa.”

And then in that fifth paragraph he indicates – I said he thought it was meeting, well that is based on what he says in paragraph 5 and I would like to read that into the record. He records there:

20 “Yakhe Kwinana chaired the meeting and declared that the purpose of the meeting is to finalise all contractual matters and that no one will leave the room before an agreement has been reached and signed. What sounded like a promising start quickly turned into calamity when both the head of procurement and Yakhe insisted that prior to the

parties finalising and signed contracts Swissport would be required to sign supplementary agreements emailed by SAA to Swissport in December 2015. Yakhe informed the meeting attendees that if Swissport does not sign these agreements any deal is off the table and SAA would make a decision on whether it gives notice to Swissport and retenders the business. Yakhe further informed that Swissport is to ignore the
10 2012 tender award and that the new award of December '15 shall apply which contains additional requirements and two additional agreements.”

And then he goes on to articulate:

“SAA’s demand essentially boiled down to this:”

Chair, I will just read the following two paragraphs also for Ms Kwinana’s benefit.

CHAIRPERSON: Yes, that is fine.

ADV HOFMEYR: He says:

“SAA’s demand essentially boiled down to this:

20 Swissport is to sign agreement ...[intervenes]

MS KWINANA: Sorry, where are you reading from now?

CHAIRPERSON: Page 300.

MS KWINANA: Page 300?

CHAIRPERSON: Ja.

ADV HOFMEYR: I am continuing after the fifth paragraph,

I am now at the seventh paragraph.

“Swissport is to sign...”

Do you have it Ms Kwinana?

MS KWINANA: 7 is on the other side on 201.

ADV HOFMEYR: Oh.

CHAIRPERSON: Did you see the one she was reading that starts with:

“Yakhe Kwinana chaired the meeting..”

Can you see that one at page 300?

10 **MS KWINANA:** Ja, Kwinana’s demand.

CHAIRPERSON: Then she was reading the paragraph – no, she was reading the paragraph that starts with:

“Yakhe Kwinana chaired the meeting and declared...”

Can you see that paragraph?

MS KWINANA: Yes.

ADV HOFMEYR: Ja. She finished reading that. She now wants to read the next one and she will tell you which one.

MS KWINANA: Oh.

20 **CHAIRPERSON:** Okay.

ADV HOFMEYR: Thank you. So then it goes on, after that first paragraph identifying you as having chaired the meeting and then it says:

“SAA’s demand essentially boiled down to this:”

And then it says the following.

“Swissport is to sign agreements which foresee 30% of the SAA revenues due to Swissport to be withheld by SAA. SAA would subsequently divert these 30% to a BEE company of their choice which essentially equates to 30% of Swissport SAA’s revenues being diverted to charity. Swissport would further commit to train staff of such company on how to run SAA ground handling operation so that the BEE company can eventually take over the job. In other words, of annual SAA revenues of 300 million, Swissport would need to part with 90 million in favour of a BEE company of SAA’s choice. Apart from being illegal and entirely outside the provisions of the South African BBBEE Act, SAA’s demands would bankrupt Swissport’s ground handling business because the demand equates to more than twice the EBIT.”

10

Could you just help us, what does EBIT stand for?

MS KWINANA: Earnings before interest and taxes.

20 **ADV HOFMEYR:** Thank you.

CHAIRPERSON: I am sorry, please look this side and repeat?

MS KWINANA: Earnings before interest and taxes.

ADV HOFMEYR: So just to go back:

“The demand equates to more than twice the EBIT

Swissport generates with the entire ground handling activities in South Africa (not only SAA but all customers and business combined) hence Yakhe's demand fell nothing short of demanding that the CEO of Swissport South Africa must sign on the spot that he accepts the bankruptcy of Swissport's ground handling division or else SAA will sever the relationship with Swissport."

I think he says severe but he actually means to say sever.

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

ADV HOFMEYR: Ms Kwinana, does that refresh your memory about what transpired at that meeting?

MS KWINANA: Definitely no, Chair.

ADV HOFMEYR: It does not?

MS KWINANA: No.

ADV HOFMEYR: Why does it not?

CHAIRPERSON: You do not remember? You do not remember the meeting?

20 **MS KWINANA:** There was a meeting, Chair, that is why I am saying it was an encounter.

CHAIRPERSON: Yes.

MS KWINANA: Yes. So basically I do not remember us discussing this.

ADV HOFMEYR: You have no memory of that being discussed?

MS KWINANA: No.

ADV HOFMEYR: So is he just making up a very detailed account of a meeting two days after it occurred?

MS KWINANA: Yes, Chair.

CHAIRPERSON: Well, Ms Kwinana, are you sure that it what you want to say? Are you sure that you want to say he is making it up or do you want to say he might not be making it up but you might genuinely not be remembering because he decides to address this email to board
10 members of Swissport South Africa and when you read even just what Ms Hofmeyr was reading you can see it is something quite serious, that he takes very seriously. Do you want to say he is fabricating all of that?

MS KWINANA: He is fabricating it, Chair. There is no way that we would say – basically, how I understand him to say is that we are imposing 30% set aside on his company, that means we are now getting into the boardroom of his company which basically we cannot do that.

ADV HOFMEYR: So he has fabricated this, correct?

20 **MS KWINANA:** Yes.

ADV HOFMEYR: Right. There was another attendee at that meeting also from Swissport who did notes of the meeting that bear a startling resemblance to Mr Kohl's account two days later. I would like to take you to his notes of the meeting you will find that at page

...[intervenes]

MS KWINANA: Where are the minutes of the meeting because I will not agree to the notes that are taken outside the meeting. Can you show me where are the minutes of this meeting?

ADV HOFMEYR: No, Ms Kwinana, I am just going to put to you the notes taken by another Swissport representative.

MS KWINANA: Yes, Chair, but I need the minutes.

10 **ADV HOFMEYR:** There were no minutes taken unfortunately.

CHAIRPERSON: Ms Kwinana, Ms Kwinana ...[intervenes]

MS KWINANA: I am saying you, Chair ...[intervenes]

CHAIRPERSON: Ms Kwinana, answer the questions that will be put to you. If you want to say I do not accept that this email or this note is a correct reflection of what was said because it is not the minutes of the meeting, you make that point. Okay? So let Ms Hofmeyr take you to the document that she wants to take you to. She will then put
20 the question to you, you respond to the question. If you want to say since that is not a minute of that meeting I am not accepting what is said there, you may make that point.

MS KWINANA: Thank you, Chair.

CHAIRPERSON: Okay. Ms Hofmeyr?

ADV HOFMEYR: Thank you, Chair, let us go to page 309

of the same bundle. That is DD25, for the record. So ...[intervenes]

MS MBANJWA: Chair, I am not objecting.

CHAIRPERSON: Sorry?

MS MBANJWA: I just want a – initially Mrs Hofmeyr had said that she is taking Mrs Kwinana to the affidavit that was submitted by Peter Kohl. I do not know, can I [inaudible – speaking simultaneously]

CHAIRPERSON: Oh, okay. No, I think you are right, she
10 had said she was going to take us to the affidavit.

MS MBANJWA: Yes.

ADV HOFMEYR: Yes, apologies, these are exhibits to the affidavit.

CHAIRPERSON: To the affidavit.

ADV HOFMEYR: I just failed to give the reference to the affidavit.

CHAIRPERSON: Yes.

ADV HOFMEYR: The affidavit commences at page 229.

CHAIRPERSON: Okay and these are annexures to the
20 affidavit.

ADV HOFMEYR: Indeed. Apologies, I did move quickly ahead but Ms Mbanjwa is absolutely correct, the affidavit commences at 229, these are the exhibits to the affidavit.

CHAIRPERSON: Yes.

ADV HOFMEYR: We have looked previously at EXHIBIT 6

which was Mr Peter Kohl's notes about the meeting two days after it occurred and then I am taking Ms Kwinana to page 309 which were meeting notes prepared by a Mr Bob Gurr, who was Swissport South Africa commercial director at the time and you will see these are meeting notes and under attendees, the attendees include Mr Kohl and Mr Gurr. They also – Mr Peter, Mr Dulaxolo Peter was at that meeting. Does that refresh your memory?

MS KWINANA: Yes, Chair.

10 **ADV HOFMEYR:** Yes, so you can confirm he was there.

MS KWINANA: Yes.

ADV HOFMEYR: And you understood him to be there.

CHAIRPERSON: Sorry?

MS MBANJWA: Sorry, Chair, I know that there is a pressure here about time but there is also a problem. Like, for instance, who Ms Hofmeyr has said this is the affidavit and this is an annexure to the affidavit, so personally I cannot relate this to the affidavit, I have to page and see if this EXHIBIT 6 is mentioned there. Is it
20 possible for you to guide us to your document [inaudible – speaking simultaneously]

CHAIRPERSON: No, Ms Mbanjwa ...[intervenes]

MS KWINANA: Then why do we not start with the affidavit so that it can also make sense for ...[intervenes]

CHAIRPERSON: Ms Kwinana, please, will both of you just

wait for your turn, okay? Ms Mbanjwa...

MS MBANJWA: Yes?

CHAIRPERSON: Ms Hofmeyr says this is one of the annexures to Mr Kohl's affidavit. Mr Kohl's affidavit and he has indicated – she has indicated on what page Mr Kohl's affidavit starts. Now she has no interest in going to the affidavit where the annexure is mentioned, you are supposed to have read the affidavit in advance if it is one of the documents that you were warned would be used and
10 then you would know what the context is. We cannot now go there if Ms Hofmeyr ...[intervenes]

MS MBANJWA: If I can answer, Chair? Generally if a person makes an affidavit and I know that Chair and Ms Hofmeyr will agree with me, if you have annexures to that affidavit, normally the annexures will be numbered annexure this and that. So the difficulty I have is that save for the *ipse dixit* of Ms Hofmeyr to say that this is an annexure to this affidavit there is nothing [indistinct] 23.30 the alleged annexure that links that annexure to the
20 affidavit. So that is all I was asking to say ...[intervenes]

CHAIRPERSON: Yes.

MS MBANJWA: How can I see [inaudible – speaking simultaneously]

CHAIRPERSON: But have you checked whether it is not referred to?

MS MBANJWA: That is the first thing. And then the second thing which I want answered chair, concerning this statement that I should have read this. If you look at the letters which we had a problem with, one of the things that we asked in the letters, we have said we want the evidence bundle that is going to be given to Ms Kwinana and we were given documents and these documents were not part of that.

CHAIRPERSON: But she said you were given the link to
10 show – that told you where the find other evidence that will be used.

MS MBANJWA: Which means then, Chair – it is like, for instance, this affidavit of Mr Kohl, which is here, because the way I understand it, if there is a document in terms of the rules of the Commission, if there is a document that implicates a party then a party is supposed to answer to that document. I know that there is a problem of time. It is like, for instance, when Mrs Kwinana wanted to mention those names she was told that she cannot yet she was not
20 given a 3.2 for Mr Ndzeke. So if [inaudible – speaking simultaneously]

CHAIRPERSON: Well, if you are warned that the following documents will be or may be used during Ms Kwinana's questioning, you are supposed to go through all of them because you have now been warned so that – well,

go through them and she should - Ms Kwinana should also go through them so that you are ready – she is ready to be asked any questions in regard to that.

MS MBANJWA: If I can be directed to where, Chair, I was warned that there would be this affidavit of Peter Kohl I would appreciate.

ADV HOFMEYR: Certainly, Chair, just so that there is no suggestion of prejudice.

CHAIRPERSON: Ja.

10 **ADV HOFMEYR:** On the 28 October a letter went to Ms Mbanjwa from the secretariat of the Commission making various proposals about how to deal with her evidence. Paragraph 5 the following is said:

“In addition to the documents in Ms Kwinana’s bundle she will be referred to the evidence of the following witnesses who have testified before the Commission on aviation-related matters. Below we have set out the relevant witness and the date on which they testified for your convenience.”

20 That is followed by the table listing all of the witnesses including Ms Memela. The letter then goes on:

“The transcripts of the evidence and witness bundles are uploaded on the Commission’s website. If you have any difficulties in accessing these documents on the website please let us now.”

Let me also read into the record what the response from Ms Mbanjwa was to that paragraph of the letter on the same day:

10 “We see the irrelevant list of witnesses furnished to us and note it for record purposes. I must confess I always find it terribly irritating when things are done merely for show and without a true desire to assist. Please read paragraph 3.3, Rules Governing Proceedings of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State. You will see what ought to have been given to a witness and compare it to what has been given to us.”

MS MBANJWA: Can I respond, Chair?

CHAIRPERSON: Ja.

20 **MS MBANJWA:** Yes, I wrote that letter and the reason why I wrote that letter is because for three weeks we had been asking for this evidence bundle and everybody knows that I am in private practice. We wanted the evidence bundle early. We were giving the evidence bundle deliberately – I say it, Chair – at the very last minute. I think we received it on Thursday.

And the other thing, I want Ms Hofmeyr – because that I what I wanted her to do, I wanted her to refer there

to something that said that Peter Kohl's affidavit will be included because this affidavit of Peter Kohl was not even given to us, it was even requested by Ms Memela. So if she can on that list refer me to something that says the evidence of Peter Kohl will be there.

CHAIRPERSON: But I thought she said that letter is also in Ms Memela's ...[intervenes]

ADV HOFMEYR: It is in her bundle.

MS MBANJWA: No, Chair.

10 **CHAIRPERSON:** In the bundle.

MS MBANJWA: Chair, that is why we wanted this correction.

CHAIRPERSON: Yes.

MS MBANJWA: The affidavit of Peter Kohl was not part of Ms Memela's bundle.

ADV HOFMEYR: It was.

MS MBANJWA: No – to a point where – we can maybe stand down and see because if I recall well, Mrs Memela, two affidavits that she wanted to be given to her was the
20 affidavit of Peter Kohl and the affidavit of this other person who spoke of GPUs. You will remember, Chair, I even said that there has been suppression of evidence because that is the affidavit that explains clearly how the price determination of GPUs was made and Ms Memela's name was not mentioned. So she did not testify this question

about these things, it was never put to Ms Memela.

CHAIRPERSON: Let me hear Ms Hofmeyr about whether Mr Kohl's affidavit was one of the affidavits referred to.

ADV HOFMEYR: Yes, it was, Chair. It is in Ms Memela's bundle. The bundle that we all have before us at the moment is EXHIBIT DD25A.

CHAIRPERSON: Yes.

ADV HOFMEYR: Which is the first of three of Ms Memela's bundles.

10 **CHAIRPERSON:** Yes.

ADV HOFMEYR: And Ms Mbanjwa was told last week that amongst the evidence and bundles that would be referred to in Ms Kwinana's evidence was that of Ms Memela.

CHAIRPERSON: Yes. Do you have bundle DD25A, Ms Mbanjwa.

MS MBANJWA: Chair, I am going to say this thing for the last time.

CHAIRPERSON: No, no, just answer my questions, do you have that bundle?

20 **MS MBANJWA:** I have bundle what?

CHAIRPERSON: What page is Mr Kohl's affidavit, Ms Hofmeyr?

CHAIRPERSON: Oh, 229.

ADV HOFMEYR: It starts at page 229, correct, Chair.

CHAIRPERSON: Have you got Mr Kohl's affidavit

...[intervenes]

MS MBANJWA: Yes, I have.

CHAIRPERSON: Starting at page 229?

MS MBANJWA: Yes.

CHAIRPERSON: You have got that. Are you now saying that you were not told that Mr Kohl's affidavit is one of the affidavits that will be referred to?

MS MBANJWA: Yes, I was not told.

CHAIRPERSON: Yes. Ms Hofmeyr, do you want to say
10 something on that?

ADV HOFMEYR: Chair, Ms Mbanjwa was alerted to every single witness's bundle.

CHAIRPERSON: yes.

ADV HOFMEYR: Who was going to be referred to in Ms Kwinana's evidence. The bundles were - she was told are available and she was even invited to come back if there was any difficulty ...[intervenes]

CHAIRPERSON: If there were any difficulties.

ADV HOFMEYR: ...on her part in accessing.

20 **CHAIRPERSON:** Yes. And I guess ...[intervenes]

MS MBANJWA: Chair all that Ms Hofmeyr needs to do is to read the letter alerting you that's all or ...[intervenes]

CHAIRPERSON: Ms Mbanjwa ...[intervenes]

MS MBANJWA: ...that is all.

CHAIRPERSON: We are going to move ahead now, I am

satisfied that you were given the affidavit, you were alerted
...[intervenes]

MS MBANJWA: No I wasn't given Chair, we made
...[intervenes]

CHAIRPERSON: Let us move ahead. I do not want any
wasting of the Commission's time Ms Mbanjwa. I do not
want any wasting of the Commission's time.

MS MBANJWA: And we ...[intervenes]

CHAIRPERSON: We don't have time.

10 **MS MBANJWA:** Can we move ahead Chair.

CHAIRPERSON: Let us proceed.

ADV HOFMEYR: We were going to look at page 309
because that is the notes made by another attendee at the
meeting on the 10th of February and they are meeting
notes compiled by Mr Bob Gurr who is the commercial VP
at Swissport and you will see their Ms Kwinana that Mr
Gurr gives a very similar account of the meeting to the one
that we looked at Mr Peter Kohl. If you go down to the
meeting notes you will see the first bullet on that page
20 says:

“That the meeting commenced at 8 o'clock YK that
is an indication that it is a reference to you from the
code above opened the meeting by expressing the
concern that SWPSA that also is a short hand for
Swissport South Africa was delaying the process by

introducing a non-standard agreement and not agreeing to the BBEE terms as stipulated in SAA's correspondence forwarded to Swissport in December 2015."

It goes on:

"Yakhe Kwinana expectation was that feedback would be received from Swissport South Africa."

LP, who is that? Oh that is Lester Peter:

10 "Advise no response received to date. PK – that is Mr Peter Kohl – advised that Swissport South Africa had not proposed any changes to SAA's original agreement template and had in fact responded to SAA's correspondence of December."

And then Mr Gurr records:

"Yakhe Kwinana indicated that the participants would be – and he puts in quotations "locked in the room until an agreement had been reached although she was required to attend a board meeting and may have to excuse herself."

20 And then it goes on you advise him that there were two documents and there had been no agreement regarding the letter of intent and Mr Peter Kohl advised that Swissport could not take part in that 30% set aside arrangement. Ms Kwinana again is this a false reporting of the meeting?

MS KWINANA: It is definitely a false reporting.

CHAIRPERSON: Are you sure about that?

MS KWINANA: 100%, Chair.

CHAIRPERSON: Okay, this is what Mr Gurr recorded.

ADV HOFMEYR: Yes, Mr Gurr.

CHAIRPERSON: Yes.

ADV HOFMEYR: He was the commercial vice president of Swissport at the time and his exhibits referenced just for record purposes Chair if you go to Mr Kohl's affidavit he introduces it at DD25 page 247 at paragraph 14.13.

10 **CHAIRPERSON:** So is my understanding correct that these are two different people who have said something about what transpired at this meeting.

ADV HOFMEYR: Correct.

CHAIRPERSON: One is what is called meeting notes and the other one in an email.

ADV HOFMEYR: Correct, Chair.

CHAIRPERSON: And certainly both of whom referred to Ms Kwinana having said something along the lines that they would be locked in the room until there was an
20 agreement.

ADV HOFMEYR: Correct, Chair.

CHAIRPERSON: But you say both of them are fabricating the story.

MS KWINANA: Chair it is two different people from the same company and I am confident that they are fabricating

it.

CHAIRPERSON: Okay, alright Ms Hofmeyr.

ADV HOFMEYR: Do you remember what that agreement was that they have been sent...[intervene]

CHAIRPERSON: I am sorry maybe let me ask this question Ms Kwinana. Do you know why they would find it necessary to fabricate a story about you in terms of what they say you said at that meeting. Do you know of a reason why they would do that?

10 **MS KWINANA:** No, Chair.

CHAIRPERSON: You do not know anything.

MS KWINANA: But reading this it looks like there has been a previous meeting.

CHAIRPERSON: Sorry?

MS KWINANA: From reading this it looks there has been a previous meeting which I am not sure of which I may not have been part of because when they are saying Swissport was delaying the process of introducing a non-standard agreement which means that there may have been a
20 meeting where this standard agreement was required and I also do not know that. So basically to me it seems as if this is a follow up meeting.

CHAIRPERSON: Ms Hofmeyr?

ADV HOFMEYR: And that is your evidence of why it is fabricated, correct?

MS KWINANA: I do not know why it is fabricated.

ADV HOFMEYR: And they keep referring to an agreement that they got sent in December of 2015 in these accounts. Do you remember that they were sent the draft agreement in 2015 in December?

MS KWINANA: Was the agreement sent to me Chair.

ADV HOFMEYR: I will ask you a different question. Are you aware that they were sent a draft agreement in December of 2015?

10 **MS KWINANA:** No.

CHAIRPERSON: I continue to be concerned about the softness of your voice so please do not move away from the mic it is important I should hear what you have to say. Yes Ms Hofmeyr.

ADV HOFMEYR: So you did not make any reference to that at the meeting, is that correct?

MS KWINANA: No, I also want to find out are they saying that that agreement was sent to me?

20 **ADV HOFMEYR:** Chair if we could just indicate to Ms Kwinana that I do not actually answer questions in these proceedings I ask the questions. So I am going to continue to sorry I do not answer questions I ask questions and I will happily direct you to the document.

CHAIRPERSON: Yes, if you seek clarification Ms Kwinana feel free to ask if you seek clarification and the

clarification would be required but otherwise the Evidence Leader will ask questions and you give answers.

MS KWINANA: Thank you Chair.

ADV HOFMEYR: You see both recordable of the meeting say that the point of this December 2015 agreement that had been circulated and not signed was taken up by you. But I understand your evidence to be you do not know of a December 2015 agreement that was circulated to them. Is that correct?

10 **MS KWINANA:** What meeting Chair.

ADV HOFMEYR: You do not know?

MS KWINANA: I do not know.

ADV HOFMEYR: Thank you, and if I then show you that agreement that was circulated to them by Mr Lester Peter the Head of Procurement I just want to be sure whether you have ever seen it before. You will find that earlier in the bundle at page 291.

MS KWINANA: Chair can I ask for some guidance.

CHAIRPERSON: Yes.

20 **MS MBANJWA:** So that I do not necessarily object. If one goes to page 309 those meetings those of SAA and Swissport which Ms Kwinana is being examined on by the Evidence Leader. If you turn to page 310 it is just written Bob, I cannot pronounce that name BP Commercial that document is not even signed.

CHAIRPERSON: Yes, but you can raise that in your re-examination.

MS MBANJWA: Yes, I just want to finalise because it is for that reason why we appear to be difficult because generally if anybody puts forward a document which a person is going to be asked to question on at least the document should be authenticated.

CHAIRPERSON: Yes.

MS MBANJWA: And we know the manner of authenticating
10 documents in the Commission is that the person who has the document who's that document or affidavit for. Which is now why my question is why is this witness being asked on a document that is not authenticated.

CHAIRPERSON: Ms Mbanjwa I allow that she be asked on that I have allowed other witnesses to be asked questions where there is no affidavit on documents but when you re-examine you are free to take that issue up in re-examination.

ADV HOFMEYR: Chair just for Ms Mbanjwa's benefit this
20 is not a document that actually is not supported by an affidavit that is why I referenced page 247 paragraph 14.13. that is where Mr Kohl introduces both his notes of the meeting and the meeting notes and he makes it clear who the author was and that they are the records of the meeting on the Swissport's side. So they do actually enter

this Commission attested to an affidavit, authentication of documents is not the point quite frankly.

MS MBANJWA: No I do not think you understand Ms Hofmeyr evidence. This documents come as an independent document remember what you are presenting to me.

CHAIRPERSON: Ms Mbanjwa even if it is an independent document I will allow it to be used to...[intervene]

MS MBANJWA: Yes, but I was just saying that she is
10 wrong Chair she does not understand this.

CHAIRPERSON: No Ms Mbanjwa when I am speaking you do not speak. I will allow her to ask questions to the witness. The witness will be able to say yes I have an answer or you do not have an answer when you re-examine you can take the issue up at that stage.

MS MBANJWA: Yes.

CHAIRPERSON: Ms Hofmeyr.

ADV HOFMEYR: Chair this agreement at page 291 is the agreement that Mr Lester Peter sent to amongst others to
20 Mr Kohl on the 15th of December 2015 and I just wanted you to take a look at it and tell us if you have any recollection of seeing this agreement previously?

MS KWINANA: No, Chair I never saw this document before.

ADV HOFMEYR: So if none of what Mr Kohl and Mr Gurr

record of what has happened at that meeting actually occurred on your version what did occur? What happened at that meeting?

MS KWINANA: There was a short meeting and I do not know why was it a short meeting and I do not even remember that is why I was saying I would not even call it a meeting and in fact I do not know if you have got the minutes of the meeting that could remind me what was being discussed what was in the meeting. But this
10 agreement in front of me is my first time to see it Chair as I am sitting here.

ADV HOFMEYR: Your evidence earlier was that it was a short meeting.

MS KWINANA: Yes.

ADV HOFMEYR: And that you decided to go out to tender afterwards, is that correct?

MS KWINANA: I do not know if we said that we are going to go out to tender or we did go out to tender or maybe I would say maybe they went out to tender after I left.

20 **ADV HOFMEYR:** No, Ms Kwinana your evidence earlier was it was a short meeting.

MS KWINANA: Yes.

ADV HOFMEYR: And you cancelled, those might not be your exact words but as I understood it and you will correct me if I am wrong you terminated the ongoing negotiations

with Swissport so that you would go out and tender. Did I have your evidence wrong?

MS KWINANA: No, Chair I am saying what was going to be discussed in the meeting was going to see a contract your contract...[intervene]

CHAIRPERSON: No, Ms Kwinana first tell her whether her understanding of your earlier evidence is right or wrong that is her question.

MS KWINANA: What was your earlier evidence Chair?

10 **ADV HOFMEYR:** I understood your evidence earlier to be it was a short meeting first...[intervene]

MS KWINANA: Wherein I would not even call it a meeting.

CHAIRPERSON: Hang on, hang on I know you have said encounter one but let her know your understanding of what you said and then you can say whether she understood your evidence correctly.

ADV HOFMEYR: And that it was communicated to Swissport at that meeting that negotiations with Swissport
20 were going to seize and you were going to go out to tender. Did I understand your evidence correctly?

MS KWINANA: No.

ADV HOFMEYR: What did happen at the meeting?

MS KWINANA: The purpose of the meeting was to communicate that their contract has been irregular and

therefore – because now I think now they were on a month to month basis and therefore if it is irregular and they are on a month to month basis then it requires that it goes out to tender. That was the purpose of the meeting. What was discussed in the five minutes or ten minutes or two minutes that I call an encounter. I do not know if we said the purpose of the meeting is what because I do not even think that we sat down but I do not remember what transpired that made the meeting not to happen.

10 **ADV HOFMEYR:** Ms Kwinana I am struggling to understand that answer so let me just break it down a bit. You say the purpose of the meeting was to communicate to them that their contract was irregular. Correct?

MS KWINANA: Yes.

ADV HOFMEYR: Was that communicated to them?

MS KWINANA: That is what I do not remember because the meeting was short and in fact I do not know if you do have the minutes of that meeting where I would say of course SAA is big and we do take minutes when we do get
20 to the meetings. So now if in this bundle you have the minutes of the meeting, the official minutes of the meeting please show me so that you can remind me what was discussed in that meeting.

ADV HOFMEYR: Ms Kwinana as I understand your evidence it was not even a meeting it was an encounter so

why would there be minutes?

MS KWINANA: Yes, then if it is then where are we going to with the minutes that you have just showed me of whoever.

ADV HOFMEYR: Ms Kwinana I just want to know what you remember.

CHAIRPERSON: Ms Kwinana do you remember or do you not remember whether the purpose of the meeting was communicated to them?

10 **MS KWINANA:** I do not remember Chair.

CHAIRPERSON: Were you the Chair of the encounter or meeting?

MS KWINANA: I was supposed to – what the Board asked me to do they asked me to go and support the CFO. So which means therefore that the Chairperson of that meeting was supposed to be Wolff Meyer because my brief to the Board was to go and support and therefore if I go and support the person who would Chair the meeting would be Wolff Meyer.

20 **CHAIRPERSON:** But I do not understand that Ms Kwinana I thought that if there is a Board member it would be a Board member rather than an executive who would Chair meetings. My own understanding would be that an executive cannot and would not Chair a meeting when there is a Board member because of seniority.

MS KWINANA: No, Chair it would depend on the status of the meeting. If it is an operational meeting that would be chaired by an operational person.

CHAIRPERSON: But why would a Board member go to an operational meeting?

MS KWINANA: To give support.

CHAIRPERSON: For what because Board members are not supposed to be involved in operational matters is it not.

10 **MS KWINANA:** I was required Chair to go and give support.

CHAIRPERSON: But why must a Board member go to a meeting which is supposed to deal with operational matters go there are there not other executives to give support to that executive?

MS KWINANA: Chair when this matter is discussed and any matter that is discussed there maybe strategic issues which needed to be taken up to the Board. It does not necessarily mean that when a Board member is in a
20 meeting we do attend the executive meetings which are chaired by the executive members. We go there either by invitation or to give support or to give guidance or to give direction.

CHAIRPERSON: Why did you get yourself involved in operational matters as Board members?

MS KWINANA: Chair the operational people are guided by the Board. They are given the support by the Board and they are directed by the Board and therefore I do not see anything wrong with that and we till this day still do that.

CHAIRPERSON: Are you saying Ms Kwinana there is nothing wrong in Board members getting involved in meetings where management and executives discuss operational matters, is that what you are telling me?

MS KWINANA: We do go Chair by invitation, we really go
10 their Chair.

CHAIRPERSON: You say it is in order for a Board member to do that?

MS KWINANA: It is in order Chair.

CHAIRPERSON: Sjoe, ja Ms Hofmeyr.

ADV HOFMEYR: Thank you Chair. So Ms Kwinana I cannot recall what was actually said at the meeting but you have been clear about its purpose.

MS KWINANA: Yes.

ADV HOFMEYR: Its purpose was to communicate that the
20 Swissport agreement was irregular and that it needed to go out on tender. Is that correct?

MS KWINANA: Yes.

ADV HOFMEYR: Why did it not go out on tender?

MS KWINANA: Maybe it is because of the processes
Chair.

ADV HOFMEYR: Yes.

MS KWINANA: We needed to follow the processes.

ADV HOFMEYR: But no processes at all were followed, why were they not followed?

MS KWINANA: You say no processes were followed.

ADV HOFMEYR: None.

MS KWINANA: And as I am sitting here I am saying there is no way that SAA will not follow the processes.

ADV HOFMEYR: Well by the 15th of March remember this
10 meeting was in the 10th of February 2016 by the 15th of
March SAA signed the ground handling agreement with
Swissport for five years and there was no tender process
between the 10th of February and the 15th of March. Are
you aware of that?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: But then why were you not concerned
that no tender process had been followed?

MS KWINANA: You know as a Board member you would
sit here and say in fact it's like 30% satisfied that I was
20 talking about. I would come here and say this must
happen, this must happen and you will find out that it has
not happened because it is not practical for that to happen
not because – like for instance me remember that the
Board members still are supposed to be in the meeting
three or four times a year. Now when we come and say

management needs to do A, B, C and D we do not know how practical that is and in fact it has been clear in the 30% set aside. Where we wanted to implement the 30% set aside and say management implement the 30% set aside and you find that it is not implementable. So we may say this contract is irregular because we have been reading in the audit reports that this contract is irregular. For you to regularise this what you should do A, B, C, D and E and you will find out that A, B, C, D and E is not
10 implementable maybe A, C and E is implementable but now for you as a Board member you were think that A to D will be implementable. So that could be what happened there.

ADV HOFMEYR: Ms Kwinana so let me just get clear. So your evidence that at no point were you motivating for a BEE partner to be brought in with Swissport to obtain 30% of the Swissport ground handling agreement?

MS KWINANA: No, Chair what we were saying about the 30% set aside was that the companies need to comply with BEE so which means therefore if Swissport and in fact that
20 is the reason why Swissport did not have the BEE because they were complying in terms of the scoring.

ADV HOFMEYR: Sorry I do not understand that as an answer to my question. Did you at any point require Swissport to partner with a BEE partner on their ground handling agreement to the value of 30%?

MS KWINANA: No, Chair.

ADV HOFMEYR: No.

MS KWINANA: We said to them they must comply; we did not say partner with a BEE. We said comply with BEE requirements.

ADV HOFMEYR: So when they were sent that draft agreement that required then to give 30% away that was done without your authority, is that correct?

MS KWINANA: Definitely.

10 **ADV HOFMEYR:** Definitely and when Mr Darwa was required to put letters of award together in order to facilitate the 30% to set aside and he resisted doing so that was not coming from you.

MS KWINANA: Definitely not.

ADV HOFMEYR: And what you were concerned about I understand your evidence to be is that proper processes were followed, is that right?

MS KWINANA: Yes, Chair.

20 **ADV HOFMEYR:** And you wanted to make sure that the Swissport agreement was proper, you did.

MS KWINANA: Yes.

ADV HOFMEYR: And when you met with them on the 10th of February and your intention was to communicate to them that they needed to go on a tender process what would you then do to ensure that the tender process was followed?

MS KWINANA: Chair I gave the direction to say this is what should happen the implementation is not mine.

ADV HOFMEYR: No because operational matters are not yours, are they?

MS KWINANA: Yes.

ADV HOFMEYR: But you were at an operational meeting, encounter apologies your intention was to communicate that process had to be followed and you gave direction afterwards that process must be followed. Is that correct?

10 **MS KWINANA:** To give support.

ADV HOFMEYR: No you were at the meeting for support but you gave direction afterwards as I understand it that process must be followed.

MS KWINANA: No, I did not give direction you know SAA staff is highly qualified and SAA staff if you talking about the executive at SAA you are talking about – in fact including the manager at SAA it has highly qualified people. So basically when we say – in fact in each and every meeting, when we say regularise we do not tell them
20 how because we really do not have to tell them how because of the calibre of the people who are there.

CHAIRPERSON: Well that is also what I expected, I do not know what their qualifications were but anybody who is an executive at SAA I thought would not need you know a Board members support to deal with operational matters. I

mean those people get paid a lot of money they are supposed to know what to do that is why I did not understand why you would have gone to a meeting to deal with operational matters to give support to the CEO or whoever or CFO or whoever the person was of SAA because those people should be able to handle those things without a Board member coming to give them any support.

MS KWINANA: Chair the issue of a BEE is a strategic
10 issue and therefore that is why I was required to go and give support and report to the Board.

CHAIRPERSON: But the CEO is supposed to give strategic direction leadership to the whole organisation as well. He knows those things, he knows he is supposed to know what the priorities of the organisations are, he is supposed to know what the objectives of the organisations are, he is supposed to know what legislation must be complied with and if he does not know he can seek legal advice.

20 **MS KWINANA:** Chair that means your argument is saying that there must not be a Board at all because the CEO is able to be strategic therefore there is no need for the Board.

CHAIRPERSON: No, the Board might give the overall strategy but in terms of who sees to the implementation is

the executive, is it not and the CEO is at the top of that.

MS KWINANA: Chair I was required to go and give support ...[intervene]

CHAIRPERSON: Yes.

MS KWINANA: And in fact I did give the support and I reported it to the Board.

CHAIRPERSON: What form of support did you give in practical terms in that meeting?

MS KWINANA: Also Chairperson to make sure that I am
10 there and whatever be it information that they would ask I would also give direction and I would state how far are we with the implementation of that and what is National Treasury saying and what is DTI saying. So basically that is the support that I would give.

CHAIRPERSON: Ms Hofmeyr.

ADV HOFMEYR: I just wanted to pick up on one or two things you said that South African Airways has highly qualified people, is that correct?

MS KWINANA: Oh yes,

20 **ADV HOFMEYR:** Does that include their lawyers?

MS KWINANA: Yes.

ADV HOFMEYR: In the legal department?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: You would rely on them regularly, is that correct?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: And another thing I just wanted to pick up on you said your view as that the Swissport agreement was irregular and that needed to go out on tender, correct?

MS KWINANA: Yes.

ADV HOFMEYR: So when in March a contract was concluded with Swissport without having gone out on tender, did you raise concerns about that?

MS KWINANA: Chair the contract was not concluded on
10 the 26th of March.

ADV HOFMEYR: I did not say the 26th of March I said in March.

MS KWINANA: In March, the contract was not concluded in March.

ADV HOFMEYR: Of 2016?

MS KWINANA: Yes, the contract was not concluded and in fact for the reason that I have been saying in that we as the Board we would say do this and you will find out that to correct that does not necessarily mean that management
20 do what the Board says but as long as they correct it to make sure that we are not exposed.

ADV HOFMEYR: Why do you say the contract was not concluded in March 2016?

MS KWINANA: It was definitely it was not concluded.

MS MBANJWA: I got a concern.

CHAIRPERSON: Sorry?

MS MBANJWA: Apologies Chair I think this is a document which we consulted on if you could just have sight of this contract that was concluded.

CHAIRPERSON: No, wait Ms Mbanjwa there is a question that has been put to the witness, the witness needs to deal with that question. That is - why do you say the contract was not concluded 2016?

MS KWINANA: It is because I am not aware Chair of the
10 contract that was concluded in March 2016.

CHAIRPERSON: Are you aware of a contract that was concluded some other time?

MS KWINANA: I am aware of the Swiss Port contract that was concluded in 2012.

CHAIRPERSON: You are not aware of a contract that was concluded sometime in 2016 at any time?

MS KWINANA: No Chair.

CHAIRPERSON: Okay.

ADV HOFMEYR: And are you not aware of the contract in
20 terms of which GPU's from SAA Technical was required to be purchased by Swiss Port?

MS KWINANA: I am aware of that.

ADV HOFMEYR: That is the same contract.

MS KWINANA: Where is this contract? Is it here in this bundle?

ADV HOFMEYR: You are aware of the contract that required Swiss Port to buy GPU's from SAAT is that your evidence?

MS KWINANA: Yes.

ADV HOFMEYR: But you not aware of a contract that was concluded for them to provide ground handling services for five years.

MS KWINANA: Yes.

ADV HOFMEYR: From the 1 April 2016?

MS KWINANA: Yes.

10 **ADV HOFMEYR:** Okay they are the same contract. I will take you to them. It is in the same – no, no sorry which bundle? Oh I now need to go to Exhibit DD19 – 19.

MS KWINANA: DD25?

ADV HOFMEYR: You were in DD25 we are now going to DD19 – 19 you will be assisted with that.

CHAIRPERSON: Somebody will give it to you.

ADV HOFMEYR: 19 and it will be [a] sorry, DD19[a] thank you.

MS KWINANA: Are we done with this one?

20 **ADV HOFMEYR:** We are done with DD25 for now.

MS KWINANA: DD25 you want us to put it away?

ADV HOFMEYR: We will not need it immediately no so you can just have DD19[a] in front of you. And Chair we will be picking it up at page 132.44, 132.44.

CHAIRPERSON: Okay. Yes I have got it.

ADV HOFMEYR: 132.44. If I may just take a moment.

MS KWINANA: Is this the IATA Standard Ground Handling Agreement?

CHAIRPERSON: She will tell you just now.

MS KWINANA: Okay.

ADV HOFMEYR: Apologies was there a question?

CHAIRPERSON: She was asking whether it is the document headed IATA Standard Ground Handling Agreement.

ADV HOFMEYR: That is correct yes.

10 **CHAIRPERSON:** Ja. Okay.

ADV HOFMEYR: Ms Kwinana this agreement just before we go further on it. So it is your evidence today before this commission that when you were a board member of SAA in March of 2016 you were not aware that this agreement had been concluded, is that correct?

MS KWINANA: Yes Chair.

ADV HOFMEYR: And – but you were aware of the requirement that Swiss Port buy GPU's from SAAT, is that correct?

20 **MS KWINANA:** Yes Chair.

ADV HOFMEYR: Where did that obligation come from?

MS KWINANA: It came from ...

CHAIRPERSON: Look this side Ms Kwinana.

MS KWINANA: It came...

CHAIRPERSON: I know a lot of people like looking at the

evidence leader.

MS KWINANA: It came from the fact that I think there was going to be some extension of what Swiss Port was currently doing where basically I think SAAT had bought with the previous contract I think it was 2015 SAAT was supposed to do the in-house of in-source other things that they were doing which required the ground power units.

And then now they required licence from ACSA and then there seemed to be some challenges in respect of this
10 licence and therefore they – Swiss Port ended up with those month to month or six month renewal ended up doing the work that was supposed to be done by the in-house people. So now to give – because now SAA Technical would not be in a position to do what they did and then now in fact I was think – like we would pushed in a corner as SAA because of the licence and therefore in the circumstances especially with Swiss Port maybe and other companies we would not be able to perform the functions if for instance they said tools down, we are putting – we are doing tools down now.
20 Because they are the ones who would be having the licence to carry on ground handling.

So it is for this reason that Swiss Port had to continue with the contract that they had but now regularise it. That means you do whatever was supposed to have been done in 2012 then that needed to be done then because

there was no way that we would say, go because that is the job that they have the licence for and SAA Technical did not have the licence for.

So basically my understanding from where I am sitting is that we were regularising the contract that happened in 2012. That is my understanding.

ADV HOFMEYR: Ms Kwinana what was the question I asked you?

MS KWINANA: I cannot remember Chair.

10 **ADV HOFMEYR:** The question was where did the obligation for Swiss Port to buy GPU's come from if not the agreement between Swiss Port and SAA?

MS KWINANA: I will not say it came from the agreement. It came from the board meeting. I do not know if the agreement followed the board meeting but it came from a board meeting where it was noted that SAA Technical cannot do this work and this work requires the licence which Swiss Port had the licence and therefore the agreement to buy GPU's came from the meeting.

20 I do not know about the agreement between Swiss Port and SAA in respect of the contract like the bidder contract. But now in respect of the GPU's I know that it came from a meeting whether then from a meeting it translated into an agreement I do not know.

ADV HOFMEYR: Why did you not know about the SAA Swiss

Port ground handling agreement for five years if you as a board member approved it?

MS KWINANA: The agreement in 2012 I know about it.

ADV HOFMEYR: No the agreement in March 2016 was approved by the board as it had to be because it is an agreement worth more than R1 billion.

MS KWINANA: The agreement Chair is not handled by the board.

ADV HOFMEYR: No it had to be approved by the board.

10 **MS KWINANA:** Yes which ...

ADV HOFMEYR: So how could you not know about an agreement that you approved?

MS KWINANA: Which has to be approved. It has to be approved the board. The agreement has to be approved by the board but I do not remember approving the agreement in 2016. However I remember approving the agreement in 2012. And in 2016 I remember us discussing the sale of GPU's – the GPU's to be sold to Swiss Port because now Swiss Port needs to continue with the agreement that they
20 have.

ADV HOFMEYR: So how then did you give your assent to the approval of a contract that you did not know had been entered into?

MS KWINANA: Which contract? The GPU's?

ADV HOFMEYR: The Swiss Port ground handling contract of

March 2016?

MS KWINANA: I am saying I approved the ground handling.

ADV HOFMEYR: No you approved the SAA Swiss Port ground handling contract.

MS KWINANA: No, no. I did not approve the contract.

ADV HOFMEYR: Well let us go to the agreement that you do not recall as at page 132.44. You will see on the last page of it which is at 132.52 that it was concluded on the 15 March 2016.

10 **MS KWINANA:** You know...

CHAIRPERSON: What is the last – I am sorry.

MS KWINANA: I think what will work for me is the – is the board resolution that results from this because I am not responsible for the agreement but I am responsible for the decision of the board.

ADV HOFMEYR: So Chair I have just begun by directing Ms Kwinana to the agreement that was concluded.

CHAIRPERSON: Yes.

ADV HOFMEYR: Do you see that Ms Kwinana?

20 **MS KWINANA:** Yes.

ADV HOFMEYR: Do you see that it was concluded in March of 2016?

MS KWINANA: Ja it does not matter which year because as I said I am responsible – you need to show me the board resolution.

CHAIRPERSON: Hang on, hang on, hang on.

MS KWINANA: That results from this.

CHAIRPERSON: Ms Kwinana hang on. Just answer the question she is asking you. Do not answer questions she has not asked because then it will waste time.

ADV HOFMEYR: Then I would like to take you to a particular clause in this agreement because it is the clause that required Swiss Port to buy the SAAT GPU's. That is the one that you do remember, is that correct?

10 **MS KWINANA:** Sorry Chair I am not going to answer anything on this agreement.

CHAIRPERSON: Hang on one second.

MS KWINANA: I will answer something on the board resolution.

CHAIRPERSON: Ms Kwinana hang on one second. Your attorney's drawing my attention to her.

ADV MBANJWA: Yes sorry Chair.

CHAIRPERSON: Yes.

20 **ADV MBANJWA:** I actually wanted to refresh that board resolution and we are not being obstructive here. The witness has said many times that she was a board member so what she would approve would be contained in the board resolution.

CHAIRPERSON: Why should that not wait until you re-examine Ms Mbanjwa?

ADV MBANJWA: No the witness Chair is wanting the board resolution.

CHAIRPERSON: Yes but the evidence leader
[SPEAKING OVER ONE ANOTHER]

CHAIRPERSON: The evidence leader is directing what she is doing and you are here to look after the interest of the witness. You will pick up what the witness wants and when you re-examine you will go there.

MS KWINANA: No Chair with all due respects. The
10 witness is saying please give me the board resolution where I [Chair speaking over Ms Mbanjwa]

CHAIRPERSON: Let the evidence leader handle that.

ADV MBANJWA: How is she going to ...

CHAIRPERSON: You are overruled Ms Mbanjwa. Ms Hofmeyr continue. I really do not want any wasting of time this time Ms Mbanjwa. Please let us go ahead.

ADV HOFMEYR: Let us – thank you Chair. So I am going to take you to the clause of this agreement which is the very clause...

20 **CHAIRPERSON:** You see Ms Mbanjwa. I am sorry Ms Hofmeyr. The more you – you interrupt Ms Hofmeyr while she is questioning Ms Kwinana the more the impression is you are trying to assist Ms Kwinana when she might not be needing your assistance. She is able to deal with the questions on her own.

ADV MBANJWA: No Chair I disagree. What is Ms Kwinana...

CHAIRPERSON: Okay that is the end of – that is the end of – of that issue now.

ADV MBANJWA: She is not – she is not ...

CHAIRPERSON: That is the end of that issue now. Go ahead Ms Hofmeyr.

ADV HOFMEYR: Thank you. So Ms Kwinana your evidence is that you did recall that Swiss Port had an
10 obligation to buy SAAT GUP's, is that correct?

MS KWINANA: Yes.

ADV HOFMEYR: And that obligation arises from this very agreement and that is why I want to take you to it. You will find it at page 132.49.

MS KWINANA: Chair as I said before I am not going to refer to this agreement. I am going to refer to the board resolution that results in this agreement.

CHAIRPERSON: I am at 132.49 Ms Hofmeyr.

ADV HOFMEYR: Right. So Chair at that page and Ms
20 Kwinana you will see under Clause 8 it says:

“Equipment and Enterprise Development.”

And then there is Clause 8.1 which talks about continuing improvement of its BEEE and promoting the government's developmental agenda. It say:

“The handling company will sub-contract

some of its services or enter into agreements with 51% black owned companies that have the representation of all either of women, youths, disabled persons and military veterans for the purchase of equipment required as part of its investments to this agreement.”

That is the BEEE aspect that you were concerned about on your evidence. Is that correct?

10 **MS KWINANA:** Chair as I said I am definitely not going to refer to this agreement. If you show me the board resolution that talks to that then I will say, yes Chair you are correct.

CHAIRPERSON: Well do you know about this 51% black owned companies referred to here and agreements that were to be entered into with 51% black owned companies that are mentioned here even if you do not know the agreement?

MS KWINANA: Where are they mentioned?

20 **CHAIRPERSON:** It is page – it is para – it is page 132.49.

ADV HOFMEYR: The page that we were....

CHAIRPERSON: Even if you do not – in other words even if you do not know the agreement but you know the issue that is covered there?

ADV HOFMEYR: And it is Clause 8.1 that I read out.

MS KWINANA: I heard of continuous improvement.

ADV HOFMEYR: Yes indeed. I stopped there because that is the point that you have been testifying about. That you were there for your support at the Swiss Port meeting because of your guidance on BEEE matters, is that correct?

MS KWINANA: Chair – Chair we were talking about the 30% set aside basically that is what we have been talking about. Now we tried the 30% set aside and it was hugely
10 rejected and we ended up not implementing it and therefore even if it was talking about the 30% set aside there the 30% set aside was never implemented because of the resistance from companies like [00:16:33], like National Treasury, like DTI. So basically the 51% that is being said there I am not aware of.

ADV HOFMEYR: Ms Kwinana do you remember ...

MS KWINANA: However I do support the 51% as I said before 30% is small. 51% is small it would be better if it was 70% so that it represents the demographics of South
20 Africa.

ADV HOFMEYR: Do you remember what my question was?

MS KWINANA: I do not remember.

ADV HOFMEYR: The question was I understood your evidence to be that you were at the meeting with Swiss Port in February.

MS KWINANA: Yes.

ADV HOFMEYR: In order to offer guidance of BEEE matters, is that correct?

MS KWINANA: Support?

ADV HOFMEYR: Support.

MS KWINANA: On BEEE matters.

ADV HOFMEYR: Thank you. Now Clause 8.3 the one I was about to get to is the clause that requires Swiss Port to the SAAT GPU's. The one that you do have recollection
10 of.

MS KWINANA: Yes.

ADV HOFMEYR: It reads:

“The handing company – that is Swiss Port agrees to purchase and or arrange purchase of all recently acquired surplus SAAT GPU's at current book value fair market value or other such valuation as mutually agreed.”

Do you remember that?

20 **MS KWINANA:** Let me read it.

ADV HOFMEYR: That is the clause that was referred to at the SAAT board meeting.

MS KWINANA:

“The handling company agrees to purchase and or arrange purchase of all recently

acquired”

Basically this would be the implementation which basically does not have anything to do with the board.

ADV HOFMEYR: But this is the very clause that was dealt with at the SAAT board meeting when you discussed the sale of the GPU’s to Swiss Port. So how could you not know about this agreement if this is the clause that required Swiss Port to buy the GPU’s?

MS KWINANA: Chair I do not know the agreement
10 however is you show me the board resolution then I will know the board resolution. I am not part of the agreement. I am part of the board resolutions.

ADV HOFMEYR: Let us go to the board resolution.

CHAIRPERSON: Well – oh okay. Alright.

ADV HOFMEYR: Page 132.43 it is a few pages back.

CHAIRPERSON: 13?

ADV HOFMEYR: 132.43.

CHAIRPERSON: 132.43.

ADV HOFMEYR: 3 – yes Chair. And let me read it into the
20 record because it is of some importance to Ms Kwinana.

“This is the SAA Board of Directors written resolution Number 2016/B05. Request for SAA board to approve the Terms and Conditions of the Swiss Port SA 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 South Africa – Johannesburg, Cape Town, Durban, Port Elizabeth and East London.”

And then the document records:

“The board by Round Robin Resolution – by Round Robin 2016/B05 as of 14 March 2016 resolved to

- 10 1. Approve the contract to be entered into with Swiss Port South African for the duration of five years commencing on 1 April 2016 to 31 March 2021 covering ramp handling, PAU’s, wheel chairs, GPU’s and air side 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
- 20 GPU equipment that has been purchased by SAAT.
- b. Swiss Port South Africa to enter into a contract with a BEEE company that has representation of black women, youth, military veterans and disabled person

from which Swiss Port will purchase all their equipment required for the SAA contract.

2.Note the feedback of the negotiations and approve executing of the contract with Swiss Port South Africa.”

So Ms Kwinana you did approve the contract, correct?

MS KWINANA: This is an approval of the Terms and Conditions and note the contract duration. That is
10 basically what we approved yes.

ADV HOFMEYR: Yes but until this moment you have no knowledge of this contract, correct?

MS KWINANA: Maybe I would say to me that is not a contract because the contract because the contract was entered into in 2012.

ADV HOFMEYR: No the contract was entered into in March of 2016.

MS KWINANA: This contract...

ADV HOFMEYR: And as a board member you were
20 required to approve its Terms and Conditions. How could you approve its Terms and Conditions if you had no knowledge of the contract?

MS KWINANA: That is what I am saying. I had the knowledge of the contract that was entered into in 2012.

ADV HOFMEYR: Right so your approved...

CHAIRPERSON: No, no Ms Kwinana you know that Ms Hofmeyr is not talking about the 2012 contract. She has told you that quite a few times. We are talking about the contract of March 2016. This resolution is about that.

MS KWINANA: This resolution Chair maybe it is because I am not a lawyer. This resolution basically for me it is noting the contract duration and approving the Terms and Conditions.

CHAIRPERSON: Yes now did you not approve the contract
10 the Terms and Conditions of the contract then?

MS KWINANA: Yes we approved it.

CHAIRPERSON: You did approve them.

MS KWINANA: Conditions.

CHAIRPERSON: So how could you approve a contract that you did not know? Because you have said you do not know that contract. I have just stopped you from going back to the 2012 contract now to remind you that Ms Hofmeyr is talking about the March 2016 contract. Now she has shown you a resolution, you agree that you approved so
20 how could you have approved a contract without knowing it?

MS KWINANA: Considering that it is stated like this Chair if you say then I approved here that is fine let us continue Chair.

CHAIRPERSON: No but the question remains, how could

you have approved a contract you did not know?

MS KWINANA: Chair I did not think that this is a contract. I thought we were approving only the Terms and Conditions not the whole contract. The whole contract would have the whole lot of things...

CHAIRPERSON: Ms Kwinana

MS KWINANA: Including the price and everything.

CHAIRPERSON: Ms Kwinana.

MS KWINANA: And then the Terms of Conditions...

10 **CHAIRPERSON:** Ms Kwinana.

MS KWINANA: Chair.

CHAIRPERSON: You are a chartered accountant. You are a chartered accountant. You have said you have approved this contract. Initially you said you did not know about this contract. You were shown a resolution, you accept that you – you approved the contract now what are you saying?

MS KWINANA: I am saying Chair.

CHAIRPERSON: You saying you do not know the contract. You know the Terms and Conditions.

20 **MS KWINANA:** I am saying Chair my knowledge of the contract ...

CHAIRPERSON: Sorry.

MS KWINANA: I am saying Chair my knowledge of the contract when Ms Hofmeyr is saying I am approving the contract the contract will start from page 1 up to the last

page. However the Terms and Conditions would be part of the contract not the whole contract and therefore Chair.

CHAIRPERSON: Precisely because the Terms and Conditions of a contract are part of the contract. It is precisely because of that that you know the contract if you say you approved the Terms and Conditions. What is perplexing is that you say you do not know the contract but you know the Terms?

MS KWINANA: No Chair. I am saying my understanding is
10 that as I was saying the Terms and Conditions would be included as part of a bigger document. That is what I understand.

CHAIRPERSON: Yes.

MS KWINANA: That is number 1. Number 2 these Terms and Conditions of this contract my understanding was that they were the Terms and Conditions of the contract that was entered many years ago.

So now when you are saying therefore the contract was entered into in March 2016 that means therefore here
20 you are saying we were approving the Terms and Conditions of the contract that was entered into in March 2016.

But now my question would be why would we approve only the Terms and Conditions instead of approving the whole contract?

CHAIRPERSON: I mean you cannot – Ms Kwinana you cannot know the Terms and Conditions of a contract without knowing the contract.

MS KWINANA: Of course you can.

CHAIRPERSON: Because the Terms and Conditions are the contract. A contract has got Terms and Conditions and if you know the Terms and Conditions you know the contract. Is it not?

MS KWINANA: Chair I think we should continue.

10 **ADV MBANJWA:** Chair if I might interrupt you?

CHAIRPERSON: Ms Kwinana do you accept what I am saying that a contract consists of Terms and Conditions.

MS KWINANA: And other information.

CHAIRPERSON: And if you know the Terms and Conditions it means you know the contract. Do you accept that?

MS KWINANA: And other information Chair.

CHAIRPERSON: Sorry.

MS KWINANA: And other information.

20 **CHAIRPERSON:** Yes but we are not talking about other information.

MS KWINANA: And not only the...

CHAIRPERSON: We are talking about the Terms and Conditions. I am not talking about what is the address of the parties or the addresses of the parties to the contract.

We are talking about the Terms and Conditions. Do you accept that if you know the Terms and Conditions you therefore know the contract?

MS KWINANA: Yes Chair.

CHAIRPERSON: Okay alright. Ms Mbanjwa what did you want to say?

ADV MBANJWA: What I wanted to say Chair is I am – I do not know if this is not one of those issues we should write down for re-examination. Because I also got a [00:27:12].

10 **CHAIRPERSON:** Because in the beginning and we have consulted with – in the beginning what the witness was saying later on was the fact that Swiss Port without a tender was awarded a contract so I think we will need time. I do not want to waste your time now to bring in that clarification.

CHAIRPERSON: Ja.

ADV MBANJWA: Because where it suddenly jumped from if they had tenders for this of ground handling services to this specific contract and got [00:27:42] with the disposal of GPU's.

20 **CHAIRPERSON:** Yes no that is fine. Just make a note so when you re-examine if necessary you can raise that for clarification.

ADV MBANJWA: Yes please Chair.

CHAIRPERSON: We – we should take the lunch adjournment Ms Hofmeyr.

ADV HOFMEYR: Indeed Chair.

CHAIRPERSON: Unless you wanted to...

ADV HOFMEYR: No, no it is appropriate on my questioning to do so now.

CHAIRPERSON: Okay alright.

ADV HOFMEYR: Thank you.

CHAIRPERSON: Okay right we will take the lunch adjournment and we will resume at quarter past two because it is about fourteen minutes past one now.

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

CHAIRPERSON: Okay we adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES:

CHAIRPERSON: Okay let us continue.

ADV HOFMEYR: Thank you, Chair. Ms Kwinana, do you know Mr Nick Linnell?

MS KWINANA: [microphone on mute]

ADV HOFMEYR: If you will just turn on your microphone.

20 Sorry. So if you will just give the answer again just for the recording.

MS KWINANA: Yes, Chair.

ADV HOFMEYR: And did you have ...[intervenes]

MS MBANJWA: Sorry, colleague. Chair, my apologies. I think Chair allowed us that we can give one clarification on

the confusing question. If... She can just answer now where we said if we could just be given clarification if going – if Ms Kwinana was going to talk,

CHAIRPERSON: Yes, but I think I said there you can raise it in re-examination.

MS MBANJWA: Oh, not now?

CHAIRPERSON: No, not now.

MS MBANJWA: That is correct, Chair.

CHAIRPERSON: Ja, okay alright.

10 **ADV HOFMEYR**: Thank you, Chair. What dealings did you have with him while you were at SAA?

MS KWINANA: He used to attend our – some meetings.

ADV HOFMEYR: Which meetings were those?

MS KWINANA: Mainly board meetings or committee meetings. I do not remember exactly.

ADV HOFMEYR: Why would he attend board and committee meetings?

MS KWINANA: I do not know Chair.

ADV HOFMEYR: You do not know why he was there?

20 **MS KWINANA**: Yes, Chair.

ADV HOFMEYR: Did you not ask about an outside, a third party being present at your board and committee meetings?

MS KWINANA: No, Chair.

CHAIRPERSON: Why did you not ask? I mean, a board meeting is supposed to be for board members. And if you

see there is an outside, how can you keep quiet? An outside is being – is hearing what the board is discussing or a committee of the board may be discussing, which might include sensitive matters that should not be matters for outsiders.

MS KWINANA: In some meetings Chair we would have outsiders by invitation.

CHAIRPERSON: Sorry?

MS KWINANA: In some meetings Chair we would have
10 outsiders by invitation.

CHAIRPERSON: Yes.

MS KWINANA: Yes. So I would not know who has invited him, in what capacity.

CHAIRPERSON: But ...[intervenes]

MS KWINANA: And in fact, Chair. In the meetings that we would attend, I do not think there is any board member who questioned what his role is there. So basically, it was not only me who did not question it. No one questioned his existence at the board.

20 **CHAIRPERSON:** Well, you see. It might be bad enough if one board member anticipates in discussions of SAA matters that are supposed to be discussed by the board, some of which may be sensitive matters. In the presence of an outside without satisfying herself that there is a good reason for an outsider to be present but once...

It is a number of members of the board who behaves like that, then it may be worse because if a matter is supposed to be discussed by a board – unless there is a good reason for somebody who is not a member of the board – no one of the board who is not a member should be privy to the discussions.

MS KWINANA: Chair, as I said. People who are not members of the board would be invited from time to time to attend the board meetings.

10 **CHAIRPERSON:** Yes, but that does not answer the question. Nobody should attend board meetings who is not a board member unless there is a good reason. And every board member who sees an outside should seek to know why is this outside here. What is the reason? So as to evaluate whether there is a good reason for this outside to be in a board meeting when he or she is not a board member. You understand?

MS KWINANA: I do not understand Chair.

CHAIRPERSON: H'm?

20 **MS KWINANA:** I do not understand Chair.

CHAIRPERSON: You do not understand?

MS KWINANA: Yes.

CHAIRPERSON: Is your view that anybody who is not – or was your view at the time that anybody could attend a board meeting of the Board of SAA even if there was no good

reason? If they just wanted to listen what you are talking about?

MS KWINANA: Chair, the board members would, when necessary, invite members from outside who are not board members to attend the board members.

CHAIRPERSON: When necessary ...[intervenes]

MS KWINANA: That is how it stands. Yes, when necessary. Like for instance, at SAA Technical we had ...[intervenes]

CHAIRPERSON: No, you do not have to give examples.

10 **CHAIRPERSON:** When you say when necessary ...[intervenes]

MS KWINANA: Yes, Chair.

CHAIRPERSON: ...I am happy to accept that.

MS KWINANA: Yes, Chair.

CHAIRPERSON: But does that not mean that board members must be satisfied that it is necessary for this person to be here?

MS KWINANA: Yes, Chair.

CHAIRPERSON: Otherwise, any member of the board could object if he or she does not think it is necessary for that particular person to attend the board meeting, is it not?
20

MS KWINANA: Yes, Chair.

CHAIRPERSON: Okay Ms Hofmeyr.

ADV HOFMEYR: Thank you. I understood you to say you did not know why he was attending. Is that correct?

MS KWINANA: No, I did not know say I did not know why. I

was saying, as and when necessary, some outsiders would be invited to the board meeting.

ADV HOFMEYR: No, I was asking in particular to Mr Linnell. Why was he at those board meetings and committee meetings, and your answer was you did not know. Do you recall giving that evidence?

MS KWINANA: Which evidence?

ADV HOFMEYR: You testified a moment ago when I said to you: Why was he at the board and committee meetings?

10 **ADV HOFMEYR:** And your answer was: I do not know.

MS KWINANA: I may not know Chair but the person who would invite him would know why is he in the meeting.

ADV HOFMEYR: So at any point in those meetings that he attended, did it ever get revealed to you why it was necessary for him to be there?

MS KWINANA: Sometimes Chair they would make the presentations. Sometimes they would offer an opinion.

CHAIRPERSON: Well, Ms Kwinana. The question is not what he did.

20 **MS KWINANA:** H'm.

CHAIRPERSON: The question is whether it was never disclosed to you why he had been invited or why he was there.

MS KWINANA: No, Chair.

CHAIRPERSON: No?

MS KWINANA: No, Chair.

CHAIRPERSON: Okay.

ADV HOFMEYR: Did you, other than those board and committee meetings that he may have attended from time to time, have other interactions with him?

MS KWINANA: Sorry, can you repeat your question?

ADV HOFMEYR: Sure. Other than the time that he attended those board and committee meetings, did you yourself had other interactions with him?

10 **MS KWINANA**: No.

ADV HOFMEYR: No. And those board meetings – I think you have indicated earlier happened about four times a years. Is that right? The scheduled ones.

MS KWINANA: Yes, Chair.

ADV HOFMEYR: And can you give me a sense? So in an average year, how many of those meetings might he have attended?

MS KWINANA: No, I would not say on average how many times.

20 **ADV HOFMEYR**: Was he always there or only sometimes?

MS KWINANA: Only sometimes.

ADV HOFMEYR: And did you ever seek advice from him?

MS KWINANA: Yes, I did.

ADV HOFMEYR: So you did have interactions outside of the board meetings and committee meetings?

MS KWINANA: Also in the meetings. Like for instance, our understanding of Nick Linnell is that he is a legal person. So basically, if there is some legal matters like something that when he is limiting(?), the board would require like a quick legal opinion that does not require maybe a research or something. He is in a meeting and then we would say for instance: What do you think about this?

ADV HOFMEYR: And Ms Kwinana, what about all the highly qualified lawyers within SAA? Why did you not ask them
10 those questions?

MS KWINANA: No, those would not be the structured previous questions.

CHAIRPERSON: Those would not be what?

MS KWINANA: Those would not pre-prepared questions. Like for instance, we know ...[intervenes]

CHAIRPERSON: No, the question is. Instead of favouring Mr Linnell at meetings of the board or some committees and get legal advice, quickly legal advice from him.

MS KWINANA: H'm?

20 **CHAIRPERSON:** Why did you not have one of those highly qualified legal people from the Legal Department of SAA? That is the question?

MS KWINANA: The board meetings of SAA would not be attended by the head of legal because she was not a board member. However ...[intervenes]

CHAIRPERSON: Mr Linnell was not a board member either.

MS KWINANA: Yes, Chair. I am still saying. She would not be a... she would not be invited as a board member, the head of legal.

CHAIRPERSON: No, she should not be invited as a board member because she is not a board member but do you not – did you not say people who are not board members were invited sometimes when it was necessary.?

MS KWINANA: I am still saying Chair. The board members
10 would attend the meeting and then sometimes Nick Linnell would be there. And then when there is a discussion, sometimes you would say: Nick, what is your opinion about this? Not because that legal opinion was pre-determined. Because he is already there.

CHAIRPERSON: Ja, but you see Ms Kwinana. He was there because he was a legal person or a lawyer or somebody with a legal background.

MS KWINANA: No, Chair.

CHAIRPERSON: You did not say that?

20 **MS KWINANA:** No, I did not say that.

CHAIRPERSON: So what did you say about him? Why ...[intervenes]

MS KWINANA: I said Chair. He would be there without me knowing why he is there.

CHAIRPERSON: H'm?

MS KWINANA: But I knew that he has a legal background.

CHAIRPERSON: H'm?

MS KWINANA: So what it means, therefore, is that, if we are discussing here and there is some quick legal reference guide that is needed, considering that we know him that he has got a legal background, we would not go and ask for Ms Figelepe, for instance, who is the Head of Legal because she is not in that meeting.

However, the things that pre-planned and in fact when
10 Mr Linnell is not there and we required the legal advice. So basically, we would know that the legal advice is required from the head of legal but now for instance... In fact, it is the same thing as if we are having a ...[intervenes]

CHAIRPERSON: Can I summarise it for you as I understand what you want to say? Namely, Mr Linnell would be in a board meeting or a committee meeting for whatever purpose he has called to attend.

MS KWINANA: Yes.

CHAIRPERSON: And if in the meeting a legal question
20 arose that board members that wanted an answer on, they would then ask him and that is how you would make use of his legal background?

MS KWINANA: Yes.

CHAIRPERSON: Is that what you say, you are saying?

MS KWINANA: Yes, Chair.

CHAIRPERSON: Ms Hofmeyr.

ADV HOFMEYR: And so just so that I can be clear. He was not there to fill the role of the lawyer?

MS KWINANA: No.

ADV HOFMEYR: You would just ask him a quick legal question every now and then.

MS KWINANA: Yes.

ADV HOFMEYR: Is that right?

MS KWINANA: That is correct.

10 **ADV HOFMEYR:** And outside of that – because I asked you if you sought advice from him beyond those meetings. I understand your evidence to be you did not.

MS KWINANA: No, Chair.

ADV HOFMEYR: Right. Do you know whether Mr Nick Linnell was paid for his services attending those meetings and giving that quick legal advice?

MS KWINANA: I do not know Chair.

ADV HOFMEYR: You do not know?

MS KWINANA: [No audible reply]

20 **ADV HOFMEYR:** You do not remember having received invoices from him regularly in 2015 and 2016?

MS KWINANA: No, Chair.

ADV HOFMEYR: You do not?

MS KWINANA: [No audible reply]

CHAIRPERSON: I am sorry Ms Hofmeyr. From what you

have said, it appears that your understanding is that it was not Mr Linnell's legal background that the board really needed him for.

MS KWINANA: Yes.

CHAIRPERSON: The legal background just came in handy whenever there were questions and he was at the meeting.

MS KWINANA: Yes, Chair.

CHAIRPERSON: What was your understanding of what actually the board needed him for in these meetings? Did
10 you have an understanding of that or did you not have? What services, what skills did the board need him at these meetings for?

MS KWINANA: The board did not need a skill from him Chair because there was the head of legal.

CHAIRPERSON: Yes.

MS KWINANA: But as you have correctly put it. If he is there and we need quick legal advice: What do you think Nick? Then that – that type of thing.

CHAIRPERSON: You say the board did not any particular
20 skills from him?

MS KWINANA: No, Chair.

CHAIRPERSON: Alright. But then the questions arises. Why was he brought in? Are you able to share light on that?

MS KWINANA: No, Chair. I am not the one who can ...[intervenes]

CHAIRPERSON: You are not able to?

MS KWINANA: No.

CHAIRPERSON: Alright. Ms Hofmeyr.

ADV HOFMEYR: Did you gain an understanding of who did invite him?

MS KWINANA: No, Chair.

ADV HOFMEYR: And you never asked?

MS KWINANA: No, Chair.

CHAIRPERSON: You said he came to some meetings and
10 not all. Are you able to say, most meetings or you just say some?

MS KWINANA: Some meetings Chair.

CHAIRPERSON: Some meetings?

MS KWINANA: H'm.

CHAIRPERSON: Would you able to say, when you say some, is it some like two, three, four or maybe five meetings over a certain period or is that something you cannot remember?

MS KWINANA: No, Chair I cannot remember.

20 **CHAIRPERSON:** Okay but certainly, it was not once?

MS KWINANA: Yes, Chair.

CHAIRPERSON: Yes, okay.

ADV HOFMEYR: And was it more than five?

MS KWINANA: I really do not know Chair.

ADV HOFMEYR: Can you set out a limit from what you can

recall, not more than ten or something like that to help us?

MS KWINANA: No, Chair I cannot answer that question. I really do not know because I may say he was in a meeting and maybe I found him in the passage or something like that. So basically, I just would not know.

ADV HOFMEYR: H'm.

CHAIRPERSON: Okay.

ADV HOFMEYR: Thank you. But you did not engaged him beyond his presence at meetings. I have that evidence
10 correct. Is that right?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Do you know if any other of the board members engaged him beyond the confines of meetings?

MS KWINANA: I do not think so Chair.

ADV HOFMEYR: And then I was asking you. Were you aware that he was paid for his services to SAA?

MS KWINANA: I am not aware Chair.

CHAIRPERSON: And do you have a recollection of what types of presentations he made to the board at some times
20 because you did say he made some presentations.

MS KWINANA: No, I would not remember. Those would be like ad-hoc. Ad-hoc presentations Chair.

CHAIRPERSON: Yes.

MS KWINANA: H'm.

CHAIRPERSON: Okay alright.

ADV HOFMEYR: And I have your evidence to be. You did not really need him for anything there. So can I understand your attitude then to him being paid. Would it surprise you then to learn that he was paid by SAA?

MS KWINANA: Chair, of course any person... I would have expect a person to be paid for services rendered. They may have been rendering some services. I do not know.

ADV HOFMEYR: No, indeed. I am talking about the ones that you do know about. You said he attended some board
10 meetings and some committee meetings Your evidence a few moments ago was that: We did not need him for anything. And what if I told you he was being paid for that for which you did not need him? Would that concern you?

MS KWINANA: But Chair if the other members of the board needed him?

ADV HOFMEYR: No ...[intervenes]

CHAIRPERSON: I think when Ms Hofmeyr talked about you not needing him, based on your evidence, her understanding was and that would be my understanding, was that you were
20 talking about the board that, in your view, the board did not need him. That you are not talking about you yourself personally that you did not need him. Because obviously, he was not there for you. He was there for the board.

MS KWINANA: H'm.

CHAIRPERSON: So the understanding was, that your

evidence was, in effect, that the board did not actually need any services from him. That is why Ms Hofmeyr is asking whether it would concern you if somebody was being paid for being admitting when actually of the board when the board actually did not need him to be there?

MS KWINANA: As much I did not feel the need for him to be there, I did not sit in all committees Chair. I only sat in the Audit Committee. So the other committees may see the need for him to be there.

10 **CHAIRPERSON:** But in the Risk and Audit Committee of which you were the chairperson, is it not?

MS KWINANA: Yes.

CHAIRPERSON: He could only come there if you approve that he should come there, is it not?

MS KWINANA: Yes, Chair.

CHAIRPERSON: As he the person.

MS KWINANA: Yes, Chair. And he never attended the Audit Committee meeting.

CHAIRPERSON: Yes. Did he ever attend meetings of the
20 Audit and Risk Committee with your approval?

MS KWINANA: No, Chair.

CHAIRPERSON: No. Okay.

ADV HOFMEYR: Sorry. And I do just need to return to my question because the question is focussed in on the board meetings that you were present at and he was present at.

Let us put – let us forget the other meetings.

What I am interested in Ms Kwinana is your response to the following. Your evidence is that he attended some of those meetings and the board did not need him for anything at those meetings.

And then I say to you: Well, if that is so, would it concern you to learn that he was being paid to be at board meetings where he was not needed?

MS KWINANA: I do not know. I cannot say with certainty
10 that if he was not needed.

CHAIRPERSON: Sorry ...[intervenes]

MS KWINANA: Maybe the other ...[intervenes]

CHAIRPERSON: Look this side Ms Kwinana. Just repeat your answer.

MS KWINANA: Chair, I was still saying. I cannot say the other board members did not need him. Maybe the other board members did need him because also, SAA does allow for some extra specialised resource if it is going to add value to the company. It does allow for that.

20 Like for instance, the outsourcing. But what I am saying. As for me, I did not think the need for him to... I did not see him adding value in my activities as the board member.

However, I am not saying other board members did not see the value because the other board member may come

here and say Nick added a lot of value for the board.

CHAIRPERSON: Yes. No, no. We wanted you to answer based on your observations and your experiences and what was discussed. Was there any meeting of the board where there was a discussion about what value he was adding or why – whether anybody needed him?

MS KWINANA: No, Chair.

CHAIRPERSON: No?

MS KWINANA: No.

10 **CHAIRPERSON**: Ms Hofmeyr.

ADV HOFMEYR: And if he was being used for his services because there was a sense from some members of the board that his services would be useful to the company. Then I assume they would need to go through the proper processes to procure those services, would they not?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Yes. So a procurement process should be followed in accordance with the constitution and the PFMA before somebody whose services are required for SAA. Is
20 that correct?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: And are you aware of any procurement process ever having been followed before Mr Nick Linnell appeared at board meetings?

MS KWINANA: I do not know Chair. The document process

is done at Operations. The only time it comes to the board is when the delegation requires it to happen.

CHAIRPERSON: So you... A short answer is, you are not aware?

MS KWINANA: I am not.

CHAIRPERSON: But you are saying, as far as you are concerned, that does not necessarily mean that no processes were followed ...[intervenes]

MS KWINANA: That procurement processes were not
10 followed.

CHAIRPERSON: You are not aware?

MS KWINANA: They may be followed.

CHAIRPERSON: Ja.

MS KWINANA: Yes, Chair.

CHAIRPERSON: Alright.

ADV HOFMEYR: So the board generally does not involve itself in those procurement process. Is that correct?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: And so a board member going to a
20 meeting with suppliers about finalising contracts would unusual. Is that correct?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: And if a board member went on her own and met with suppliers to SAA without any member of management, that would also be unusual, would it not?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Ms Kwinana, when did you resign from SAA?

MS KWINANA: The 23 August 2016.

ADV HOFMEYR: And ...[intervenes]

CHAIRPERSON: Your voice is low Ms Kwinana. Just repeat that answer and face this side.

MS KWINANA: 23rd of August 2016.

CHAIRPERSON: Okay.

10 **ADV HOFMEYR:** And why did you resign?

MS KWINANA: I think Minister Gordan... I think there was issue with funding where basically, Minister Gordan wanted the new board members.

ADV HOFMEYR: I am not sure I understand. Could you just elaborate? Minister Gordan had an issue with funding and wanted new board members. Is that right?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: So did he communicate that to you?

20 **MS KWINANA:** I do not remember, Ma'am. I think what you need to do. I did write the resignation letter. And my reason for resigning, I stated in that letter. And nothing has changed.

ADV HOFMEYR: Right. So do you remember those reasons now or would you like to go to the letter?

MS KWINANA: I would like to go to the letter.

ADV HOFMEYR: Right. You will find that in your bundle which is BD33 at Tab 10. So Chair, this will be Exhibit BD33.10. If we may enter it into the record?

MS KWINANA: 33.10?

ADV HOFMEYR: It is under the flag... Sorry, Tab 10 and it is at page 84. So if you just go to page 84, that might be easier.

MS KWINANA: H'm. You want me to read it?

ADV HOFMEYR: I do not want you to read it and... You
10 said... Maybe take a moment so that it can refresh your memory about why you resigned. And then you can tell us in your own words why you resigned.

MS KWINANA: Oh, yes Chair, I remember.

CHAIRPERSON: Yes.

ADV HOFMEYR: Thank you. So what were your reasons for resigning?

MS KWINANA: The main reason, basically, was that the National Treasury was not issuing the guarantee which resulted in the audited financial statements not to be
20 finalised. And so basically my understanding was that the minister want the board that he himself has elected.

ADV HOFMEYR: But how did you know he would not select you?

MS KWINANA: If he would select me.. At least he would start from scratch and... He would start from scratch after I

have resigned. And then when he appoints new board members, if he wants to selected me then he would do so. So I think it was going to be easy for me to resign because if he wanted me, he would still select me.

ADV HOFMEYR: So let me just understand this because I have to say, I did read your letter of resignation a few times and there were parts of it that just were not clear to me. So I would like to give you an opportunity to assist me. I understand you to be saying that you had some
10 understanding that the government guarantee that SAA needed was not going to be forthcoming unless the board, the current board resigned. Is that right?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Right. Now imagine.. Oh, sorry. Let me ask this. How was that communicated to you, that issue?

MS KWINANA: Chair, you know, no one does not see that there are some disagreements between the shareholder for instance and the chairperson or maybe and the board or chairperson of the board reporting(?) can see if they are
20 correct.

ADV HOFMEYR: So your understanding was he was not issuing the guarantee until this board resigned, is that correct?

MS KWINANA: Yes, Chair, that was my thinking.

ADV HOFMEYR: And imagine the whole board has

resigned, what then would have happened?

MS KWINANA: Then the shareholder would appoint new board.

ADV HOFMEYR: Do you know that it is quite an important principle of corporate governance that there be continuity on boards but – or any company but particularly state owned enterprises.

MS KWINANA: Yes, Chair.

ADV HOFMEYR: So if the whole board had resigned in
10 order to release this government guarantee there would no continuity on that board, would there?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Did that concern you at all, that you might be putting this letter of resignation in with all your fellow board members?

MS KWINANA: Chair, one would have to weigh the options and look at what would be best of the company. Would it be best for me to resign so that the minister can appoint the new people or would I sit here and then the
20 guarantee is not forthcoming and then the company goes into liquidation. So I had to weight the options.

ADV HOFMEYR: Ms Kwinana, I have just been told, if you could just try and raise your voice a bit more and just do remember, if you could, to direct your answers to the Chair. You mentioned in particular that you were all aware

at the time of some let us call it conflict between Minister Gordan and the then Chairperson of SAA, is that correct?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Do you know when Minister Gordan made the next appointment for the new board?

MS KWINANA: No, Chair.

ADV HOFMEYR: So would it surprise you to learn he did it just more than a week after you resigned?

MS KWINANA: No, I was not aware.

10 **ADV HOFMEYR:** And would it surprise you to learn that he kept on Ms Myeni?

MS KWINANA: I know that.

ADV HOFMEYR: So what happened to that you were aware of and that underscored your reason for resignation?

MS KWINANA: Maybe I was the undesirable element.

ADV HOFMEYR: Was that communicated to you because I understood you to say that what was at issue at the time was Minister Gordan and Chairperson, Ms Myeni. Did you receive indications that you were undesirable on the
20 board?

MS KWINANA: No, Chair.

ADV HOFMEYR: So it was not that.

MS KWINANA: H'm.

ADV HOFMEYR: Did you have any other reason for resigning, Ms Kwinana?

MS KWINANA: Everything – all the reasons are in this letter, Chair.

ADV HOFMEYR: And none over and above what is in the letter?

MS KWINANA: No, Chair.

CHAIRPERSON: Now I take it that the minister, Mr Gordan, never said – never told you that the guarantee would not be provided until the board had resigned, did not say that himself to you, or did he?

10 **MS KWINANA:** I cannot remember, Chair, but it was a well-known fact that basically ...[intervenes]

CHAIRPERSON: You cannot remember whether he told you?

MS KWINANA: Yes, Chair.

CHAIRPERSON: He might have?

MS KWINANA: Yes.

CHAIRPERSON: Okay. If he did, would this have been in a board meeting of SAA or would it have been a separate meeting encounter with him between the two of you?

20 **MS KWINANA:** No, definitely not between the two of us. Definitely not at SAA. Maybe a Department of Finance.

CHAIRPERSON: Maybe at the Department of Finance?

MS KWINANA: Yes, Chair, but I am not sure but it was a well-known thing that ...[intervenes]

CHAIRPERSON: Is it something that was conveyed to you

as a board member or to the board members by somebody such as the Chairperson of the board saying this is the position of the minister or can you not remember?

MS KWINANA: I do not remember, Chair, how it was communicated but, as I said, everybody knew about it.

CHAIRPERSON: And you cannot remember whether it was communicated in writing by way of a letter or email?

MS KWINANA: No, definition it cannot – it definitely was not in writing, Chair.

10 **CHAIRPERSON:** Okay.

ADV HOFMEYR: Thank you. And, Ms Kwinana, are you aware of the evidence of Mr Mothibe, the previous PwC auditor before the Commission?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: So you did look at that evidence as well, is that correct?

MS KWINANA: Yes, Chair.

20 **ADV HOFMEYR:** Now Mr Mothibe is somebody you would have had quite a few interactions being the chair of audit and risk while PwC and Nkonki were auditing SAA, is that correct?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Did you regard him as a good auditor?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Did you trust his judgment?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: And did you interact quite frequently with him in that role?

MS KWINANA: Not frequently because remember that the external auditors come once a year, so I would not say frequently.

ADV HOFMEYR: But you would engage him at audit and risk committee meetings that they attended, is that right?

MS KWINANA: Yes, Chair.

10 **ADV HOFMEYR:** And how many of those are there a year?

MS KWINANA: Four.

ADV HOFMEYR: Thank you. I would just like to get a few background issues about obligations of board members out of the way with you. Is it your understanding that board members of SOEs are required to comply with obligations under the PFMA?

MS KWINANA: Yes, Chair.

20 **ADV HOFMEYR:** And are you aware of the obligations that the PFMA places on board members?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: And can I ask one question, in Ms Memela's evidence – I think it was in February this year – she said that it was against procurement rules for a bidder while a tender is still open to meet with somebody who is a

decision-maker from the state owned entity concerned. Do you agree with her on that?

MS KWINANA: Not entirely, Chair. The reason why I am saying not entirely is that you would meet with a person not knowing that there is a tender going on and also, even that person not knowing that there is a tender going on and if you are not involved in any tender you would really not know that there is a tender now that is going on.

ADV HOFMEYR: But if you did know that a tender was
10 going on then would it be against procurement rules?

MS KWINANA: I would also depend what is your involvement in that tender.

ADV HOFMEYR: No, she believed that if you just met with somebody. So you have got a tender that is open and you have got a decision-maker in the state owned entity who has gone out on tender and that person meets with somebody who is a bidder, she said that would be against procurement rules. Do you accept that?

MS KWINANA: No, I do not accept it. It would also
20 depend, as I said, it would depend on the involvement of that person in that tender.

ADV HOFMEYR: Why?

MS KWINANA: Like, for instance, you cannot expect a person - like you meet a person in town and you do not know what is happening in the tendering process but it

happens that the person is working in this place where there is a tender going on. No, it cannot be taken like that.

ADV HOFMEYR: So if you do know that ...[intervenes]

MS MBANJWA: I do not know what Ms Hofmeyr is saying was said by Mrs Memela ...[intervenes]

CHAIRPERSON: I am sorry, Ms Mbanjwa, I have not said you may speak. What do you want to talk about?

MS MBANJWA: Oh, I must apologise, Chair, sorry.

10 **CHAIRPERSON:** Yes.

MS MBANJWA: What I wanted, Chair, is if Ms Hofmeyr can refer us to that evidence that Ms Memela [indistinct – dropping voice]

CHAIRPERSON: Okay.

MS MBANJWA: Thank you, Chair.

ADV HOFMEYR: Chair, I am just going to have to find it, it is in her affidavit, I did not take a reference, I did not actually think it would contentious but if you could give me a moment, I would appreciate it.

20 **CHAIRPERSON:** That is fine. It looks like you do not have any junior helping you today, Ms Hofmeyr.

ADV HOFMEYR: No, I do have her helping me but she is not present in the room.

CHAIRPERSON: Oh.

ADV HOFMEYR: She is available to me on Whatsapp

communication, so she can certainly be looking for it too. Chair, my challenge at the moment is – we explored it – I am looking for it in the affidavit, we explored it further in evidence. I do have a reference on my computer.

CHAIRPERSON: Yes.

ADV HOFMEYR: So if I could come back to it, that would be preferable.

CHAIRPERSON: Ja, later on.

ADV HOFMEYR: I do not want to delay things too long in
10 finding it.

CHAIRPERSON: Ja, okay.

ADV HOFMEYR: So I understood you, Ms Kwinana, to say that it really depends on the circumstances. Is that right? If you happen to encounter somebody out one evening and you do not make the association that they are a bidder and you are decision-maker, then you could communicate. Is that right?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: But if you knew that you were the
20 decision-maker and you knew that they were a tenderer and they knew that they were a tenderer, then you should not have communication, should you.

MS KWINANA: Still, Chair, that would depend.

CHAIRPERSON: You are away from the mic. Your previous answer was yes, is that right, to the question that

was asked earlier on.

MS KWINANA: Can you repeat that question, Ms Hofmeyr?

ADV HOFMEYR: Yes, I was saying if everyone knows that you are a decision-maker and that they are a tenderer and the tender is still open you should not be communicating and I understand you to say no, you could still communicate, is that right?

MS KWINANA: You could still communicate. It would
10 depend what is the role of the person at the time and that is one. Secondly, you know the issue of conflict of interest, the issue of conflict of interest is a serious challenge in the sense that the procurement process would say you cannot meet with the person or you cannot communicate with the person. What if you are meeting and you are communicating on something else?

ADV HOFMEYR: Well, if the procurement rule is you cannot communicate, it does not matter, does it?

MS KWINANA: So that is why I am saying it depends on
20 the circumstances.

ADV HOFMEYR: Yes, so if the procurement rule says you cannot communicate and you were a decision-maker and they were a tenderer – and let me add, the person you are dealing with is a director of the company who is tendering, then do you accept it would not be in compliance with

procurement rules to communicate with that tenderer?

MS KWINANA: That would need to be specified, Chair, that would need to be specified because, as I said, if I am not involved in this tender ...[intervenes]

CHAIRPERSON: No, remember, she is talking now – Ms Hofmeyr is talking about a person who is a decision-maker in the tender, is not talking about somebody who is not a decision-maker. So this whole question about whether you may meet ...[intervenes]

10 **MS KWINANA:** You talk with a person who is a decision-maker ...[intervenes]

CHAIRPERSON: Hang on, hang on, hang on, hang on, this whole question about whether you may meet or you may not meet somebody whose company has put in a bid and the tender is still open, relates the context of you being a decision-maker in that tender, not some secretary or somebody.

MS KWINANA: A decision-making in this tender and then the other person is also a bidder ...[intervenes]

20 **CHAIRPERSON:** Yes.

MS KWINANA: And the person knows that there is a bid.

CHAIRPERSON: Yes, yes and he says both of you know.

MS KWINANA: And there is no room to disclose because again, the tender processes allow for a disclosure.

CHAIRPERSON: What Ms Hofmeyr seeks to test with you

is your understanding of what the rules at SAA were in regard to such communication between a decision-maker in regard to a certain tender that is still open and somebody who is a bidder in that tender. So you said, as I understood what you are saying, what you said, you said that a communication between the decision-maker and that tender and somebody who has tendered or whose company has tendered may be acceptable or permitted in certain circumstances and she seeks to establish what those
10 circumstances are and she says let us say you know that this person is a director of a company that has put in a bid, so you know that this person that you are communicating with is a director in a company that has put in a bid which you will decide and she asked the question are you saying that your understanding was that there would be nothing wrong with communication between a decision-maker and such a person while the tender was open at SAA?

MS KWINANA: It may happen, Chair, that I am a decision-maker this side and the bidder on that other side
20 is a company and this person I am talking to does not even know his company has bid for this. So that it is why I am saying ...[intervenes]

CHAIRPERSON: Let us say he knows. Ms Hofmeyr said everybody concerned – you know what your role is in the tender, namely decision-making. He knows also or she

knows – that person knows that you are a decision-maker in this tender where his company has put in a bid. You know that he is a director or she is a director of that company. Everybody knows everyone's role.

MS KWINANA: Chair, it still depends again. It depends on a whole lot of things. That would also include, as I said, the disclosure because the tender processes, even the government tender processes – I do tenders every day. I went to submit a tender today. It does not say if you
10 know a person you must not tender. It says if you think that your decision will be impaired and you need to disclose that, it does not say you must not tender and it does not say you must [inaudible – speaking simultaneously]

CHAIRPERSON: No, no, let us talk about the decision-maker. Let us talk about the decision-maker, not the bidder. Can you, on your understanding, if you were a decision-maker in a particular tender, which has not closed, could you – would you have been permitted to
20 communicate with a director of company that had put in a bid and you were to make a decision on the bid in terms of procurement rules applicable at SAA?

MS KWINANA: No, that ...[intervenes]

CHAIRPERSON: Or in general.

MS KWINANA: No, that would not be right, Chair.

CHAIRPERSON: It would not be right.

MS KWINANA: If I am a decision-maker this side and the person is a decision-maker responsible for this tender, then that would not be right.

CHAIRPERSON: Okay, alright.

ADV HOFMEYR: I did find the reference, Chair, and I have been able assisted in that. So the first place you find it in, it is in Ms Memela's own affidavit. I am going to read it in. Certainly Ms Mbanjwa can take a look at it if she
10 wants to but I do not suggest anyone else needs to.

CHAIRPERSON: Ja.

ADV HOFMEYR: It is DD25A page 10, paragraph – it is very difficult, Ms Memela's paragraphs were not numbered but it is the third paragraph on page 10. She says there:

“This is also the time...”

Because she is – page 10. She says in the third paragraph there:

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

And this is the part that is important:

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

So that is the basis for my question.

CHAIRPERSON: Ja.

ADV HOFMEYR: That is why I put it – it was elaborated on in evidence but that is sufficient for present purposes.

CHAIRPERSON: Ja.

ADV HOFMEYR: What position did Ms Memela hold at SAAT?

MS KWINANA: Head of procurement.

ADV HOFMEYR: So the head of procurement at SAAT
10 actually goes further – I did not remember this – she goes further. I talked about communication, she says you cannot meet anyone who is a decision-maker from the company while the tender is still open and do I understand your evidence to be you disagree with her?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: You can still have those communications?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: And if you are a decision-making and
20 they are a bidder?

MS KWINANA: As I elaborated, Chair, if I am a decision-maker this side and bidder, assuming that a bidder is a company.

ADV HOFMEYR: Yes.

MS KWINANA: And I meet – and the Chairperson went

further to say if I am a decision-maker here and I am going to decide on this tender and the person on the other side is involved in this tender.

ADV HOFMEYR: Then you accept you cannot communicate, is that right?

MS KWINANA: Yes, exactly and we both know that this is the tender, then that is not right. However, if a person in that company does not know about this tender, is not involved in this tender, then what would make that person
10 not to communicate with the person who is a decision-maker here because that person is not involved and I was – and as I was saying, he may not even know that there is a tender that is going on.

ADV HOFMEYR: No but, Ms Kwinana, with fairness and again as the Chair redirected you previously, you keep answering the question from the standpoint of the tenderer. We are interested in your answer because you are the decision-maker and you have now clarified for us, if you are the decision-maker and you are dealing with somebody
20 who is responsible within the company and has put in a bid, you agree you cannot communicate, correct?

MS KWINANA: Yes.

ADV HOFMEYR: Now you change it and you say but what if it is somebody else in the company who you are dealing with who does not know ...[intervenes]

MS KWINANA: Yes, that is why – that is why the Chairperson – the Chairperson was specific to say this person this side is a decision-maker on this tender and then the person on the other side is preparing this tender and therefore I know that this person I am talking to is preparing this tender, then that is not right, provided we talk about this tender because ...[intervenes]

ADV HOFMEYR: No, Ms Kwinana, the question is whether you can communicate at all. It is not about what you
10 communicate about. It is can you communicate at all. What is your answer to that?

MS KWINANA: I do not see anything wrong because we are not talking about this tender.

ADV HOFMEYR: Well, how could it possibly be fair to the other tenderers that somebody they are competing with has access to a decision-maker to communicate with them and they do not? How would that be fair?

MS KWINANA: What would make them not to be able to communicate with me?

20 **ADV HOFMEYR:** What would make them not be able to communicate with you is that if you ever got approached you would say I cannot deal with you because there is an open tender and it would be in defiance of procurement law that I engage with you now while the tender is open. That is what would stop them.

MS KWINANA: But when you are saying that you are communicating with that person, you have already breached that rule if it is anything to go by.

CHAIRPERSON: Okay, alright, hang on a second? Ms Mbanjwa?

MS MBANJWA: Please Chair, I am not saying Ms Hofmeyr did not read this line because I was still battling to get – but from that paragraph that was red in page 10 of Ms Memela’s affidavit, it is said at the end:

10 “But as France was not disqualified because Mr Bezuidenhout and Mr Parsons were not part of the evaluation not adjudications.”

And the reason why I am reading this penultimate and this very last line is because my understanding of my instructions are, Ms Kwinana, when she was a director at SAA and the Chairperson of SAAT was never part of the evaluation and adjudication team, that is one.

20 Then the very last one. The second thing, I did not know if it is me who missed it but if there is a conflict of interest policy at SAAT and SAA, if Ms Hofmeyr can kindly refer me to that. Thank you, Chair.

CHAIRPERSON: Ja, no, okay. Let us continue. It is matters you can deal with in re-examination. The other questions, ja.

ADV HOFMEYR: Indeed, thank you, Chair. Right, I think I

have an understanding about where you regard the limits of communications in procurement ...[intervenes]

CHAIRPERSON: But hang on before you proceed, Ms Hofmeyr, I just want to understand what your evidence is, Ms Kwinana. I think your latest answer seems, as I understand it, to be saying that in the situation that Ms Hofmeyr is putting to you where the decision-maker from SAA communicates with somebody from a bidding company who is involved in the bid or tender, I understood you to be
10 saying now the decision-maker can communicate with that person, it depends what they communicate about whereas I understood you earlier on to say no, no, no, in that case it would not be right for the decision-maker to communicate with that person and I thought you said that without any qualification. Did I misunderstand you?

MS KWINANA: A decision-maker, Chair. We talked about a decision-maker in this tender, for example and then the decision-maker in the other company who is submitting this tender ...[intervenes]

20 **CHAIRPERSON:** Oh, somebody involved in the tender in the company, that is [inaudible – speaking simultaneously]

MS KWINANA: Somebody involved in the tender in the company.

CHAIRPERSON: Ja.

MS KWINANA: And both of them know that there is this

tender and then they come together and talk about this tender, then that is not allowed.

CHAIRPERSON: But now you have said they come together. At that stage we just talked about communicating. How they communicate, we did not talk about that. So are you saying what you say would not be right is for them to come together and communicate about the tender but if they phone each other without coming together it would be fine or ...[intervenes]

10 **MS KWINANA:** But still, even if they phone each other, Chair. But if they phone each other on this tender then that is also not right.

CHAIRPERSON: But am I right to say your evidence earlier when you say it would not be right, your evidence did not put any qualification, it was simply that it would not be right for the decision-maker to communicate with such a person while the tender was open. Am I right that is what you said?

20 **MS KWINANA:** If that is what I said, Chair. Let us take this one that I am saying now.

CHAIRPERSON: Ja.

MS KWINANA: I am saying if I am the decision-maker, I am going to decide on this tender.

CHAIRPERSON: Ja.

MS KWINANA: And my decision is going to be impaired

on this tender and the person on the other side, I am communicating with him or her with regards to this tender and the person was involved in this tender, then that is not right.

CHAIRPERSON: Are you saying it is not right if you communicate with that person about the tender but it is – there is nothing wrong if you communicate with that person about other matters?

MS KWINANA: Yes, Chair.

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

ADV HOFMEYR: I understood you, just to clarify again, to say it matters whether you are going to be influenced by what you are discussing. Is that part of your qualification?

MS KWINANA: Yes because now you are talking about this tender and now your decision, by you talking about this tender, will be influenced. Also, the influence will play a big role.

ADV HOFMEYR: Right, can I say – Ms Mbanjwa might be interested to hear me say this, but this is the part of Ms
20 Memela's evidence that I completely agreed with and I think we were on common ground. She was quite clear, as we have seen, that it is meeting anyone, right, at the time when the bid is open. I understand you to say no, it depends on whether what you discuss influences the decision-maker, correct?

MS KWINANA: Yes.

ADV HOFMEYR: And then I am wanting to put to you how extraordinarily difficult that would be to be a procurement rule. Let me explain to you why I say that. So imagine now state owned entities around the country can go out on tender and the decision-makers can communicate with tenderers, some when they want to, others when they don't ...[intervenes]

CHAIRPERSON: And go and tender. [laughing]

10 **ADV HOFMEYR:** Indeed, and all of that is fine, just provided in their own minds they are not being influenced, is that what you say proper procurement is?

MS KWINANA: What is your question?

ADV HOFMEYR: My question is, is that proper procurement, that it would leave it to the decision or the feeling of the decision maker whether they had been influenced or not by that communication?

MS KWINANA: This clause that Ms Mbanjwa was talking about states exactly what is happening practically. Ms
20 Memela was saying people at Air France each communicate with decision makers and they were not disqualified.

ADV HOFMEYR: Ms Kwinana that was not actually my question about Air France I'm just trying to get a grip on your understanding of procurement, because as I understand your evidence you don't agree with Ms Memela

who was the head of procurement at SAAT. You are now designing a new rule, a rule, not the one that she agrees with, a new rule that says, decision makers can communicate with tenderers while the tender is open provided the decision maker doesn't feel influenced and I'm putting to you that would be a very risky procurement rule to be in place, do you accept that?

MS KWINANA: As Ms Mbanjwa has pointed out, she made example, exactly in respect of what you are saying. The
10 example that much as the policy is saying that...[intervenes].

CHAIRPERSON: Look this...[intervenes].

MS KWINANA: Much as the policy is saying that what is happening on the ground...[intervenes].

CHAIRPERSON: Leave out what is happening on the ground, let's talk about the rule or your understanding of what the rule was.

MS KWINANA: My understanding of the policy, of the procurement policy – my understanding of the procurement
20 policy in a nutshell, is that you cannot communicate – when you say you cannot communicate with the bidder, if you look at big companies, take, maybe Steinhoff if it's the good example, anyway, if you look at big companies like Steinhoff there would be a person who is doing the tender and there will be the person who is putting together

everything up to the submission. Now there is another person on the other side, let's say SAA, maybe SAA is small compared to Steinhoff but let's talk about - if we say SAA, if the person at Steinhoff has been doing the tender and then that person meets with a person at SAA who is not involved in any way...[intervenes].

CHAIRPERSON: No, no we said decision maker Ms Kwinana we're not talking about somebody – we're not talking about a secretary, we're talking about a decision
10 maker at SAA and somebody in the other company called Steinhoff or whatever who is involved in the tender, those are the people we are talking about.

MS KWINANA: But Chair, what would – of course I know, I'm not supposed to ask questions but maybe that is a rhetorical question.

CHAIRPERSON: Well the question is, we want your understanding of what the rule was at SAA or what the rule is, but we talk about that particular time when you were a Board member. We are saying, if you were a decision
20 maker at SAA in regard to a certain tender that has not closed, were you permitted to communicate with somebody who comes from a company that has put in a bid in regard to that tender and that somebody is somebody who has been involved in that tender on the side of that company.

MS KWINANA: And then I went further to say, if they

meet, what are they talking about if they are not talking...[intervenes].

CHAIRPERSON: So is – are you reaffirming that your answer is, they were permitted – they would have been permitted to communicate, a decision maker would have been permitted, entitled to communicate with that person, as long as they did not talk about the tender?

MS KWINANA: Yes Chair.

CHAIRPERSON: Okay, so if some Executive from SAA,
10 while you were Chairperson of the Audit and Risk Committee approached you and said, you know the Managing Director of this company that has put in a bid here has asked me if we can go and have lunch or dinner while the tender was open, your answer would be, yes you can go as long as you don't talk about the tender?

MS KWINANA: Yes Chair.

CHAIRPERSON: And if somebody – if another bidder saw them sitting at a restaurant and then complained and say, you know, the MD of that company which is bidding here, I
20 saw them – I saw him or her sitting with the decision maker at a restaurant it would – you would say, what were they talking about, is that what you would say?

MS KWINANA: Chair, the bidders complain all the time, even the people who have not bidden like Ms Sambu do complain.

CHAIRPERSON: Yes, but what I'm asking is whether your concern would be whether that person has got proof that they were talking about the bid, the tender?

MS KWINANA: Yes Chair.

CHAIRPERSON: And how would he know?

MS KWINANA: How would he know Chair if we are not talking about...[intervenues].

CHAIRPERSON: If he was not with them, he just saw them.

10 **MS KWINANA:** Yes Chair.

CHAIRPERSON: Obviously if he joined them, they would not talk about it.

MS KWINANA: No, but Chair, whether they were talking about it or they were not talking about it, the other person would not know.

CHAIRPERSON: Yes, which is why the rule may well be, I haven't looked at the rule, but I would understand if the rule prohibits communication absolutely because those who drafted the rule, would have known how difficult it would
20 be for somebody else to prove that they were talking about the tender and so the best way, if you want to ensure that there are no complaints, you say, no communication until after a certain period because if you say there can be communication but not on the tender, it's going to be difficult to prove that and then in terms of transparency, in

terms of fairness there are going to be a lot of complaints.

MS KWINANA: As I said, Chair, in theory that is how it's supposed to be. The people that I was going to mention here, listening, that you said, they need Rule 3.2 is still at SAA and he has been communicating with the suppliers and he has been communicating with the tenderers. So, basically, much is that is said in the procurement policy, but it's difficult. One of the reasons why it is difficult and in fact, almost impracticable to apply it is because some of
10 the bidders may be doing work with the company at the time and therefore they may be coming in and going out of the office because they are doing work whilst there is also another bid that is going on.

CHAIRPERSON: But you understand what I was putting to you, how difficult it would be...[intervenes].

MS KWINANA: It would be difficult Chair.

CHAIRPERSON: Yes, Ms Hofmeyr?

ADV HOFMEYR: Thank you, and then just to close it off. So, if one of the bidders wined and dined decision makers
20 and took them on planes and drove the around in limousines while a tender was open, that would all be okay, provided they never spoke about the tender, is that right?

MS KWINANA: Chair, if you are talking about AAR there was no tender when we went to Chicago.

ADV HOFMEYR: I'm talking now...[intervenes].

CHAIRPERSON: No, no, no she's putting a certain question to you, in general in order to confirm her understanding of what you're saying in terms of your understanding of the rule. So, just answer that, if and when she wants to talk about whatever you have in mind you will deal with that at that time, she's just talking in general.

MS KWINANA: As I said to Chair, in terms of practicality of it, if for instance, we assume that we were taken to Air France and Air France was doing the work there, then –
10 and Air France was doing the tender and Air France is not taking us because of this tender but is taking us because we are the current clients – that's why I'm saying, it's difficult to deal with the procurement policy as it is.

ADV HOFMEYR: So, you cannot apply the procurement policy when it's difficult to do so, is that your evidence?

MS KWINANA: Not when it is difficult, when it is impracticable to do it.

ADV HOFMEYR: So, you as a member of the Board of SAA Technical may not apply the procurement policy of
20 SAA Technical, when it's impractical to do so?

MS KWINANA: Of course, if it is impractical how are you going to apply it, you can't apply it if it is impractical.

ADV HOFMEYR: I'd like to move on Chair if we may.

CHAIRPERSON: Yes.

ADV HOFMEYR: And I'd like to now focus, Ms Kwinana on

a – what I'm going to call quite a fateful week in the life of SAA and it's the week that started on Monday the 28th of September 2015 and ended on Friday the 2nd of October 2015. Okay, let's start at the beginning of that week. At the beginning of that week, Monday the 28th of September 2015 the Board of South African Airways, including you, decided to cancel a tender that had already been awarded to LSG Sky Chefs and instead to award it to Air Chefs, do you remember that?

10 **MS KWINANA:** Oh, Chair, I like that one and in fact, even before you go further, that is the decision – the cancellation of that tender...[intervenes].

CHAIRPERSON: Hang on, hand on, Ms Kwinana, she has only asked you whether you remember that.

MS KWINANA: No, I'm saying Chair, I'm saying Chair that decision – I'm saying Chair, that decision of us...[intervenes].

CHAIRPERSON: No, she will get – she will ask you about the decision.

20 **MS KWINANA:** Chair, maybe, let me first...[intervenes].

CHAIRPERSON: No, no, no we are going to waste time...[intervenes].

MS KWINANA: No Chair, I want to say this...[intervenes].

CHAIRPERSON: No, no you will get a chance to say...[intervenes].

MS KWINANA: No but Chair, let me say it now before we go anywhere...[intervenes].

CHAIRPERSON: No, Ms Kwinana, I control what happens here, I'm saying you are not going to answer that now, you may answer it when she asks you about it, okay?

MS KWINANA: Okay.

CHAIRPERSON: Do you remember or do you not remember that...[intervenes].

MS KWINANA: There is no way that I would not
10 remember, that was one of the best decisions that I made at SAA.

CHAIRPERSON: Yes, okay, Ms Hofmeyr?

ADV HOFMEYR: One of the best decisions you made, is that correct?

MS KWINANA: Yes.

ADV HOFMEYR: And you did address this in your affidavit in response to the Chair's questions, do you recall that?

MS KWINANA: Sorry?

ADV HOFMEYR: You addressed this issue in your
20 affidavit?

MS KWINANA: Yes.

ADV HOFMEYR: I'd like to take you there because it seems to be a decision that you are resolute of being proud of.

MS KWINANA: Yes.

ADV HOFMEYR: Excellent, so let's go to it, pick it up at page 4 in your affidavit, Chair that's Exhibit DD33 at page 4.

CHAIRPERSON: Yes, thank you.

ADV HOFMEYR: And again, your affidavit is also differently numbered. You have to go to the bottom, it's tab C, because you're responding to paragraph C of the 10(6) directive and the heading is, "SAA Board's decision on 28 September 2015 to cancel the tender awarded to
10 LSG Sky Chefs" and then what I understand follows is – well first of all you say, you point out that you are "flabbergasted".

MS KWINANA: Yes.

ADV HOFMEYR: By the question by the Commission.

MS KWINANA: Yes, I am very flabbergasted.

ADV HOFMEYR: And, maybe explain to us, why are you flabbergasted by the question?

MS KWINANA: I am flabbergasted by this question, the reason being that...[intervenes].

20 **CHAIRPERSON:** I'm sorry, Ms Hofmeyr, just so that the public who are listening can follow, start with what the question is and then we can hear why she is flabbergasted.

ADV HOFMEYR: Indeed, what the Directive required is that Ms Kwinana would tell us everything she knew about a series – and her involvement in a series of topics, right.

CHAIRPERSON: Yes.

ADV HOFMEYR: And so, she actually records the topic, the topic is the SAA Board's decision on 28 September 2015 to cancel the tender awarded to LSG Sky Chefs and...[intervenes].

CHAIRPERSON: So, C was...[intervenes].

ADV HOFMEYR: Was a replica.

CHAIRPERSON: Was a question requiring her to share with the Commission, whatever she knows about the
10 Board's decision of 28 September 2015 to cancel the tender award to LSG Sky Chefs.

ADV HOFMEYR: Exactly.

CHAIRPERSON: That's the question?

ADV HOFMEYR: Yes.

CHAIRPERSON: Okay, now when you say you were flabbergasted, then the public can understand what question flabbergasted you.

MS KWINANA: Chair when Mr Mothibe was asked about...[intervenes].

20 **CHAIRPERSON:** I'm sorry, I think, Ms Hofmeyr's question was, why were you flabbergasted by this question?

MS KWINANA: That's what I'm explaining Chair, that's...[intervenes].

CHAIRPERSON: Oh, that's where you were going okay?

MS KWINANA: Yes, I'm saying, Chair, the reason why I

am flabbergasted by this question is that I really would not even think that it would be part of the Inquiry here in view of the fact that Air Chefs was going to retrench people and Air Chefs is 100% subsidiary of SAA and therefore it is a Government entity and the reason why Air Chefs was formed is mainly to service SAA. So, which means, therefore that, if they were no longer going to service SAA, there would be job losses, that's why I even said, whoever made this decision is causing a sabotage, that's why I
10 said, that is how strongly I feel and that is how strongly I still feel about it as I am sitting here. Our decision, as the Board, to cancel that award against Sky Chefs and take it back to Air Chefs, Air Chefs employs or employed 1500 people at the time and those 1500 people would lose their jobs and then now, look at the other suppliers of Air Chefs, some of the smaller suppliers of Air Chefs would lose their jobs for a Lufthansa Company, oh really, Chairperson, no. That's why I am saying, I am flabbergasted and in fact the evidence leader, even forced Mr Pula Mothibe to say, this
20 cancellation should have been reported to IRBA as a reportable irregularity because we cancelled this tender irregularly and my understanding of the reportable irregularity is that an act must be done at Management and it must cause financial loss. Now what does Advocate say about the financial loss that will be incurred by Air Chefs.

So that's why I'm saying...[intervenes].

CHAIRPERSON: But are you saying it was not going to be a reportable irregularity?

MS KWINANA: No Chair, I don't see any – in fact, it would be a reportable irregularity if this tender had continued to be given to the Sky Chefs. The reason being that there would be job losses and in fact, this was supposed to go to tender and this was supposed to go to the shareholder in terms of Section 54 of the PFM ACT.

10 The reason being that this would be the discontinuation of the bigger portion of SAA Group and therefore that would be the reportable irregularity.

CHAIRPERSON: Maybe I'll understand the flabbergasted part later, but I think you must continue, Ms Hofmeyr.

ADV HOFMEYR: Indeed, thank you Chair. So, Ms Kwinana I understand you to say, your main concern were the job losses that were going to result at Air Chefs if you retained the award with LSG Sky Chefs, is that right?

20 **MS KWINANA:** Not to retain because that tender – or let me not say that tender, SAA was being supplied by Air Chefs, which is 100% owned subsidiary and in fact, I heard Ms Mpshe suppressing the fact that Air Chefs was a 100% owned subsidiary of SAA and thanks to the Judge and – the Deputy Chief or the Chairperson because you asked a question, whether Air Chefs was not a 100% subsidiary of

SAA because she was suppressing it.

ADV HOFMEYR: You think, Ms Mpshe suppressed evidence before this Commission, is that your evidence?

MS KWINANA: Yes.

ADV HOFMEYR: She suppressed it?

MS KWINANA: Yes, she did.

ADV HOFMEYR: Did she suppress it to you at the time when she was advising you on this award?

MS KWINANA: You know, if I can talk about Ms Mpshe
10 and her disregard of the Board decisions, this one was one
of them...[intervenes].

CHAIRPERSON: Ms Kwinana?

MS KWINANA: Chair.

CHAIRPERSON: Please, it's in your interest and it's in
the interest of all of us, that as the evidence leader asks
questions, you listen carefully to what the question is and
answer that question because that way we'll make progress
much more easier. I think your last answer didn't answer
her question it was – it dealt with something else. I'm
20 going to ask her to repeat her question, listen carefully and
answer that question.

ADV HOFMEYR: Your testimony today is that Ms Mpshe
suppressed evidence before this Commission, is that
correct?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: And I asked you, do you regard her as having suppressed evidence when she was engaging you about this award at the time that it was made?

MS KWINANA: Yes, Chair, she did suppress it because, as I said, although the amount itself did not require the Board decision but the nature of the transaction required that it needed to go to the Board because Air Chefs was going to close down and in fact, it did not even need to go to the Board, it needed to go to the shareholder in terms of
10 Section 54 and she suppressed all of that.

ADV HOFMEYR: Did you read any of the emails that Ms Mpshe was circulating to the Board after that fateful day in Parliament where Ms Myeni was criticised for this award?

MS KWINANA: Ms Myeni was criticised of this award, who criticised her?

ADV HOFMEYR: Members – when she addressed the Portfolio Committee, I think it was on the 1st of September, I always get this wrong, the 2nd of September she was asked a quite inflammatory question about the award of
20 this tender to LSG Sky Chefs and she was asked whether that was done because she took it that quote, “black people can’t cook”, do you remember being aware of that at the time?

MS KWINANA: Yes, I’m aware of that.

ADV HOFMEYR: You’re aware of that, so that happened

on the 1st of September and then in Ms Mpshe's evidence she explained in graphic detail how distressed Ms Myeni was by that encounter, how she berated Ms Mpshe outside the meeting room in front of Ms Mpshe's other colleagues and subsequent to that Ms Mpshe was called to account for what had happened. In that process, she sent numerous emails to all the Board members and I'm trying to establish now whether you read any of those emails of Ms Mpshe at the time?

10 **MS KWINANA:** I may have read them Chair, but regardless of what those emails were saying they would not change how I felt at that time and they would not change how I am feeling at this time.

CHAIRPERSON: Yes, Ms Kwinana, the answer was whether you read any of those emails, I think your answer should be, you may have read them, you may not have read them, you can't remember, I think that's what you're saying...[intervenes].

MS KWINANA: I may have read them.

20 **CHAIRPERSON:** Yes, when you are referred to a particular email you might see when you look at it whether you remember reading it or not.

MS KWINANA: Yes Chair.

ADV HOFMEYR: And I think I understand you to say, whatever Ms Mpshe was saying, you took the view that it

would cause job losses if it remained with LSG Sky Chefs, correct?

MS KWINANA: Yes.

ADV HOFMEYR: And that Air Chefs would close down its business, is that correct?

MS KWINANA: Yes, correct.

ADV HOFMEYR: Right and then you hesitated when I said, to cancel the award, to LSG Sky Chefs because an entire tender process had been run prior to this, were you
10 aware of that?

MS KWINANA: Irregularly so because...[intervenes].

ADV HOFMEYR: Why was it irregular?

MS KWINANA: This tender was irregular for the reason that I am saying, why would – in fact when I make this example of this LSG Sky Chefs is, if my daughter is selling fat cakes here at home, why would I go and buy fat cakes next door and then if I decide to go and buy fat cakes next door as a parent am I not supposed to tell the child that I don't like your fat cakes this is how you should do the fat
20 cakes the please correct here and there and so on. So, the reason why I'm saying it was irregular is because that tender should not even have happened. Why would – in fact, had that tender went on, also that would be the same with SAA Technical we would see some aeroplanes being repaired elsewhere because we would have created a

precedent for that. That's why I'm saying that's one of the best decisions that we made.

CHAIRPERSON: So when you say it was irregular...[intervenes].

MS KWINANA: It was irregular...[intervenes].

CHAIRPERSON: Hang on, Ms Kwinana, everybody allows you to speak.

MS KWINANA: Sorry Chair.

10 **CHAIRPERSON:** When you say it was irregular, you don't mean there was a process that was supposed to be followed but was not followed, you only mean that, substantively you disagreed with the decision to award it to this company, that's what you mean?

MS KWINANA: Plus, the process Chair because...[intervenes].

CHAIRPERSON: What was wrong with the process?

MS KWINANA: Because the process – the discontinuance of the major component of the business requires a Board
20 decision and it also requires a certain 54 application.

CHAIRPERSON: Yes, okay, Ms Hofmeyr?

ADV HOFMEYR: You were told by Ms Mpshe why the decision had been taken, to go out on tender and that had to do with the fact that Air Chefs had, previously been providing the service and was doing so to great customer

dissatisfaction, were you aware of that?

MS KWINANA: That's why, Chair, I was saying I was aware of that, that's why I was saying the responsibility of the parent is to guide the child, to say, you're not doing right here, then do like this and this and this, not to do what Ms Mpshe was doing.

ADV HOFMEYR: Because prior to Ms Myeni appearing in Parliament and being questioned about this, there was a detailed memorandum sent to the SAA Board of Directors explaining the whole process. Explaining why the decision had been made to go out on tender, I'd like to take you to it if I may, you'll find it in Mr Mothibe's Bundle, Chair that will be DD19A and you'll pick it up at page 132.3.1, you'll be assisted now Ms Kwinana.

CHAIRPERSON: Okay let's go to the page first.

ADV HOFMEYR: So, it's Exhibit DD19A and when we're looking for the page, we'll be looking for page 132.3.1.

MS KWINANA: Which one, is it this one?

ADV HOFMEYR: So, we're going to have to find 132.3.2 in that please – oh sorry it starts at 132.3.1, apologies. If you bring it to me, I could possibly assist. So, this is a memorandum that Ms Mpshe, as the acting Chief Executive Officer prepared for the SAA Board of Directors dated the 2th of August 2015 and you'll recall that precedes the meeting at the Portfolio Committee and what she says in

the background section, that's midway down the page, Ms Kwinana, is she says there,

10 “SAA’s lounge customer value proposition, product and service has to date been provided by SAA’s subsidiary, Air Chefs. The food and beverages on offer are specified in line with customer needs, preferences, and expectations. Over time SAA has experienced a severe deterioration in the quality and standard of product and the food and beverages on offer are specified in line with customer needs, preferences and expectations, over time SAA has experienced a severe deterioration in the quality and standard of product offered by Air Chefs based on Premium customer complaints in respect of the customer value proposition at ORTIA’s lounges which are ranked as high value customer touch points. The negative customer experience has not only detrimentally affected SAA from a reputational and commercial perspective but has also resulted in SAA’s Premium customers beginning to use the slow lounge, British Airways customer value proposition, which is SAA’s competitor.”

20

And then she goes on and she explains because of that challenge with the service delivery, the impact it was

having on SAA both reputationally and commercially there was then this decision to go out on tender.

Were you aware of that at the time Ms Kwinana?

MS KWINANA: Chair I was not aware about the decision to go out to tender. We became aware of this when we were asked in Parliament.

ADV HOFMEYR: So why did you not become aware of it a week or so earlier when the memo was prepared?

MS KWINANA: I am not sure if this memo was prepared
10 before they went out to tender, or it was prepared for the Zondo Commission.

ADV HOFMEYR: No, no, no it is an historical document, it is a document dated the 20th of August, so they have gone out on tender, they have run the whole process and now she is alerting the Board about the process ...[intervenes]

MS KWINANA: I see, oh.

ADV HOFMEYR: ...before you went to Parliament.

MS KWINANA: Oh, they have gone out to tender, that is the problem, that is the problem Chair, they were not
20 supposed to have gone out to tender.

CHAIRPERSON: Ja, but she is not asking you about that, she is saying this memo from Ms Mpshe is dated 20 August 2015.

MS KWINANA: Yes.

CHAIRPERSON: The meeting at Parliament appears to

have been on the 1st of September 2015, she is asking why you would not have been aware about a week or ten days before the meeting in Parliament, since this memo from Ms Mpshe was addressed to Board members.

MS KWINANA: It would be good if other board members would confirm this memo because I really do not trust it.

CHAIRPERSON: You really don't?

MS KWINANA: I don't trust it Chair.

CHAIRPERSON: You don't trust?

10 **MS KWINANA:** Yes.

CHAIRPERSON: Trust?

MS KWINANA: Yes, I don't trust this memo Chair because ...[intervenes]

CHAIRPERSON: You don't trust that it is on ethic?

MS KWINANA: Yes, the reason why I do not trust it Chair is because we were all surprised by this revelation in Parliament, so it may happen that she may have prepared it and did not send it to the Board.

CHAIRPERSON: Okay.

20 **ADV HOFMEYR:** Could it also have been like in the case of the Swissport Ground Handling contract that you got it and you just did not read it.

MS KWINANA: The contract no Chair I did not get the contract, we do not get the contract in the meeting, we get the submission and then if there is an agreement then

management goes back to write the contract so in the meeting we do get the submission, not the contract.

ADV HOFMEYR: No but that could not ...[intervenes]

MS KWINANA: That is why I am saying, that is why I was saying I do not want to read that contract because I am not party to it, the only thing that I would do is to – if it is available is to read the Board resolution and see if it has been translated correctly in the contract, but remember that the contract is the management document, it is not my
10 document.

CHAIRPERSON: But Ms Kwinana I am – it is a pity you are taking us back to the thing, as Board member if certain contracts required Board approval you would want to see the contract before you approve it because why would you agree to approve a contract you have not seen?

MS KWINANA: No Chair, this is how the process, the approval process happen, you come to the meeting with a proposal and then now there is an agreement to say now you can go and enter into a contract and then management
20 goes back and enter into a contract, and they file it, they don't bring it back unless there is something that requires that in the next board meeting the contracts is brought back.

CHAIRPERSON: But if the requirement is that you must approve the contract you have to see the contract, you are

not – you can't approve it until it exists, and you can't approve it unless you see it, because otherwise you are going to approve a contract whose terms you don't know.

MS KWINANA: Chair that is the misunderstanding that we had before lunch.

CHAIRPERSON: Hmm?

MS KWINANA: That is the misunderstanding that we had before lunch, what comes to the Board is a submission with the terms and conditions to be approved and then when
10 those terms and conditions are approved then that's when management goes back and put it in a contract.

CHAIRPERSON: You never as the Board want to see the actual contract to see whether the terms that found its way, found their way into the contract are the terms that you approved?

ADV HOFMEYR: Chair there is – there are so many assurance bodies in an organisation, there is internal audit, there is external audit, there is risk management ...[intervenes]

20 **CHAIRPERSON:** No but I am talking about ...[intervenes]

MS KWINANA: There are ...[intervenes]

CHAIRPERSON: Ms Kwinana if the policy or the regulations or the law says this type of contract must be approved by the Board I am saying how could you approve a proposal and end there, a proposal to enter into a

contract on the following terms and never say we want to see the actual contract that you entered into when you say to management, we want to see the actual contract so that we can see whether you actually carried out what we approved, we want to see whether the actual terms in which you entered are the terms that we approved, or you did your own thing.

MS KWINANA: Chair the contract, the contract document does not come to the Board, what comes to the Board is
10 the submission ...[intervenes]

CHAIRPERSON: Okay Ms Mbanjwa – I am sorry Ms Kwinana, please carry on.

ADV HOFMEYR: Thank you Chair. We were dealing with the memorandum that I understand Ms Kwinana's evidence to be she does not trust, and ...[intervenes]

CHAIRPERSON: I am sorry Ms Hofmeyr just the last thing and I just want to raise this because this kind of horrifies me. So does mean that during your time when you were a board member at SAA there may have been a lot of
20 contracts where the Board made approved that the management must negotiate and enter into without the Board ever seeing once the contracts had been signed whether the management did its own thing or whether the management entered into the contracts on the terms approved by the Board.

MS KWINANA: Not the actual contracts Chair but the terms and conditions.

CHAIRPERSON: Yes, no but I am saying does it mean that there would have been many ...[intervenes]

MS KWINANA: Oh yes Chair.

CHAIRPERSON: ...contracts where you never saw the ultimate contract whether it was in accordance with the Board's terms and conditions, you just said go and enter into a contract along the following terms and conditions
10 and you left it at that?

MS KWINANA: Yes Chair, and in fact that is also part of our trust in the calibre of management.

CHAIRPERSON: Ja, well.

ADV HOFMEYR: Well you did not have any trust in the calibre of management, did you, in August of 2015?

MS KWINANA: Ms Mpshe.

ADV HOFMEYR: Just Ms Mpshe, you didn't have any trust in her calibre?

MS KWINANA: Not in everything but in the decision of
20 LSG, in the decision of LSG then no.

ADV HOFMEYR: So we were just establishing whether you knew before you attended Parliament that there had been consideration given to why they wanted to go out to tender and we saw here what that motivation was, but because of the sub-standard performance of Air Chefs it

was having a reputational and commercially negative impact on SAA, were you aware of that before you attended Parliament?

MS KWINANA: As I said Chair I made an example, a very easy example of the fat cakes. I would not go next door and buy fat cakes and leave my child's fat cakes here.

ADV HOFMEYR: Ms Kwinana ...[intervenes]

MS KWINANA: Even if I had a challenge with them, if I have a challenge with them I would say reduce the baking powder, add this and this and this, so that it can be to the customer's satisfaction.

ADV HOFMEYR: Ms Kwinana what was my question?

MS KWINANA: Forgotten about it.

ADV HOFMEYR: It is because you repeatedly, with respect Ms Kwinana do not answer the question, it was simply a question about what you knew. Did you know when you attended Parliament that the reason why SAA's management had decided to go out on tender was because ...[indistinct]

20 **MS KWINANA:** I said, I said ...[intervenes]

CHAIRPERSON: Ms Kwinana ...[intervenes]

MS KWINANA: That is why ...[intervenes]

CHAIRPERSON: Ms Kwinana, Ms Kwinana ...[intervenes]

MS KWINANA: I only knew about the ...[intervenes]

CHAIRPERSON: Ms Kwinana when I call you please keep

quiet.

MS KWINANA: Sorry Chair.

CHAIRPERSON: Ms Hofmeyr has not even finished asking you the question and yet the previous question you admitted you could not remember what the question was. The reason why she has to repeat the question now is because you did not listen to the question and answer the question, and now when she is repeating the question for your benefit, because you did not listen before, you start
10 talking before she can finish. We are going to waste time if we do it like that. I said to you before please it is in your interest and in the interest of everybody that when she asks you questions you keep quiet and listen carefully and then answer that question.

I am going to ask Ms Hofmeyr to repeat the question, this time just listen carefully.

ADV HOFMEYR: Were you aware when you attended Parliament on the 2nd of September that the reason why SAA's management had decided to go out on tender for
20 these lounge catering services was because Air Chefs the prior provider, was providing sub-standard performance, which was having a reputational and commercially negative impact on SAA. Were you aware of that?

MS KWINANA: No.

ADV HOFMEYR: Did you become aware of it after

attending Parliament?

MS KWINANA: Yes Chair.

ADV HOFMEYR: Yes, and I take you to disagree with that, is that correct?

MS KWINANA: That is correct.

ADV HOFMEYR: Now your reasons for disagreeing – sorry?

CHAIRPERSON: We are at four, we have agreed we will all go beyond four o'clock but maybe we should take a
10 break.

ADV HOFMEYR: Certainly.

CHAIRPERSON: But if you have a question that you want to ask ...[intervenes]

ADV HOFMEYR: No, we can take the break now, I am very comfortable with that.

CHAIRPERSON: Okay, let us take a break and resume at quarter past four. We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

20 **INQUIRY RESUMES**

CHAIRPERSON: Let us continue.

ADV HOFMEYR: Thank you Chair. We were dealing with the memorandum that Ms Kwinana does not trust dated the 20 August 2015. And Ms Kwinana I reference two paragraph where the background to why the decision had been taken to

go out on tender was recorded. But what is noteworthy I want to suggest to you what else Ms Mpshe says in this memorandum is that she actually takes up your very point. The point about should the parent not be assisting the child. Are you aware that she addressed that very issue?

MS KWINANA: No Chair.

ADV HOFMEYR: And as you sit here today you do not have a recollection of ever reading this memorandum, is that right?

10 **MS KWINANA**: No Chair.

ADV HOFMEYR: Well what she did say addressing the board is that and I now Chair just for record DD19[a] at page 132.3.1 the same page we were on previously. But I am now going to read from ...

CHAIRPERSON: That last passage.

ADV HOFMEYR: From the last paragraph sort of half of the way down because what she records there is she says:

20 “Several interactions were held between SAA and Air Chefs to find means to improve the level of service delivery achieved. However and notwithstanding these efforts no improved results were recorded. SAA was accordingly faced with no option but to take a decision to go out on a confined tender to achieve the desired commercial value

proposition expected for this premium customer segment.”

So you were not aware that there actually had been efforts between SAA and Air Chefs to do the very thing that I think your vetkoek example is supposed to convey. Correct?

MS KWINANA: I was not aware Chair.

ADV HOFMEYR: Now you are so are you satisfied that they did take steps to do the very thing you were concerned about?

10 **MS KWINANA:** I am not satisfied Chair because I – as I said I do not believe this memorandum.

CHAIRPERSON: But if it is true that they take those measures to try and get Air Chefs to improve its level of service delivery but those efforts did not succeed would you accept that in that case then if that is true then it would be understandable and justifiable for them to look elsewhere for service of the right quality at the right level?

MS KWINANA: No Chair I would not understand it.

CHAIRPERSON: Sorry.

20 **MS KWINANA:** Chair I would not understand it. Of course if your child does not listen to what you are saying – let us say your child does not want to go to school; she bunks school you hand hold that child and take him to school. So basically I just would not understand – I still do not understand Chair.

CHAIRPERSON: Are you – are you saying that there could never be a point where they say, look we have tried everything with Air Chefs to get them to improve their service and their efforts are you saying that such a point would – could not be reached?

MS KWINANA: They would not have tried enough Chair.

CHAIRPERSON: Are you saying therefore that they should just go on and on and on even if they can – they could see that their efforts were not bearing fruit?

10 **MS KWINANA:** No. Not going on and on and on Chair.

CHAIRPERSON: Yes.

MS KWINANA: But I am saying you hand hold your child. You do not throw you child in the dustbin.

CHAIRPERSON: Well leave out the child example now.

MS KWINANA: You going to hold [Chairperson speaking over Ms Kwinana]

CHAIRPERSON: Leave out the child example let us talk about this. This is a business now.

MS KWINANA: Yes.

20 **CHAIRPERSON:** It is not at home. This is a business. SAA must be run like a business.

MS KWINANA: Yes.

CHAIRPERSON: Now they are saying – Ms Mpshe is saying in this memorandum telling the board over the years or over whatever period when Air Chefs was providing the service

there had been complaints about the quality of the service. They as management had made a number of efforts to try and get Air Chefs to improve their – the quality of their service and these efforts had not borne any fruit. It was only after that that they decided look we must go to open tender. So are you saying that the – no matter how unsuccessful their efforts were they should have gone on and on trying to get Air Chefs to improve their service even if they realised that it simply was not working?

10 **MS KWINANA:** Chair I am saying if they tried they did not try hard enough.

CHAIRPERSON: Ja but they say they have tried enough.

MS KWINANA: Of course it is their word against mine.

CHAIRPERSON: Yes but ...

MS KWINANA: I am saying they did not try hard enough.

CHAIRPERSON: Ja but you do not know whether they – what they say to you we have tried hard enough. Is there a point which you accept?

MS KWINANA: I am saying...

20 **CHAIRPERSON:** At which they could say we have tried enough.

MS KWINANA: I am saying Chair I was a board member of SAA and I did not feel their efforts so that is why I am saying if they ...

CHAIRPERSON: How could you feel their efforts they were

not talking to you they were talking to Air Chefs.

MS KWINANA: Chair the Air Chefs is the subsidiary of SAA they could not close Air Chefs without informing SAA; without informing the shareholder. They could have even gone up to the shareholder to say, we have given up on Air Chefs. We have done a,b,c,d and e.

CHAIRPERSON: Ms Hofmeyr.

MS KWINANA: So that is why I am saying.

CHAIRPERSON: Please continue.

10 **MS KWINANA:** They did not try hard enough.

ADV HOFMEYR: Ms Kwinana I want to try and get some common ground because you have said repeatedly you do not trust that memorandum so I want to actually go to an email that Ms Mpshe sent directly to you amongst other people because maybe we can work with the content of what she said there. So let us go to her actual email to you. You will find that a few pages on in the bundle you are busy with DD19[a] and it is at page 132.11.

CHAIRPERSON: I am sorry what is the page number?

20 **ADV HOFMEYR:** 132.11.

CHAIRPERSON: Okay.

ADV HOFMEYR: Now Ms Kwinana you will see that starts with an email from Ms Mpshe copied to Ms Myeni, yourself, Mr Dickson and Dr Thambi cc'd to many people and it says in quite big green – sorry blue lettering there.

“Dear board members and colleagues please note the trailing emails in respect of the lounge discussion today. Please familiarise yourself with the contents thereof in particular the legal implication and risks associated with the decision.”

So now we have jumped – well that is an email dated the 28 September but the trailing email that I want to focus on is the one just below it midway down the page which is an
10 email that Ms Mpshe send to amongst other you. It is dated the 8 September 2015. Do you recall receiving that at the time?

MS KWINANA: Yes Chair.

ADV HOFMEYR: You do. And did you read it?

MS KWINANA: Yes Chair.

ADV HOFMEYR: Right. And did you read the trail of emails? You can go through to page 15 because that is the end of this trail? You are copied on all of the relevant as I can see it.

20 **MS KWINANA**: Yes Chair.

ADV HOFMEYR: Right. So you read it at the time and I understand what – one thing you were really concerned about is that this decision would close down Air Chefs, correct?

MS KWINANA: Yes Chair.

ADV HOFMEYR: Now Ms Mpshe told you that it would not, you remember that?

MS KWINANA: How would it not go down Air Chefs?

ADV HOFMEYR: Well because – no well why do you not tell me how it would?

MS KWINANA: SAA ...

CHAIRPERSON: Closer – closer to the microphone.

MS KWINANA: Air Chefs was mainly formed to service SAA and therefore SAA is a bigger customer – is the major
10 customer of Air Chefs. And therefore in any business if you take out the major client that business is going to close down.

ADV HOFMEYR: Yes but...

MS KWINANA: And again let me finish Chair.

ADV HOFMEYR: Apologies.

MS KWINANA: And again if for instance SAA the shareholder the 100% shareholder of Air Chefs has lost confidence in Air Chefs what about the other airlines and other customers that they even serviced by Air Chefs. So
20 she was also not telling the truth to say Air Chefs was not going to close. In fact if you could interview the employees of Air Chefs they were being retrenched already.

ADV HOFMEYR: You were worried about that were you not?

MS KWINANA: Yes.

ADV HOFMEYR: She also told you they were not going to

be retrenched, do you remember that?

MS KWINANA: Where would they work? No man Chair.

ADV HOFMEYR: Do you know where they were going to work? They were going to work for LSG Sky Chefs. It was a requirement that they be taken over Ms Kwinana. Were you aware of that?

MS KWINANA: You know Chair we have heard that before. We have heard that before. As Air Chefs was going through the retrenchment process.

10 **ADV HOFMEYR:** No the tender itself and the contract that was going to be concluded required the employees of Air Chefs to be taken over by LSG Sky Chefs. There was not going to be a single retrenchment. That is what Ms Mpshe told you on the 8 September 2015. Do you not remember that?

MS KWINANA: I told Ms Mpshe that Ms Mpshe is suppressing evidence.

CHAIRPERSON: Hang on, hang on Ms Kwinana.

20 **MS KWINANA:** And that is another – I said we can start she is suppressing because Air Chefs.

CHAIRPERSON: Ms Kwinana.

MS KWINANA: Was going through to – retrenchments.

CHAIRPERSON: Please listen to me. You are not answering her question. You are responding to a question she did not ask. Please stick to answering her questions.

Ms Hofmeyr do you want to repeat your question?

ADV HOFMEYR: Well I understand...

CHAIRPERSON: Each time a question has to be repeated we are wasting time.

MS KWINANA: Sorry Chair.

CHAIRPERSON: Okay.

ADV HOFMEYR: I asked you whether you were aware that Ms Mpshe told you in her email of the 8 September that there would be no retrenchments because it was a condition
10 of the tender and the to be concluded contract that the Air Chefs employees would be taken over by LSG Sky Chefs. What is your answer to that?

MS KWINANA: She was not telling the truth.

ADV HOFMEYR: Oh. So if I can show you the contract.

CHAIRPERSON: Well okay. Yes. Ms Hofmeyr is saying to you Ms Kwinana the contract that was going to be signed by Sky Chefs was going to include a clause or did include a clause to say they must take over the employees of Air Chefs. Now I can tell you this and Ms Hofmeyr knows it as
20 well, maybe Ms Mbanjwa knows it as well when this type of thing happens Section 197 of the Labour Relations Act obliges the new company to take over the employees of the company which has lost the tender – which is no longer going to do the job. So to the extent that the contract to which Ms Hofmeyr is referring you may have had a clause to

that effect that would have been in line with the law. But even if that clause was not there the law – the Labour Relations Act would have obliged the new company to take them over. You understand that?

MS KWINANA: Chair.

CHAIRPERSON: I know you are not a lawyer but I am now telling you what – at least a statute says.

MS KWINANA: Chair I am not a lawyer but what I know is that Air Chefs was going through the retrenchments
10 processes.

CHAIRPERSON: Okay alright. I am sorry. Ms Mbanjwa you wanted to say something at some stage or has it fallen off – fallen away?

ADV MBANJWA: No Chair what I thought Ms Hofmeyr would refer us to is the tender document that had these conditions that oblige ...

CHAIRPERSON: Oh I think in due course she will. Okay alright.

ADV HOFMEYR: I would like to take you to the contract
20 itself.

CHAIRPERSON: Yes.

ADV HOFMEYR: Let us find it. That is in your bundle Ms Kwinana at DD – so that is Exhibit DD33. Chair it is under Tab 15 and so that starts at page 154.

CHAIRPERSON: Yes.

ADV HOFMEYR: You will see that that was the contract that was to be entered into. Is this a contract you saw at the time Ms Kwinana?

MS KWINANA: Are we still on Air Chefs Chair?

ADV HOFMEYR: Yes.

MS KWINANA: In DD33.

CHAIRPERSON: I am sorry I cannot hear you.

ADV HOFMEYR: DD33 page 154 under Tab 15. Do you have that Ms Kwinana?

10 **MS KWINANA:** Yes Chair.

ADV HOFMEYR: So that is the contract that SAA was going to enter into with LSG Sky Chefs. Did you see that at the time?

MS KWINANA: No Chair. As I said the board was not responsible to see the contract.

ADV HOFMEYR: Oh yes.

MS KWINANA: So I did not see the contract.

20 **ADV HOFMEYR:** I remember that. But what Ms Mpshe said to you in that email of the 8 September is exactly what the Chair has highlighted and then I will take you to the contract and where it references Section 187. Let me just tell you what she said in that email of the 8 September. Ms Kwinana you can go there if you want to but otherwise I will just read it into the record. It is where we were back in DD19[a] at 132.12. She says:

“There are not job losses emanating...”

CHAIRPERSON: That is paragraph 7 hey?

ADV HOFMEYR: Paragraph 7 thank you Chair.

CHAIRPERSON: At page 132.12.

ADV HOFMEYR: Point 12. Exactly.

CHAIRPERSON: Hm.

ADV HOFMEYR:

10 “There are no job losses emanating from
the award of services to LSG Sky Chefs as
any impacted Air Chefs employees will be
transferred to the successful bidder as per
the conditions set out in the tender
document in accordance with Section 197 of
the Labour Relations Act 1995.”

20 And then just for good measure so that we could see it in
the anticipated contract I wanted to take you to the
contract which I have done at DD33 page 154. If you go
right to the end of that contract at page 179 you will see
detailed clause 25 imposes this contractual obligation over
and above the legal obligation under Section 197. So Ms
Kwinana is it still your evidence before this commission
that Ms Mpshe was quoted lying to the board of directors
at SAA when she said in her email to you on the 8
September 2016- 15 – what year are we in – 15 that there
were going to be no job losses?

MS KWINANA: Chair what I am saying is there were – Air Chefs was going through retrenchment process.

ADV HOFMEYR: But not related Ms Kwinana to this contract. This was lounge catering services. Every employee of Air Chefs who was ever involved in lounge catering services was going to move over to the new supplier. How could that possibly then be a reason for you to reject management's decision?

MS KWINANA: Chair I am saying Air Chefs was going
10 through retrenchments.

CHAIRPERSON: Please raise your voice Ms Kwinana.

MS KWINANA: Air Chefs. Chair I am saying Air Chefs was going through retrenchments. And in fact this contract ...

CHAIRPERSON: But Ms Hofmeyr is saying to you whatever retrenchments Air Chefs may have been going through if there was any could not have arisen out of this because there was proper provision for the employees under this contract to be taken over by the new contractor. So if there were some retrenchments or letters of
20 retrenchments that may have been given to employees they probably did not relate to this. That is what she is saying. Now do you know whether to the extent that Air Chefs may have been in the process of retrenching some employees do you know whether it was connected with this or it could have been connected with something else?

MS KWINANA: It was connected with this Chair because when we subsequently reversed this award of course the contract was not yet signed. But when we eventually reversed this award the retrenchments did stop so which means therefore that the retrenchments were as a result of this award.

CHAIRPERSON: So – so that was your – your inference from what happened?

MS KWINANA: Yes Chair.

10 **CHAIRPERSON:** But nobody ever said to you that those retrenchments were connected or – to this award?

MS KWINANA: It was – it was – it was a known fact Chair because Air Chefs was closing down and therefore the retrenchments were related to Air Chefs being closing down.

CHAIRPERSON: No it does not follow – it does not follow. You may have thought at that time it followed because you might not have known what Section 197 of the Labour Relations Act says.

20 You might have thought so at that time. You see the – Section 197 does not allow that to happen. Even if an employer does not include it in the contract – in the agreement employees are supposed to be taken over by the new contractor.

 That is part of what the Labour Relations Act has

put in place in order to protect jobs for workers. To say when there is a new company coming to do a job that your employer has been doing or you have been doing for your employer the workers must not suffer. That is the protection that is there. Ms Mbanjwa you wanted to say – ask something?

ADV MBANJWA: Yes Chair I am not arguing the issue of Section 197 I am not a labour expert I will freely admit that and I know you are from that is. But what I just want to
10 point out is that if one reads in page D33 page 179 in paragraph 25.1 the way that paragraph is cast is not in the terms that has been read here. I will read it for the record it says:

CHAIRPERSON: No do not read it we can see it.

ADV MBANJWA: Oh okay thank you. So ...

CHAIRPERSON: It says the agreement is subject to the provisions of Section 197.

ADV MBANJWA: Yes. And it does not say – and this is very important for a board member. It did not say that it is
20 a condition of the award of this tender that all employees of Sky Chefs will be taken over.

CHAIRPERSON: Okay.

ADV MBANJWA: If I may be allowed to finish Chair. And the second most important thing Chair.

CHAIRPERSON: Sorry Ms ...

ADV MBANJWA: It is drafted to create...

CHAIRPERSON: Sorry Ms Mbanjwa. That is something you can raise in re-examination or argument. It says subject to Section 197. If you go and read Section 197 you will know that – you will know that it will cover all employees who were doing the job that will now be taking over by a new company. Ms Hofmeyr.

ADV MBANJWA: I just wanted to point out the indemnification that if it was so tight then there would be
10 no need to put in an indemnification...

CHAIRPERSON: Let us continue Ms Hofmeyr. Please continue.

ADV HOFMEYR: Thank you Chair. I just want to do the last deal with the last point. You said you were concerned about the retrenchments and you were concerned about the fact that Air Chefs was going to close down if this business went to LSG Sky Chefs, is that correct?

MS KWINANA: Yes Chair.

ADV HOFMEYR: Well Ms Mpshe told you that it was not
20 going to close down and you I think I raised that with you earlier and you said how could it not because SAA is its main customer. Did I have your evidence correctly?

MS KWINANA: Yes Chair.

ADV HOFMEYR: But you see what Ms Mpshe went into some detail to tell you in those emails we were looking at

previously is how small a percentage of Air Chefs revenue this lounge services contract actually took up. Do you remember what that percentage was?

MS KWINANA: No.

ADV HOFMEYR: You see at page 132.14 which is in the email trail that we were looking at at DD19 she makes it clear and I am reading under point 1 on that page on the email on which you were copied on the 3 September 2015 now. She says:

10 “The award of the lounge catering contract
 to LSG does not in way affect the current...”

CHAIRPERSON: I am sorry. I am sorry.

ADV HOFMEYR: Sorry Chair.

CHAIRPERSON: Did you say 132.13?

ADV HOFMEYR: 14 sorry Chair the next page.

CHAIRPERSON: 14?

ADV HOFMEYR: Yes.

CHAIRPERSON: Oh okay.

20 **ADV HOFMEYR:** So this is Ms Mpshe writing to amongst
 others you Ms Kwinana on the 3 September 2015 and it is
 addressed to the Chairperson but you are copied on it.
 And she deals under point 1 there with the following. She
 says:

 “The award of the lounge catering contract
 to LSG does not in any way affect the

current process being undertaken to divest Air Chefs. The lounge service contract represents 4.265% of the Air Chefs total annual revenue. As per the attached notification to the board there will be negligible revenue loss for Air Chefs with an estimate of R1.8 million net per annum to Air Chefs as per the current CVP and rates related thereto.”

10 So she is communicating there to as I understand the stat it comprises less than 4.3% of the Air Chefs total revenue. It was a negligible on all accounts part of the Air Chefs revenue and only it was going to go to a third party suppliers. So it was not going to close down because this contract was going to LSG Sky Chefs, was it?

MS KWINANA: I also do not trust that.

ADV HOFMEYR: You do not trust that.

CHAIRPERSON: Sorry.

MS KWINANA: Yes. I also do not trust that – that is Ms
20 Mpshe’s submission which I do not trust Chair

CHAIRPERSON: Do you not accept what she says namely that the revenue that Air Chefs would lose by reason of the fact that this service would be given to somebody else was less than 4.3%. Do you not accept that?

MS KWINANA: I would have to audit Chair whatever Ms

Mpshe is saying I do not trust that.

CHAIRPERSON: Okay. Okay. You – as we – as you sit there you do not know whether it is true or not?

MS KWINANA: Yes Chair.

CHAIRPERSON: Yes. Do you have a reason not to accept it?

MS KWINANA: It is because Chair as I have said she has suppressed a lot of evidence.

CHAIRPERSON: Okay. But she would have written this
10 email to you at a certain time. I would have imagined that if you saw this and you did not trust it you would have checked to see whether her figure was correct? Did you do that?

MS KWINANA: Chair that email was inconsequential the reason being that a tender had gone out and we had already heard about this thing in Parliament and I think we already had got them to cancel it. So basically that email was inconsequential to me.

ADV HOFMEYR: No it could not have been
20 inconsequential it preceded your decision to cancel the award. It is your acting Chief Executive Officer writing to the board of SAA because she was drawn over the coals on her evidence after that address in Parliament and told she had to account. And she gave this detailed account on the 3 September preceding the board's decision which comes

on the 28 September 2015. So I put it to you Ms Kwinana it was nothing less of critical for you to understand it, interrogate it and make an informed decision on it. What is your response to that?

MS KWINANA: Chair Ms Mpshe had already gone out to tender irregularly so and therefore...

CHAIRPERSON: No, no, no Ms Kwinana please, please, please you said – you said this email was inconsequential because you had already as the board taken the decision
10 that the award should be cancelled.

MS KWINANA: Cancelled.

CHAIRPERSON: Now Ms Hofmeyr tells you that that is factually not true. This email was before the board made the decision. The question now is we go back to my question. You got this, you saw this email, you saw that Ms Mpshe was saying the revenue that Air Chefs were going to lose by virtue of this decision to award the contract to somebody else was less than 4.3%. If you did not agree with that did you check whether that figure was
20 correct or not and if it was not what was the correct figure? Did you check that?

MS KWINANA: Chair Ms Mpshe had already gone out to tende...

CHAIRPERSON: No answer – my question is did you check whether what the correct figure was if you did not

trust this figure? That is my question.

MS KWINANA: No Chair I did not check it.

CHAIRPERSON: Why did you not if you did not trust it?

MS KWINANA: It was because – it is because I do not even trust whatever he said after she awarded the contract to a foreign company.

CHAIRPERSON: But that is precisely the reason why you should check if you do not trust her. If you trusted her you did not have to check. But if you did not trust her as you
10 say you did not that is all the more reason why you should check whether she has got the figure right?

MS KWINANA: Chair she had already awarded the tender irregularly so.

CHAIRPERSON: But you are about to reverse that if you were not satisfied with her motivation. Now why did you not check if you did not trust this figure?

MS KWINANA: Chair I did not see any reason for me to check.

CHAIRPERSON: Is the position that it did not matter what
20 she said?

MS KWINANA: Actually ...[intervenes]

CHAIRPERSON: You were not interested. You are simply going to reverse to say – the decision. Is that what you are saying?

MS KWINANA: Chair, what I said is. The fact that

Ms Mpshe preferred a foreign company at the expense of the local company. At the expense of a hundred percent subsidiary company. I lost confidence in her, unfortunately.

CHAIRPERSON: For that reason, you were not interested in whatever motivation she put before you. Is that right?

MS KWINANA: Chair, I have seen Ms Mpshe suppressing evidence in this important ...[intervenes]

CHAIRPERSON: Ms Kwinana, I am asking you a very simple question. Did you not care whatever motivation
10 Ms Mpshe placed before you in order before you could take the decision whether to reverse the decision or not? Did you not care whatever she said?

MS KWINANA: She would write Chair a motivation according to her. She would write a motivation according to her.

CHAIRPERSON: I think it is the fact ...[intervenes]

MS KWINANA: The fact that ...[intervenes]

CHAIRPERSON: Ms Kwinana. Ms Kwinana, I think it is the third time I am asking you this question. I am going to ask
20 you for the fourth time and it is the last time. Is the position that you did not care whatever motivation Ms Mpshe placed before you? You were not interested in her motivation?

MS KWINANA: Not after I felt that she had betrayed the contract the way she did.

CHAIRPERSON: Okay the answer is, you were not

interested. Ms Hofmeyr, continue.

ADV HOFMEYR: Your evidence was, you did not trust her after she preferred a foreign company over a local subsidiary. Is that correct?

MS KWINANA: Yes.

ADV HOFMEYR: She did not prefer a foreign company over a local subsidiary. An entire tender process was run in which Air Chefs was a competing tenderer. Did you know that?

10 **MS KWINANA:** That was even wrong Chair.

ADV HOFMEYR: No, the question is. Did you see know that Air Chefs competed in the tender?

MS KWINANA: That was not even supposed to happen like that.

CHAIRPERSON: No, Ms Kwinana. The questions is. Did you know that or not?

MS KWINANA: Chair, I am not going to answer yes or not. But I am ...[intervenes]

CHAIRPERSON: But you either knew or you did not know.

20 Or is the position that you do not know whether you knew?

MS KWINANA: Chair, that tender did not go to the board and therefore I did not know that there was a tender going on.

CHAIRPERSON: Okay alright.

ADV HOFMEYR: Well, she told you in her notes in

September and back in August that ...[intervenes]

MS KWINANA: Chair, in September that tender was ...[intervenes]

CHAIRPERSON: Ms Kwinana, wait until the question is complete, please. Wait until the question is complete.

MS KWINANA: Sorry, Chair.

CHAIRPERSON: The reason why you are end up answering questions that have not been asked is because you do not listen when a question is being asked or you interrupt
10 Ms Hofmeyr before she completes her question. Just listen carefully, let her finish her question and then you can answer.

MS KWINANA: Sorry, Chair.

ADV HOFMEYR: You see, Ms Kwinana. You are absolutely right. The board was not notified before the process. That is because it fell within the delegated authority of structures below the board. What happened is, you attend the parliament on the 2nd of September.

This issue was raised and then the CEO was called to
20 account for what had happened because there was an allegation that this was somehow irregular because it had gone to a foreign company. Right.

What she does and she then respond to you and she tells you about the tender process that was run. You confirmed having read her emails. Is that correct?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: And what she said there is the following. I am now back at page 132.12, paragraph 6. She says:

“As per the board notification of 20 August 2015...

I understand you were – you did not trust that document. I mean, she repeatedly refers to the memorandum that she has already provided in these emails.

10 “I suggested to her if there was any ambiguity about that, somebody would have picked it up. I do not see that in these emails. Nonetheless...”

She says.

“As per the board notification on 20 August 2015, responses to the RFP were received from Air Chefs, LSD Sky Chefs and Newrest. A lawful and duly constituted procurement process was followed in respect of which all received responses were properly evaluated.

20 In this regard, it must be noted that Air Chefs failed to the meet the minimum threshold for evaluation in the tender and was lawfully precluded from proceeding to further stages of evaluation.”

Ms Kwinana, I draw that to your attention because you said it is Ms Mpshe who preferred the foreign company. And I put it to you, it was not Ms Mpshe who preferred the foreign company. Air Chefs failed to move passed the first stage of

a lawfully and procedurally fair process. What is your response to that?

MS KWINANA: I am saying Chair. That tender was irregular for the reasons I have just mentioned.

CHAIRPERSON: Ms Kwinana ...[intervenes]

MS KWINANA: It was not - it was supposed to go to that stage. It was not even ...[intervenes]

CHAIRPERSON: Ms Kwinana...[intervenes]

MS KWINANA: Chair.

10 **CHAIRPERSON:** Ms Kwinana, you are being asked a question about what is written here in paragraph 6, namely the reason why Air Chefs did not get the tender even though it was one of the tenderers.

It was that it failed to meet a lawful requirement, certain lawful requirements. Minimum, basic minimum. That is what is being said to you.

20 Do you accept that that is why Air Chefs did not get the tender as opposed to saying it was Ms Mpshe who just preferred to give the tender to another company? You accept that?

MS KWINANA: No, Chair.

CHAIRPERSON: You do not accept that Air Chefs failed to meet a basic requirement?

MS KWINANA: Not even that Chair. Even before that.

CHAIRPERSON: Yes but let us talk about this one

...[intervenes]

MS KWINANA: ...was supposed to have been arrived at.

CHAIRPERSON: Let us talk about this one. Do you not accept that ...[intervenes]

MS KWINANA: No, Chair. No, no.

CHAIRPERSON: ...Air Chefs failed to meet this requirement?

MS KWINANA: No, Chair I do not accept it.

CHAIRPERSON: Have you checked whether they did or
10 they did not?

MS KWINANA: Chair, that tender to be where it is, was not even supposed to be ...[intervenes]

CHAIRPERSON: No, no, no. I am talking ...[intervenes]

MS KWINANA: It was not even supposed to happen.

CHAIRPERSON: This requirement ...[intervenes]

MS KWINANA: Why would I check Chair something that was irregular, that was not even supposed to happen?

CHAIRPERSON: I am talking about this requirement. Have you checked whether – when Ms Mpshe says Air Chefs failed
20 to meet a basic requirement, whether that is factually true? Did you check that at the time? Have you checked that subsequently?

MS KWINANA: Chair, my answer is still. Why would I check if the process was not even supposed to happen?

CHAIRPERSON: Ms Kwinana, I am going to try the best I

can to be fair to you as a witness because I try to be fair to all witnesses. When I evaluate evidence, I need to evaluate, among other things, what type of a witness you were.

And if I make a finding that is very adverse to you as a witness, that might have far-reaching implications for you professionally.

Please, take my guidance. Listen to questions. Answer those questions. I go back to my question. When Ms Mpshe says, Air Chefs did not meet a basic requirement. Do you
10 know whether she is right or not right or do you not know?

MS KWINANA: I do not know Chair.

CHAIRPERSON: Okay alright. Ms Hofmeyr.

ADV HOFMEYR: Thank you. Ms Kwinana, why do you keep saying LSD Sky Chefs is a foreign company?

MS KWINANA: It is because our understanding is that LSD Sky Chefs is a subsidiary of Lufthansa. Lufthansa, our understanding, is a German company.

ADV HOFMEYR: And – but were you aware at the time that LSD Sky Chefs is a locally incorporated company, paying tax
20 here and purchasing its product and do its servicing here with local suppliers?

MS KWINANA: My understanding Chair of LSD Sky Chefs is that it is a Lufthansa subsidiary company.

ADV HOFMEYR: No, that was not my question. I said, were you aware that it is a locally incorporated company that

pays tax here and that was deriving its services and products locally? Were you aware of those facts?

MS KWINANA: Chair, my question – my answer is. What I knew is that LSD Sky Chefs ...[intervenes]

CHAIRPERSON: I am sorry. Look this side Ms Kwinana so I can hear your answer.

MS KWINANA: Chair. No, I am saying Chair. What I knew is that LSD Sky Chefs is a hundred percent owned subsidiary of Lufthansa. And Lufthansa is a competitor of SAA.

10 **CHAIRPERSON**: In other words, you did not – you were not aware of what she has just put to you?

MS KWINANA: Yes, Chair.

CHAIRPERSON: Because the question is whether you were aware of that?

MS KWINANA: Yes, Chair. I was not aware. I am now aware. However, my awareness now has not changed what I was thinking then.

CHAIRPERSON: Ja.

MS KWINANA: It has not changed at all.

20 **CHAIRPERSON**: Okay alright.

ADV HOFMEYR: So on your reasoning, Swissport South Africa is also a foreign company, correct?

MS KWINANA: [No audible reply]

MS MBANJWA: Sorry, Chair.

CHAIRPERSON: Yes, Ms Mbanjwa.

MS MBANJWA: I do not want to waste time. But if Ms Hofmeyr is going to make these statements like saying it is paying tax here and there is no evidence of that. How are we supposed to treat that evidence?

ADV HOFMEYR: Asking whether Ms Kwinana was aware of certain facts. That is the basis of the question Chair.

CHAIRPERSON: [microphone on mute]

ADV HOFMEYR: I will ask the question. On your reasoning then, Swissport South Africa is a foreign company, correct?

10 **MS KWINANA:** Yes, Chair.

ADV HOFMEYR: Yes. And you approved more than one billion rand going from SAA going to a foreign company then, correct?

MS KWINANA: I did not approve that Chair.

ADV HOFMEYR: You did in the resolution of the 14th of March 2016 when you approved the contract for five years to Swissport to provide ground handling services which were going to be to the value of more than a billion rand.

20 **MS KWINANA:** Chair, let me explain and try to explain maybe for the third time now how this contract happened. I know that you are saying I must not refer to 2012 but I need to refer to it because the award was made in 2012.

And in 2016, we were approving the terms and conditions. The award was done and it followed a proper process. That is number one.

And number two. You cannot compare Swissport and Air Chefs. With Swissport, I did talk about a license and I did talk about the fact that the reason why SAA Technical would not perform the function that they wanted to perform. It is because they did not have a licence.

And therefore, you just cannot compare Swissport and LSD Sky Chefs. You are comparing two different things. That is number one.

Number two. I did not award the contract. I was part of
10 the board that approved the terms and conditions.

ADV HOFMEYR: Ms Kwinana, I am just pushing, you know, your analyses of LSD Sky Chefs being a foreign company and putting to you, is it not putting Swissport South Africa in the same position?

I do not really want to go back to Swissport because we have felt with that. But you did say something a moment ago is inconsistent with your evidence earlier.

And so in fairness to you, I must put it to you. You tried to justify the award in 2016 ...[intervenes]

20 **MS KWINANA:** There was no award Chair in 2016 ...[intervenes]

CHAIRPERSON: Wait Ms Kwinana. Ms Hofmeyr has not finished to put her question to you. Just wait.

MS KWINANA: Sorry, Chair.

ADV HOFMEYR: If I understand your evidence. You

justified the contract that was given to Swissport in March of 2016 on the basis that a tender process had already been followed in 2012 that was regular. Is that correct?

MS KWINANA: Yes.

ADV HOFMEYR: Yes. You see the problem with that answer Ms Kwinana is that, earlier today you told us that your recollection of the 10th of February 2016 meeting with Swissport was that you were going there to tell them that a proper tender process had to be followed.

10 **MS KWINANA**: Yes.

ADV HOFMEYR: Do you remember giving that evidence?

MS KWINANA: Yes.

ADV HOFMEYR: That is entirely inconsistent with the version you had just given which is that the tender process had already been taken care of way back in 2012. Do you have a response to that contradiction?

MS KWINANA: The circumstances Chair are different.

CHAIRPERSON: I am sorry?

MS KWINANA: The circumstances are different.

20 **CHAIRPERSON**: Well ...[intervenes]

MS KWINANA: You cannot ...[intervenes]

CHAIRPERSON: Well, this is what Ms Hofmeyr is saying to you. She is saying, you said earlier that you went to that meeting to tell Swissport that an open tender would have to be followed.

MS KWINANA: Yes.

CHAIRPERSON: Okay?

MS KWINANA: H'm?

CHAIRPERSON: But she says when you say now the contract had been awarded in 2012, that would mean a tender process had already been followed. Therefore, you could not talk about having to follow a tender process when it had already been followed. That is what she is putting to you. She is saying, there is a conflict, a contradiction
10 between these two things that you are saying. What do you say to that?

MS KWINANA: I am saying Chair, Air Chefs is a hundred percent subsidiary of SAA. And the Swissport is not a subsidiary of SAA. So basically, that is why I am saying that tender should not even have happened, the tender of Air Chefs.

CHAIRPERSON: Well, let us take it step by step because I do not understand what you are saying as being an answer to Ms Hofmeyr's question. Do you accept that there is a
20 contradiction between the two things you have said? Maybe you say there is an explanation for the contradiction but you accept that there is a contradiction?

MS KWINANA: There must be contradictions Chair
...[intervenes]

CHAIRPERSON: Yes.

MS KWINANA: ...because the circumstances are different.

CHAIRPERSON: Okay so you say there is justification for the contradiction. And what are the circumstances that make it different?

MS KWINANA: Air Chefs, Chair is a hundred percent owned subsidiary of SAA and Air Chefs was phoned to cater for SAA. And therefore, if there is something wrong with Air Chefs that needed to be corrected by SAA. That is point number one. And point ...[intervenes]

10 **CHAIRPERSON:** Corrected in what way?

MS KWINANA: Like as Ms Mpshe was saying there were complaints in respect of their services. So SAA as the holding company of Air Chefs was supposed to correct that instead of going out to tender because the reason for the formation of Air Chefs is the same as the reason for the formation of SAA Technical. So that means ...[intervenes]

CHAIRPERSON: But ...[intervenes]

MS KWINANA: So that means, the services of Air Chefs were mainly made for SAA. So basically, the relationship
20 ...[intervenes]

CHAIRPERSON: I am going to interrupt you Ms Kwinana because I do not want us to take too long on something that I do not understand. You accept that if the tender process had been followed in 2012, there would have been no basis in 2015 for you to say there is going to be an open tender

process on the same thing?

MS KWINANA: That is why Chair ...[intervenes]

CHAIRPERSON: No, no. Do you accept that there would have been no basis for it to say that?

MS KWINANA: Sorry, what is it that I accept?

CHAIRPERSON: If a tender process had been followed in 2012.

MS KWINANA: Yes?

CHAIRPERSON: Do you accept that in 2015 and if it was
10 the same thing, there would have been no basis for you to say this must go to an open tender in 2015 because open tender had already been followed.

MS KWINANA: Yes, Chair. There would no basis for it ...[intervenes]

CHAIRPERSON: Yes.

MS KWINANA: ...to place on open tender.

CHAIRPERSON: So why did you say that?

MS KWINANA: That would depend Chair when that 2012 tender would expire. And therefore, if that tender would
20 expire. Now then that would have to go out to tender.

CHAIRPERSON: Yes. But in this case – so why did you say it would have to go to open tender? Is it because it had expired?

MS KWINANA: Yes, Chair. When we looked at 2012 and we are now in 2016, I think it was a five year tender, then it

would have to go out to tender.

CHAIRPERSON: No, from 2012 to 2015 is not five years
Ms Kwinana.

MS KWINANA: To 2016.

CHAIRPERSON: Even to 2016.

MS KWINANA: Yes, but remember Chair ...[intervenes]

CHAIRPERSON: And you know the numbers. We are a
chartered accountant.

MS KWINANA: Remember Chair, the tender process takes
10 long and therefore, if the 2012, 13/14/15/16 then the other
six months of the year would have to be used for the tender.

CHAIRPERSON: Ms Hofmeyr.

ADV HOFMEYR: Chair, I think it is important just to record
at this point that we would likely argue in due course that
Ms Kwinana's evidence today is evasive. There have been
numerous occasions on which simple questions have been
put to her and the answers not short of evasive.

Ms Kwinana, this question has nothing to do with Air
Chefs. It is about a contradiction in the evidence you have
20 given today, explaining the Swissport agreement. So I do
need to say that.

Do you have anything in response to the submission that
your evidence today is evasive?

MS KWINANA: Well, Chair it is evasive to you but I do not
see it as being evasive to you.

ADV HOFMEYR: Thank you.

CHAIRPERSON: Yes, Ms Mbanjwa.

MS MBANJWA: Chair, maybe I need to respond to that kind of argument that Ms Hofmeyr wants to put.

CHAIRPERSON: No, you do not respond to argument now. You can deal with the argument later. The reason why she has to put to her is to be fair to her. But you can later on present argument that says Ms Hofmeyr's submission in this regard is wrong and has no basis and is not justified by the
10 answers that Ms Kwinana has given. But that is for later, not now.

MS MBANJWA: No, thank you Chair. I am not responding to the argument. I am just responding to something.

CHAIRPERSON: Is that?

MS MBANJWA: Yes. I think Chair, you will recall that just before we took the break, there was a confusion about a question. And then I said if we can seek clarification. Chair, you agree that we can seek clarification. What is confusing this witness – and I am just advising Ms Hofmeyr that in
20 future she can be careful. What she does, she takes one line of questioning and then she jumps.

Like for instance, there was a time here when we were referred to an affidavit. I battle to find the affidavit. There was no affidavit. It was actually an email.

And then secondly, she moved to the issue of the

auditor. I think it is Mr Mutule. And then when we were listening to what is going to happen to this auditor, she jumps.

So what I am trying to say is. The witness is not being evasive but she is ...[intervenes]

CHAIRPERSON: Well, you are presenting argument on whether she is being evasive or not Ms Mbanjwa. I said the time is not now for that. It is for later. Okay. Let us proceed Ms Hofmeyr.

10 **ADV HOFMEYR**: Thank you, Chair. We would just like to conclude the Air Chefs aspect. We have been looking at those, that chain of emails Ms Kwinana. And we were at the point where the Chair was questioning whether you had ever taken up the issues that you regarded as lies in Ms Mpshe's submission. And I understand you to have said, you did not, for example, go and check the 4.265%. Is that right?

MS KWINANA: No, Ms Mpshe lies. They ...[intervenes]

CHAIRPERSON: Look this side Ms Kwinana so I can hear.

MS KWINANA: Sorry, Chair.

20 **CHAIRPERSON**: Look this side so that I can hear what you are saying.

MS KWINANA: I am saying Chair. Ms Mpshe lies start from ...[intervenes]

CHAIRPERSON: Ms Kwinana ...[intervenes]

MS KWINANA: ...issuing of the tender.

CHAIRPERSON: That is not about... that is not the answer to the question. Ms Hofmeyr is asking you to confirm whether her recollection of what you said is correct. So you need to say yes your recollection is correct or no it is not correct.

ADV HOFMEYR: But the question was. You did not go and check the 4.265%?

MS KWINANA: I did not have to.

ADV HOFMEYR: Yes. You did respond to Ms Kwinana(sic) 10 though. Oh, sorry. To Ms Mpshe's email in which she referenced the 4.265%. In which she told you that the company was a local South African company. In which she told you that people were going to be retained. And you did that on the basis that she committed treason. Do you remember that?

MS KWINANA: Yes.

ADV HOFMEYR: H'm. And you wanted her to be investigated by the SIU. Do you remember that?

MS KWINANA: I still do Chair.

20 **ADV HOFMEYR:** You still do?

MS KWINANA: Yes.

ADV HOFMEYR: Right. I guess consistency is a virtue. Ms Kwinana, this must have been a very difficult time at the board? You had no trust in your acting CEO. Is that correct?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: You believe that she was lying to you. Is that correct?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Did you go back to her and say: Give me the nuts and bolts of the 4.265% that you put in your email.

MS KWINANA: She did not even have to start there Chair. She ...[intervenes]

ADV HOFMEYR: No, my question is Ms Kwinana is, did you
10 go back to her and say: Give me evidence of the 4.265%.

MS KWINANA: Chair, she would have to start from the evidence that Air Chefs was producing ...[intervenes]

CHAIRPERSON: Ms Kwinana ...[intervenes]

ADV HOFMEYR: Ms Kwinana ...[intervenes]

MS KWINANA: Yes.

CHAIRPERSON: Ms Kwinana, the question is, did you ask her to give you evidence supporting the figure that she put in? Yes or no? Did you ask her for the evidence or substantiation?

20 **MS KWINANA:** Chair, the answer cannot be yes or no.

CHAIRPERSON: But it has to be. Or if it is not yes or no, it can be: I do not... I cannot remember whether I asked her or not.

MS KWINANA: No but still it cannot be that Chair.

CHAIRPERSON: Why it cannot be?

MS KWINANA: The reason Chair why it cannot be any of those?

CHAIRPERSON: Why?

MS KWINANA: Is because, I said from the beginning that this was not even suppose to go out to tender.

CHAIRPERSON: But that is not ...[intervenes]

MS KWINANA: ...for any ...[intervenes]

CHAIRPERSON: Ms Kwinana ...[intervenes]

MS KWINANA: ...proof after that ...[intervenes]

10 **CHAIRPERSON:** Ms Kwinana, that is not what the evidence leader wants to know. Please stop trying to give the evidence leader, trying to give me what I – what she has not asked. She is asking you a very simple question.

When you read the memo from Ms Mpshe where she said the revenue that Air Chefs were going to lose if this contract was – this business was given to somebody else, was less than 4.3%. Did you ask her, either to give you evidence to prove that or any substantiation?

20 **MS KWINANA:** Chair, I am not going to say yes or no. I am going to say the process was flawed from the beginning.

CHAIRPERSON: So you... Do you know whether you did ask her or not?

MS KWINANA: Chair, the process was flawed from the beginning.

CHAIRPERSON: Ms Kwinana, I am... I do not know how I

can explain this to you. You are not doing a service to yourself. You are not doing justice to yourself. You are a professional. You are chartered accountant. Clients out there trust that you can do your work as a chartered accountant properly.

I do not know how many times I have explained simple things and tried in order to be fair to you, to say: Please, just answer the questions that are being asked.

Now you cannot tell me whether you know or you do not
10 know whether you asked Ms Mpshe to substantiate her figure or to give you evidence.

You keep on wanting to tell me something I did not ask. It is not going to be good for you as a witness. And if I am going – if I make an adverse finding against you as a witness it could have far-reaching implications for you professionally.

So I am asking you again. Please, just listen to the questions. Try and answer the question. If you do not know say: I do not know. It is okay. If Ms Hofmeyr accepts that you are genuinely saying you do not know, she will not
20 bother you to challenge that. But if she thinks you are not being genuine, she will ask you further.

But for your own sake, please just listen to questions and try and answer the questions that are being asked. Do not tell me something that you think I want to know which has not been asked.

When I want to know that, I will ask you. Ms Hofmeyr will ask you. Okay Ms Hofmeyr continue.

ADV HOFMEYR: Thank you, Chair. Ms Kwinana, did you consider the advice that had been put together by the highly qualified lawyers in the legal department of SAA about this award?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: You did. Did you notice in that advice that you were warned that if you were to reverse the award of the
10 tender that would likely be invalid and not in compliance with the Promotion of Administrative Justice Act.

MS KWINANA: Chair, from Cape Town I asked Ms Fikelepe if the award letter has been sent to Sky Chefs and she said no that has not been sent to Sky Chefs. So that was also – that also gave me some comfort that SAA is not going to incur unnecessary or be exposed to unnecessary litigation.

ADV HOFMEYR: So can I just be clear? Your evidence now is that Ms Fikelepe told you the letter of award had
20 not been sent, is that right?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Why did you then refer to cancelling the award in your own email?

MS KWINANA: Cancelling the decision to award. The letter – the award was already made, the letter was not yet

sent.

ADV HOFMEYR: Well, that is not true factually. We will get the letter shortly. But I would just like to focus on the lawyer's advice, right? Because the lawyer's advice that came through and you said you read says this process was lawful and procedurally fair and if the board now concludes to cancel it then ...[intervenes]

CHAIRPERSON: Sorry, is there something saying anything?

10 **MS MBANJWA:** Yes.

ADV HOFMEYR: That there will be possible legal action and financial exposure ...[intervenes]

CHAIRPERSON: Sorry, Ms Hofmeyr.

ADV HOFMEYR: Oh, sorry, Chair.

MS MBANJWA: Sorry, Chair, Ms Hofmeyr has just made a statement that it is not true that the award letter, according to the testimony of Ms Kwinana, had gone out. Can she please give that evidence?

CHAIRPERSON: Wait, Ms Mbanjwa, she has not finished.
20 You interrupt while she is busy with her question. Just wait.

MS MBANJWA: Chair, I do not want to offend you, she had left that question.

CHAIRPERSON: Please – you know, she had not finished, give her time, it might not be now, it might be later, just

give her time to handle – to deal with the – to question your client they way she sees fit and at a certain stage if she has not referred to that and it is important you can raise that but ...[intervenes]

MS MBANJWA: Thank you, Chair.

CHAIRPERSON: She was still in the middle of her question.

ADV HOFMEYR: So the legal advice from the highly qualified lawyers in the SAA legal department was that if
10 you were to cancel the award to LSG Sky Chefs that would likely result in possible legal action and financial exposure to SAA. Were you aware of that at the time?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Yes and why were you not persuaded by that?

MS KWINANA: As I said, Chair, I asked Ms Fikelepe if the award letter has been given and the answer was no and in terms of litigation and financial loss, I think I did address that before because also if Air Chefs was going to close,
20 as I understand, that would also result in financial losses anyway.

ADV HOFMEYR: Chair – or let me ask first, sorry. Ms Kwinana, do you know that LSG Sky Chefs did sue SAA arising from this cancellation?

MS KWINANA: Assisted by Ms Mpshe.

ADV HOFMEYR: No, that is not the question.

CHAIRPERSON: Do you know whether they sued or not, Ms Kwinana?

MS KWINANA: The time I left SAA they had not yet sued.

CHAIRPERSON: But do you know whether they ...[intervenes]

MS KWINANA: That is why I am saying ...[intervenes]

CHAIRPERSON: Do you know whether they ...[intervenes]

MS KWINANA: Or maybe let me say most probably.

10 **CHAIRPERSON:** Do you know whether they sued whether before you left SAA or after?

MS KWINANA: They did not sue when I was at SAA.

CHAIRPERSON: Do you know as you sit there?

MS KWINANA: No.

CHAIRPERSON: Whether they sued or not?

MS KWINANA: No, I do not know, Chair.

CHAIRPERSON: Okay.

20 **ADV HOFMEYR:** And so you said you called her from Cape Town. Is that a reference to when you were at parliament?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: And that was on the 2 September 2015.

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Well, the letter of award was signed on the 21 August 2015. So Ms Fikelepe was just lying to you

that an award had – a letter had gone out, is that right?

MS KWINANA: It may have been signed, Chair, but not submitted to LSG.

ADV HOFMEYR: That is interesting because LSG Sky Chefs' own particulars in the claim that they brought against SAA refers to that letter on the 21 August 2015. How do you know, Ms Kwinana, that it was not sent to them?

MS KWINANA: I am saying it may have been signed but
10 not yet sent to them.

ADV HOFMEYR: But it is attached to their own particulars of claim.

MS KWINANA: What is attached to the particulars of claim? I have ...[intervenes]

ADV HOFMEYR: The letter of the 21 August 2015.

CHAIRPERSON: Maybe, Ms Hofmeyr, just to be sure that Ms Kwinana is on the same page.

ADV HOFMEYR: Certainly.

CHAIRPERSON: Explain the particulars of claim to her.

20 **ADV HOFMEYR:** Right. So when LSG Sky Chefs sued SAA – I accept after you left SAA, arising from the cancellation of this very award to it, they sue by preparing a document called the particulars of claim. So they prepare it, right? And one of the documents attached to their particulars of claim is the award letter itself dated the

21 August 2015. So I cannot understand in the light of that your evidence that they had not received it.

MS KWINANA: Chair, it may happen and I was saying most probably that letter may have been hand delivered by either Ms Mpshe or Dr Darwa to LSG Sky Chefs and assisted LSG Sky Chef to sue Air Chefs.

ADV HOFMEYR: You do not know that as a fact, that is your speculation, is that right?

MS KWINANA: It is most probable.

10 **CHAIRPERSON:** You are not testifying about something you have personal knowledge of, of how the letter may have reached them, is that correct? You are just speculating, is that correct?

MS KWINANA: I am just speculating, Chair, and I am saying – and I have carefully selected the word most probable rather than saying possible.

CHAIRPERSON: Ms Mbanjwa, do you...?

MS MBANJWA: Yes, Chair. There is also an element of difficulty in the manner the question is posed because what
20 Ms Hofmeyr is saying, she is saying that this letter
...[intervenes]

CHAIRPERSON: Can you not – why can that not be dealt in re-examination, Ms Mbanjwa?

MS MBANJWA: No, Chair, it is to assist in the phrasing of the question because the fact that something is attached

to the papers does not mean that [inaudible – speaking simultaneously]

CHAIRPERSON: Ja but you can deal with that either in argument or in re-examination.

MS MBANJWA: But it in a confusion, Chair, this is what defeats me because [inaudible – speaking simultaneously]

CHAIRPERSON: No, no, there is no confusion.

MS MBANJWA: Well, there is to me, Chair.

CHAIRPERSON: There is no confusion. Let us go ahead.

10 **ADV HOFMEYR:** You see, the problem I have with your most recent answer, Ms Kwinana, is in the advice from the lawyers of SAA that you have confirmed in your evidence moment ago you did receive and read. You are told that the letter was communicated to LSG Sky Chefs.

MS KWINANA: Chair, I called Ms Fikelepe and Ms Fikelepe said the award letter had not yet been sent.

ADV HOFMEYR: Well, Ms Kwinana, a few days later on the 7 September – because remember, this alleged conversation took place on the 2nd ...[intervenes]

20 **CHAIRPERSON:** Maybe Ms Hofmeyr – I am sorry, Ms Hofmeyr. What of course would be true is if Ms Kwinana says I do not know as a fact whether the letter had been sent out or not but I was told by Ms Fikelepe that it had not been sent out and I acted on the belief that that was factually true. Is that what you are saying?

MS KWINANA: Thank you, Chair, hundred percent.

CHAIRPERSON: Sorry?

MS KWINANA: Thank you, Chair, hundred percent.

CHAIRPERSON: Please, Ms Mbanjwa, hang on. That is what you are saying?

MS KWINANA: Yes, Chair.

CHAIRPERSON: Okay, you do not know whether it had gone out or not but Ms Fikelepe had said to you it had not gone out and you believed her.

10 **MS KWINANA:** Yes, Chair..

CHAIRPERSON: Okay, alright.

ADV HOFMEYR: But five days later in the submission to the board by the legal department of SAA you were told it had gone out. Did you not – well, you told us you did read this document, so how could you hold onto what you were told on a conversation five days previously when the written document that is submitted to the board tells you it was communicated to LSG Sky Chefs?

MS KWINANA: 2 September, Chair.

20 **CHAIRPERSON:** I am sorry, just repeat?

MS KWINANA: 2 September, Chair, Ms Fikelepe is telling me that the letter has not been sent and then five days later.

ADV HOFMEYR: On the 7th she tells you it has, it has gone out and the 7 September is before you make your

decision. Remember, we got into this debate, Ms Kwinana, because you said you were not worried about lawyers – you were not worried about LSG Sky Chefs suing South African Airways because you were satisfied that the award letter had not gone out. Do you remember giving that evidence?

MS KWINANA: Chair, 2 September Ms Fikelepe is saying [inaudible – speaking simultaneously]

CHAIRPERSON: Hang on, hang on, hang on, start by
10 saying – confirming do you remember giving that evidence? Start by saying yes I do remember or no, I do not remember.

MS KWINANA: I do remember.

CHAIRPERSON: Okay, alright, then let us take it from there.

ADV HOFMEYR: Thank you, Chair. So on ...[intervenes]

MS KWINANA: But now, Chair – but now Chair...

CHAIRPERSON: Ja.

MS KWINANA: 2 September Ms Fikelepe is saying the
20 award letter has not gone out. 5 September the award letter has gone out, so it may have gone out between the 2 September and the 5 September.

CHAIRPERSON: Yes but Ms Hofmeyr's question to you is if you had – if you made your decision as the board on the basis of what Ms Fikelepe told you on the 2 September

without having been given something in writing, which you were given on the 5 September, saying no, actually the letter did go out, maybe one could understand but her question is, now you have something even in writing after the 2 September confirming that the letter awarding the contract has gone out. So how can you still cling to what you were told telephonically on the 2nd when there was something – there is now something in writing, black and white, saying that letter had gone out. That is the question

10 she put to you.

MS KWINANA: You know, Chair, if the information on the 2 September is saying the letter has not gone out and then on the 7 September the letter has gone out, that means Thuli has fast-tracked that letter.

CHAIRPERSON: Sorry, that means?

MS KWINANA: That means Ms Mpshe made sure that that letter is sent out to LSG Sky Chefs.

CHAIRPERSON: But you are not answering my question, Ms Kwinana, which is Ms Hofmeyr's question. She says to
20 you when you take the decision that you took, as a board, you had the benefit of this email or letter of the 5 September which in black and white was telling you that the letter had been sent out, how do you explain your conduct in clinging to a telephonic advice that was given on the 2 September because one would have expected that

now that you have been given something in writing you would attach more weight to that.

MS KWINANA: Chair, this contract, as I was saying, as I have been putting it maybe for the past three hours ...[intervenes]

CHAIRPERSON: No, do not tell me what you have told me for the past three hours. Do you have an explanation or do not have an explanation of why you would prefer to cling to a verbal advice that you were given on the 2 September
10 when on the 5 September you are given something in writing that says that letter did go out? Do you have an explanation for that or do you not have?

MS KWINANA: I have an explanation, Chair.

CHAIRPERSON: What is the explanation?

MS KWINANA: The award in fact, as I said, starting from the fact that there was a tender competing against Air Chefs was irregular on its own.

CHAIRPERSON: Okay, so it is back to what you said earlier.

20 **MS KWINANA:** Yes.

CHAIRPERSON: Ms Hofmeyr?

ADV HOFMEYR: Thank you. Just so that we do have it for record purposes.

CHAIRPERSON: Yes.

ADV HOFMEYR: I do not think it is necessary to go there.

The paragraph in the legal submission that you indicated you did read at the time is at the DD19, the bundle we have been in, at page 132.5 Chair, it is one of those unfortunate situations where the numbering goes to the other side of the page because it is printed in landscape rather than portrait. But you will see there at paragraph 2.5 on page 132.5. We are at page 132.5 in EXHIBIT DD19.

CHAIRPERSON: Oh, will you tell them to please do
10 another one because you cannot see these numbers.

ADV HOFMEYR: I know, it is terrible, Chair. We will do so.

CHAIRPERSON: Okay, alright, 132.5.

ADV HOFMEYR: Yes and if you just go there to
paragraph 2.5, this is the legal department confirming that:

20 “LSG emerged the preferred bidder and were recommended for appointment by the CFST, annexure C. On 14 August 2015 the BAC adjudicated on the CFST’s recommendation and supported it and further recommended LSG’s appointment to the Acting CEO, annex D. On 19 August 2015 the CEO approved the appointment of LSG as per her DOA, annexure E. Pursuant to the CEO’s approval a letter of award dated 21 August 2015 was communicated to LSG, annex F.”

I do not actually have that annexure attached here, it might have just been left off but we can certainly source it if necessary but the point of the matter is the legal department tells you, Ms Kwinana, as a member of the board, that the letter of award has gone out, they confirmed that on the 7 September. They warn you that there are likely litigation risks if this award is cancelled, they indicate that the cancellation would likely be unlawful and nonetheless you decide to cancel it.

10 **CHAIRPERSON:** And they say in this paragraph 2.5 that she has just read, that letter that went out to LSG was dated 21 August 2015 and on the 26 August 2015 there was what they refer to as a kick-off meeting where a project firm – a kick-off meeting was held with LSG where a project plan was developed and adopted by SAA and LSG to ensure a successful opening of the lounge on 29 September 2015 which suggests that about a week before you went to parliament they are saying LSG had already been given the letter. Not only that but a meeting had
20 been held with them to say let us talk about a project plan because the lounge must be opened on the 29 September 2015. That is what that paragraph says.

MS KWINANA: Chair, I am not aware of that. What I knew was that the award letter had not yet been given and what I knew – they are talking about the [inaudible –

speaking simultaneously]

CHAIRPERSON: But you were told rather than what you knew, is it not?

MS KWINANA: Yes.

CHAIRPERSON: What you were told.

MS KWINANA: Yes, what I was told. And they are talking about the delegation of authority and, as I said, Air Chefs is a major component – is an important component of SAA that was supposed to be approved ...[intervenes]

10 **CHAIRPERSON:** Ja but the delegation of authority is a side issue for purposes of Ms Hofmeyr's question.

MS KWINANA: It is not a side ...[intervenes]

CHAIRPERSON: What is important for her question is whether LSG had received the notification that they had been awarded.

MS KWINANA: I was told, Chair, that the notification has not yet been ...[intervenes]

CHAIRPERSON: Okay.

20 **ADV HOFMEYR:** But your evidence was you received this memorandum and you did read it, correct?

MS KWINANA: Yes.

ADV HOFMEYR: So how did you miss this?

MS KWINANA: How did I miss what?

ADV HOFMEYR: The fact that you were now been told that it had been sent out.

MS KWINANA: On 2 September ...[intervenes]

ADV HOFMEYR: No, no, how did you miss it.

CHAIRPERSON: Please – okay, let me assist. Ms Kwinana...

MS KWINANA: Chair?

CHAIRPERSON: As I understand the position, you have confirmed that the memorandum, paragraph 2.5 of which we read a few minutes ago ...[intervenes]

MS MBANJWA: Sorry, what page is that?

10 **ADV HOFMEYR:** 132.5.

MS MBANJWA: Sorry, Chair, to interrupt, I do not know if I am at the correct place because on DD19, 132.4, is that what has been read out?

ADV HOFMEYR: 132.5.

CHAIRPERSON: 132.5.

MS MBANJWA: Yes but that document is addressed to the Acting Chief Executive Officer and to the Chief Procurement – is that the document that is supposed to have been seen by Ms Kwinana?

20 **ADV HOFMEYR:** Yes, she has confirmed she saw it and read it, Ms Mbanjwa, that is her evidence.

MS MBANJWA: No, I think she must be taken back to that document because it not addressed ...[intervenes]

MS KWINANA: 132.5.

CHAIRPERSON: Hang on, Ms ...[intervenes]

MS KWINANA: This document that starts with 2.3.

ADV HOFMEYR: Correct. This is the – I submit
...[intervenes]

MS MBANJWA: Where does this document start?

ADV HOFMEYR: It starts at page 132.4.

MS KWINANA: So this document mos does not go to the
board.

ADV HOFMEYR: No but you confirmed that you received
it because you said that you had read it a moment ago.

10 **MS KWINANA:** No, this document.

ADV HOFMEYR: Yes, the submission from the legal
department. I have your evidence to be that you
...[intervenes]

MS KWINANA: No.

MS MBANJWA: And, Chair ...[intervenes]

CHAIRPERSON: Ms Mbanjwa, just hold on, allow the
evidence leader and the witness to deal with this and let us
see.

20 **MS KWINANA:** No, I did not read this document. I did not
even get it.

ADV HOFMEYR: You are sure about that?

MS KWINANA: Yes.

MS MBANJWA: But, Chair, with your permission. This is
what I complain about. Mrs Hofmeyr takes a document -
Ms Hofmeyr, sorry, take a document – I have never seen

evidence being led like this ...[intervenes]

CHAIRPERSON: Ms Mbanjwa ...[intervenes]

MS MBANJWA: A witness must be taken to identify the document.

CHAIRPERSON: Ms Mbanjwa, not all the time. Please ...[intervenes]

MS MBANJWA: But this is what is causing confusion, Chair.

CHAIRPERSON: Allow – allow Ms Hofmeyr to do her job
10 the way she believes it should be done. The witness will indicate where she may have I misunderstood her question and give a certain answer and if Ms Hofmeyr accepts that maybe there was a I misunderstanding she will say so.

MS MBANJWA: But please, Chair, let us be taken to the document. It is standard in all litigation ...[intervenes]

CHAIRPERSON: Do not – you are not going to dictate to her how to do her job, Ms Mbanjwa. She is not going to dictate to you how to do your job when you re-examine.

MS MBANJWA: But, Chair, it is not her job, there is a
20 witness I am representing. She is not being taken to the document.

CHAIRPERSON: Please keep quiet, Ms Mbanjwa.

MS MBANJWA: And this is what is causing confusion.

CHAIRPERSON: Please keep quiet, let us make progress.

ADV HOFMEYR: So what memorandum from the legal

department did you read then?

MS KWINANA: Maybe what you can do to assist me, Chair, is to take me to the minutes of the board meeting that talk about this.

ADV HOFMEYR: I want to ask a question before. Your evidence earlier was that you read the memorandum from the legal department. If it is not this memorandum, what memorandum did you read?

MS KWINANA: Maybe I did not read the memorandum,
10 the legal document but ...[intervenes]

CHAIRPERSON: Sorry?

MS KWINANA: But let us say I did not read the memorandum from the legal document - legal department because ...[intervenes]

ADV HOFMEYR: No but that is a different piece of evidence. Are you saying that you did or you did not? Your previous evidence was you did.

MS KWINANA: No, I did not.

ADV HOFMEYR: You did not. You are now sure about
20 that?

MS KWINANA: Yes.

ADV HOFMEYR: You – when you previously said you did, you were wrong, correct?

MS KWINANA: H'm.

ADV HOFMEYR: And then you wanted to go to that board

resolution. I am just going to have to find it, if I may. How will that assist you, Ms Kwinana?

MS KWINANA: The reason is because this document is not addressed to the board and as I said previously ...[intervenes]

CHAIRPERSON: I think she says she – if it is suggested that this document was sent to the board there would be a resolution of the board which refers to this document.

MS KWINANA: Yes, Chair.

10 **CHAIRPERSON:** And that is the resolution she would like to be referred to.

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Yes, I can take you to the resolution at which the decision was made to cancel it. There is no reference to all the documents that preceded it but I will take you to it. It is at the same bundle, you have to go now I think back a bit in the paging. You have to go to 132.16.3.1.

MS KWINANA: DD19?

20 **ADV HOFMEYR:** Indeed.

MS KWINANA: 1.16?

ADV HOFMEYR: Point 16.3.1.5.

MS KWINANA: Can you please repeat? DD132?

CHAIRPERSON: DD19.

ADV HOFMEYR: 132.16.3.1. Those are the minutes of

the meeting on the 28 September 2015.

MS KWINANA: Yes, Chair. So which paragraph?

ADV HOFMEYR: The resolution you will see at page 15. So it is 132.16.3.15. Ja, you will see it at page 15 of 17.

MS MBANJWA: Ms Hofmeyr, I am at page 132.16.3.1.

ADV HOFMEYR: Yes, that is where it starts and then I was taking Ms Kwinana to where the resolution is recorded and that is at page 15. So it is 132.16.3.15.

MS KWINANA: Point 15. Yes, Chair.

10 **ADV HOFMEYR:** You attended this meeting, is that correct?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: And your evidence is you may not – are you clear you did not receive the legal department's memo? Is that your evidence?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Yes. And so you were relying on what Ms Fikelepe has said to you on the 2 September about the status of the letter of award, correct?

20 **MS KWINANA:** Yes, Chair.

ADV HOFMEYR: And you had no reason to doubt what she told you on the 2nd, is that correct?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: And you took the decision to cancel the award because you were satisfied if a letter of award had

not yet gone out you would not be as in as much risk as if it had, is that correct?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Thank you. Let us look at the discussion that took place at that meeting because – sorry and you saw the resolution, you saw that at page 15:

10 “It was resolved that the SAA domestic lounge’s tender to be retracted and the catering contract to be awarded to Air Chefs without going through the bidding process.”

Do you see that?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: What happens before that in these minutes is the lengthy discussion that took place between the members of the board is recounted and let us go back a page to page 14 then, 132.16.3.14 and let us go to H at that page. He says:

“The GM LRC...”

What is the GM LRC?

20 **MS KWINANA:** Legal and Risk.

ADV HOFMEYR: Legal and Risk. So who would that be?

MS KWINANA: Ms Fikelepe.

ADV HOFMEYR: Ms Fikelepe, the same person who on the 2 September when you were at parliament told you that a letter of award had not gone out. What she told the

meeting on the 28 September, consistent with what is in the memorandum that you now say you did not see, is she reports the following:

“At that stage only a letter of award had been issued and there was no contract in place. She stated that the legal opinion...”

That is the one we have just been looking at.

10 “...provided that where a state owned entity went out on tender it was considered administrative action. Therefore, should it want to cancel the tender it should give the other party an opportunity to be heard and the reasons for the cancellation should be transparent, competitive and cost-effective.”

So, Ms Kwinana, I put it to you that it was quite clear at that meeting that the letter of award had gone out.

MS KWINANA: No.

ADV HOFMEYR: What is your response to that?

20 **MS KWINANA:** This meeting was on the 28 September and we were in parliament on the 2 September. So that means by this 28 September this letter of award may have gone out but on the 2 September the letter may not have gone out.

ADV HOFMEYR: No but that is exactly why I was very careful before we went to this to get clear your thought

process. Your thought process was you were accepting cancelling the tender, despite the reservations of the legal team, because you were satisfied that the letter of award had not gone out, and I am putting to you Ms Kwinana that that cannot be so, because you were attending a meeting at which you were told before the decision was made that the letter of award had gone out, what is your response to that?

MS KWINANA: I still don't understand Chair because I am
10 saying on the 2nd of September I am told that the letter of award ...[intervenes]

CHAIRPERSON: Let me try and clarify it to you. You remember that you said that in effect, I am not quoting you, that Ms Fikelepe told you on the 2nd of September that the letter of award had not gone out.

MS KWINANA: Yes Chair.

CHAIRPERSON: You remember that. My understanding of what you were saying was that you were saying that gave you a certain level of comfort to say the decision can
20 be reversed because at least the letter had not gone out – did I – was my impression correct of what you said, of what – why you were making that point?

MS KWINANA: The decision may be reversed without much damage.

CHAIRPERSON: Yes, ja, what you are saying is it was

giving you a certain level of comfort.

MS KWINANA: Yes Chair.

CHAIRPERSON: Yes. Now Ms Hofmeyr is saying to you when you made the decision as a Board that that award should be retracted you knew, because in that meeting before the final decision or resolution was made Ms Fikelepe did say the letter of award had gone out, what she said had not happened was the conclusion of the contract, she is then saying, that is Ms Hofmeyr, it could not be true
10 that when you make the decision on the date on which it was made you were influenced by the fact that by what Ms Fikelepe had told you on the 2nd of September, because that had changed and you knew that. That is what she is saying, what do you say to that?

MS KWINANA: That is true Chair.

CHAIRPERSON: That is true?

MS KWINANA: Yes.

CHAIRPERSON: Okay, alright.

ADV HOFMEYR: Thank you, so you weren't then – well
20 tell me were you worried then about the litigation risk flowing from the fact that an award letter had gone out?

MS KWINANA: Yes.

ADV HOFMEYR: You were, but you still decided to cancel it and despite the fact that the CFO at that meeting had recorded that he was very worried about the exposure of

R85million that SAA could face if the contract – the award was cancelled, is that correct?

MS KWINANA: Chair I was worried about the whole lot of things as I have articulated here. So litigation was one of them, I was worried there were going to be risks if this is cancelled there were going to be risks if we did go ahead, so basically whichever decision that you would have made would have some element of risk.

ADV HOFMEYR: But the risk that we have looked at, that informed your decision, related to the retrenchment of employees and the loss of the Air Chefs business, is that correct?

MS KWINANA: Yes.

ADV HOFMEYR: And Ms Mpshe addressed both of those points but you say you did not take what she said to be correct, is that right?

MS KWINANA: Yes Chair.

ADV HOFMEYR: Thank you. And you have subsequently learnt that LSG Sky Chefs did sue SAA in relation to this award, is that correct?

MS KWINANA: Yes Chair, yes.

ADV HOFMEYR: Thank you. Chair I would then like to move on if we may ...[intervenes]

MS KWINANA: I just said by Ms Mpshe.

ADV HOFMEYR: Ms Kwinana you keep making references

to the fact that they were assisted by Mr Mpshe, do you have actual knowledge of that?

MS KWINANA: No.

ADV HOFMEYR: You don't, but you feel free in this Commission to make claims about which you have no knowledge, is that correct?

MS KWINANA: A lot of things have been made about me Chair here, a lot of names have been made about me here ...[intervenes]

10 **CHAIRPERSON:** Ms Kwinana ...[intervenes]

MS KWINANA: It was a huge ...[intervenes]

CHAIRPERSON: Ms Kwinana when you say assisted by Ms Mpshe you realise that what you would be saying is that Ms Mpshe may have acted in a manner that might be seen as unacceptable, because she was the acting CEO of SAA, you are saying she was assisting somebody to sue SAA, you realise that?

MS KWINANA: Yes Chair.

20 **CHAIRPERSON:** Now why would you say such a thing when you have no facts to base that on. Why would you say such a thing about somebody when you do not have facts. Is that the type of person you are? You can just say somebody assisted somebody, put them in a bad light when you don't have facts in a public platform?

MS KWINANA: I am saying most probably Chair.

CHAIRPERSON: Ja but have you got facts on which to base what you are saying, even if you say probably, have you got facts? You see Ms Kwinana you are a Chartered Accountant, you are a professional, there are certain things that even if you suspect you cannot say about people, particularly in a public platform like this unless you have got facts. It is not responsible to do that. One would expect a professional like you to know that and to act in a responsible manner. Ms Hofmeyr?

10 **ADV HOFMEYR:** Thank you Chair. Chair I am moving now to a new topic and we are very close to six, so it may be appropriate for us to adjourn now.

CHAIRPERSON: Yes, I think that is fine, I think we must adjourn till tomorrow.

MS HOFMEYR: Thank you.

CHAIRPERSON: Maybe we should start a little earlier than normal tomorrow.

MS HOFMEYR: Yes.

CHAIRPERSON: Half past nine?

20 **MS HOFMEYR:** That will be ideal, thank you Chair, if it is convenient for Ms Mbanjwa and Ms Kwinana.

CHAIRPERSON: Ms Mbanjwa will that be fine?

MS MBANJWA: Thank you Chair, yes it is convenient.

CHAIRPERSON: Would that be fine with you?

MS KWINANA: That will be fine Chair.

CHAIRPERSON: Okay, alright, so we will adjourn now and then tomorrow we will start at half past nine.

We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS TO 3 NOVEMBER 2020