

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

03 NOVEMBER 2020

DAY 297



Gauteng Transcribers
Recording & Transcriptions

22 Woodlands Drive
Irene Woods, Centurion
TEL: 012 941 0587 FAX: 086 742 7088
MOBILE: 066 513 1757
info@gautengtranscribers.co.za

CERTIFICATE OF VERACITY

I, the undersigned, hereby certify that, *in as far as it is audible*, the foregoing is a **VERBATIM** transcription from the soundtrack of proceedings, as was ordered to be transcribed by Gauteng Transcribers and which had been recorded by the client

COMMISSION OF INQUIRY INTO STATE CAPTURE

HELD AT

CITY OF JOHANNESBURG OLD COUNCIL CHAMBER

158 CIVIC BOULEVARD, BRAAMFONTEIN

DATE OF HEARING:

03 NOVEMBER 2020

TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



Gauteng Transcribers
Recording & Transcriptions

PROCEEDINGS RESUME ON 03 NOVEMBER 2020

CHAIRPERSON: Good morning Ms Hofmeyr, good morning everybody.

ADV HOFMEYR: Good morning Chair.

CHAIRPERSON: Are we ready?

ADV HOFMEYR: We are indeed.

CHAIRPERSON: Okay let us start.

ADV HOFMEYR: Thank you. If I can just confirm...

CHAIRPERSON: Ms Kwinana you – the oath you took
10 yesterday continues to apply today. You understand that?

MS KWINANA: It continues Chair.

CHAIRPERSON: Thank you.

ADV HOFMEYR: If I can just check that Ms Mbanjwa is ready I see that she is still...

CHAIRPERSON: Yes.

ADV HOFMEYR: Moving some files.

CHAIRPERSON: Ja let her get settled first. No, no that is fine. No that is fine; that is fine.

ADV HOFMEYR: Thank you Chair.

20 **CHAIRPERSON:** Okay.

ADV HOFMEYR: Ms Kwinana would like to move this morning to the 30% set aside policy which you referenced in your evidence yesterday and which I understand from your affidavit in response to the Chairperson's Regulation 10.6 Directive is something that you felt strongly about

while you were at SAA, is that correct?

MS KWINANA: Yes Chair.

ADV HOFMEYR: Can you tell us about it – why you felt strongly about it; what it was envisaged to do?

MS KWINANA: It was intended to empower the black people and as we all know that South Africa – black South Africans have long been in a disadvantaged position and therefore the 30% set aside was intended to at least make sure that the gap is being bridged.

10 **ADV HOFMEYR:** Thank you.

MS KWINANA: And in fact as I said yesterday the 30% set aside was too little considering the demographics of South Africa.

ADV HOFMEYR: So if it had been up to you it would have been more than 30%.

MS KWINANA: Oh yes definitely.

ADV HOFMEYR: Is that correct?

MS KWINANA: Yes.

20 **ADV HOFMEYR:** And I understand from your affidavit that you made particular reference to a memorandum of understanding that was concluded with the Department of Trade and Industry. Can I take you to that?

MS KWINANA: Yes.

ADV HOFMEYR: Chair that is in Exhibit DD33 and it is back in Ms Kwinana's affidavit which is Exhibit 1 there from

page 4.

CHAIRPERSON: Thank you.

ADV HOFMEYR: And if you can just tell us about at page 4 in your paragraph addressing at b which is entitled the 30% set aside policy adopted by SAA during your tenure on the board of SAA. You explain there the role that the MOU played; could you explain that to us today please?

MS KWINANA: I would need the copy of the MOU.

ADV HOFMEYR: I am going to – it is actually the first
10 annexure to your affidavit. But Ms Kwinana you might be aware the version that you gave us was a version that was unsigned and then we asked if you had a signed version and as we understood it from your representative Ms Mbanjwa you did not have a signed copy to hand, is that right?

ADV MBANJWA: That is correct.

ADV HOFMEYR: So we managed to get a signed copy from the DTI. So I would like to just beg leave to hand that up if I may?

20 **CHAIRPERSON:** Yes.

ADV HOFMEYR: Chair I suggest that we mark it Exhibit DD33.22 because that will be the new numbering and then if I could also ask if we could just hand one to the legal representatives and Ms Kwinana. Thank you so much.

CHAIRPERSON: Now Ms Kwinana please free to take a

moment just to take a look at this. This you will see on the last page of the document.

CHAIRPERSON: Just one second.

ADV HOFMEYR: Apologies Chair.

CHAIRPERSON: Ms Hofmeyr you were asking me to admit this?

ADV HOFMEYR: Yes.

CHAIRPERSON: As Exhibit DD33.2?

ADV HOFMEYR: Sorry point 22 apologies.

10 **CHAIRPERSON:** 22?

ADV HOFMEYR: Yes.

CHAIRPERSON: Okay. The memorandum of understanding between the Department of Trade and Industry and the South African Airways ...

ADV HOFMEYR: Chair we might want to say signed on 18 May 2015 because that is the signature date.

CHAIRPERSON: Yes that is what I was looking for.

ADV HOFMEYR: Sorry it is on the last page.

CHAIRPERSON: I am looking for the date here.

20 **ADV HOFMEYR:** Yes.

CHAIRPERSON: Signed by – did they sign on the same date?

ADV HOFMEYR: There is not a date filled in by Ms Myeni.

CHAIRPERSON: Yes.

ADV HOFMEYR: But there is actually later

correspondence that refers to the 18 May.

CHAIRPERSON: Yes.

ADV HOFMEYR: So I am fairly confident.

CHAIRPERSON: I say the memorandum of understanding between the Department of Trade and Industry and the South African Airways SOC LTD signed by Mr Mzwandile Masina Deputy Minister on the 18 May 2015 and signed by Ms Dudu Myeni Chairperson of the SA board is admitted as Exhibit DD33.22.

10 **ADV HOFMEYR:** Thank you Chair I am indebted. Ms Kwinana have you had a chance to look at this version?

MS KWINANA: Yes Chair.

ADV HOFMEYR: Thank you. So if you could just tell us what role this memorandum of understanding on your version played in the 30% set aside?

MS KWINANA: This memorandum if you read in the record.

CHAIRPERSON: Maybe shall we start with getting clarification whether it is exactly the same as the unsigned
20 one that she provided or are there differences?

ADV HOFMEYR: There are some differences yes.

CHAIRPERSON: Yes material?

ADV HOFMEYR: Yes.

CHAIRPERSON: Oh okay alright. No I just wanted to know.

MS KWINANA: So why do you not give me both of them?

ADV HOFMEYR: I said where the other was. It is your annexure to your affidavit it is Tab 2 at page 11.

CHAIRPERSON: I interrupted while Ms Kwinana was trying to answer a question. I am sorry. So you can continue Ms Kwinana with your answer.

MS KWINANA: Chair considering the fact that Ms Hofmeyr is saying there are material differences between the two can she point it to me those differences so that I can be
10 able to respond.

CHAIRPERSON: Okay no that is fine she will do that.

ADV HOFMEYR: So you see the challenge we had when the unsigned version was provided as an annexure to your affidavit was that on its face it appeared to be incomplete and I will give you an example. If you go to page 15 of your bundle DD33 and you look at Clause 4 there – 4.1.

ADV MBANJWA: Sorry the reference again?

ADV HOFMEYR: Page 15- 15 of Exhibit DD33 which is within the memorandum of understanding that Ms Kwinana
20 provided to the commission. Admittedly she confirmed she did not have the signed version. But his version do you see on page 15 at Clause 4.1.5 there is a question mark?

MS KWINANA: Page 15 4.

ADV HOFMEYR: 1.5

MS KWINANA: Yes 4.1.5.

ADV HOFMEYR: Do you see that there is a question mark there?

MS KWINANA: Yes.

ADV HOFMEYR: And then also further down on the page you will see at Clause 4.2.6 it is open – it is left blank.

CHAIRPERSON: Hm.

ADV HOFMEYR: So when the commission received this from you our impression was that this was unlikely to be the final version. Would you share that impression?

10 **MS KWINANA:** Yes Chair.

ADV HOFMEYR: Yes. So when I say there are material differences there are differences because this I think we can all accept is in a less than complete version and then the signed version that we were able to obtain is the completed version. Do you see that?

MS KWINANA: Hm.

ADV HOFMEYR: If you will just say yes.

MS KWINANA: Yes Chair.

20 **ADV HOFMEYR:** Thank you. So if I could then return to my question. What role...

MS KWINANA: Sorry before you go to the question. Are you saying those are the only differences between this signed version and the unsigned version?

ADV HOFMEYR: Yes the clauses that seem to have been not completed on the version that you provided to the

commission are then filled out in the signed version.

MS KWINANA: Oh I see those are the two differences?

ADV HOFMEYR: Yes.

MS KWINANA: Okay.

ADV HOFMEYR: Thank you. So if we can return to the question. What role did the MOU in your understanding play in the 30% set aside policy?

CHAIRPERSON: Maybe do you...

MS KWINANA: Then I will stick to the unsigned version
10 which I saw. Can I quickly read it?

CHAIRPERSON: Oh well that is – that is what I wanted to find out whether you ever saw the signed one?

MS KWINANA: No Chair I will stick to the unsigned version that I submitted.

CHAIRPERSON: Yes but did you or did you never see the signed one before?

MS KWINANA: No.

CHAIRPERSON: Is it the first time you see it?

MS KWINANA: Yes Chair.

20 **CHAIRPERSON:** Oh okay. I just wanted to clear that.

ADV HOFMEYR: Ms Kwinana are you sure that you did not signed version because if you are not sure you may want to say you are not sure.

CHAIRPERSON: Yes.

ADV HOFMEYR: But if you are sure please do tell us.

CHAIRPERSON: Yes.

ADV HOFMEYR: You are absolutely sure you did not see the signed version?

MS KWINANA: I am sure I did not see the signed version.

ADV HOFMEYR: Okay.

CHAIRPERSON: I am – I am sorry what was that last sentence? You – did you...

MS KWINANA: Chair I did not see the signed version.

CHAIRPERSON: Okay alright.

10 **MS KWINANA:** I will stick the unsigned version.

CHAIRPERSON: Okay alright. Do you want Ms Hofmeyr to repeat the question or you still remember it?

MS KWINANA: Can she allow me to read the unsigned version first because I was reading the signed version Chair? So can she allow me to read the unsigned version and then she repeats the question after I have read the unsigned version?

20 **CHAIRPERSON:** But you would have read the unsigned version when you sent – when you attached it to your affidavit.

MS KWINANA: Yes Chair I want to read it again.

CHAIRPERSON: Sorry.

MS KWINANA: I want to read it again Chair.

CHAIRPERSON: Was the question Ms Hofmeyr how the MOU influenced her decision or the board's decision?

ADV HOFMEYR: It influenced the 30% set aside policy.

CHAIRPERSON: yes.

ADV HOFMEYR: Because I understood her affidavit to say it did.

CHAIRPERSON: Oh. Okay have a look then Ms Kwinana.

MS KWINANA: Thanks Chair. In fact Chair all this record here from number 1 to number 7.

CHAIRPERSON: On the unsigned MOU?

MS KWINANA: On the unsigned MOU.

10 **CHAIRPERSON:** Aha what about it?

MS KWINANA: Supports the black economic empowerment basically. Now as I said in my affidavit the 30% set aside is intended to make sure that it bridges the gap between the blacks and the whites so to say.

ADV HOFMEYR: Yes but I am – I am focussing in on the 30% set aside. Where in this memorandum of understanding is the 30% set aside identified?

MS KWINANA: It is not going to talk about the 30% set aside as the others – the other companies implement 51%.
20 The others which implement 30%. The others which implement – so basically what this means is the guideline and then the implementation therefore the 30% that we were talking about at SAA is the implementation of this MOU.

ADV HOFMEYR: Ms Kwinana is it your evidence that when

in other SOE's there was a focus on providing opportunities to bidders or suppliers who were more – 51% or more let us call it broadly black owned that was the same as the 30% set aside policy that SAA adopted.

MS KWINANA: It may not be implemented exactly the same but the end result I would think that it is intended to achieve the same objectives.

ADV HOFMEYR: Yes but the implementation is quite important because I – as I understand and it is reflected in
10 the name set aside. The idea and we have had evidence on jet fuel and how it played out in jet fuel and we have had evidence on how it was playing out in Swiss Port was that 30% of contracts would be directed to those who qualified for being BEEE partners of the main contractor. Have I described it accurately?

MS KWINANA: How you intended to implement it if – if we were successful in implementing it? Remember that we were not successful in implementing this 30% set aside. And therefore if we were successful this is how we would
20 like it to be implemented.

ADV HOFMEYR: Yes.

MS KWINANA: We would say for instance cleaning has been done by a white only company previously and then we would say 30% of that cleaning when the tender comes 30% of that cleaning should be set aside so that black

people can participate in the 30% set aside. That is how we intended to implement it - they did not being met with resistance.

ADV HOFMEYR: Right. And it was met with resistance we will come to that in a moment. But do I have your evidence to be the MOU itself does not speak to the 30% set aside, is that correct?

MS KWINANA: The MOU talks about the promotion of economic opportunities to previously disadvantaged South
10 Africans which basically would be implemented by putting aside the 30%.

ADV HOFMEYR: Yes.

MS KWINANA: So basically much as it does not talk exactly about the 30% Chair but the whole aim is exactly the same.

ADV HOFMEYR: Hm. But you faced resistance both from National Treasury and from the DTI when you tried to implement the 30% because they said that would be unlawful, did they not?

20 **MS KWINANA:** Yes.

ADV HOFMEYR: Yes.

MS KWINANA: Yes Chair.

ADV HOFMEYR: And part of the reason I suggest that they would have said it was unlawful was because of a term of the MOU that was signed. So let me take you to that if I

may? It is the one that we have handed in this morning and that has been marked as Exhibit DD33.22. You see those clauses that were not complete on the unsigned version that you gave us are completed on the signed version and you will find them at Clause 5 which is headed Obligations of the Parties.

MS KWINANA: Sorry 33?

ADV HOFMEYR: Ms Kwinana it is the document handed up this morning so it will not be in your file.

10 **CHAIRPERSON:** The signed one. The signed one.

MS KWINANA: Okay.

CHAIRPERSON: The signed one ja – clause 5.

ADV HOFMEYR: Find that and you need to find Clause 5 in that agreement. Do you have it?

MS KWINANA: Yes Chair.

ADV HOFMEYR: It begins with Clause 5.1 with the DTI's obligations and then at 5.2 it sets out SAA's obligations. Do you see that?

MS KWINANA: Yes Chair.

20 **ADV HOFMEYR:** And if you go over the page to Clause 5.2.3 could you read for us what is recorded there as SAA's obligations?

MS KWINANA:

“Engaged with suppliers who have expressed an interest in supplying goods

and services to SAA within the selected product categories to gain insight into challenges experienced and to expedite resolution to such challenges. All such engagements remains subject to SAA's Supply Chain Management Policy and due Procurement Processes.”

ADV HOFMEYR: So it is based on that clause that I say the DTI and National Treasury regarded the 30% set aside
10 as unlawful. Because what SAA was obliged to do here was to comply with Supply Chain Management and due procurement process and as I understand the advice that SAA received from National Treasury and the DTI this section 30% set aside policy would not be in line with those requirements. Is that your understanding as well?

MS KWINANA: Yes Chair.

ADV HOFMEYR: Yes.

CHAIRPERSON: One second. Ms Mbanjwa.

ADV MBANJWA: I just wanted – thank you Chair if Ms
20 Hofmeyr could also read for the witness paragraph 5.24 of the document. Thank you.

ADV HOFMEYR: Paragraph 5.2.4 reads:

“Review existing contracts of SAA in order to develop a transformation road maps for selected procurement categories”

Do you have a comment on that?

MS KWINANA: No Chair.

ADV HOFMEYR: Thank you. So we have the same understanding of National Treasury's basis for resisting the 30% set aside policy. If

CHAIRPERSON: One second Ms Hofmeyr. Ms Mbanjwa with regard to that when you re-examine you could say when Ms Hofmeyr read to you this is what she read but read this section and then see what the witness has to say.

10 So it could easily go into re-examine. Okay alright. Let us continue.

ADV HOFMEYR: So we – both have the same understanding that National Treasury and the DTI regarded the set aside policy as unlawful because it was inconsistent with the existing procurement policy framework and legislation. And so I wanted to ask you why then did you persist in implementing it or seeking to implement it?

20 **MS KWINANA:** Chair we wrote to National Treasury and requested for guidance in respect of this implementation of the set aside. It should still be noted or maybe again be noted that we could not implement the 30% set aside. We wrote a letter to National Treasury to say we need guidance yes.

ADV HOFMEYR: They responded and said it is unlawful.

So why did you persist in trying to implement it?

MS KWINANA: Chair we wrote – we did not implement the 30% set aside. We did not implement the 30% set aside. We wrote to National Treasury and said we needed guidance on how to implement this 30% set aside.

ADV HOFMEYR: Yes.

MS KWINANA: We did not implement the 30% set aside.

ADV HOFMEYR: No I did not ask whether you implemented it. I said; after National Treasury said to you
10 it is unlawful why did you try to implement it?

MS KWINANA: No, no, no we tried to implement it before we were reprimanded by National Treasury.

ADV HOFMEYR: Okay well let us look at that. Let us go to the letter from National Treasury and for that purpose you will need to go to Exhibit DD19 – 19[a].

MS KWINANA: DD19. Sorry where do I get DD19?

ADV HOFMEYR: Oh it is just on your right hand – left hand side Ms Kwinana they were put there in anticipation this morning.

20 **MS KWINANA:** 19?

ADV HOFMEYR: 19 and then where we will need to go in 19 is page 132.16. So 132.16.

MS KWINANA: 132.16.

ADV HOFMEYR: Yes. Before we look at the letter I would just like to spend a moment on the evidence of Dr Dahwa

before this commission. Did you follow that evidence?

MS KWINANA: Yes Chair.

ADV HOFMEYR: You did. Dr. Dahwa gave evidence to the commission that he had concerns about the unlawfulness of the 30% set aside policy. Were you aware that he had those concerns?

MS KWINANA: No Chair he did not say that when we were trying to implement the 30% set aside.

ADV HOFMEYR: He did not ...

10 **MS KWINANA:** The concerns I had the concerns in this commission because Dr Dahwa was going with us in respect of this whole empowerment and we were not aware that he was concerned. And in fact if he was concerned he would tell us why and then correct and guide us so that we could successfully implement the 30% set aside.

ADV HOFMEYR: Well his version before the commission is that he had a lengthy engagement with you and Ms Myeni on Friday the 2 October in which he made it clear to you that he could not in his conscience sign letters that would
20 facilitate the 30% set aside. Are you saying that none of that evidence was true?

MS KWINANA: That is not true Chair. Where would be the letters – where – the letters that he would sign where would they be coming from? I am not aware of those letters that he would sign.

ADV HOFMEYR: Okay because he said in his evidence that one of the reasons he was concerned about the set aside policy were these very letters that we are going to go to. The National Treasury letter and the BBEE Commissioner's letter from the DTI. You said that you did not continue to seek to implement the 30% set aside policy after receiving the National Treasury letter and I said to you that we would go and see whether that was indeed the case. Because you will see at page 132.16 that is the
10 National Treasury letter. Can you tell us what it is dated?

MS KWINANA: Chair before that can I get copies of those letters that Dr Dahwa did not want to sign?

CHAIRPERSON: Well for now you are not being asked about them. Just tell – read the date of that letter and then if and when it is important to deal with those letters we will take it from there. Ms Mbanjwa.

ADV MBANJWA: Thank you Chair. Chair I would like us to get an undertaking that we would receive those letters. I do not want to hold the...

20 **CHAIRPERSON:** Wait those letters might not really be important for now. So let us see if and when they are important.

ADV MBANJWA: Yes but Chair they go to the probity of the evidence of Dr Dahwa.

CHAIRPERSON: Yes but just wait for now. The question

is about something else. It is about what date this letter is. Ms Kwinana do you want to – to read the date of that letter – that letter from National Treasury.

MS KWINANA: The date is 28 September 2015 Chair.

CHAIRPERSON: Yes.

ADV HOFMEYR: That is the date we were focussed on yesterday because I said that there was a fateful week at the end of September early October 2015. 28 September is the date on which the board of SAA met and you made
10 that decision to cancel the LSG Sky Chefs award and give it to Air Chefs. Do you recall that?

MS KWINANA: Yes Chair.

ADV HOFMEYR: So that was the Monday of the week. This letter comes from National Treasury could you tell us who at National Treasury writes this letter?

MS KWINANA: Ms Mpshe.

ADV HOFMEYR: No it is written by somebody from the National Treasury who is that?

MS KWINANA: Oh Kenneth Brown Chief Procurement
20 Officer.

ADV HOFMEYR: And he is addressing it to?

MS KWINANA: To Ms Mpshe.

ADV HOFMEYR: Who was the acting Chief Executive Officer of SAA at the time, correct?

MS KWINANA: Yes Chair.

ADV HOFMEYR: And what I would like to just focus on there is it is the response to the letter. That is the letter where you sought guidance, is that correct?

MS KWINANA: No Chair. This is not the letter that we sought guidance. In fact how it happened was when we were trying to implement the 30% set aside in the newspapers Bidvest was complaining that they are forced to 30% set aside and so on and so on.

CHAIRPERSON: Who was complaining?

10 **MS KWINANA:** Bidvest. Bidvest.

CHAIRPERSON: Okay.

MS KWINANA: Yes Chair. And then we received the letters from National Treasury and from DTI. And saying that they have been informed about this 30% set aside. And then we responded as the board. So basically this is not the letter that we responded to. We responded to as the board to Kenneth Brown because he wrote us a letter not this one but he wrote us a letter and then we responded.

20 **ADV HOFMEYR:** I think you might be confusing this with the letter of the BEE Commissioner but we will come back to that. This one says in the 3 – the third paragraph.

“Decisions that are taken by the board to encourage transformation in procurement are commendable. However the SAA board

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

Let us just stop there for a moment. The board had already taken by this stage a resolution to implement the 30% set aside had it not?

10 **MS KWINANA**: Yes Chair.

ADV HOFMEYR: Yes. As I have it that was on around the 25 August 2015. Does that accord with your recollection?

MS KWINANA: Yes Chair.

ADV HOFMEYR: Yes. So you decided you were implementing it then there was this issue that was taken up and now Treasury as I have it unless you disagree with me is writing here to SAA addressed to their Chief Executive – Chief – acting Chief Executive Officer saying that

20 “The resolution of the board to set aside the 30% in its current form is not supported by any procurement legal framework and must be stopped with immediate effect. You are kindly requested to advise the board not to take procurement decisions that bring the name of SAA and National Treasury into

disrepute.”

And then he concludes by saying:

“Kindly update me on the development around the 30% set aside of key procurement transactions.”

So both Ms Mpshe and Dr Dahwa indicated that this letter was brought to the board’s attention and despite that on the Friday of that same week there was an interaction with Dr Dahwa which we will get into in a moment. Do you confirm that you met with him on Friday the 2 October 2015?

MS KWINANA: I cannot confirm Chair but as I said if you can give me the minutes of that meeting with Dr Dahwa I may be able to ...[intervenes]

ADV HOFMEYR: As I understand it, there were no limits. He was called up to, I think it was the 6th floor of the Airways Park Building on SMS from you. Do you recall that?

MS KWINANA: An SMS from me?

ADV HOFMEYR: Yes.

20 **MS KWINANA**: What did the SMS say?

ADV HOFMEYR: His evidence was that he was called to a meeting on the 6th floor of Airways Park Building.

MS KWINANA: What did the SMS say Chair?

ADV HOFMEYR: No, I am telling you his evidence. His evidence is that the meeting – he was called to a meeting on

the 6th floor of Airways Park Building.

MS KWINANA: Via an SMS message?

ADV HOFMEYR: Yes, from you.

MS KWINANA: How do I call him by an SMS message?

ADV HOFMEYR: That is not my question. I am asking whether you sent it? Whether you have any recollection of sending it?

MS KWINANA: No, I cannot call him via an SMS message. Definitely.

10 **ADV HOFMEYR**: Right. And his evidence is that he began a meeting with you and then you were joined by Ms Myeni. Do you recall that?

MS KWINANA: No.

ADV HOFMEYR: So did this meeting take place at all on your recollection?

CHAIRPERSON: Well, maybe Ms Hofmeyr ...[intervenes]

MS KWINANA: Maybe you can give me the minutes of the meeting so that I can remember that yes the meeting did take place and this is what was discussed.

20 **CHAIRPERSON**: Or ...[intervenes]

ADV HOFMEYR: Ms Kwinana, I have said that my understanding is that there are not any minutes of that meeting.

CHAIRPERSON: Okay. I thought maybe if you remind her what the issues were that were discussed at the meeting.

That might help her to remember.

ADV HOFMEYR: I do that.

CHAIRPERSON: If she remembers the meeting.

ADV HOFMEYR: H'm. Well, she certainly has indicated already Chair that she did observe the evidence of Dr Dahwa.

CHAIRPERSON: Yes.

ADV HOFMEYR: So this was setup there. But let me do so for completeness purposes.

10 **CHAIRPERSON:** Yes.

ADV HOFMEYR: And I summarise now. And for the record, it appears in Dr Dahwa's transcript on the 28th of June 2019 and it commences at page 168 of that transcript. Dr Dahwa's version of that day is broadly the following.

That you sent him an SMS calling him to a meeting on the 6th floor of Airways Park Building. That you asked him how far he had got with implementing the 30% specified policy. You asked in particular about Swissport.

20 Ms Myeni walked into the meeting at a point and asked you for an update and you said that Dr Dahwa was not doing enough to implement the strategy.

Ms Myeni then said she wanted to advertise Dr Dahwa's job. He was then told to go back to his office to draft awards for the set aside for Swissport and for Engen.

Swissport was the particular contract that would have

involved the entity called Jammicron in the ground handling that was to be concluded with Swissport. And so he went and he drafted letters of award but he refused to sign them because he said it was against his conscience to do so.

And the chair then suggested that Ms Myeni, that it should be drafted for the acting CEO, Ms Mpshe to sign. At that point, Ms Mpshe joined the meeting.

You, Ms Myeni and as Dr Dahwa's evidence goes, try to convince her to sign on the basis of telling her that
10 Swissport was in favour of this arrangement. And she refused to sign it and eventually said that she had to leave because by now, the meeting was getting late in the day.

And on Dr Dahwa's version that it started in the morning and we were now towards the end of the day. And his evidence is that when Ms Mpshe was leaving, she said the following to him. Well, I am going to quote from Dr Dahwa's transcript.

CHAIRPERSON: Yes.

ADV HOFMEYR: But he talks about what Ms Mpshe says
20 but I will try and make that clear in how I convey it.

CHAIRPERSON: Ja.

ADV HOFMEYR: So Dr Dahwa says this in his evidence before the Commission.

“But before Ms Mpshe left Chair, I need to confirm.

She said to me in front of the two board members

that: Dr Dahwa, you will be alone in court should this thing come back. And if you know this is wrong, you do not do it.

Ja, she insisted.

And the chair tried to sweet-talk her and say: No, but you know, if anything is to come back, it will come back to me as the chair.

10 Then Ms Mpshe still insisted that: Dr Dahwa, will all your qualifications, experience and credentials, you will have to answer to this one day and in my view, if you content and if you are quite satisfied that it is the wrong to do, please do not do it.

And off she went.”

That was his evidence. He described the day as involving psychological games. He went on to give evidence to the Commission that he was told by Ms Myeni that the EFF would be there on the Monday at SAA and that they wanted to get rid of people like Dr Dahwa who were anti-transformation because they – and that they wanted to get
20 rid of Zimbabweans.

And he also testified that he – that you, Ms Kwinana, said to him that he and Ms Mpshe were going to suffer and that he would be disciplined. So that is his version of what happened on that day. What is your response?

CHAIRPERSON: I think that is the day where he says the

meeting started roundabout ten in the morning.

ADV HOFMEYR: Correct.

CHAIRPERSON: And by four o'clock the meeting was still continuing.

ADV HOFMEYR: Yes, they were still continuing and went on probably to six because that is when Ms Mpshe said she had to leave to go home.

CHAIRPERSON: Yes.

ADV HOFMEYR: So we calculated a total of eight hours on
10 his version.

CHAIRPERSON: Yes, and if I am not mistaken, he said at some stage, I think, he was asked to go to his office and he cried or something.

ADV HOFMEYR: H'm. He certainly spoke about being distressed.

CHAIRPERSON: Ja, that is right. Being distressed. Maybe he did not cry.

ADV HOFMEYR: Yes, yes.

CHAIRPERSON: But he was very distressed ...[intervenes]

20 **ADV HOFMEYR:** Yes.

CHAIRPERSON: ...about the demands that he said were being made on him by Ms Kwinana and Ms Myeni.

ADV HOFMEYR: Yes. Correct.

CHAIRPERSON: I think, ja. That is the... Ja.
Ms Kwinana, do you remember that meeting?

MS KWINANA: I do not remember the meeting at all Chair. That is why I was saying. I am sure for such a long meeting that would start at ten o'clock and end at four o'clock, there would be minutes that would be approved by the people who are in that meeting.

CHAIRPERSON: Ms Kwinana.

MS KWINANA: Chair?

CHAIRPERSON: If what Dr Dahwa says you and Ms Myeni were doing in that meeting to her, that was wrong. And if
10 you were doing something wrong, you are not going to have minutes for that meeting, obviously. So not every meeting has got minutes. And certainly meetings where illegal things are being done, wrong things are being done – people do not keep minutes generally.

MS KWINANA: Definitely, Chair. In this meeting I was to there.

CHAIRPERSON: You say you were not there?

MS KWINANA: I was not there.

CHAIRPERSON: Are you sure that you have a clear
20 recollection that you were not at that meeting or is the position that you cannot remember? Maybe you were in that meeting, maybe you were not?

MS KWINANA: Definitely, Chair I was not in the meeting. If I was in the meeting, I would remember that event.

ADV HOFMEYR: So you do not have any recollection of him

saying to you that his conscience would let him do that you were demanding of him?

MS KWINANA: Definitely no.

CHAIRPERSON: But not... But as I understand your evidence. You are not saying you cannot recall. You are saying that did not happen because you were not in that meeting.

MS KWINANA: That did not happen Chair.

ADV HOFMEYR: And did you ever come to learn that he
10 was resisting signing letters of award to facilitate the 30% set-aside policy because his conscience would not allow him to do that?

MS KWINANA: Chair, I do not even understand these letters of award that Dr Dahwa is talking about because the letter of award would emanate from a due procurement process. So that is why I wanted to see these letters that Dr Dahwa is refusing to sign.

ADV HOFMEYR: Ms Kwinana, they would not emerge from a due procurement process because one of the contractors
20 that you wanted to implement the 30% set-aside policy, was Swissport.

And as we traversed at length yesterday, in 2015 and 2016 no procurement process was followed at for Swissport. So there would be no procurement process.

What there was, on the evidence that we looked at

yesterday and to the lead up of this meeting, was the decision by the Board of SAA on the 25th of August to implement a 30% set-aside policy.

Communication from National Treasury on the 28th of September 2015 that that must be stopped with immediate effect.

A meeting on Friday that week on Dr Dahwa's version where he was pressurised into doing so and implementing it. And your response saying that he was going to be
10 disciplined and that he would suffer.

And then thereafter, shortly thereafter, he is disciplined. He is removed and he is replaced. Ms Kwinana, who replaced him?

MS KWINANA: [No audible reply]

ADV HOFMEYR: Who replaced Dr Dahwa?

CHAIRPERSON: One second. Ms Mbanjwa.

MS MBANJWA: Thank you, Chair. I just want you to give us a chance Chair to re-examine on this point. The evidence leader, Ms Hofmeyr has the evidence of yesterday
20 incorrectly. There was a procurement process for Swissport but we will leave that for re-examination. She is wrong on evidence.

CHAIRPERSON: Okay alright.

MS MBANJWA: Thank you, Chair.

CHAIRPERSON: Okay thank you.

ADV HOFMEYR: Who replaced Dr Dahwa?

MS KWINANA: Lester Peter. I do not know... acted in his position?

ADV HOFMEYR: Yes, so when Dr Dahwa was suspended for the disciplinary charges that were brought against him, Ms Lester Peter took his position. Correct?

MS KWINANA: Yes.

ADV HOFMEYR: And Mr Lester Peter is the person who sent on the 15th of December, we looked at last – yesterday, 10 the 15th of December 2015 – that Tripartite Agreement that was going to be concluded that you said you have not seen before, between Swissport/SAA and a yet to be selected BEE supplier who was going to get 30% of the contract. Do you remember seeing that for the first time yesterday?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Right. So where we are at the moment is you, as I understand it, could not understand how a letter of award could arise in this circumstance. And I am putting to you, that set of facts makes it clear, to me at least, how it 20 could arise. It was a board decision that this policy would be implemented and now you were checking up on whether it was being implemented. Do you have a response to that?

MS KWINANA: Chair, at SAA, the letter of awards arises from a due procurement process. That is why I am surprised about these letters of awards that Dr Dahwa is saying he

refused to sign because the award letters would come from a due procurement process.

ADV HOFMEYR: So when Mr Lester Peter sent the draft contract facilitating the 30% set-aside policy of the board on the 15th of December 2015, was he acting irregularly?

MS KWINANA: Was that signed Chair?

ADV HOFMEYR: Sorry. My question ...[intervenues]

MS KWINANA: Before we can he was acting irregularly or not, we need to take the process up to the time he has to
10 sign.

Now the process would be: Was there a tender? Was it advertised? Was the procurement process followed? Was the award given? Was the contract awarded? Was the contract signed?

So all of these. And then – and therefore, we would say, if for instance there is a draft that does not talk to that whole process, then that is irregular.

ADV HOFMEYR: What is your knowledge, Ms Kwinana? Did a procurement process proceed, the 15 December 2015
20 draft agreement that was sent to Swissport by the acting procurement officer of SAA?

MS KWINANA: Chair, that agreement, draft agreement I saw it for the first time here.

ADV HOFMEYR: That was not my question. To your knowledge, was there a procurement process followed before

that agreement, which I accept your evidence yesterday was you saw it for the first time yesterday ...[intervenes]

MS KWINANA: I do not know. I do not know Chair.

ADV HOFMEYR: Right. But you would have wanted to check before any agreement was entered into with Swissport because you are concerned to ensure that procurement is properly followed. Is that correct?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: So let us go back to your evidence that
10 you have no recollection of that meeting. You say it did not happen. Is that your version?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: You say it was not communicated then or since then that Dr Dahwa could not in good conscience do what you are asking him to do. Is that correct?

MS KWINANA: I am saying Chair. I definitely was not in that meeting.

ADV HOFMEYR: No, my... that was not the question. Did it
20 ever come to your knowledge that Dr Dahwa was saying he could not in good conscience do what you were requiring of him to do?

MS KWINANA: When he was testifying here. Yes, Chair.

ADV HOFMEYR: Here? That is the first time it came to your knowledge.

MS KWINANA: Yes.

ADV HOFMEYR: Is that correct?

MS KWINANA: Yes, yes.

ADV HOFMEYR: Okay let us go to an email that you wrote to Ms Myeni a few days after your 2nd of October meeting. You will find that in Dr Dahwa's bundle. I do not think you had that before. So if we could just have assistance. That is Exhibit BD16 and we will pick it up at page 240.

MS KWINANA: [No audible reply]

ADV HOFMEYR: Two, four, zero.

10 **MS KWINANA:** Yes.

ADV HOFMEYR: Let us maybe start at page 239, actually, if we may?

MS KWINANA: [No audible reply]

ADV HOFMEYR: So on Dr Dahwa's version, the meeting that lasted for eight hours or thereabout and he described it as having involved psychological games being played with him was on Friday, the 2nd of October. Now what you will find on page 239 Ms Kwinana is an email that you sent to Ms Myeni on the 12th of October 2015. Do you see that?

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

ADV HOFMEYR: And you say... Its subject is complaint letter and you say:

“Dear Chairperson. Please find my letter of complaint which is self-explanatory for your action. Best regards Yakhe Kwinana.”

And then if you go over the page, is the attachment to that email. Do you see that?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Do you recall this letter of complaint?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: You do?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Well, the letter of complaint suggests that some of the evidence you have given this morning
10 Ms Kwinana is false. The first thing that indicates that your evidence is false is because you begin the letter with Dear Chairperson.

May 18, 2015 was a historic day for South African Airways where you have signed the memorandum of understanding on behalf of SAA with the Department of Trade and Industry, committing SAA to support DTI Industrialisation.

Your evidence earlier was that you had not seen 18 May 2015 MOU. Do you remember giving that evidence?

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

ADV HOFMEYR: You clearly had seen it, had you not?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Yes. So that evidence was false. What you then go on to do is you talk about President Zuma's State of the Nation Address and his reference to 30% set-

aside. And then I would like to pick it up, in the last paragraph of that page before the numbering starts because this is where you start to lodge your complaints against Dr Dahwa.

MS KWINANA: H'm.

ADV HOFMEYR: You wrote the following:

10 “Having noted all this, it is sad for me to seek answers from your Chairperson wherein particular, I would like to report the following about Dr Masimba Dahwa.

1. He lied that the Jet Fuel Tender is inclusive of six streams whereas on further enquiry the Jet Fuel Tender is just supply of jet fuel.

2. I use the above lies to communicate that this tender has six streams to SMME's to whom the board awarded the 15% tender of Jet Fuel.”

20 So I am just going to pause there. We did have evidence back in June of last year about how there was steps to implement the set-aside in the jet fuel context. I am just reminding us that that is where that comes in the evidence of the Commission.

CHAIRPERSON: Yes, okay.

ADV HOFMEYR: She goes... Ms Kwinana, you go on at 3.

“3. These lies that I communicated to a room with more than 60 people has an effect on bringing my

name, the chairperson's name, SAA and the governments' name into disrepute as there are now enquiries where service providers want to know the way forward in respect of logistics and other streams as communicated by myself as per the misleading information provided by Dr Dahwa.

4. He also lied and made the chairperson to believe that the award letters to tenderers were signed whereas there were no letters.”

10 Those are the award letter that a moment ago you said you had no knowledge of and could not exist because procurement would have to be followed beforehand.

Paragraph 5:

“5. When asked about the status of the board resolutions implementation he lied and said that the delays are with Legal.

I subsequently asked Legal who informed me in the presence of Dr Dahwa that they are waiting for Dr Dahwa.

20 6. He travelled with us on Transformational Road shows and when we were communicating the board decisions, he also clapped hands knowing very well that he would not write the award letters which I later discovered that he would not write as he said, “my conscience does not allow me”.”

Let me just pause there. A moment ago Ms Kwinana you gave evidence that said that you did not know that that was his issue with the award letters and you heard his evidence in this Commission. I put it to you that your evidence earlier was false. What is your response?

MS KWINANA: Chair, I had forgotten about this letter that I wrote. In this regard, I have ...[intervenes]

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

MS KWINANA: In this letter I detract. I stand by the letter
10 that I wrote.

CHAIRPERSON: Sorry? What? You stand by?

ADV HOFMEYR: The letter.

MS KWINANA: By the letter that I wrote.

ADV HOFMEYR: I do not know what that means.

CHAIRPERSON: Okay.

ADV HOFMEYR: What does it mean that you stand by it?

CHAIRPERSON: Does that mean ...[intervenes]

ADV HOFMEYR: Because it is a completely different
version.

20 **CHAIRPERSON**: Does that mean you now remember the
meeting that you said you did not attend?

MS KWINANA: I still do not think that was the meeting. I
think all these things transpired through the road shows, not
through the meetings.

CHAIRPERSON: Okay let me try this. Previously, at my

request, Ms Hofmeyr read Dr Dahwa's evidence, you know, a substantial part to indicate what, according to him, happened at that meeting. The idea behind that was that it could help you remember whether you were part of that meeting. You said you definitely were not part of that meeting.

So now Ms Hofmeyr has referred us to a letter or an email that you sent to Ms Dudu Myeni in which you refer to Dr Dahwa and the award letters.

And of course, his evidence was that he refused to sign
10 two award letters. And here you refer to him having said his conscience did not allow him.

Now that seems to – what is written here – seems to tie up with what Dr Dahwa says according to the evidence that was read by Ms Hofmeyr about a meeting where he says he was required by you and Ms Myeni to sign two letters, award letters and his conscience would not allow him to do that. And he was distressed and so on.

But at least, there are references here which suggests that you seemed to or you may have known about some of
20 these things. What do you say?

MS KWINANA: Chair, I would remember one of... I do not know whether to say the award letter or the agreement. Maybe it would not be the award letter. The reason why I am saying it would not be the award letter is because I remember very well the one for the Jet Fuel where basically

Engen agreed that from the supply that they are giving to SAA, they are willing to dispose of 15% of that supplies and give it to the smaller companies.

So which means, therefore, that the agreement between SAA and Engen where the tender process was followed would still continue as it is.

And therefore – that is why I am saying, maybe it is not an award, it is an agreement between now Engen and the BEE companies.

10 Then that one, our understanding and Dr Dahwa made us to believe that he is going to lead it. And please Ms Hofmeyr, understand that the award followed a procurement process from the beginning up to the time that Engen was awarded that tender.

And then now, we negotiated with Engen to say: Can you please from the remaining tender, from the remaining period that is remaining to the expiry of your contract, can you give 15% to these black companies.

20 In fact, I remember that there were about 60 odd black companies that were not knocking on SAA's doors to get the tender. And therefore, Dr Dahwa ...[intervenes]

CHAIRPERSON: But does all of this – are you saying all of this, to say, you remember the meeting and you did attend it or are you saying all of this, to say, you did not attend the meeting?

MS KWINANA: No, Chair I did not attend the meeting. It was not the meetings.

CHAIRPERSON: Ja.

MS KWINANA: We were doing the road shows throughout the country.

CHAIRPERSON: Oh... H'm.

MS KWINANA: And then now we would, in fact, discuss like with a hall full of people to say this is how this thing is going to happen. So basically, I would not say there was a
10 meeting especially the meeting that Ms Hofmeyr was talking about. So basically, what I was talking about *but what was* Dr Dahwa promised that.

Now that we have negotiated with Engen, Engen now can give the 15% out of their own will. Remember that this is about negotiations because the company that has got the tender with SAA is Engen and therefore, we cannot enforce anything. That is why we were negotiating with Engen and the other companies and Bidvest.

So basically, Dr Masimba Dahwa was supposed to say,
20 he does not want to do that. And in fact, if he says he does not want to do that. Remember that the procurement process is not tampered with in this exercise that we are doing.

CHAIRPERSON: Ms Hofmeyr, before – but before that. Ms Mbanjwa.

MS MBANJWA: Thank you, Chair. Chair, I just want to put on record that on my own evaluation, I do not believe that this letter, this email that has been written by Ms Kwinana is a confirmation of the fact that there was that meeting.

CHAIRPERSON: No, Ms Mbanjwa. That you can deal with in re-examination. Now it is like you are telling the witness how to respond to questions on this letter.

MS MBANJWA: No, I was going to ask Chair that ...[intervenes]

10 **CHAIRPERSON**: Reserve it for re-examination.

MS MBANJWA: Thank you, Chair.

CHAIRPERSON: Ja, you do not have to ask for it. I give – I told you, I will allow you to re-examine when the witness has – when Ms Hofmeyr has finished.

So you do not have to ask for it each time. We will give you the opportunity. What I do not know whether it will be today or it will have to be some other date, depending on when we finish.

20 Okay. So you just make a note of all the issues that you want to clarify during re-examination.

MS MBANJWA: Yes, Chair.

CHAIRPERSON: Okay alright.

ADV HOFMEYR: Ms Kwinana, I do want to just spend a little bit more time on this meeting because, you see, it is not a meeting if it has occurred, that I want to suggest to

you, could easily be forgotten by the people involved.

And the reason I say that is, if Dr Dahwa's version is correct - and I might add, the part of the meeting where he says Ms Mpshe joined him, Ms Mpshe confirms in her evidence. Right.

But that type of meeting that caused such psychological distress to one of the participants, is not a meeting that people easily forget.

I want to put that to you. Would you accept that if
10 somebody in a meeting experiences severe psychological distress by it and it last for eight hours, is not the type of meeting that people easily forget having been part of?

MS KWINANA: Chair, I would also not forget that meeting.

ADV HOFMEYR: Right, right. That type of meeting would be in your memory, would it not?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: And your evidence today is, despite having seen this email that was days later on the following Friday. You still maintain that you did not attend that
20 meeting with him, is that correct?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Right and do you also maintain that he was not told at that meeting that the EFF were going to be coming to SAA that next Monday and that he must be fearful because they were there to act against people who

were anti-transformation and foreigners, Zimbabweans, like him. Did that not occur?

MS KWINANA: Chair, I was not at that meeting.

ADV HOFMEYR: Did that not occur?

MS KWINANA: I was not at that meeting, I do not know if it did occur or not, I was not at the meeting.

ADV HOFMEYR: Right. You see, Dr Dahwa was so distressed by that threat that he did not go to work the next Monday and instead he wrote an email to his line manager, Mr Wolf Meyer. He copied it to Ms Mpshe, who
10 had attended the meeting with you on the 2nd, the previous Friday, and he referenced that meeting and he referenced the fact that he was too afraid to come to work. Does that not jog your memory at all?

MS KWINANA: Not at all, Chair.

ADV HOFMEYR: Right, so your evidence today is despite your own email on its face referencing the things that he said took place in that meeting and a subsequent email, I will take you to now, in which he talks about the very threat
20 and the fact that he met with two board members the previous Friday. You still maintain to this Commission you did not participate in that meeting.

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Right. Let us go to the email. It is a few pages back in the witness bundle of Mr Dahwa which is

DD16 and you will pick it up at page 236.

CHAIRPERSON: 236?

ADV HOFMEYR: Yes. 236, the same one, DD16.

CHAIRPERSON: The Dr Dahwa one.

ADV HOFMEYR: So contemporaneous evidence at the time, this email, written at 747 in the morning on Monday the 5 October by Dr Dahwa to Mr Wolf Meyer and Ms Thuli Mpshe, says the following:

10 “Dear Sir, following the meeting between the two board members and I on Friday 2 October 2015 I was advised that EFF was coming to Airways Park today, Monday 5 October to demonstrate. I was advised that they will be demonstrating that there is no transformation at SAA because of people like me in senior positions as there is no South Africans holding such positions in Zimbabwe. Seeing the recent violence against foreign nationals I feel endangered. As you are aware of these demonstrations by EFF and that they are targeting
20 “people like me who are non-South Africans yet holding senior positions at SAA”? I do not find it safe to proceed to the office this morning against the advice I was given by the two board members I met on Friday. I await your advice and direction.”

Do you still persist that you did not attend that meeting, Ms

Kwinana?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: I need to put it to you that you have been dishonest with this Commission.

CHAIRPERSON: Well, before that. Ms Kwinana, just reflect properly. Here is a situation where a senior member of the management of SAA, Dr Dahwa, has given evidence along the lines that Ms Hofmeyr read to you earlier on about a meeting where he says you and Ms
10 Myeni demanded and pressurised him to sign letters of awards that he considered to be wrong, illegal, he said his conscience would not allow him – said he was very distressed and he says Ms Mpshe came in at some stage at the meeting and Ms Mpshe has come before this Commission and under oath confirmed that she came into the meeting and you and Ms Myeni were there with Dr Dahwa and she has confirmed that part of the meeting that happened when she was there. Now Ms Hofmeyr has referred you to an email dated 5 October 2015 from Dr
20 Dahwa to his supervisor or whoever, Mr Wolf Meyer. Monday - the 5 October was the Monday, the meeting that he is talking about he says happened on the Friday, three days before that. So everything is fresh in his mind. He is writing to his senior and he talks about having had a meeting with two board members on that Friday. In the

email he does not mention who they are but he has mentioned the evidence who they are and he says that you told him that the EFF was going to have a demonstration against people like him holding senior positions in SAA who were anti-transformation and foreigners and why would this man fabricate all of this against you? What did he have against you to fabricate all of this because if you were not in that meeting, it means he is fabricating all of this. So I just want you to reflect properly whether really
10 you are saying – you are sticking to your evidence that you were not in that meeting or whether when you reflect properly you may have been in that meeting or you were in that meeting.

MS KWINANA: Chair, there is no way that I will forget such a meeting. I was not in that meeting.

CHAIRPERSON: So Dr Dahwa is just falsely implicating you in what he says you and Ms Myeni did or said to him in that meeting?

MS KWINANA: He is falsely implicating me, Chair.

20 **CHAIRPERSON:** And Ms Mpshe, to the extent that she confirms at least some – those things that happened while she was at that meeting, she is also falsely implicating you?

MS KWINANA: Yes, Chair.

CHAIRPERSON: Ms Hofmeyr, you had asked a question.

I am sorry, I just wanted to give Ms Kwinana really an opportunity to reflect and decide whether she sticks with her evidence that she was not at this meeting but you ...[intervenes]

ADV HOFMEYR: And I was simply going to follow that, Chair, by indicating to Ms Kwinana that we will likely argue in due course that you have been dishonest in the evidence you have given in resisting against all this overwhelming evidence pointing to the fact that you were
10 there, you nonetheless doggedly insist you were not and that that is false and dishonest. What is your response to that?

MS KWINANA: I said, Chair, I was not in that meeting. So if you want to say what I am saying is false and dishonest, it is your own prerogative, Chair.

ADV HOFMEYR: Let us then go – you were very – you said you stand by the letter that you wrote on the 9 October that you have been shown now, is that correct?

MS KWINANA: Yes.

20 **ADV HOFMEYR:** That letter, as I read it, and I want to check if we have the same understanding, expresses a level of animosity towards Dr Dahwa that I would describe as extreme, coming from you. Do you agree with that assessment?

MS KWINANA: No, Chair.

ADV HOFMEYR: It is not extreme animosity?

MS KWINANA: Not at all.

ADV HOFMEYR: Not at all, okay. Let us read what he said. Let us go to page 241, it is in the same bundle, we are in DD16 and it is just the second page of the letter that you wrote to Ms Myeni on the 9 October 2015. Can I just before we go to what you wrote? You say it does not express extreme animosity to Dr Dahwa. How would you describe your feelings to Dr Dahwa at that stage?

10 **MS KWINANA:** No feelings at all, Chair.

ADV HOFMEYR: None at all?

MS KWINANA: No.

ADV HOFMEYR: No. He was just the head of procurement and you were just dealing with him like you would deal with any manager, is that correct?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Okay, let us see what you said to Ms Myeni. We will pick it up at the bottom of page 241 under the bullet points. You say:

20 "From the foregoing it is clear that there is no commitment on the part of Dr Dahwa to the resolutions of the Durban Road Show."

MS KWINANA: Sorry, Chair, where is this?

ADV HOFMEYR: Apologies. So we are at 241. You will see some bullets sort of two thirds of the way down and I

am reading from the paragraph below that, “From the foregoing...

“From the foregoing it is clear that there is no commitment on the part of Dr Dahwa to the resolutions of the Durban Road Show. No positive outcome has eventuated since we went on a road show judging by numerous enquiries from would-be service providers that have gone unanswered. The situation as it presents itself amply demonstrates that Dr Dahwa is hell-bent on sabotaging and derailing the transformational agenda of the present government in general and that of SAA in particular while the SAA board is doing all in its power to translate government’s intent of economic empowerment into concrete reality to extricate the African majority from the quagmire of poverty, Dr Dahwa is equally doing his best to keep the same people in economic bondage. He is part of sinister retrogressive agenda which is aimed at reversing the transformation agenda of the present government. His behaviour smacks of insubordination and conspiracy against the SAA board. His purulent attitude may be located in the fact that he does not share the agony of the people of South Africa who have emerged from centuries of

economic deprivation and his freedom was born of struggle. It is actually ironic that he is sabotaging SAA that appointed him to such a senior position essentially biting the hands that feeds him. This leaves me with no other option except to recommend that the strongest possible action be taken against him.”

Ms Kwinana, I put it to you that that is not written about somebody in respect of whom you had an indifferent
10 attitude as your evidence a few moments ago suggested. Do you want to comment on that?

MS KWINANA: I still take it, Chair, as indifferent in the sense that there will always be some disagreements between the junior and his or her senior but that does not mean that there is a – what words did you use, animosity? No.

ADV HOFMEYR: So he was just average ...[intervenes]

CHAIRPERSON: Ms Kwinana – I am sorry, Ms Hofmeyr, are you saying to me you want me to believe that you had
20 no strong feelings against Dr Dahwa when you wrote an email in such strong negative terms? This email is written in very strong, negative terms about and against Dr Dahwa, you want to tell me that you did not have any strong negative feelings towards him?

MS KWINANA: Chair, from time to time there will be

disagreement between the senior and the junior.

CHAIRPERSON: No, I know that, Ms Kwinana, do not tell me that. My question is are you saying to me that the strong words you used here, negative words about and against Dr Dahwa do not reflect that you had strong negative against him? Is that what you want me to believe?

MS KWINANA: Yes, Chair.

CHAIRPERSON: Continue, Ms Hofmeyr. Well, before you
10 proceed, let me ask this question. I mean, Ms Kwinana, you say in this paragraph that Ms Hofmeyr read, you are saying that while the SAA – you say:

“From the foregoing it is clear that there is no
commitment on the part of Dr Dahwa to the
resolutions of the Durban Road Show. No positive
outcome has eventuated since we went on a road
show judging by numerous enquiries from would-be
service providers that have gone unanswered. The
situation, as it presents itself, amply demonstrates
20 that Dr Dahwa is hell-bent on sabotaging and
derailing the transformational agenda of the present
government in general and that of SAA in particular
while the SAA board is doing all in its power to
translate government’s intent of economic
empowerment into concrete reality to extricate the

African majority from the quagmire of poverty, Dr Dahwa is equally doing his best to keep the same people...”

That is the African people.

“...in economic bondage.”

This is an African person that you are talking about. This is a person from Zimbabwe, brothers and sisters who have suffered under colonialism, who have suffered under the white rule. This is an African person that you are talking
10 about, Ms Kwinana. You are saying while you are trying to empower economically black people in South Africa, you are saying he is doing his best to keep African people in economic bondage. You say:

“He is part of sinister retrogressive agenda which is aimed at reversing the transformation agenda of the present government. His behaviour...”

You say.

“...smacks of insubordination and conspiracy against the SAA board.”

20 You say:

“His attitude may be located in the fact that he does not share the agony of the people of South Africa”

He is from Zimbabwe, he has suffered just like the African people in South Africa. Shoo.

Anyway, let us go to page 241 bullet point 3 you say

that you recommend that the Chairperson should charge Dr Dahwa with- and I go to bullet 3:

“Refusal or failure to carry out lawful and reasonable instruction.”

What are you talking about there?

MS KWINANA: Chair, this lawful and reasonable instruction would relate in this previous tender that I talked about, the jet fuel specifically, where basically we managed to negotiate 15% from Engen to be shared by 60-odd black
10 fuel suppliers. So basically what I was saying here, refusal or failure to carry out lawful and reasonable instructions.

CHAIRPERSON: Who had given this instruction that you are talking about to him?

MS KWINANA: He was given by the board.

CHAIRPERSON: Who in the board conveyed the instruction to him or was he called to a board meeting and the board told him the instruction?

MS KWINANA: No, Chair, as I said, there were road
20 shows and in the road shows there would be commitment and in those commitments like, for instance, you would go and speak to this example, Engen or Shell and then ...[intervenes]

CHAIRPERSON: No, I do not want that whole history, Ms Kwinana, what I want is – you said here the Chairperson

should charge him with a refusal or failure to carry out a lawful and reasonable instruction. I am asking the question, who conveyed to him this instruction that you say he failed or refused to carry out?

MS KWINANA: It is the members of the board, Chair.

CHAIRPERSON: Which members of the board?

MS KWINANA: The board takes a collective decision, Chair.

CHAIRPERSON: Sorry?

10 **MS KWINANA:** The board takes a collective decision, so ...[intervenes]

CHAIRPERSON: Did this all convey this instruction to him?

MS KWINANA: Yes, Chair.

CHAIRPERSON: At a meeting?

MS KWINANA: No, not in the meeting, in the road shows that we were attending.

20 **CHAIRPERSON:** So there was a road show where all the board members were present and they all gave him this instruction?

MS KWINANA: They may not necessarily be all present but most of them would be there and in fact, Chair, when these road shows happened, the board members who were in the road shows, had a mandate from the other board members. That is why I am saying this instruction

basically was from the board because even if it was two or three or four board members that attended they would have ...[intervenes]

CHAIRPERSON: Were you one of those board members?

MS KWINANA: Yes, Chair.

CHAIRPERSON: Was Ms Myeni another one?

MS KWINANA: Yes, Chair.

CHAIRPERSON: And what was the instruction again? Just tell me in clear terms.

10 **MS KWINANA:** The instruction was that considering that the board has gone to negotiate with Engen and Engen has agreed from their contract to put aside 15%. That means if they were supplying 100% of the jet fuel, they would supply 85% and 15% would be supplied by the 60-odd black companies. So basically Engen with their procurement process, they had agreed. So basically what Dr Dahwa was supposed to do, Dr Dahwa was supposed to make sure that the 15% that has been agreed by Engen – remember that other companies did not agree, that is fine, but at
20 least those companies that agreed that okay, then we can supply 85% and then 15% you can take.

So Dr Dahwa was supposed to carry out that mandate, the mandate of going to Engen and say Engen, you are agreed on 85%, here are the companies ...[intervenes]

CHAIRPERSON: Which law said you could do this, Ms Kwinana? Which law said you could award an entity, a business without that entity taking part in a procurement process?

MS KWINANA: Chair, the procurement process was done and then now we negotiated with Engen.

CHAIRPERSON: No, no, no, no, what you have said to me is you instructed Dr Dahwa to award a certain entity 15%.

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

CHAIRPERSON: Of business that was supposed to go to another one.

MS KWINANA: No, Dr Dahwa would not be in a position to do that.

CHAIRPERSON: What did you want him to do?

MS KWINANA: That is what I am explaining, Chair, I am saying ...[intervenes]

CHAIRPERSON: Ja, I am asking what did you instruct him to do?

20 **MS KWINANA:** We wanted Dr Dahwa to carry forward from the negotiations that were made with Engen where Engen was saying we are giving away 15% so that SAA, you can be supplied by black people.

CHAIRPERSON: What do you mean carry forward? What was – what in practical terms was he supposed to do?

MS KWINANA: To carry forward, Chair.

CHAIRPERSON: What was he supposed to do?

MS KWINANA: What I mean by carrying forward is because negotiations had happened with Engen and Engen agreed that 15% will be supplied by the black firms, by the black companies and therefore, Dr Dahwa needed to make sure that the agreement between Engen and the other companies do happen.

CHAIRPERSON: What was he supposed to do?

10 **MS KWINANA:** He was supposed to call a meeting, if I can be like saying line by line what he was supposed to do.

CHAIRPERSON: He was supposed to call a meeting with Engen as a follow-up of what they agreed previously, call a meeting with Engen, call a meeting with all the six companies, put all of them together in the room and say Engen, as you agreed, here are the companies that are going to supply 15% of the jet fuel that you are giving away.

CHAIRPERSON: Why did he have to do that?

20 **MS KWINANA:** That was part of pushing the transformational agenda from the side of SAA.

CHAIRPERSON: Which law said he could do that?

MS KWINANA: Even if there is no law, Chair, but what – that is how we were pushing the black economic empowerment in SAA.

CHAIRPERSON: You see, that might be the problem, that you do not care whether there is a legal framework within which you are acting. You say even if there is no law we will do it, that might be the problem. Ms Hofmeyr, continue.

MS KWINANA: Chair, I would actually, if I may, just like to pick up on one final point arising from your question. You see, what troubles me, Ms Kwinana, you articulate the charge as being his failure to follow lawful and reasonable
10 instructions in line with the set aside policy but, you see, you wrote that letter to Ms Myeni on the 9 October 2015 and on the 28 September 2015 SAA had been told by National Treasury's Chief Procurement Officer that this whole set aside policy was unlawful and had to stop with immediate effect. So how could Dr Dahwa in good conscience, if he was concerned about acting lawfully at all, ever have acted on that instruction?

MS KWINANA: You know, National Treasury here was talking about what was supposed to be implemented by
20 SAA. This one that I am talking about, about the 15%, remember that it is not supposed to be implemented by SAA like the procurement process of SAA because we have already negotiated with Engen and therefore, that does not have anything to do with the 30% set aside. The 30% set aside that we were talking about, that was never

implemented, is the 30% set aside by SAA.

Remember that this 15% was not going to be set aside by SAA, it was going to be set aside by Engen.

ADV HOFMEYR: Chair, we are at eleven and we did start earlier this morning. I wonder if it is convenient to take the break now or I am happy to go on, it is entirely up to you, Chair.

CHAIRPERSON: I think let us take the break at quarter past.

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

CHAIRPERSON: Ja, okay.

MS KWINANA: Chair, may I have a comfort break, Chair?

CHAIRPERSON: Sorry?

MS KWINANA: Comfort break, Chair.

CHAIRPERSON: Okay, alright. Then we will have – when the witness says comfort break, we will have a comfort break. Okay, we will just take the tea break. We will resume at quarter past eleven.

ADV HOFMEYR: Thank you, Chair.

20 **CHAIRPERSON:** We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay, let us continue.

ADV HOFMEYR: Thank you, Chair. Ms Kwinana, towards the end of the first session before our break we were

looking at that letter that you had written to the Chairperson on the 9 October and in that letter you called for Dr Dahwa to be charged with those various charges that you had set out. Do you know what then happened? Was he disciplined?

MS KWINANA: Yes, he was disciplined, Chair.

ADV HOFMEYR: And did you note from his evidence before the Commission that in the process of his disciplining he entered into a settlement with SAA. Were
10 you aware of that?

MS KWINANA: No, Chair.

ADV HOFMEYR: And were you aware of his evidence where he indicated that pursuant to all of those events he ended up losing his house that he had bought with his family in order to be able to settle here when he was employed as procurement manager?

MS KWINANA: I am not aware of that, Chair.

ADV HOFMEYR: And were you also aware of his evidence – because I did understand you previously to say that you
20 had watched it. He also gave evidence that he - as at the date of his evidence which was June of last year had great difficulty back in Zimbabwe seeking employment. Were you aware of that?

MS KWINANA: No, Chair.

ADV HOFMEYR: Ms Kwinana, I picked up on a point

earlier which was the point about who was Dr Dahwa replaced by and we – you confirmed for us that was Mr Lester Peter and I indicated to you one of the first things that Lester Peter did was to circulate the 30% set aside agreement to Swissport to facilitate the policy there and you then have meetings with Swissport in early 2016 about that. Were you not concerned that pushing the 30% set aside line was unlawful and you should not be persisting with it by that stage?

10 **MS KWINANA:** Chair, we did not implement the 30% set aside.

ADV HOFMEYR: Ms Kwinana, again remember I absolutely take it for today's evidence that you were not ultimately successful in implementing it. I am asking about when you are in the throes of trying to implement it, that is why I said did you not – were you not concerned that you were pushing for the implementation of the 30% set aside at a time when National Treasury had told you it was unlawful?

20 **MS KWINANA:** Chair, we pushed the 30% set aside before the National Treasury said it was unlawful. When National Treasury said it is unlawful then we stopped immediately and we said to the National Treasury give us guidance.

ADV HOFMEYR: You did not stop immediately because on

the 15 December 2015 Mr Lester Peter, the person who replaced Dr Dahwa, sent an agreement that Swissport was required to sign setting aside 30% of that contract. Your comment?

MS KWINANA: The 30% set aside by Swissport is not the 30% set aside by SAA. We have got nothing to do with the 30% set aside by Swissport, we are nothing at Swissport of – or let me say, I am nothing at Swissport and therefore I would not push the 30% set aside to be implemented by
10 Swissport. However, I would push the 30% set aside to be implemented by SAA if it was not allowed but I could not push it because National Treasury and DTI did not allow for us to do that.

ADV HOFMEYR: No but, Ms Kwinana, we looked at that agreement yesterday. It said they must set aside 30% and SAA is going to retain the revenue of the 30% and give it to the BEE partner of its choice. How can that not be pushing for the implementation of the 30% set aside?

MS KWINANA: Chair, the 30% set aside that we are
20 talking about is the 30% set aside that would be implemented by SAA. If Swissport wanted to push their 30% set aside, we, as SAA, did not feature anywhere in their policies of pushing aside the 30%.

ADV HOFMEYR: Ms Kwinana, it was a tripartite agreement, that means there are three parties to it. SAA,

Swissport and the yet to be named 30% BEE partner that SAA was going to select. Ms Kwinana, how could SAA not have been involved in that?

MS KWINANA: Chair, I am not going to comment on the tripartite agreement that you showed me yesterday, I was not aware of that until you showed me yesterday and, therefore, I will talk about the SAA trying to push the 30% set aside as SAA, not Swissport doing their 30%.

CHAIRPERSON: Well, you cannot not comment when you
10 said SAA was not involved and Ms Hofmeyr says to you but SAA was party to an agreement that sought to put aside 30% that it wanted to give to another entity that was yet to be named. So do you not agree that if SAA was involved in such a party – such an agreement was a party to such an agreement, that was involvement by SAA?

MS KWINANA: Chair, the tripartite agreement, I was not aware of the tripartite agreement and I ...[intervenes]

CHAIRPERSON: You were not aware of it, as an individual?

20 **MS KWINANA:** Yes and I said yesterday it was my first time to see the draft agreement that Adv Hofmeyr showed me.

CHAIRPERSON: But you agree that the fact that SAA was party to such an agreement means that it was involved in setting aside or it sought to set aside that 30%. All you

might say is you were not aware of it but that was involvement.

MS KWINANA: My knowledge, Chair, of the 30% set aside, I have tried to explain it that the 30% set aside that SAA was trying to implement was never implemented. The tripartite agreement ...[intervenes]

CHAIRPERSON: No, no, Ms Hofmeyr has explained more than twice that she accepts that the actual implementation might not have happened but there were efforts to try and
10 implement the 30% set aside and that is what she is talking about when she refers to this agreement. So the question is, do you not agree that if SAA was party to such an agreement then SAA was involved in attempts to set aside – to implement the 30% set aside.

MS KWINANA: Chair, I do not – I do not even want to comment about the tripartite agreement.

CHAIRPERSON: Well ...[intervenes]

MS KWINANA: The agreement that I can talk about is the agreement that we would envision where this 30% set
20 aside would happen.

CHAIRPERSON: Ms Kwinana, when you are asked a question and you do not answer it or you do not want to answer it, it does not speak well of you as a witness. It is the kinds of things that Ms Hofmeyr may in due course rely on to say you were evasive as a witness, to say you were

dishonest.

When you were being asked a question and you knew the answer but the answer would be inconvenient, you would then decide to say I am not commenting instead of being honest and say this is the answer, even if it is inconvenient, even if it does not put you in a good light but because you are an honest person, you give the answer. When you say I am not going to comment and you start giving an answer to a question that has not been asked, it
10 does not say – it does not speak well about you as a witness.

So I am going to ask you the question again. Would you not agree that if SAA was party to such an agreement then it was involved in attempts to implement the 30% set aside.

MS KWINANA: For the sake of progress, Chair, let me say yes.

CHAIRPERSON: Sorry?

MS KWINANA: For the sake of progress, Chair, let me
20 say yes.

CHAIRPERSON: You must not say for the sake of progress, you must say – give an answer that you honestly is the correct answer. If you say for the sake of progress it gives the impression that you do not believe honestly that that is the correct answer and I do not – I am not asking

you to give me answers that you do not believe to be true, all I want for you is honest answers. If you truly believe that that was not involvement or in efforts by SAA to implement the 30% set aside you say so.

MS KWINANA: Chair, as I said, that tripartite agreement, it was the first time for me to see it and therefore for me to comment and say it was an effort for the involvement of SAA, I really do not think that I would be in a position to confidently say so considering that I was not even aware
10 that there is a tripartite agreement.

CHAIRPERSON: Ms Hofmeyr.

ADV HOFMEYR: So can I just get clear, if we move away from the tripartite agreement, is your evidence that you yourself did not take any steps after let us call it late September 2015 to advance the 30% set aside policy of SAA?

MS KWINANA: No, Chair, after we received the letter from DTI and we responded then we never decide to push for the 30% set aside.

20 **ADV HOFMEYR:** I want to be very specific because you have answered with “we” and I want to focus particularly on you.

MS KWINANA: Okay.

ADV HOFMEYR: Right. Did you ever after the National Treasury letter of 28 September 2015 try and push the 30%

set aside?

MS KWINANA: No, Chair.

ADV HOFMEYR: You did not. You did not hold any meetings with Swissport and – let me just back for a moment – we discussed the 10 February 2016 encounter yesterday but can I just have your evidence as to whether you were involved in any other meetings to facilitate a 30% set aside between Swissport and a BEE partner for Swissport?

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

ADV HOFMEYR: You did not?

MS KWINANA: No.

ADV HOFMEYR: You are absolutely certain about that, Ms Kwinana?

MS KWINANA: Yes, Chair..

ADV HOFMEYR: Right, we were talking about Mr Lester Peter ...[intervenes]

CHAIRPERSON: Maybe just to make – just in case the transcript does not catch that, that last answer was: Yes,
20 yes, yes. Is that right?

ADV HOFMEYR: Correct.

CHAIRPERSON: Ms Kwinana, your last answer was yes.

MS KWINANA: I did not have any other meeting with Swissport.

CHAIRPERSON: You did not take part in pushing for the

30% set aside after National Treasury had sent its letter saying the 30% set aside was unlawful.

MS KWINANA: Yes, Chair.

CHAIRPERSON: Ja, okay.

ADV HOFMEYR: And no meetings with Swissport and a prospective BEE partner, your answer was no, you did not.

MS KWINANA: Yes.

ADV HOFMEYR: Thank you.

CHAIRPERSON: One second, Ms Hofmeyr. Ms Mbanjwa?

10 **MS MBANJWA:** Thank you, Chair, I just want clarification from Ms Hofmeyr. Please, if I heard her incorrectly, just correct me. The document which you were referring the witness to, is it that Swissport agreement that appears in DD19, 132.45?

ADV HOFMEYR: I am not referring her to any document.

MS MBANJWA: No, not now. I think you were talking about a document where you said that there was an agreement which you referred her to yesterday.

ADV HOFMEYR: It is the tripartite agreement.

20 **MS MBANJWA:** I just want to make sure that I have got the same ...[intervenes]

ADV HOFMEYR: Sure, let me find it for you.

MS MBANJWA: It is not the – ja, it is a standard ground handling.

ADV HOFMEYR: No, it is not that one.

MS MBANJWA: Okay, can I please get a reference to that? I will allow her to continue, Chair, I just want to get the reference for that. Thank you for that.

CHAIRPERSON: Okay.

ADV HOFMEYR: Should I maybe provide it at the break?

CHAIRPERSON: Yes, ja, that is fine. Ja.

ADV HOFMEYR: Sorry, it is not at the top of my mind or would you like it now?

MS MBANJWA: No, it is find after a break, I will just ask
10 for the document you are referring to.

ADV HOFMEYR: Certainly. Oh sorry, no, I can do it quite swiftly, I think I have the right one in front of me.

MS MBANJWA: And then the ...[intervenes]

ADV HOFMEYR: You will find it in the Memela – Ms Memela's bundle which is DD25A and you will find it at page 291.

MS MBANJWA: And then the second thing which I just want to confirm, were you saying that in that 30% set aside it was said that SAA would choose the BEE partner?

20 **ADV HOFMEYR:** Chair, really, I mean, I am happy to give a reference.

CHAIRPERSON: Ja.

ADV HOFMEYR: But Ms Mbanjwa must please pay attention to the questions that I ask.

CHAIRPERSON: Ja. Yes.

ADV HOFMEYR: I am not here to clarify for Ms Mbanjwa.

CHAIRPERSON: Yes.

MS MBANJWA: Chair, can I please respond to that?

CHAIRPERSON: Yes.

MS MBANJWA: Because it is one of those things which I just simply cannot accept. I have a right if I do not hear a question. I have been instructed by the Chair, whom I respect, not to make interruption. If I do not understand a question I have to ask for the question to be repeated. It
10 does not matter, Ms Hofmeyr, how irritated you become, it is a right I have. Thank you, Chair.

CHAIRPERSON: Just to bring this to finality. Yes, there was a reference that SAA said they were going to choose the BEE partner.

MS MBANJWA: Thank you, Chair.

CHAIRPERSON: Okay. Okay, let us continue.

ADV HOFMEYR: Right. So we were talking about the replacement of Mr Lester Peter taking the position of Dr Dahwa. Are you aware that Ms Mpshe was also
20 disciplined?

MS KWINANA: Yes, Chair.

CHAIRPERSON: And who was she replaced by?

MS KWINANA: By Mr Musa Zwane.

ADV HOFMEYR: And what ...[intervenes]

CHAIRPERSON: By Mr who?

ADV HOFMEYR: Musa Zwane, Chair.

CHAIRPERSON: Okay. Ms Kwinana, please remember to look this side as you answer so I can hear. Okay, Mr Musa Zwane, okay, alright.

ADV HOFMEYR: And that was towards the end of 2015, is that right? Maybe early 2016 I think it was. So what position did Mr Zwane hold then?

MS KWINANA: He was the CEO of South African Airways Technical.

10 **ADV HOFMEYR:** Musa Zwane?

MS KWINANA: Yes.

ADV HOFMEYR: No but he was replacing Ms Mpshe. Ms Mpshe was the Acting CEO of SAA, correct?

MS KWINANA: Yes.

ADV HOFMEYR: So he took her position which is Acting CEO of SAA, is that not correct?

MS KWINANA: Yes, that is correct.

ADV HOFMEYR: So you referred to SAA Technical.

20 **CHAIRPERSON:** No, she was saying before Mr Zwane took Ms Mpshe's acting position he was CEO of SAA Technical.

ADV HOFMEYR: Sorry, I did misunderstand that. Can I make sure that I understand? So Mpshe was Acting CEO of SAA, right?

MS KWINANA: Yes.

ADV HOFMEYR: At the time that she was in that position did Mr Musa Zwane hold a position anywhere?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: And what was that?

MS KWINANA: He was the CEO of SAAT.

ADV HOFMEYR: Right, thank you, Chair. And then Ms Mpshe is suspended for disciplinary processes to run and then Mr Musa Zwane takes over her position, is that correct?

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

ADV HOFMEYR: So then he becomes acting CEO of SAA, is that right?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: And who was going to fill the CEO position at SAAT albeit on an acting basis?

MS KWINANA: The acting position was taken by Mr Malola.

ADV HOFMEYR: Malola-Phiri, yes. We have heard some evidence from him previously and about him. So towards
20 the end of 2015, early 2016, we have got Mr Malola-Phiri as Acting CEO of SAA Technical and we have got Mr Musa Zwane as Acting CEO of SAA. Have I got that correct?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Thank you. Now Mr Musa Zwane was the person who signed the Swissport agreement, the

Arata(?) one that Ms Mbanjwa was asking about earlier and that we saw yesterday. Do you recall that?

MS KWINANA: No, Chair.

ADV HOFMEYR: You do not. Well, in his position of Acting CEO I assume it would not surprise you that he would be the signatory to that agreement, correct?

MS KWINANA: That is right.

ADV HOFMEYR: Yes and that was the agreement that was the culmination of the efforts with Swissport to pursue
10 the 30% set aside, is that correct?

MS KWINANA: I do not know where does the 30% set aside feature with him, the Swissport agreement.

ADV HOFMEYR: You will remember that I took you to two clauses yesterday. I agree with you it does not talk about 30% because on Mr Kohl's evidence they would not accept that but eventually by March 2016 what they would accept are those clauses 8.1 and 8.2 that required them to partner with 51% black owned companies in certain of the performance under the contract and then you will recall
20 that important clause 8.2 which was the one that required them to buy the SAAT GPUs. Do you recall that?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Right, so that is why I said that is in a sense a culmination of as far as the 30% set aside got at its implementation. Do you accept that?

MS KWINANA: I do not know if that was the culmination of the 30% set aside. My knowledge of Swissport on its own is that they are BEE compliant, so now if you are talking about Swissport and the 30% set aside then that is where I am not understanding it.

ADV HOFMEYR: They were already BEE compliant, were they not?

MS KWINANA: Yes, that is what he said.

ADV HOFMEYR: H'm. So it would not make sense for
10 them additionally to have to part with 30% of their revenues to a preselected supplier, would it?

MS KWINANA: Yes.

ADV HOFMEYR: And then ...[intervenes]

CHAIRPERSON: Sorry, Ms Mbanjwa?

ADV HOFMEYR: Oh, sorry.

MS MBANJWA: Chair, I am sorry to launch an objection. We have paragraph 8.1 and 8.2 here in this page 132.49. There is absolutely nothing about the 30% set aside.

CHAIRPERSON: That is for re-examination, Ms Mbanjwa.

20 **MS MBANJWA:** That is a wrong question to put to the witness.

ADV HOFMEYR: The record will show, Chair, that I said in exact terms that I was aware it did not refer to the 30% and then I went on. The record will show that. Let us then go – are you aware that three days after Mr Zwane was put

into the acting CEO position at SAA after Ms Mpshe had left that he signed a Section 54 application to National Treasury that Ms Myeni has tried to change the structure of the Airbus swap transaction with.

MS KWINANA: No, I am not aware of that, Chair.

ADV HOFMEYR: You see, the reason why I am focusing just a little bit on these positions that involved replacements of persons, Ms Kwinana, is because Commission over the last two years has heard a lot of
10 evidence about people who were in state owned entities tried to resist efforts of unlawful conduct taking place then being required or pushed out by various means and then replaced by others who were either more compliant or participating in those unlawful efforts. I would like to ask you whether you think that that occurred at all with the replacement of Dr Dahwa with Mr Lester Peter and the replacement of Ms Mpshe with Mr Musa Zwane.

MS KWINANA: Definitely no, Chair.

ADV HOFMEYR: And can I ask you, was there any
20 corruption and fraud, to your knowledge, that took place at SAA and SAA Technical while you were on the boards?

MS KWINANA: Except for the ones that are appearing in the Open Water reports.

ADV HOFMEYR: Not beyond that. And that, as I recall it, was the one you referenced yesterday was the spare parts

investigation, is that right?

MS KWINANA: Yes.

ADV HOFMEYR: So on the components tender you say, if I understand your evidence, there was no corruption involved?

MS KWINANA: No, Chair, as far as I know.

ADV HOFMEYR: Not as far as you know. Thank you. I would like to go to that tender, if we may, that is the components tender that ends up being awarded in May of
10 2016 to the joint venture of AAR and JM Aviation. Now there are allegations – and we have heard evidence before this Commission, so it is even in a sense more than allegations at this point, the Commission has received evidence that there was corruption involved in the appointment of JM Aviation and AAR as the ultimately successful bidders in that tender. Are you aware of that evidence?

MS KWINANA: No, Chair.

ADV HOFMEYR: You are not aware of it. Can you tell us
20 who Ms Cheryl Jackson is?

MS KWINANA: First can I have this evidence where fraud and corruption happened?

ADV HOFMEYR: Chair, I am certainly going to come to that.

CHAIRPERSON: Ms Kwinana, the question or what you

are being asked is to tell us who Ms Jackson is. Do you know her?

MS KWINANA: I think it is the director of AAR.

ADV HOFMEYR: Of AAR.

CHAIRPERSON: I am sorry, I cannot hear you.

MS KWINANA: Director of AAR.

CHAIRPERSON: Oh, okay.

ADV HOFMEYR: And who is Ms Kuki Mdlulwa?

MS KWINANA: Kuki Mdlulwa was one of the consultants
10 of SAA, legal consultants of SAA.

ADV HOFMEYR: Thank you. Sorry, I just need to make a note there. Now you I think mentioned yesterday that you were aware of the evidence that Ms Sambo gave before the Commission, is that correct?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: And you received a Rule 3.3 notice in advance of her evidence.

MS KWINANA: Yes, Chair.

ADV HOFMEYR: And at that point you sent in a response
20 that was just a statement, it was not an affidavit. As I understand it, you were not legally represented at that point, is that correct?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Okay, you said in that statement - sorry, let me go back first because you asked me where are the

allegations of corruption and fraud. Now Ms Sambo's evidence was that in a meeting that you had with her, you said to her you wanted to get your hands on three big contracts before you left SAA. Are you aware that she gave that evidence?

MS KWINANA: Yes.

ADV HOFMEYR: And she also said that she had a second meeting with you at which you introduced her to someone whom you called *ihashi*, that person was Ms Ndlulwa, who
10 we just discussed and Ms Sambo's evidence was that at that meeting you said that you were going to demand a payment from AAR for yourself, for Ms Memela and Mr Zwane. Do you recall that evidence?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Chair, just for record purposes that can be found in EXHIBIT DD18, page 19, paragraphs 60 and 64. We do not need to go there. Now you did deny those allegations in your statement that you provided to the Commission. I can take you there, if you would like me to,
20 but the part of it that I would like to pick up on is you said that Ms Sambo is a "pathological liar" and it was she who was the *ihashi* for AAR. Do you remember saying that in your statement?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Can you just expand on that a bit? Why

is she a psychological (sic) liar and why is it she who was the *ihashi*?

MS KWINANA: The reason why I am saying a pathological liar is because all the things that she said were untrue or were false. If you think about it, Chair, Ms Sambo was dumped by AAR 2014, if I think, was dumped in 2014 and then now it is my first time to meet with her. I called a meeting and Ms Sambo is saying Ms Memela said I want to be introduced to Ms Cheryl Jackson and then she
10 is saying that is in the last quarter of 2015. My understanding of the last quarter in 2015 is October, November, December 2015 and now in May, few months before that, we went to Chicago. Our host was Ms Cheryl Jackson and then now I go to Ms Sambo and say I need to be introduced to Cheryl Jackson. That is the blatant lie.

Now I call her and then I get to her house and stay for about ten minutes and say I want to get my hands on this tender and this tender and this tender and then I go and then I arrange a meeting. That is the first time for me
20 to meet with her and then I arrange a meeting at Protea Hotel and then at Protea Hotel the meeting is between Dr Tambi, who is the board member of SAA, myself, Ms Nzuli and Ms Sambo. I say in this meeting I want to lay my hands on three contracts I want to get a 100million from AER, and the people who are going to benefit for this is

myself, Ms Zwane and Ms Memela, now a reasonable person would ask a question as to why was Ms Ndluli here, why was she there herself, Ms Sambo, why was Dr Thami there if I am saying I need this, I will pay, I will get this money from AER.

Now that is blatant lies and Ms Sambo in her affidavit she had literally about 40 statements where she is saying she cannot remember, she cannot remember, she cannot remember, and all of a sudden she remembers that
10 in the last quarter of 2015 I wanted to meet with her, so basically that is why I am saying Ms Sambo is such a pathological liar and in fact I did say she is so spoilt that she wants things, she wants to be spoon fed, she doesn't understand the procurement processes. She doesn't know that if she did not put in the tender, she has zero chances of winning the bid and another thing, she knows that she was ditched in 2014.

No, if I wanted to get my hands on the tender, why would I go to her for God's sake how would I go to her and
20 say, I want 100million and the reason why I am saying she is the one – and in fact, she said when she came to us to complain about her relationship with AER which basically, was the reason why she called us, I said, let me arrange a meeting with Dr Thami because I will be going anyway so if you have an issue with SAA Technical then let me arrange

a meeting and that was the reason for the meeting, basically and then, now – so basically, I really do not know why I would literally go to her and knowing that she no longer has a relationship with AER and we met with AER in May and therefore if I wanted 100million from AER, I would simply go to AER and get that 100million, why would I go to her. That's why I am saying Ms Sambo is such a pathological liar and in fact, she did not even tender in that components tender, I don't know why is she disgruntled
 10 like that and I understand that she – Ms Memela tried to assist her but because she is such a spoilt brat, maybe she is used to getting things her way but now, if you don't even put your tender how was she expected to win the tender. So, basically, that's the reason why, basically, I did not even put an effort to answer her affidavit because it is clear that she is a blatant liar, thank you Chair.

CHAIRPERSON: What was the meaning that you were attaching to the word, "lhashe", I think she may have explained when she was giving evidence but I've forgotten
 20 but obviously know what the literal meaning of "lhashe" is, so if that is IsiZulu or IsiXhosa, that's a horse but there may have been a particular meaning that it was – that was attached to it, what was that?

MS KWINANA: What Sibongile said in our meeting when she was complaining about AER, she said, her relationship

with AER started as early as 2012 and she has been running around trying to get AER people, she got them to meet the Department – I think the Department of Public Enterprises tried to meet with this person and this person tried to meet with people at SAA and therefore she has been running since 2011 and then now, she is being dumped and therefore she has been a runner for all these years. So, basically “Ihashe” is a runner Chair. So, when she was telling me about this, I said, oh – and in fact, I
10 said to her, oh that means [5.32 African language] running left, right and centre, up and down for them.

CHAIRPERSON: Okay.

MS KWINANA: Yes.

CHAIRPERSON: Okay, Ms Hofmeyr?

ADV HOFMEYR: Thank you Chair. As I understand Ms Sambo’s allegations against you, Ms Kwinana, it’s really that you were endeavouring to solicit a bribe from AER, do you understand her allegation similarly?

MS KWINANA: I understand her allegations but what she
20 needed to do, she needed to prove that, I wanted to solicit a bribe, that is number one and then number two, she needed to tell me, why should I go to her if I wanted to solicit a bribe from AER because at that time there was no longer a relationship between her and AER and if I wanted a bribe at AER, I would have gone to AER and Chair, I

hope your investigators did go to AER to check if I did solicit that bribe.

ADV HOFMEYR: Ms Kwinana, my question was just whether you understood her evidence in the same way as I did, that she was accusing you of having tried to solicit a bribe. I understand you to agree with me, that is her claim against you, correct?

MS KWINANA: That is her claim.

ADV HOFMEYR: And I understand your evidence to deny
10 that you did not, at any point, solicit a bribe in relation to the components tender, is that correct?

MS KWINANA: Yes Chair.

ADV HOFMEYR: Right, do you believe that Ms Memela is a pathological liar too?

MS KWINANA: I don't know.

ADV HOFMEYR: Okay, could she be, from your interactions with her?

MS KWINANA: There was never an indication to me that she is lying or not.

20 **ADV HOFMEYR:** You see, she engaged in some WhatsApp communications with Ms Sambo in around 2017 in which she makes reference to your effort to solicit a bribe, so I'd like to take you to those WhatsApp communications so that we can have your comment on them. You'll find them in Ms Sambo's Bundle, now that is

DD18 and we open it at page 540. Well actually could we start at 539, just a page earlier? So, the page is 539 of Exhibit DD18. So this was a set of WhatsApp communications that Ms Sambo provided to the Commission, they start quite a bit earlier in this Bundle but the one that I'm interested in is the one that starts right at the foot of page 539, it's the last dated entry there, you'll see it says 2017/10/16 and the time is 21h47.10 and then identified as the communicator on the WhatsApp there is,

10 Nontsasa SAAT Memela, do you see that Ms Kwinana?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Right, so this is a response that Ms Memela sends to Ms Sambo referencing an email that she got in the morning, I think I'm going to read it all to the part that I'm interested in, Chair, just because it's helpful to get context for what's happening, if I may. So, what it says there is – this is Ms Memela writing to Ms Sambo, she says,

20 “Sibongile I'm really trying to analyse your email of this morning. I'm not sure what your intentions are but let me remind you of something, when you came to my office I advised you to write a background of what work you did with them and what agreement you guys had in place and how you feel they owe you for introducing them to South Africa. I went as

far as saying, make sure you breakdown everything you did for them and send them an email where you copy us so that, base on that, we will intervene and schedule a meeting but the email you sent today, was intended for something else and it was nothing of what we discussed, so I'm really not sure what you were trying achieve by that one-liner. You came with your partners for a meeting in 2014 and you asked for help, first from the CEO who refused to give you the prices for the tender",

10

And this is the part I'd like to draw your attention to, Ms Memela goes on and says the following,

"And in 2015 you came to me as a friend and asked for information for the short tender which you wanted to give to your partner, but looks like you ended up not giving it to them, since you wanted money upfront, they tendered anyway with your company name and that of Ndizane. You guys (yourself, Cookie Ndluli and Chair) were negotiating with Cheryl where there was an agreement of what amount was going to be paid out to you guys if there was success. Unfortunately, Cheryl changed her mind, claiming it was illegal in her country to pay out bribes but anyway they didn't succeed in that tender, Air France did",

20

Do you see that?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: So as I read that, and you tell me if you read it differently, Ms Memela is talking about an occasion in the past where you, Ms Ndluli and Ms Sambo were trying to solicit a bribe from Cheryl Jackson of AER, do you read it in the same way as me?

MS KWINANA: I read it in the same way Chair, and I consider this as nonsense.

10 **ADV HOFMEYR:** Nonsense?

MS KWINANA: Yes.

ADV HOFMEYR: You say, you never ever solicited a bribe in relation to the components tender, is that correct?

MS KWINANA: Definitely.

ADV HOFMEYR: So why would Ms Memela just make this up in her private communications with Ms Sambo?

MS KWINANA: I don't know Chair, and I don't even know the people that she is talking about here, Duduzani and okay Bongani, maybe we met at Air France but Duduzani I
20 don't know and I don't know Rafeeq so I really do not know why would she write that.

ADV HOFMEYR: Thank you, I'd then like to move to the actual tender process for AER, well let's call it the components tender, the ultimately successful on the last one, but there's a lot that happens in between. Were you

aware that there were numerous tenders prior to the last one in which they were successful?

MS KWINANA: Yes Chair.

ADV HOFMEYR: Yes, and the final decision-making body on those tenders, would have been the Board of SAA Technical, correct?

MS KWINANA: Yes Chair.

ADV HOFMEYR: It was a contract valued at – certainly more than a billion rand, correct?

10 **MS KWINANA:** Yes Chair.

ADV HOFMEYR: So, it would fall within the delegation of the Board, is that right?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: And on the 9th of May, as I have it, that final decision was taken on the last of those tenders to award it to the joint venture of AER & JM Aviation, do you recall that?

MS KWINANA: Yes Chair.

20 **ADV HOFMEYR:** Now while some of the other tenders that preceded it was still open, you travelled to America to visit AER's offices, is that correct?

MS KWINANA: Yes Chair.

ADV HOFMEYR: And yesterday – Sorry I sort of hesitate in asking that question because yesterday in your evidence, at a point when we were trying to engage with

you about the limits on communications between decision makers and bidders, I thought I heard you say, but it was okay when you went to America because the tender was not open at that stage.

MS KWINANA: Yes Chair.

ADV HOFMEYR: Yes, so can I just get clarity now, when you went to America to visit AER, was there a tender open in which AER was a bidder?

MS KWINANA: I'm not aware of that.

10 **ADV HOFMEYR:** You're not aware of, so when you said yesterday, it wasn't open, you're not certain now whether it was or it wasn't?

MS KWINANA: But definitely it was the tender between AER, that was won by AAR & JM Aviation.

ADV HOFMEYR: That we would agree on. So, AAR, in the – let me just get it right – had bid in the 29 October 2014 tender, not with JM Aviation and that is the one that was still open, if you can believe it, in May of – sorry in – when did you go, May of 2015, so it took really some time and it
20 was still open. Do you accept that it was still open when you travelled to AAR?

MS KWINANA: Yes Chair.

ADV HOFMEYR: You do, and in that encounter with AAR Ms Memela's evidence was that you went on private jets, facilitated by AAR, you had limousine rides from time to

time and dined at expensive restaurants. Do you confirm that evidence of Ms Memela's?

MS KWINANA: Ja, I wouldn't know about the expensive restaurants...[intervenes].

ADV HOFMEYR: They might have just been restaurants, ordinary.

MS KWINANA: Ja.

ADV HOFMEYR: Okay but you don't deny the private jets and the limousines?

10 **MS KWINANA:** Yes.

ADV HOFMEYR: Right, and I want to go back to where we were yesterday then, because you're a member of the Board of SAAT that was going to decide that tender that was open at the time that you travelled to the US, correct?

MS KWINANA: Yes Chair.

ADV HOFMEYR: And notwithstanding – oh sorry AAR was a bidder in that Tender, correct?

MS KWINANA: I didn't – I can't remember but I would think that they would be the bidders.

20 **ADV HOFMEYR:** They were, I mean, if it's necessary I'll take you to the letter but let's – can we proceed on the basis that they were?

MS KWINANA: Yes.

ADV HOFMEYR: Right, so you as the Chairperson of the decision-making body go on this trip to the US, interact

with a bidder while a tender is still open. Do you not regard that as irregular, Ms Kwinana?

MS KWINANA: Chair, if I can quickly tell you about the in summary, the summary of the tendering process? The reason why I would not even – the reason why I would not even know that there is...[intervenes].

CHAIRPERSON: Well, start your answer with saying whether you regard that as irregular, if you say you don't regard it as irregular then you can say why you don't
10 regard it as irregular.

MS KWINANA: I don't regard it as irregular Chair.

CHAIRPERSON: Okay, alright.

MS KWINANA: The reason why I don't regard it as irregular is because for the Board to know – the only time that the Board knows about the tender that is going on, is when it is at the final stage, at the final approval. Only if the delegation of authority requires that it be approved at the Board and therefore, if there was a tender that was going on at the time, we were in Chicago, I would not know
20 if there is a tender going on if it hasn't been brought to the Board.

ADV HOFMEYR: Do you not think that that is something that you should have been advised about?

MS KWINANA: No, I don't think so Chair. As I said, the tendering process starts from identification of the need and

then it goes to bid specification and then it goes to bid evaluation and all these people are different people, maybe, there's one or two people who are common and then there is bid adjudication and then there's EXCO meeting and then there is the Board. So basically, I don't – at no stage, was I advised that there is now a tender going on, until the tender gets to the Board. So, I find it quite normal that I wouldn't know about it until it gets into the Board.

10 **ADV HOFMEYR:** Ms Memela, who was the head of procurement at the time, joined you on that trip, correct?

MS KWINANA: Yes.

ADV HOFMEYR: So, you don't regard it as concerning that the head of procurement who would have known that the tender was open, didn't alert you to that fact before you took this trip?

MS KWINANA: No Chair, no, not at all.

ADV HOFMEYR: And why would she not be required to alert you, given that you're the ultimate decision maker on
20 the tender that was open?

MS KWINANA: As I said, Chair, there are many processes that would go up to there, you may find out that she may not even be aware that there was also a tender going on...[intervenes].

ADV HOFMEYR: As the head of procurement, she

wouldn't know that?

MS KWINANA: Most probably.

ADV HOFMEYR: For a contract worth more than a billion rand?

MS KWINANA: She may not be aware because those contract would happen – I'm not sure at what stage would she get involved but what I am saying is, at no stage did she tell me, with not a single tender that there's a tender going on. The only time that I would see that there is a
10 tender, is when it gets to the Board.

ADV HOFMEYR: So you have no knowledge that the company of which you are the Chair of the Board, is out on tender to try and get component services, you don't know at any point in time until you're asked to make a decision on it, is that your evidence?

MS KWINANA: Until I'm asked to make a decision but maybe – let me go back to before the bid specification, then there would be a Board submission that would say the components tender will be up for renewal, it's expiring on
20 this date and then we say, okay, then start with the process. When they start with the process, sometimes they would report that six months before the expiry of the contract because the tender processes take longer. So, basically when exactly the tender process is starting as long as we know in the beginning and then the tender

specification and everything and basically that one is just for noting to say that there's a big contract that is going to expire but if it doesn't happen it could have an impact on the operations of the business.

ADV HOFMEYR: So, you are given forewarning when tendering will take place on big contracts, correct?

MS KWINANA: Yes.

ADV HOFMEYR: And in relation to this one in particular, the one that was advertised in October of 2014 and was
10 still open in May of 2015, the Board became quite involved in that tender, didn't they, because you took a decision to retract it, at a point, didn't you?

MS KWINANA: Not necessarily, quite involved, the retraction also came as a submission to the Board and all the reasons by Management which had been stated, until it gets to the Board. So, when you say, quite involved, I tend to disagree with you on that.

ADV HOFMEYR: You were involved at the beginning, you know it's going out to tender, and you're involved when
20 you're asked to take a decision on it, correct?

MS KWINANA: Yes.

ADV HOFMEYR: Right, so in between it would be fair to assume, it's still open, correct?

MS KWINANA: Yes Chair.

ADV HOFMEYR: So, you did know that it was still open

when you went to the US?

MS KWINANA: You know Chair, there are so many tenders at SAA and SAA Technical and as a result, me, as the member of the Board, I do not have a book where I write that on this date, there was a notification that a tender is coming and then on that date the tender is advertised and on that date – no I don't have that. If they say, we note that the components tender is going to expire in the next six months and therefore we will go out to
10 tender, we say, yes that is fine.

ADV HOFMEYR: So, there are just too many tenders open at any point to keep your finger on one of them, correct?

MS KWINANA: Exactly.

ADV HOFMEYR: Exactly, and – so when you're going to go overseas to the premises ...[intervenes].

CHAIRPERSON: Sorry, Ms Hofmeyr can we take a five-minute break ...[intervenes]

ADV HOFMEYR: Of course.

CHAIRPERSON: And then we'll come back.

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

CHAIRPERSON: We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay let us proceed.

ADV HOFMEYR: Ms Kwinana do you accept that being flown in private jets and driven around in limousines are benefits to receive?

MS KWINANA: No Chair. They are not benefits. We were required to go to AAR as part of the due diligence and which has happened with many other companies including Lufthansa, including Air France, including Rolls Royce. Now I do not consider that I received any benefit when they transported me in a private jet. I really do not consider that
10 as a benefit at all.

ADV HOFMEYR: So just tell us about the due diligence. What were you doing a due diligence on?

MS KWINANA: For any company that we intend to work with in – at some stage there was a MOU non-binding MOU that SAAT had with AAR which basically was intended to take SAAT to the next level and therefore any company that we enter into as part of the due diligence we need to make sure that it is the company that exists; it is the company that is saying they are able to do and meet our requirements. So it
20 happens all the time.

ADV HOFMEYR: And I accept that if you are embarking on a partnership with an entity you would like to know quite a bit about them. And is that what the due diligence was designed to achieve for SAA Technical?

MS KWINANA: Yes Chair.

ADV HOFMEYR: Right. The challenge I have with that is that you took the trip before the MOU was entered into and while a tender was still open in which AAR was a bidder. Now you have said previous there were just too many tenders open at any point in time to keep track of them, is that correct?

MS KWINANA: Yes Chair.

ADV HOFMEYR: Do you not think though as the Chairperson of the board of SAAT that was ultimately going
10 to make a decision on that tender that it would have been required of you to find out; just make sure that before you go and visit AAR in the US there is not a tender that is open in respect of which you will later be a decision maker?

MS KWINANA: We were not going there Chair for the purposes of the tender. We were going there for the purposes of the partnership.

ADV HOFMEYR: And...

MS KWINANA: And therefore I did not see any need for me in fact it never even rang a bell that I need to go and check
20 if there is a tender going on and if AAR has tendered. No I did not and in fact as I am sitting here I really do not see any relevance in respect of that.

ADV HOFMEYR: So just to go back to the point that the Chair put to you yesterday. I want to suggest what the relevance might be.

You see AAR was competing with other tenderers in that very tender that was still open. And as the Chair put it to you yesterday that if you go and have dinner at a restaurant with one of the representatives of a bidder and one of their competitors sees you there they would be I would suggest quite fairly concerned about the fact that the decision maker is meeting with the competitor.

And so I would like to put it to you that similarly if the other tenderers found out that you were taking a trip
10 overseas aspects of which would be covered – the expenses of which would be covered by their competitor bidder they would regard that as unfair in the process. Do you accept that that would be unfair?

MS KWINANA: That would be unfair if SAA Technical did not do that to other tenderers. SAA Technical had been to Air France. SAA Technical had been to Lufthansa. SAA Technical had been to basically almost all the big suppliers of SAA Technical. So basically that was not abnormal.

ADV HOFMEYR: But in a particular open tender Ms Kwinana
20 I would put it to you that if only one of the bidders gets this opportunity to get close to you; to spend days with you while you are at their premises; to drive you around in Limousines and put you on private jets the other tenderers could fairly say but we do not have that access to the decision maker. And that is inherently unfair in this process.

MS KWINANA: Chair as I said SAA Technical has been to all these bidders.

ADV HOFMEYR: Yes but Ms Kwinana do you know that they went to those other bidders when tenders were open in respect of which there were other competitors?

MS KWINANA: Then that would be tested Chair.

ADV HOFMEYR: No do you know? Do you know whether those visits took place at a time when there were open tenders in respect of which there were other competitive
10 bidders?

MS KWINANA: I would not know Chair. Much as I did not know that there was an open tender at that time.

ADV HOFMEYR: That is the problem.

CHAIRPERSON: Yes you see Ms Kwinana you said that you going to AAR would be unfair if you did not do the same to others. And you said you had done the same or the board had done the same with others.

But the two cases cannot be the same unless you say in regard to the others the trips also occurred in
20 circumstances where there were bidders in a tender that was still open.

So if you do not have that information then you cannot use the other trips to the other service providers to justify to say it was not unfair to go to AAR at a time when the tender was still open. You – it is one thing to say

whether you were aware; you were not aware that they were party to a tender that was open.

MS KWINANA: I was not aware Chair. Much as I was not aware if there was a tender open where AAR had bid.

CHAIRPERSON: But if – let us say for argument sake you were aware would you agree that it would have been wrong to embark on such a trip at a time when the tender was still open if you were aware?

MS KWINANA: Chair even if I was aware I really would not
10 see anything wrong in us undertaking that trip. The reason being that there are rigorous processes that need to happen for – up to the stage where we get the recommendation and therefore that would not affect my decision whether I did go there or not.

And in fact maybe the tender that you were talking about as much as we went to AAR – AAR did not win that tender because the – they had some deficiencies in terms of the tendering processes.

ADV HOFMEYR: No.

20 **MS KWINANA:** So basically what I am saying is that would not impair my independence and thinking.

CHAIRPERSON: Ms Kwinana

MS KWINANA: Chair.

CHAIRPERSON: Do you really seriously mean what you are telling me?

MS KWINANA: Yes Chair.

CHAIRPERSON: That in your judgment there would have been absolutely nothing wrong for you as a member of the board that would make a decision on a tender in regard to which AAR had put in a bid for you to go on a trip overseas to their premises without the knowledge of other bidders and let them wine you and dine you over there. You say there would have been nothing wrong with that.

MS KWINANA: Chair the procurement processes are so
10 rigorous such that...

CHAIRPERSON: Shoo.

MS KWINANA: Even if I went to Chicago if the bidder does not qualify the bidder does not qualify.

CHAIRPERSON: I think Ms Kwinana quite frankly processes that in terms of which people are appointed as board members to SOE's must be reviewed. If that is what you think and you were the – you are a board member, you are a chartered accountant you think it would have been – there would have completely nothing wrong with that then there is
20 something wrong in the appointment process. Ms Hofmeyr.

ADV HOFMEYR: Ms Kwinana I want to pick up on a point. You recently said that it was okay to be there because AAR did not win that tender they ended up not qualifying, correct?

MS KWINANA: No Chair. I am not saying it would be okay because AAR did not win that tender.

ADV HOFMEYR: Hm.

MS KWINANA: I am saying as part of the due diligence we had to go there.

ADV HOFMEYR: Why ...

MS KWINANA: Whether AAR – whether AAR had bid or not our visit to AAR was not informed by whether AAR had bid or not.

ADV HOFMEYR: No but you...

MS KWINANA: Our visit was informed by the partnership
10 agreement that we wanted to enter into at that stage. So it was not informed by the tender. Even if AAR did not tender we would still have to go – to Chicago.

ADV HOFMEYR: No of course. If AAR did not tender there would have been no problem with you going. On that Ms Kwinana you and I agree completely. The problem is that you go with one of the bidders right. You are wined and dined by them and then they were not disqualified in this tender. Do you remember what happened with this tender?

MS KWINANA: I read in the document I may remember the
20 – the fact maybe incorrectly but it seems as if there was some move to disqualify them.

ADV HOFMEYR: No I think you might be confusing it. You see because what happens is you go to America; you get wined and dined by AAR; you come back and the board decides to retract that tender – that tender in respect of

which there were other competitors who might have been service providers to SAA Technical. And you decide to embark on the MOU with AAR. So your closeness with AAR led to a retraction of a tender in respect of which there were competitors to now form a partnership with AAR. Do you not regard that as problematic either?

MS KWINANA: Chair it was – it is problematic at all.

ADV HOFMEYR: Right. And if other competitors thought that the fact that you were in the US and being wined and
10 dined by one of the bidders led you to cutting them out of potential supply to SAA Technical and forging a partnership with the entity that had wined and dined you they would not have any complaints of unfairness. Is that your approach?

MS KWINANA: I do not know Chair.

ADV HOFMEYR: Okay.

CHAIRPERSON: You do not know what your approach is?

MS KWINANA: I do not know if they would complain or not.

ADV HOFMEYR: No I am asking whether if they complained they would legitimately do so.

20 **MS KWINANA**: That would depend Chair. It – that would be proved in the court of law as it has happened with AAR and Air France whether it is legitimate or not.

ADV HOFMEYR: We will come back to the litigation.

CHAIRPERSON: And if you do not get to a court of law it is fine.

MS KWINANA: Chair.

CHAIRPERSON: If you do not get to a court of law it is not a problem?

MS KWINANA: It is not fine Chair but as SAA Technical at the time we considered that was the best decision that we did and in fact as I am still sitting here.

CHAIRPERSON: Which decision now?

MS KWINANA: The decision to form a partnership with AAR because the process – the partnership process was embarked into and it was agreed that we needed to form a partnership hence the back of the MOU.

CHAIRPERSON: Did you get persuaded while you were overseas at AAR – being wined and dined by AAR that the way to go would be to retract the tender and enter into a MOU with AAR? Is it something you get – got persuaded of when you were overseas?

MS KWINANA: No Chair. I cannot be...

CHAIRPERSON: Or when you came back.

MS KWINANA: I cannot be persuaded by wining and dining of AAR Chair because...

CHAIRPERSON: But at what point did you...

MS KWINANA: I was in a position to wine and dine myself if I wanted to.

CHAIRPERSON: At what point did you see this point that the right way to go would be to retract the tender and enter

into a MOU with AAR? Was it while you were visiting AAR overseas or was it after you had returned?

MS KWINANA: Of course the MOU I am – I do not know the date but I would think the MOU would be entered after we have been there and seen the premises and seen what value can they add to SAA Technical

CHAIRPERSON: So what you saw on the trip would have influenced you to say we must go the MOU route?

MS KWINANA: Yes Chair.

10 **CHAIRPERSON:** So which means it was while you were overseas on this trip that you got persuaded that you must go the MOU route?

MS KWINANA: We did not – we did not get persuaded Chair. The purpose of our trip was to make sure that we confirm the resources that they said they had in the paper which we liked that this is the company that we can form a partnership with.

20 So basically our trip there was to make sure to confirm what was in the paper. It was not for them to persuade us. We acted in the best interest of SAA Technical to enter into that MOU which expired after six months after all.

CHAIRPERSON: Let Ms Hofmeyr ask her next question but before that I want to go back to the question of communication with a bidder while a tender is open. The

basis on which you have now today said there would have been nothing wrong for you to go on this trip even if you were aware that AAR was one of the bidders in the tender that was still open is that the company that is SAA Technical had a rigorous procurement process so as I understand it you were not going to be influenced by anything because there is a rigorous procurement process.

I do not remember you advancing that as the reason yesterday for saying communication between a decision
10 maker could take place – communication could take place between a decision maker in regard to a tender and a director of a company that has put in a bid. I thought you advanced a different basis, am I right – am I right in understanding that?

MS KWINANA: I may not have remembered Chair what basis did I advance. However I remember me saying that there are processes including combined assurance providers and I mentioned internal audit; external audit; risk management and management as a whole which basically
20 would also form part of the chain within the procurement process.

CHAIRPERSON: I seem to think that at least at one stage the basis you advanced was that as long as the communication did not include discussing the tender there would be nothing wrong with the decision maker having

communication of even having dinner or lunch with the director of a company that had put in a bid in regard to a tender that was still open. At least that was either the basis you advanced or one of them. Is that your recollection as well?

MS KWINANA: Yes Chair and in addition to that there are these rigorous processes that I told you about today. And more importantly at SAA there is a cross-functional

CHAIRPERSON: Team.

10 **MS KWINANA:** Team yes which basically is responsible to make sure that the process is thorough and in fact you can even see their minutes that there was a process that was the process that was followed. So in addition to that cross-functional team there is also the bid adjudication committee and then there is EXCO and all of these people basically are the gate keepers of making sure that procurement processes are followed to the letter.

CHAIRPERSON: But we saw yesterday from your evidence how this board of which you were a member at SAA at least
20 you know could override a decision by other people in regard to the Air Chefs contract. You did not even want to look at the motivation put up by the acting CEO because you had decided you were going to override them; you were going to reverse the decision. That is – that can happen when people know they have got power. They might disregard whatever

other people have said.

MS KWINANA: Chair I said yesterday the Air Chefs retraction of that tender was – the circumstances were different.

CHAIRPERSON: Ja you do not have to repeat them. I remember the circumstances you gave. I was just saying but whatever you said what was quite clear from your evidence was that at least the SAA board of which you were a member you know would not hesitate to reverse a decision made by
10 other people within the company and in your case would not even bother to look at the motivation for the decision that they – they would – they wanted to reverse. Ms Hofmeyr.

ADV HOFMEYR: Thank you Chair. Ms Kwinana I understood you yesterday to accept in your evidence that as a general principle boards of state owned enterprises should not get involved in operational matters. Do you accept that?

MS KWINANA: Yes Chair.

ADV HOFMEYR: That is left to the management of the SOE, correct?

20 **MS KWINANA:** Yes Chair.

ADV HOFMEYR: So then can you just help me why it was at all necessary for non-executive board members of SAA Technical to go on this due diligence trip at all? Should that not have been left to management?

CHAIRPERSON: Just one second before she answers. Ms

Mbanjwa.

ADV MBANJWA: Thank you Chair. It was actually a response to what the Chair had put to the witness.

CHAIRPERSON: Yes.

ADV MBANJWA: And I just want Chair to remind you what the evidence of the witness was.

CHAIRPERSON: Yes.

ADV MBANJWA: The evidence of the witness was this. The reason why the Air Chefs tender that is the award to LSG
10 was reversed by board was because of application of a section in the Public Finance Management act and the fact that that is a tender that ought not to have gone out.

CHAIRPERSON: Oh that is what...

ADV MBANJWA: Before

CHAIRPERSON: That is what I told her not to remind me because I remember what her evidence was.

ADV MBANJWA: Yes.

CHAIRPERSON: Ja.

ADV MBANJWA: So it is – because that is creating the
20 impression that they can override. They do not override they apply.

CHAIRPERSON: No, no, no. I remembered what evidence she gave.

ADV MBANJWA: Thank you Chair.

CHAIRPERSON: Ms Hofmeyr I think you had asked a

question?

ADV HOFMEYR: Yes I had asked why if board members are not supposed to involve themselves in operational matters it was necessary for non-executive members of the board to go on this trip to do a due diligence. Should that not have been left to management?

MS KWINANA: It has been at SAA Technical it has been a practice that the board and management who undertake this trip and it also did happen at AAR. Both board and
10 management did go to this trip.

ADV HOFMEYR: Why only some board members then?

MS KWINANA: Of course it would depend on the meeting who would be selected to go and it also would apply with management. Not everybody would go because that would mean that all management it depends who is nominated to go and represent SAA Technical.

ADV HOFMEYR: I can understand that for management I cannot really understand it for non-executive board members. Why should there – why should some of you have
20 the benefit of this and not others?

MS KWINANA: Chair it has been – it has been the case. People have been nominated in board meetings. Like for instance when SAAT went to Lufthansa and when SAAT went to Air France I was a board member at SAA Technical and I did not go to these trips. So it depends who is nominated in

a meeting to go.

ADV HOFMEYR: So you did it because it was a practice, is that correct?

MS KWINANA: Yes.

ADV HOFMEYR: Did you ever look at whether the practice made sense?

MS KWINANA: For me it made sense because SAA Technical is involved in high value contract and therefore also as the members of the board then they needed to go. I
10 really did not see anything wrong.

ADV HOFMEYR: Why would they need to go?

MS KWINANA: The previous – the previous – the previous chairpersons did go and I also do not see the reason why they would not go.

ADV HOFMEYR: Well because...

MS KWINANA: [00:25:32] that they have a fiduciary responsibility to make sure that the companies that SAA Technical enters into are genuine companies, are the companies that have got capacity. So I really did not see
20 anything wrong in the board members going in the previous board members going and me remaining behind I really did not see anything wrong.

ADV HOFMEYR: Well let me put to you what might be wrong. You see on your version you went so a due diligence could be done.

MS KWINANA: Yes.

ADV HOFMEYR: You have a full management team with no doubt the expertise.

MS KWINANA: Yes.

ADV HOFMEYR: To evaluate the proposed partner.

MS KWINANA: Yes.

ADV HOFMEYR: They would go; they would do the necessary and they would report to you. Your evidence yesterday is that these SOE's were populated by highly
10 qualified people.

And the reason for separation Ms Kwinana is precisely because as the ultimate accounting authority you must make the final call on these decisions so you do not want to be influenced along the way.

You leave your managers to do operational stuff; to do the nitty gritty of the due diligence. They feed it into you, you assess it, you can go back you can say it is not good enough but you do not get on a plane and go and be wined and dined by somebody who is a bidder in a process.

20 Do you accept that that might be a better way to do it?

MS KWINANA: Chair this has been the practice and I do not doubt the intelligence of the people who made those decisions including my own intelligence Chair.

ADV HOFMEYR: Ms Kwinana you enter – you come back

right. You retract the tender and you enter into the MOU. And I heard you a moment ago I think say entering into that MOU was one of the best decisions that SAA Technical took, is that correct?

MS KWINANA: That was – that was the best decision that SAA Technical entered into the reason being that AAR is providing [00:27:44] components in almost all the airlines and therefore the reason why SAA Technical has been incurring losses or one of the reasons is because we have
10 been using the middle man to get to this purpose that AAR is supporting.

So that is why I am saying if and in fact AAR has got a network all over the world which SAA Technical would also tap into. So that is why I am saying it was one of the best decisions that we made.

And in fact Chair I said they are – I do not regret a single decision that I made when I was a board member at SAA and SAA Technical but some of the decisions are definitely better than the others and this one was one of
20 those.

ADV HOFMEYR: I just want to be sure that we are on the same page. Because what you have given now as I understand your evidence is a justification for choosing AAR ultimately to be the components supplier. But your evidence earlier was that deciding to embark on the MOU – the

Memorandum of Understanding with AAR was one of the best decisions that the board has taken.

MS KWINANA: Yes, yes.

ADV HOFMEYR: Do you stand by that?

MS KWINANA: Yes Chair.

ADV HOFMEYR: Why was it abandoned a month later then?

MS KWINANA: It is because the Terms and Conditions was that after – I think it was six months it was a six month MOU the Terms and Conditions required that after six months if
10 nothing – if no relationship happens then it needed to be cancelled.

ADV HOFMEYR: No that would explain why six months later it did not continue. It was reversed a month after it was entered into. How could that be a good decision?

MS KWINANA: I may not remember about the reversal a month after. My recollection is that that MOU was a six month contract – so it is six months MOU and after six months it expired. So the one month, I really do not remember.

20 **ADV HOFMEYR**: Okay. But in your mind, even from as early as that trip, I understand your evidence to be, you had identified AAR as an excellent supplier of component parts. Is that correct?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: And you believe that for SAA Technical to

partner with AAR would be one of the best things that it could do. Is that correct?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Right. Mr Parsons who was your co-board member around this time had some concerns about that MOU. Are you aware of them?

MS KWINANA: You know I do not even want to talk about Mr Parsons. The reason being that he was not even supposed to be in that board because he was an illegal
10 immigrant. Anyway. I ...[intervenes]

CHAIRPERSON: Are you aware that he had concerns? That is the question.

MS KWINANA: I am aware that he had concerns and I even wrote him a letter, an email to say: Let us meet so that I can hear your concerns. And to be honest Chair. That email that Barry(?) wrote, I did not even understand what he was complaining about. What I know is that he was very, very disgruntled ...[intervenes]

CHAIRPERSON: Ja-no, you will not be asked about that
20 email as yet. Ms Hofmeyr.

ADV HOFMEYR: So you say he was disgruntled that he did not get to go on the trip?

MS KWINANA: Yes.

ADV HOFMEYR: Oh. Alright. So did you surmise that he writes this letter because he did not get on the trip with you

to the US?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Do you have any facts to back that up?

MS KWINANA: The reason is that he was doing the walkabout with AAR people at SAA Technical and he supported this thing, the partnership and he was very supportive and he liked it. And then all of a sudden now he turns around and writes that email and subsequently he resigned.

10 **ADV HOFMEYR**: So the trip was really something that mattered to the board members, correct?

MS KWINANA: Yes, the trip mattered to the board members.

ADV HOFMEYR: H'm, h'm. And he had been excluded. So he felt left out. Is that your version?

MS KWINANA: No, he was part of that meeting that decided who should go.

ADV HOFMEYR: But he holds some discomfort or frustration maybe about the fact that he was not selected,
20 correct?

MS KWINANA: Everybody in the board meeting needs to decide. It is not only one person who decides. Everybody decides.

ADV HOFMEYR: No, indeed.

MS KWINANA: He also had an opportunity of deciding and

make a recommendation as to who should go.

CHAIRPERSON: Ja, Ms Kwinana it is not about that. I mean, Ms Hofmeyr is really asking – is following up on your evidence that he was disgruntled. Did he ever say: I want to go. At the board meeting?

MS KWINANA: I do not remember him saying he wants to go because if he wanted to go, obviously, that would be discussed and then a decision would have been made to say: Yes, you can go or you cannot go. With some reasons.

10 **CHAIRPERSON:** Do you know of any reason why, if he wanted to go, he would not have expressed that wish at the board meeting?

MS KWINANA: Even at... I later came to understand ...[intervenes]

CHAIRPERSON: No, no, no. Ms Kwinana, do you know of any reason why, if he wanted to go on the trip, he would not have expressed that wish at the meeting?

MS KWINANA: Yes, Chair. It is because ...[intervenes]

CHAIRPERSON: What is the reason that you know?

20 **MS KWINANA:** I know that he is stays in South Africa at – was illegal at the time. And then therefore it would be difficult for him to get out of the country.

CHAIRPERSON: So why would he be disgruntled about not being nominated to go on a trip of which he could not go anyway even if he wanted to? Where is the logic in that?

MS KWINANA: Well, basically Chair that is the only reason why I would think that all of a sudden after the trip he resigned. Otherwise, that would ...[intervenes]

CHAIRPERSON: No, but we talk about ...[intervenes]

MS KWINANA: It is purely speculation.

CHAIRPERSON: Let us talk about your evidence that he was disgruntled because he was not allowed to go on the trip. He was not nominated. If he – on your evidence, he knew that he could to go out of the country. How could he
10 be disgruntled about not being nominated? Because even if he had been nominated, he would have been bound to decline. It does not make sense, does it?

MS KWINANA: That is the speculation Chair because I, as I am sitting here and ...[intervenes]

CHAIRPERSON: But your speculation has no basis. It does not make sense. You are saying, he could not leave the country because he was illegal and he knew it, in the country. And then you say, he was disgruntled because he was not nominated to go on the trip.

20 But if he knew that he was illegal and therefore could not get out of the country, logically he could not be disgruntled about something that he could not take advantage of.

MS KWINANA: Maybe Chair he was disgruntled because he could not go ...[intervenes]

CHAIRPERSON: Oh, is that another speculation?

MS KWINANA: ...not being nominated. But he could not go.

CHAIRPERSON: Is that another speculation?

MS KWINANA: It is a speculation Chair because I do not understand his email.

CHAIRPERSON: Ms Hofmeyr.

MS KWINANA: And ...[intervenes]

ADV HOFMEYR: You see, his letter is very clear about his
10 reasons, right? His letter, which you will find in your bundle
Ms Kwinana at DD33, page 22. So we are at Exhibit DD33,
page 22.

CHAIRPERSON: Do I need to go there?

ADV HOFMEYR: No, Chair.

CHAIRPERSON: Okay.

ADV HOFMEYR: I am just going to read two points that he
made that I like to pick up on.

CHAIRPERSON: Ja, okay.

ADV HOFMEYR: Because Ms Kwinana has said that she
20 does not understand from this letter, as I have it, why he was
leaving. Is that your evidence Ms Kwinana?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Right. He says:

“Please accept my resignation with immediate effect
on the Board of Directors of SAA Technical. I feel

like I made a strong contribution to the board, finding governance in the business, weep(?) after what happened – what appeared years of neglect.

Unfortunately, the value I can add seems no longer wanted as it is quite clearly due to the AAR corporations strategic partnership.

There is clearly a hidden agenda somewhere in this relationship and it requires urgent independent investigation.”

10 So if I read that, he is communicating that he is concerned that there is something hidden in this relationship that SAA Technical is forging with AAR. Do you understand it in the same way?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Yes. What is not clear about that reason?

MS KWINANA: What is not clear is that this person was very excited about this relationship and he was the person who was walking the AAR Team about. And then now, all of a sudden, he writes this letter. So basically, I just do not
20 understand.

ADV HOFMEYR: Well, he ...[intervenes]

CHAIRPERSON: But... Precisely because he has realised that there is something hidden that he does not agree with. That is why he attitude changes. That is logic.

MS KWINANA: Maybe Chair that is what he should have

written that hidden agenda. He could have said: I think there is a hidden agenda. A hidden agenda being A, B, C, D and E.

ADV HOFMEYR: Yes, he does do that. So ...[intervenes]

MS KWINANA: Oh, he goes further?

ADV HOFMEYR: He goes on. He explains precisely what his concerns are. He talks about the irregular way in which the MOU was concluded. He raised a series of concerns about it ...[indistinct]

10 **MS KWINANA**: [Indistinct]

[Parties intervening each other and cannot be heard clearly.]

ADV HOFMEYR: [Indistinct]

MS KWINANA: You take ...[intervenes]

CHAIRPERSON: Ms Kwinana, wait until Ms Hofmeyr has finished what she has to say.

ADV HOFMEYR: Ms Kwinana, I am trying to summarise. We can read every word of this letter if it is necessary. It was in your bundle. So I assume you have taken some time to look at it beforehand. I am summarising now but if you
20 would like to go through it yourself, you must let us know.

He, in essence, says the following. He had reservations about the conclusion of the MOU. He raises the concern about when it was entered into because there were certain time periods that was supposed to run and it was unclear when it was entered into.

That appears in much more detail before this letter but here he is summarising it. And then importantly. In the penultimate as paragraph on page 23, he says:

“My other specific concern is the identification and selection of the BBBEE partners, if any, for the proposed jointed venture, a process that needs to be highly transparent in a business that already has an uncompetitive cost base.

10 The MOU received includes an implementation timetable that suggests this process may already be significantly advanced and there is no visibility of this to either the SAA Technical or SAA boards or National Treasury.”

He concludes:

“I hope the company shares my concerns and appreciate that I have no confidence in the integrity of the SAA Technical Board and my membership of that board has become a reputational matter and it is a simple decision to submit my resignation.”

20 What would you not understand about that Ms Kwinana?

MS KWINANA: I still do not understand when he talks about the identification and the selection of the BEE partners. I also do not understand the MOU, what is not clear about the MOU.

And another thing. For him being a board member, he

should have raised these issues in a meeting. And then now, he just resigns without raising the issues and get them properly attended to.

So basically, I really do not understand. And if, for instance, he is talking about the AAR and the identification and the selection of the BEE partners and he referred to all other companies.

We do not – of course, we have got a list of the BEE companies that would want to do business with SAA. But
10 now, the selection of the BEE partners also do follow a rigorous process to be included in the database of the BEE's.

So basically, if Mr Parsons had a problem with that, he was a board member. He had the platform to raise his issues and make sure that they are properly communicated.

As I said, I needed to have a meeting with him and then we decide what needs to happen. And instead of us meeting, he just resigned. So basically, I do not understand a person at his level who has the platform to put together
20 what his concerns are, he is unable to do that and he simply resigns.

CHAIRPERSON: Okay. It is about lunchtime. But Mbanjwa had her hand up.

MS MBANJWA: No ...[intervenes]

CHAIRPERSON: Ms Mbanjwa.

MS MBANJWA: Thank you, Chair of the opportunity but Ms Kwinana has already ...[intervenes]

CHAIRPERSON: Has taken care of.

MS MBANJWA: Yes, Chair.

CHAIRPERSON: Okay alright. Ms Hofmeyr, shall we take the lunch break now?

ADV HOFMEYR: Indeed Chair.

CHAIRPERSON: Okay. It is five past one. We will resume at five past two. We adjourn.

10 **INQUIRY ADJOURNS**

INQUIRY RESUMES

CHAIRPERSON: Ms Hofmeyr, I see the witness is not here. Ms Mbanjwa is not here.

ADV HOFMEYR: No.

CHAIRPERSON: And I did say five past, is it not?

ADV HOFMEYR: I think so, I might have even heard two, but it might have been five past. We can try and take steps to contact them. I think we might have a cell phone number for Ms Mbanjwa. I do not know about their
20 location.

CHAIRPERSON: Yes. I definitely did say five past. And on my watch it is ten past now.

ADV HOFMEYR: Yes.

CHAIRPERSON: I am going to adjourn for another five minutes.

ADV HOFMEYR: Thank you, Chair, we will update you.

CHAIRPERSON: Ja, thank you. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

MS KWINANA: Sorry Chair I have to apologise unreservedly, I thought it is quarter past two, so we were informed by Mr Kirkland to say it is actually five past two, our sincere apologies.

CHAIRPERSON: Okay alright, just pay attention more
10 next time when we say what time we are coming back.

MS KWINANA: Indeed Chair.

CHAIRPERSON: Okay, alright. Let us continue.

ADV HOFMEYR: Thank you Chair. Ms Kwinana I indicated that we are going to be focusing on the AAR contract and what we've done in the evidence so far is that we have looked at the trip that some members of the Board and management of SAA Technical took to the US we have looked at the MOU and the concerns that your Co-Board member Mr Parson's had about that MOU. I would now like
20 to get to get to the actual final tender that was awarded to the joint venture of AAR and JM Aviation. Are you aware that that was advertised at the end of 2015 I think the date was the 8th of December 2015.

CHAIRPERSON: Just repeat the answers so it can be recorded.

MS KWINANA: Yes, Chair.

ADV HOFMEYR: And you did tell me previously that you had watched some of Ms Memela's evidence but not all of it. Is that correct?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Were you aware of the part in which she was taken to the requirements in the RFB for this tender that prohibited communications with anyone other than the project manager?

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

ADV HOFMEYR: You were not aware of that?

MS KWINANA: No.

ADV HOFMEYR: Okay so I would like to take you to that today because what we have traversed with Ms Memela is that she had received communication from JM Aviation the joint venture partner of AAR while the bids were open and she was asked to comment on the bid submission of JM Aviation as well as to give input on their JV agreement and what we showed her was that that was in breach of the
20 RFB, of the bid so I would like to take you to it. You will -
would find it in actually Mr Human's bundle which is DD22 and it is the mini files for Mr Human. So this is DD22E and you will need to pick it up at page 2052, two thousand and fifty-two. So the page is 2052, two zero five two and just for the record where everyone is turning up that page I do

not suggest that we go there just so that you know that the bid, the request for bid commences in Exhibit DD22E 2043 but what I am wanting us to look at is 2052.

So that is within the request for bid and it includes a Clause 1.6 on that page. Do you see that Ms Kwinana?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: And what that says is Clause 1.6.1:

10 “All queries or information relating to this document or surrounding the bid must be addressed to the project manager as stipulated on page 1 of this RFB in writing.”

And then Clause 1.6.2:

“Any queries addressed to individuals other than as stipulated where the verbal telephonic and written or in any other form will eliminate the bidder from this process.”

Do you see that?

MS KWINANA: Yes, Chair.

20 **ADV HOFMEYR:** So it was put to Ms Memela that her communications with Ms Sekulu who was representing JM Aviation at the time that the bid was open were in breach of that clause. So you agree that those communications would have been in breach of that clause?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: So now I am drawing your attention

because you did not see Ms Memela's evidence on this previously, that JM Aviation and AAR could never have been awarded this tender. Do you accept that?

MS KWINANA: I do not want to say I accept or I do not accept but as I said if the procurement processes were not followed or were flawed in one way or another then necessary steps would have been taken.

ADV HOFMEYR: Well no what this says at clause 1.6.2 is that if you address any queries to anyone other than the
10 project manager you are eliminated from this process. What possible steps could then have been taken?

MS KWINANA: Maybe Chair you see when you get me to read only this and then the tender process as it is starts from the beginning up to the end and then now you are telling me about the people who communicated. I do not want to comment about the people who communicated because I do not know what they were communicating about and I do not know if they communicated specifically with this.

20 **ADV HOFMEYR:** Okay so that is why I assisted with just a summary of the evidence that was presented. Would you like me to take you to the communications between JM Aviation and Ms Memela?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Right, so let us go to the Sambu Bundle

that is DD18 and we will need to go to page 339.

CHAIRPERSON: I think somebody will assist you Ms Kwinana you can sit down somebody must get the file for you.

ADV HOFMEYR: Yes, we do have assistance thank you so much. So we're looking for DD18, one eight and we going to begin at page 339.

CHAIRPERSON: It was with her just now I think it must be the one on top of the others it must be one of those, ja.

10 **ADV HOFMEYR:** So 339 is the page. Okay so Ms Kwinana what you see here is midway down the page do you see that there is a from Khosi Sekulu date 14 January 2016 at four in the afternoon to Nomsasa Memela at an iCloud email address and the subject is:

“RE: Joint Venture Draft Agreement.”

Do you see that?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: So this is the communication between Ms Sekulu, what was Ms Sekulu's status at JM Aviation?

20 **MS KWINANA:** A director.

ADV HOFMEYR: Right, so director of JM Aviation's sends to Ms Memela who was the Head of Procurement at SAAT the joint venture draft agreement that was going to be entered into between JM Aviation and AAR and she says:

“Hi cousin this is the first draft of the JV so far.

Jules did a quick review and noticed the following and then point 1 relates to the agreed participation.”

So JM Aviation was going to 5% and AAR 95% then Clause 6 said:

“Participation interest the same JM Aviation, 5% AAR, 95%.”

And then over the page:

10 “As per the collaboration agreement JMS to receive 5% of any amounts received by AAR from SAAT, this is linked to revenue not profits. For example, if SAAT remits a 100 000 US Dollars to AAR then JM is to receive five million US Dollars, sorry 5 000 US Dollars.”

Did I say millions earlier I might have, sorry?

CHAIRPERSON: I did not hear.

ADV HOFMEYR:

20 “100 000,00 US dollars then JM Aviation gets 5 000 US dollars. The way the participation interest clause is written and states that JM will receive 5% of the profits this is not correct. We need to determine what will 5% of revenue equate to as a parentage ownership of the joint venture for JM, please let me know if there is anything that we might have overlooked?”

So this is a communication between a bidder and a Head of Procurement who confirmed in her evidence fairly that she was not the project manager with whom the only communications could take place asking for her input on the way that they were structuring the JV agreement and the look through the JM Aviation would have to all revenue generated by AAR. The second communication you will find at page 367. Now 367 is an email of the same day again you must go halfway down it is from Ms Sekulu
10 again, 14th of January 2016 now it is thirteen minutes past eight in the evening to Ms Memela at her iCloud address. It says:

“Subject forward RE: South Africa Draft Proposal.

Hi Cuz, so here is the latest proposal let me know if it is acceptable thanks.”

And then if you turn over two pages you will see there at page 369 what was attached and that is the then draft of the AAR, JM Aviation bid. So now having seen those documents are you then satisfied that JM Aviation and AAR
20 should have been eliminated from his process?

MS KWINANA: I do not want to say yes or no that would also depend on the role that Ms Memela would play in respect of the joint venture.

ADV HOFMEYR: No it does not, do you remember we saw the clause. The clause says:

“Any queries addressed to individuals other than as stipulated i.e. the project manager where the verbal telephonic and written or in any other form will eliminate the bidder from this process.”

Ms Kwinana?

CHAIRPERSON: Well I am sorry Ms Hofmeyr, let us just go back to that page where that clause is just to make sure you know what you are clear about what clause Ms Hofmeyr is talking about at page 205 of DD22E.

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

CHAIRPERSON: DD22E at page 2052. Have you got it?

MS KWINANA: Yes, Chair.

CHAIRPERSON: Ja, Clause 1.6 this is communication surrounding the RFB clause 1.6.1:

“All queries or information relating to this document or surrounding the bid must be addressed to the project manager as stipulated on page 1 of this RFB in writing.”

1.6.2:

20 “Any queries addressed to individuals other than as stipulated whether verbal, telephonic and written or in any other form will eliminate the bidder from this process.”

Do you understand that?

MS KWINANA: Yes, Chair.

CHAIRPERSON: Now my understanding of this clause 1.6.2 is that if any bidder communicates in any way about the bid other than through the project manager, communicates with other people in the company that bidder is eliminated, no discussion, that is it. Is your understanding the same or is it different?

MS KWINANA: My understanding is the same in respect of this 1.6.2.

CHAIRPERSON: Yes.

10 **MS KWINANA:** However as I said yesterday there are many circumstances surrounding that ...[intervenes]

CHAIRPERSON: There are many circumstances that what?

MS KWINANA: Surrounding that and some time yesterday I spoke about a situation where sometimes it is impractical.

CHAIRPERSON: But hang on, excuse me, this is a rule put into a bid, isn't it?

MS KWINANA: Yes Chair.

20 **CHAIRPERSON:** And you see that it doesn't provide for any exceptions, do you see that?

MS KWINANA: Yes Chair.

CHAIRPERSON: So there are now exceptions provided for, so how are you going to create your own exceptions to the rule, because if anybody thinks there are difficulties with the rule then they must use internal processes to say

we mustn't have such a rule, we must change it, isn't it?

MS KWINANA: Yes Chair..

CHAIRPERSON: But you can't have a situation where the rule has no exceptions and anybody is free to make their own exceptions then the rule will not work, you accept that?

MS KWINANA: Yes Chair.

CHAIRPERSON: Yes okay, thank you. Ms Mbanjwa?

MS MBANJWA: Thank you Chair, if I can take Chair back
10 to 2052, the clause that has just been read, Clause 1.6.2, that clause has a heading, "communication surrounding the RFB".

CHAIRPERSON: Well what you – immediately you say that it seems to me something that you should reserve for re-examination because it seems you want a certain qualification or meaning to be attached to it which you can do at re-examination.

MS MBANJWA: No Chair, I don't want to be obstructive but ...[intervenes]

20 **CHAIRPERSON:** But you see ...[intervenes]

MS MBANJWA: ...[indistinct – talking over one another]

CHAIRPERSON: Hang on Ms Mbanjwa, you see the danger of doing that now is that it will look like you are giving a tip to the witness ...[intervenes]

MS MBANJWA: No, I wanted ...[intervenes]

CHAIRPERSON: But if you reserve it for later then nobody will think they that you are trying to give a tip to the witness.

MS MBANJWA: No Chair, I know I am not giving a tip to the witness, actually the question is addressed to Ms Hofmeyr, what I want Ms Hofmeyr to do, because she has referred us to this other bundle, that is bundle BD18, which is of a JV, so I want now Ms Hofmeyr to show us what kind of communication is mentioned in the RFB under which the
10 day before.

CHAIRPERSON: Ja, no please leave Ms Hofmeyr to do her job as she sees fit you will come in at re-examination and either exploit whatever you believe is a witness on how she did the job but leave that for re-examination. Ms Hofmeyr?

ADV HOFMEYR: Thank you Chair, so Ms Kwinana I understand your evidence to be that you and the Chair agree on your understanding of that clause, that there is no exceptions, that the bidder will be eliminated from the
20 process and I actually do want to add clause 1.6.3 because I think if there was any debate, which I don't think there can be, 1.6.3 concludes the point because it says:

“no discussions will be entered into surrounding elimination through non-compliance in Clause 1.6.1.”

So I would say what was already clear in 1.6.2 is emphasize again in 1.6. we are not even going to debate the issue if you communicate you will be eliminated. Now Ms Kwinana if you as a Board member, the Chair of SAAT had had this brought to your attention when you decided to award this joint venture to AAR and JM Aviation would you have said they have been eliminated, I cannot award this to JM Aviation and AAR.

MS KWINANA: What the management would bring to the Board they would bring say a recommendation or the
10 cancellation of the tender.

CHAIRPERSON: Please raise your voice.

MS KWINANA: Sorry Chair.

CHAIRPERSON: Ja.

MS KWINANA: So what I am saying Chair what would come to the Board would be a recommendation from management, from the CEO and is executives to say there are flaws in respect of this tender, and therefore we recommend that the tender be cancelled and then they
20 would state whatever the reasons that they put to cancel the tender.

CHAIRPERSON: Ms Kwinana I am sorry please you – there is no need to give a long answer to this, the question that Ms Hofmeyr is putting to you is if you knew this rule as it reads, and you told me what your understanding is of

it, and it is the same as my understanding, if you knew this rule and you knew what had happened with regard to this communication, would you have taken the attitude that therefore this bidder had been eliminated or would you not have done it?

MS KWINANA: Chair how basically we decide I wouldn't just say eliminate the tender, even if I knew I would take it to the Board and get the circumstances surrounding that before the Board decides that the tender must be
10 cancelled.

CHAIRPERSON: I mean you have agreed that this rule does not make provision for exceptions, so what circumstances would you look for?

MS KWINANA: How we decided Chair at the Board even if I knew this information there is no ways that I would go in the passage and say this bidder is eliminated even if I knew about it.

CHAIRPERSON: No, no it is not about the passage, it is about in your own mind what would you understand the
20 effect of a breach of this rule to be, would you accept that the effect was that this bidder was eliminated or would you say the bidder was not eliminated even though the bidder had acted in breach of this rule? Now that on your own once you know that this is the rule, this is what it says, there are no exceptions that it provides for, this bidder has

acted in breach of this rule?

MS KWINANA: Chair I wouldn't be in a position to do that on my own.

CHAIRPERSON: You would have to take a view, I mean that's what Ms Hofmeyr wants to establish from you, what is the view that you would have, would it be that a breach of this role means the bidder is eliminated or would you start saying well there must be some exceptions or would you say no it is not eliminated because when you meet as
10 a board you must have thought about issues and taken a view yourself.

MS KWINANA: Of course Chair looking on the face of it before considering the reasons why and circumstances, on the face of it I would be of the view that the bidder should be eliminated, however as I said I would not be in a position to say eliminate on my own, I would gather some evidence and find out what happened, and whether indeed that should be eliminated and in fact that would be decided not by me only as the Chairperson but also all the
20 members of the Board.

CHAIRPERSON: Well you know Ms Hofmeyr drew your attention to Clause 1.6.3 and I think she is right in saying if you look at that clause if there was any doubt that anybody had about the meaning of Clause 1.6.2 that doubt is removed when you get to Clause 1.6.3 because it is –

the message is clear, a breach of this rule is so serious that the company will not entertain any discussions with the bidder about the elimination. If you are eliminated because you have acted in breach of this rule there will be no discussions, you are cut off, that's how serious the company took this issue of communication between a bidder and officials other than the project manager. This says we have one person to talk to, or communicate with about the bid, this is the project manager. So you cannot
10 say you do not have anybody to talk to, but if you then go and communicate with somebody else you are in breach of this, you have been told this, you know about it because it is included here, there will be no discussions, you are eliminated.

Now do you have any doubt that that is how emphatic the message underlying this clause is?

MS KWINANA: No Chair I have not.

CHAIRPERSON: You have no doubt, okay alright. Thank you. Ms Hofmeyr?

20 **ADV HOFMEYR:** But then Ms Kwinana in fairness to you I don't really understand your resistance to saying absolutely, if this came to my attention as the Chair of the SAA Technical Board that a bidder was being proposed to the Board to be confirmed for this contract that ought to have been eliminated, you wouldn't resolutely say there is

no way that they can be awarded this tender. Why do you resist saying clearly they should have been eliminated, they should not have got this tender.

MS KWINANA: I am not resisting Chair but I am emphasizing the collective Board decision because definitely I wouldn't say this is eliminated, that is why I am saying we would take it to the Board and decide as a collective so basically that is not how we decide, I don't decide alone Chair in the Board.

10 **ADV HOFMEYR:** In ...[intervenes]

CHAIRPERSON: But Ms Kwinana I have told you what Ms Hofmeyr is looking for is your own judgment of what is permitted and what is not permitted if there are rules that say A, B, C, D, you might not be the person in a particular case to make the decision but you can have a view and in this case when you are Chairperson of a Board you are the leader and you should show the way, you should be clear about what the rules are, you should be clear about how the rules must be enforced, compliance with the rules, so if
20 you say it is the collective, the collective might have to take a decision if the power to make a decision is given to the collective but that does not mean you cannot or should not have your own view of what is permitted, and what is not permitted in terms of the rules, do you understand?

MS KWINANA: Yes Chair.

CHAIRPERSON: Yes, okay alright. Ms Mbanjwa?

MS MBANJWA: Chair I know you are going to be frustrated but I still feel the question that is put to the witness is incorrect because we were not referred to something in the RFB that says communication between two bidders about a JV is a violation of the provision of that RV.

CHAIRPERSON: Yes I am going to say again Ms Mbanjwa when you re-examine you can get that clarified. Ms
10 Hofmeyr?

ADV HOFMEYR: Thank you. So can I then take it to be your evidence that Ms Kwinana you accept that AAR and JM Aviation should not have been awarded this tender because they should have been eliminated?

MS KWINANA: As I said Chair I would not say they should have been eliminated or not, because the circumstances surrounding that my lawyer wants to clarify something and we are unable to do that, and therefore what you are saying to me you are saying I must agree that
20 I should have said that and therefore I will not do that
Chair.

CHAIRPERSON: Hang on Ms Hofmeyr. You see Ms Mbanjwa this is what I was talking about, that when the witness is still being asked questions and you raise the issues that you raise this is what is going to happen, now

she is saying because her lawyer is raising a certain issue she is not going to answer that. It does not do her any good. She should be seen to be giving her evidence without assistance from anybody. You see. But if you do that it gives rise to that perception even if you might not intend it that way yourself. Okay Ms Hofmeyr what was your answer Ms Kwinana? You said you would – you will not give an answer or what was your answer?

MS KWINANA: I was saying Chair I would not with certainty
10 say they should have been eliminated or not because as I said before that would depend on the circumstances and I have seen these clauses. But now they needed to be read together with the whole bid and together with what was discussed here. And therefore there needs to be some alignment between what is discussed here and also with the RFP.

CHAIRPERSON: I am not in any doubt that the communication with Ms Memela and Ms Sokhulu was about the bid. Are you in any doubt about that?

20 **MS KWINANA:** It is – the communication is about the JV Chair.

CHAIRPERSON: The agreement?

MS KWINANA: The communication.

CHAIRPERSON: Yes relates to the draft agreement.

ADV HOFMEYR: [inaudible]

CHAIRPERSON: That relates to...

ADV HOFMEYR: It is the draft agreement is the first email. The second email attaches the bid – the bid and says is it acceptable.

CHAIRPERSON: Yes.

ADV HOFMEYR: That is what the second email says.

MS KWINANA: Okay this one is – this one is the JV and then where is the email that attaches the bid?

ADV HOFMEYR: 367.

10 **CHAIRPERSON:** I am sorry.

MS KWINANA: Oh okay.

CHAIRPERSON: I have moved – we moved from the...

ADV HOFMEYR: Apologies we did Chair. So we are in DD18 at 367.

CHAIRPERSON: At DD20?

ADV HOFMEYR: No DD18.

CHAIRPERSON: Yes.

ADV HOFMEYR: At 367.

CHAIRPERSON: 367.

20 **ADV HOFMEYR:** Yes because remember there were two communications on the 14 January. I took you to the first email that is at four o'clock in the afternoon. There was a moment of some humour in Ms Memela's evidence because she had indicated that she would use her non-SAAT email address for communications after hours and then I asked her

is 4:00 pm after hours. That is why that one stays in my memory quite clearly. And then there is the later on at 8:00 pm where it is now no longer the JV it is the bid proposal which you see attached at 369 and it is asking Ms Sokhulu who addresses Ms Memela as Cuz.

“Here is the latest proposal please let me know if it is acceptable.”

CHAIRPERSON: And I was told Cuz in an abbreviation for cousin.

10 **ADV HOFMEYR:** Hm.

CHAIRPERSON: What I have just said might distract you from what you were looking for. I think what you were looking for was the communication whether it was about the bid or not. I think Ms Hofmeyr has referred you to page 368 communication – is it 368 or 36?

ADV HOFMEYR: 367 is where it starts Chair.

CHAIRPERSON: Ja that is where it starts.

ADV HOFMEYR: That is the email, correct?

MS KWINANA: Hm.

20 **CHAIRPERSON:** Yes.

ADV HOFMEYR: And then if you go to 369 that is the bid.

CHAIRPERSON: Yes.

MS KWINANA: Hm Yes Chair.

ADV HOFMEYR: So now you have established – we have established Ms Kwinana that it was a question about whether

the bid proposal was acceptable and do you then accept that JV Aviation and AAR should have eliminated?

MS KWINANA: Yes Chair.

ADV HOFMEYR: And then they should not have been awarded this tender, correct?

MS KWINANA: Yes Chair.

ADV HOFMEYR: Right. So you do not anymore. You began yesterday and this morning to say you stand by all of these decisions. I take it that you do not stand by this one

10 anymore?

MS KWINANA: I do not stand by which one? The award?

ADV HOFMEYR: The one in terms of which they got...

MS KWINANA: The award?

ADV HOFMEYR: Yes when they had breached the tender rules and should have been eliminated.

MS KWINANA: When they breached the tender rules yes Chair.

ADV HOFMEYR: That is the one that they finally got on the 9 May when the board met and gave them the tender for five

20 years with AAR and JM Aviation. It is in that process that they should have been eliminated. Do you accept that?

MS KWINANA: Yes Chair.

ADV HOFMEYR: Thank you. So we – and in fairness to you given that concession we do not need to spend time on the way in which the decision was motivated at the time because

this information was not brought to your attention at the time, was it?

MS KWINANA: No Chair.

ADV HOFMEYR: Do you regard it as an obligation on Ms Memela to have disclosed it to the board that she had received this communication while the bid was still open from one of the bidders?

MS KWINANA: I think Ms Memela of course if she received it she would have not even disclosed it to the board but
10 eliminate. So basically it would not even come to the board.

ADV HOFMEYR: That is true and actually that is an important point because earlier you said what would happen if this was discovered is that there would be a recommendation that came to the board to cancel the tender. I want to suggest to you that is by no means what would happen. You do not cancel the tender you just eliminate the bidder who has breached the rules and you let the remaining bidders stay in the process, do you not?

MS KWINANA: Yes.

20 **ADV HOFMEYR:** Yes. So that is what should have happened. It should not even have been before the board to approve AAR and JM Aviation should it?

MS KWINANA: Yes Chair.

ADV HOFMEYR: And it was Ms Memela who held information that she did not disclose to anyone which if she

had disclosed it would have eliminated JV of AAR and JM Aviation, correct?

MS KWINANA: Yes Chair.

ADV HOFMEYR: Thank you.

CHAIRPERSON: And if for whatever reason she thought that AAR should not be eliminated because of the breach of this rule at least she should have disclosed to say there has been this communication this is what the rule says but I take the following view. She should not have just not eliminated
10 them and not have disclosed to some higher authority, is it not?

MS KWINANA: Yes Chair.

CHAIRPERSON: Hm okay.

ADV HOFMEYR: And Ms Kwinana in the process that did lead up to the board's decision on the 9 May 2016 you received submissions from the then acting CEO of SAAT Mr Malola Phiri, correct?

MS KWINANA: In respect of the tenderers?

ADV HOFMEYR: Yes. Because he made the
20 recommendation to the board. Remember they were recommending Air France and at the board meeting on the 9 May you and your fellow board members decided not to go with management's recommendation and you went for the joint venture of JM Aviation and AAR, do you recall that?

MS KWINANA: Yes Chair.

ADV HOFMEYR: And all I am clarifying is the person who makes that submission to you was the then acting CEO Mr Malola Phiri, correct?

MS KWINANA: Yes Chair.

ADV HOFMEYR: Thank you. Now I want to just move to your communications at this time. Because during this time you were having a number of telephone conversations with the Mr Ndzeke were you not?

MS KWINANA: I would not – I would not know until you
10 show me and that is very possible.

ADV HOFMEYR: It is possible. So while a tender is open in respect of which JM Aviation and AAR are joint bidders you were having communications with the director of JM Aviation, is that correct?

MS KWINANA: Yes Chair.

ADV HOFMEYR: Are you not concerned that that would not be appropriate in the circumstances?

MS KWINANA: Chair I really would not be concerned. The reason being that as I told you about the processes and as I
20 told you about the fact that basically the only time that we know is when the documentation is in front of us. And I also told you that there are many tenders at SAA Technical including SAA and I do not have a record where I would say the tender is starting now and then the tender is ending there. So with me not being involved in the tender process I

would communicate freely with Mr Ndzeke without knowing that there is a tender that is going on or without registering that there is a tender going on.

ADV HOFMEYR: Well remember I asked you about Mr Phiri's submissions to the board. In your own affidavit you explain that there were some earlier submissions where Lufthansa was first and then you asked them to go back and then there were later submissions and then what came was Air France. Do you recall saying that in your affidavit?

10 **MS KWINANA:** Yes and in fact I was state – I also stated the reason why they were taken back.

ADV HOFMEYR: Correct.

MS KWINANA: Is because there was a disagreement between management in front of the board where the – the CFO was in disagreement in terms of I think the bid – the process basically. And then I said you cannot fight in front of us. Go back and make sure that you come with the same voice. So basically they did go back and came with the same voice and the process continued.

20 **ADV HOFMEYR:** Yes but that means you knew when you were speaking to Mr Ndzeke that he was a bidder in this open tender because you had already had that interaction where you had asked him to go back where they were privileging Lufthansa over AAR and Air France. They came back to you again. In all of that time you knew full well Ms

Kwinana that JM Aviation was a bidder.

MS KWINANA: The date when we told them to go back and when they came back I do not think there was much difference that is point number 1. Point number 2 Mr Ndzeku is not operational and I do not even think that he had even an input into this.

Hence I said yesterday basically in fact I made a practical example where I – like if a person goes to the shopping centre and then you come across a person maybe
10 you would even know that there is a tender here and maybe the person does not know that there is a tender there.

So basically my interaction with Mr Ndzeku was not in any way about the tender that was – that was happening there.

ADV HOFMEYR: That is a different answer to the one you gave earlier. The earlier answer was it was okay for you to communicate with Mr Ndzeku because at the time you were communicating with him you did not know JM Aviation was a bidder. I am now showing you how that cannot factually be
20 so. So your answer is now as I understand it that is okay for you to have been communicating with him because you were not talking about the bid, is that correct?

MS KWINANA: That is also what I said yesterday Chair.

ADV HOFMEYR: No I am saying how it differs from the evidence you have just given now. I am not suggesting you

did not say that yesterday. What I would then like to understand is how do you know he was not operational at JM Aviation? I thought you were not talking to him about anything specific to JM Aviation?

MS KWINANA: Of course.

ADV HOFMEYR: Of course so how do you know he was not operational?

MS KWINANA: That is exactly the reason because if he was operational at JM he would basically talk about JM. Yes.

10 **ADV HOFMEYR:** Ms Kwinana.

MS KWINANA: Yes.

CHAIRPERSON: Ms Kwinana.

MS KWINANA: Chair.

CHAIRPERSON: Are you sure that is the – that is the answer you are giving?

MS KWINANA: Yes Chair.

CHAIRPERSON: Yes.

MS KWINANA: And in fact – in fact that is the answer I can give you.

20 **CHAIRPERSON:** The reason why you know that he was not operational is because he was not talking to you about operational matters?

MS KWINANA: Of course. Yes Chair.

CHAIRPERSON: Yes Ms Hofmeyr.

ADV HOFMEYR: Thank you Chair. Ms Kwinana you even

spoke to Mr Ndzeke the day before the board took the decision, do you remember that?

MS KWINANA: No Chair I do not remember.

ADV HOFMEYR: You spoke to him at twelve minutes past seven in the evening. You do not have a memory of that?

MS KWINANA: No Chair.

ADV HOFMEYR: No. Okay. Do you want me to take you to the cell phone records that show that or will you accept that that took place?

10 **MS KWINANA:** I will accept it Chair.

ADV HOFMEYR: Thank you. Right then I would like to move to – well in fairness to you do you accept that it would be high – it was highly irregular for you the chairperson of the board of SAA Technical to have numerous conversations with the director of a bidder while the bid was open in advance of you taking the decision to award it to him and his joint venture partner.

20 **MS KWINANA:** Chair I do not take it as irregular. We were not talking about the bid and it fact also my talking about the bid would end in the board room. And I do not think Mr Ndzeke would talk about the bid anyway. And as I told you that we were talking about the whole lot of things and therefore you cannot assume that when we are talking at ten past seven in the morning or whatever time we are talking about the bid.

ADV HOFMEYR: We have only your word for that do we not Ms Kwinana?

MS KWINANA: Yes Chair.

ADV HOFMEYR: Thank you.

CHAIRPERSON: What about that rule that we talked about earlier on would it not have applied to you?

MS KWINANA: Chair we are not – we were not talking about the RSB yet.

CHAIRPERSON: Yes. Yes so in your view how would the
10 rule be policed by the company if people who are going to be making decisions could have telephone conversations with whichever bidder they wanted to talk to even the day before the decision is taken. How would the company police this to make sure that there is that people within the company whether board members or managers to make sure that they do not discuss matters relating to bids with bidders. How would they police it? Who is there to police – police you and Mr Ndzeku when the day before the – you decide the bid you are having a telephone conversation in the evening.

20 **MS KWINANA:** Chair I said earlier – yesterday Mr Ndzeku is involved in many other businesses.

CHAIRPERSON: Ja that does not tell me how ...

MS KWINANA: And in fact...

CHAIRPERSON: How the company would police this. Then my question is if the position was that as a decision maker if

you are going to make a decision tomorrow on a bid the evening before you could phone one of the bidders and have an hour long conversation with them, it is fine as long as you do not talk about the bid. How will the company know that during that hour long conversation you did not talk about the bid?

MS KWINANA: Maybe how the company would know would tape the conversation for instance and bring it to the attention of the relevant authorities.

10 **CHAIRPERSON:** Well if you – if you do not phone it – if you do not talk on the phone but you phone each other to make an appointment and meet at a restaurant and enjoy wine and dinner for two hours and then talk about the bid how will the company know you – you talked about the bid? You do that the day before you make a decision on the bid and this person comes from a company that has put in a bid for this. How will the company enforce this?

MS KWINANA: Chair. I would not know about the controls surrounding that. But it also would depend on the integrity
20 of the people involved.

CHAIRPERSON: So it would just depend on the people. Once you say depends on the integrity of the people it also means it depends on the lack of integrity on those you do not have integrity.

MS KWINANA: Yes Chair ...

CHAIRPERSON: And therefore the rule cannot be enforced because everyone – I mean if you did talk about it or any official or board member who talked about the bid with a bidder would not admit that they talked about it because they would know that then they would have acted in breach of the – of the rule and that bidder would be eliminated. So they would not admit it.

So in the end the rule would not be enforceable which is why you might have a situation where the company
10 says they must just be an absolute prohibition. No communication whatsoever. Because if we are going to say you may have communication but do not talk about the bid we will never be able to enforce that rule.

So the best thing is to say no communication whatsoever between somebody who has decision making powers on a particular tender and anyone of the bidders while the bid – the tender is open. You understand that?

MS KWINANA: Yes Chair.

CHAIRPERSON: Okay.

20 **ADV HOFMEYR:** Then I would just like to deal with the signing of the agreement. The agreement between SAA on the one hand and AAR and JM Aviation on the other. Were you involved in that signing?

MS KWINANA: No Chair.

ADV HOFMEYR: You were not? You do not remember a

meeting at which you asked for the couriered copy of the agreement to go and be fetched?

MS KWINANA: The only thing Chair I remember regarding the contract – or maybe say regarding the agreement is that I went to SAAT after I received a letter from the chairperson of SAA and also received a letter from National Treasury saying they want – oh and then also I think the newspapers we also had to respond to the newspapers about this tender. And then I went to SAA and then SAA Technical and then I

10 said that was the acting CFO – I said ...

ADV HOFMEYR: Who was that sorry?

MS KWINANA: Arson Malola Phiri.

ADV HOFMEYR: He was the acting CEO.

MS KWINANA: Yes.

ADV HOFMEYR: Sorry you said CFO so I just wanted to check. You were speaking to Mr Malolo Phiri is that right?

MS KWINANA: Yes.

ADV HOFMEYR: Acting CEO continue please.

MS KWINANA: Yes. And then I said to them I received this
20 letter which we needed to respond to. Can they please make sure that all the files, everything is taken to National Treasury because also the chairperson of the board was saying I think she received the letter from National Treasury and therefore the files were required at National Treasury.

ADV HOFMEYR: So that is the only meeting you recall is

that right? You do not recall being involved in a meeting when the signing of the contract took place?

MS KWINANA: Definitely not.

ADV HOFMEYR: Definitely not.

MS KWINANA: Yes.

ADV HOFMEYR: You – Ms Kwinana you always say it with such conviction so I just want to check again. You have no recollection of being in that meeting when it was signed?

MS KWINANA: No Chair.

10 **ADV HOFMEYR**: No. So if Ms Malola Phiri had given an affidavit to this commission in which he had set out in detail your presence at that meeting and what you said in it and your role in it would you say he is made that up?

MS KWINANA: Let me see what he is saying Chair?

ADV HOFMEYR: Certainly. You will find that in DD25[c]. So that is also Ms Memela's bundle and it is Exhibit DD25[c] and we will go to page DD25[c] at page 790.

MS KWINANA: Page 791?

ADV HOFMEYR: Well the one I want to start at is 790 but I
20 do just want to orientate you. So this is an affidavit that Mr Arson Malola Phiri provided to the state capture commission. It commences in DD25[c] at page 773 but we are going to pick it up at page 790. Chair I just want to ensure that Ms Mbanjwa has the file and its...

CHAIRPERSON: Yes no that it is fine.

ADV HOFMEYR: Comfortable.

CHAIRPERSON: Thank you.

ADV HOFMEYR: Ms Mbanjwa we are at page 790 within Mr Phiri's affidavit and I would like to start at the bottom at paragraph 105. Right so what Mr Phiri says in this paragraph and some of the following ones. I am just going to highlight a few features. He says: Well let us start at 104.

10 "I cannot recall who brought me the execution version of the contract for my signature but I vaguely remember that the chairperson had called an impromptu unscheduled meeting at the SAAT board room which included Ms Memela. I cannot recall further details. However as far as I can recall Ms Kwinana expressed with a firm voice that she would not leave the board room until the AAR contract was signed. Mr Memela then indicated that the contract was

20 at the time in the process of being sent to her by courier for SAAT's signature. It was at this point that Ms Memela gave an instruction to Ms – Ms Kwinana gave an instruction to Ms Memela to get the airway bill AWB number from AAR to track the parcel

– the contract. Ms Memela then obtained the AWB number and subsequently traced the parcel to a warehouse in Johannesburg.”

Can I just stop there. Is this helping with your memory? Do you recall this interaction?

MS KWINANA: No Chair.

ADV HOFMEYR:

10 “Ms Kwinana’s driver was then requested to collect the parcel/contract whilst we were all waiting in the board room for the driver to arrive. Ms Kwinana requested that we respond comprehensively to the complaints raised staff and labour unions against SAAT management. The complaints were addressed directly to the SAA board chairperson Ms Dudu Myeni for her intervention.”

That is the part that you have just told us you do remember is that right?

20 **MS KWINANA:** Yes Chair but it was not the complaint raised by staff and labour unions. I cannot remember well but the – the letter was coming from SAA Chairperson.

ADV HOFMEYR: Yes.

MS KWINANA: And from National Treasury.

ADV HOFMEYR: Right, right. So that part you remember

but you have no recollection of saying we are not leaving this room in a firm voice until this contract is signed. Getting Ms Memela to go and track it. Getting drivers to go and pick it up. You have no memory of that?

MS KWINANA: My understanding Chair was that the contract was already signed when I went there. And hence I was saying make sure that the files that the National Treasury wants are in place and then we take them together with the contract.

10 **ADV HOFMEYR:** You see Mr Malola Phiri's version is that you played a much more active role in that meeting. If you go to paragraph 108 this is when the driver comes back with the contract or the parcel.

“The contract delivered was already signed by AAR's President. Ms Kwinana then requested that I sign the contract as it was signed by the President of AAR so it would be in alignment with the contract – that the contract be signed by the acting CEO on the SAAT side. At this point I requested Ms Memela to go through the
20 contract and sign it, given that she was leading the team that negotiated the contract. Ms Kwinana also went to the contract and was happy for me to sign.

It was on Ms Memela's and Ms Kwinana's go-ahead that I signed the contract.”

And then he attaches a copy of the signed contract to his

affidavit. And then, if we just go on to 110.

“As far as I recall, Ms Kwinana wanted the contract signed as a matter of urgency in order to ensure the SAAT could access costs saving within a matter of weeks.

However, her behaviour at the meeting was, she says, over the top, bordering on being aggressive.”

Do you deny his account of this meeting and your involvement in assisting that the contract be signed?

10 **MS KWINANA:** I would not insist that the contract be signed because according to my recollection, when I got there to say we need to respond to this and we need to take the files to National Treasury because they want to audit them, then the contract was already signed.

Of course, maybe I may have been aggressive in the sense that when the National Treasury wants something, National Treasury, basically, is our finance department and therefore, there is no way that when they say, we want this information, I can take it lightly.

20 **CHAIRPERSON:** But why were you even getting involved in those things Ms Kwinana? That is for management.

MS KWINANA: Yes, Chair. That is ...[intervenes]

CHAIRPERSON: Why would you ...[intervenes]

MS KWINANA: That is ...[intervenes]

CHAIRPERSON: There was a CEO or acting CEO or SAA

Technical. Why were you getting involved in which contract is being couriered from where?

MS KWINANA: No ...[intervenes]

CHAIRPERSON: The driver must go and fetch it ...[intervenes]

MS KWINANA: No, Chair I was not involved in that. The reason why I went to SAAT is because I received a letter from the chairperson of the SAA addressed to me and received a letter from Mr Tjitamano(?) of National Treasury,
10 saying that they want to audit, basically, the process.

And therefore, I had to SAAT and instruct management that this is what is required. Of course, I would not – I do not even know where the contract is filed. I am not involved, as I said before.

But I would have to give direction and make sure that all the information that National Treasury wants is submitted to National Treasury.

CHAIRPERSON: Ms Hofmeyr.

ADV HOFMEYR: Thank you, Chair. Ms Kwinana, I do want
20 to pick up on a point that the Chair has just highlighted with you and that is this question of the degree of your involvement in matters going on at SAAT and at SAA, quite frankly, in relation to procurement.

Because you have previously given evidence, both yesterday and you confirmed it today again. And I was really

quite specific to be clear that I understood your evidence.

You confirmed that other than that 10 February encounter in 2016 with Swissport, you did not have any other meetings. You did not involve yourself in that contract process. That was to be left for management. Correct?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Yes. You see, I was reminded by my faithful team that there is an email suggesting something to the contrary. So we took efforts to have it copied over the
10 lunch break. I would like to ask an opportunity to hand it up. I am well-aware that Ms Mbanjwa and Ms Kwinana may not have seen it recently. So they must please take the time they wish to consider it.

CHAIRPERSON: Ja.

ADV HOFMEYR: And Chair, if we could enter it as Exhibit 33.23?

CHAIRPERSON: Is that Exhibit BB...[intervenes]

ADV HOFMEYR: DB33.

CHAIRPERSON: Point?

20 **ADV HOFMEYR:** Twenty-three.

CHAIRPERSON: Twenty-three. Is this a few emails or one email?

ADV HOFMEYR: It is actually just two emails.

CHAIRPERSON: H'm?

ADV HOFMEYR: It is an email – you will see at the bottom

of the first page from Ms Kwinana to Mr Peter and then it is Mr Peter's response.

CHAIRPERSON: Okay. The document containing an email from Ms Yakhe Kwinana dated 20 January 2016 to Mr Lester Peter, as well as an email from Mr Lester Peter to Ms Yakhe Kwinana which consists of three pages is admitted and it will be marked as Exhibit BB(?)33.23.

DOCUMENTS OF EMAIL BETWEEN MS YAKHE KWINANA AND MR LESTER PETER IS ADMITTED AND MARKED AS

10 **EXHIBIT BD33.23**

ADV HOFMEYR: Thank you, Chair.

CHAIRPERSON: Okay.

ADV HOFMEYR: So Ms Kwinana, it starts at the bottom of the page with an email that you sent to Mr Peter on, as I have it there, the 20th of January 2016 at 19:37 in the evening. Have you had a chance to consider it?

MS KWINANA: Let me read it Chair.

ADV HOFMEYR: Certainly.

CHAIRPERSON: Yes-no, that is fine.

20 **MS KWINANA**: Ai, Chair I just do not remember this.

ADV HOFMEYR: H'm.

CHAIRPERSON: Yes ...[intervenes]

ADV HOFMEYR: What is appears to be Ms Kwinana is an email that you sent to Mr Lester Peter on the 20th of January 2016 and the subject is, meeting with

Swissport.

And you address it: Dear A: CPO. Which I take to be Acting Chief Procurement Officer. But remember, he has now replaced Dr Dahwa. And you say:

“Yesterday I had a meeting with one of the shareholders of Swissport, Mr Vuyo Ndzeku, Mr Peter Cole (CEO/CFO of Swissport), Mr Daluxolo Peter, a BEE partner of Swissport.

10 The purpose of the meeting was that the BEE partner was concerned about the status of the contract.”

And then you go over and you summarised the resolutions of those discussion that you had and you say:

“I promise that I would get back to them after consulting as to what happened and if what they are suggesting is possible or not.”

So you have no recollection of this, do you?

CHAIRPERSON: Well, Ms Hofmeyr.

ADV HOFMEYR: Apology Chair.

20 **CHAIRPERSON:** I think it might be convenient if you just read that first page.

ADV HOFMEYR: Read the whole ...[intervenes]

CHAIRPERSON: Ja, for the benefit of those who are listening.

ADV HOFMEYR: Of course.

CHAIRPERSON: Ja.

ADV HOFMEYR: I do occasionally forget about them, with respect.

CHAIRPERSON: Ja. [laughing]

ADV HOFMEYR: So.

CHAIRPERSON: Yes.

ADV HOFMEYR: Alright. So what happened is. You talk about the meeting. You say that the BEE partner was concerned about the status of the contract and then you go
10 on and you say:

“This is the summary or resolutions of yesterday’s discussions.

1. Swissport wants the current contract, which includes ground power unit, crew transportation and ground handling. The first two items are not part of the approved tender that needs to be signed.

2. Peter said in the event that the first two items cannot be added, they will pull out but there will be no business motivation to continue with ground
20 handling only. They will pull out of this contact.

I promised that I will get back to them after consulting as to what happened and if what they are suggesting is possible or not. Thank you.
Yakhe Kwinana.”

Do you not have any memory of this email?

MS KWINANA: Not at all Chair. And the other thing that is strange here is that... Okay I do not know what email is Yakhe Kwinana to.

ADV HOFMEYR: It is the one you often get emailed on at... I can show you lots of... There is a yakhekwinana2 and a Yakhe. I will find one of the emails.

MS KWINANA: Oh, that is the SAA email.

ADV HOFMEYR: Let me find it for you. Well... No, hang on. I think... No, I think it is your personal one because if
10 you go up to the response from Mr Peter to you, you will see yakhekwinana2, it seems to be yakhe@kwinana.co.za.

I have certainly seen that before, I can tell you, in some of the emails that you were sent. I think you were often sent emails.

That is your Fly SAA one and at your yakhekwinana one which comes up as yakhekwinana2. I can try and look for some of that if that would help you? But does that resolve it for you?

MS KWINANA: I still do not remember this Chair. And
20 secondly, I do not know why the footer would be SAA.

ADV HOFMEYR: No, let me explain why. Because, you see, it is Mr Lester Peter's email at the top which is flysaa.com. So it takes his footer because it is actually his email in which he responds to you that contains your email, right?

So it is his flysaa.com email that contains the footer. It is your yakhekwinana email in the middle. But we now, as I understand how these things come up because we have seen many of them in our two years. But that is aside. Are you suggesting this is fabricated?

MS KWINANA: I think so Chair.

ADV HOFMEYR: You think it is fabricated?

CHAIRPERSON: Ms Kwinana, you may be well-advised to just reflect before you can say it is fabricated. To make sure
10 that you do not say it is fabricated unless you ...[intervenes]

MS KWINANA: I am saying Chair. I think it is fabricated.

CHAIRPERSON: You think it is fabricated?

MS KWINANA: Yes, Chair.

CHAIRPERSON: Okay. Okay Ms Hofmeyr.

ADV HOFMEYR: Oh, thank you. Am I ...[intervenes]

CHAIRPERSON: Do you have an idea who may have fabricated it, Ms Kwinana?

MS KWINANA: No, I do not know.

CHAIRPERSON: You do not know. Okay alright.

20 **ADV HOFMEYR**: Because if it is not fabricated, then it is inconsistent with quite a bit of evidence you have given at this Commission, is it not?

MS KWINANA: If it is not fabricated, it is inconsistent. What does that mean?

CHAIRPERSON: If it is authentic that you did send such an

email. That is what she means. If you ...[intervenes]

MS KWINANA: If I did send such an email?

CHAIRPERSON: If you did send such an email, she says it would mean that it is not – it is inconsistent with a lot of evidence you have given. That is what she is saying to you. If you did send it.

MS KWINANA: Oh, okay.

CHAIRPERSON: Do you accept that?

ADV HOFMEYR: Do you accept that?

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

CHAIRPERSON: Okay.

ADV HOFMEYR: Yes. And I would just like to highlight what those are. First of all, you indicated to us yesterday that Mr Daluxolo Peter, to your understanding, was part of Swissport.

MS KWINANA: Yes.

ADV HOFMEYR: This makes it clear, he was not part of Swissport. He was the BEE partner who was going to join Swissport in relation to the Swissport agreement on its
20 terms. That is what it says, correct?

MS KWINANA: My understanding of Mr Daluxolo Peter's involvement and in fact, the way he was introduced to us, I was thinking that he was part of Swissport. How he would be part of Swissport, basically, I would not interrogate them as to how are they – how is he related to Swissport but they

had always been together.

ADV HOFMEYR: No, but your own email draws a distinction between Swissport representatives and Mr Peter. Your own emails says: The shareholder of Swissport was Mr Vuyo Ndzeku. The CEO/CFO of Swissport was Mr Peter Cole. And Mr Daluxolo Peter was there as the BEE partner of Swissport. So that is separate on your own description of them, if this is an authentic email. Do you accept that?

MS KWINANA: Yes, if this is an authentic email.

10 **ADV HOFMEYR:** Yes. So that is why your testimony yesterday would have been false. The second respect in which your testimony yesterday and repeated again this morning would have been false is.

Because you repeatedly said you had no other meetings with Swissport in relation to this contract baring the encounter on the 10th of February. Again, if this is authentic, that means that evidence was false, correct?

MS KWINANA: Yes, Chair.

20 **ADV HOFMEYR:** Yes. And it also shows a level of involvement in finalising this contract that you previous accepted should not be a level of involvement from a member of the Board of SAA, correct?

MS KWINANA: Finalising which contract? Are you talking about ...[intervenens]

ADV HOFMEYR: The Swissport contract.

MS KWINANA: The Swissport contract?

ADV HOFMEYR: H'm. In respect of which Jammicron, which is the entity that Mr Daluxolo Peter was representing, was going to be the BEE partner.

MS KWINANA: Chair, I am not aware of the contract. As I said, I do not get involved in signing the contracts. We did talk about the Tripartite Contract which basically I was not party to.

ADV HOFMEYR: H'm.

10 **MS KWINANA:** We did talk about the Swissport contract which basically does not have anything to do with me.

ADV HOFMEYR: Yes, but this email says you are involved in the contract because if this email is authentic, you had a meeting with the BEE partner of Swissport, Swissport representatives at which the BEE partner was – and I am quoting “concerned about the status of the contract”. So here, you are getting involved in the contract. Do you accept that if this is authentic?

MS KWINANA: If this is authentic.

20 **ADV HOFMEYR:** You accept that?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Thank you. Right. I would then like to know Ms Kwinana. Oh, no sorry. Before we move on. I do want to put to you in fairness for your opportunity to respond. What we would likely submit, in due course, is the

overwhelming impression created by your evidence thus far. The first is that AAR and JM Aviation were unfairly favoured in the tender processes that your board at SAA Technical decided. Do you accept that that is so?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Do you accept that they had access to you and to Ms Mamela when no other bidder had that access?

MS KWINANA: No.

ADV HOFMEYR: You do not? And why not?

10 **MS KWINANA**: As I said, we went to AAR, Chicago and also other bidders had been visited by the ...[intervenes]

ADV HOFMEYR: Apologies. I take that point. I should have been more precise.

CHAIRPERSON: She is talking about the bidders in this tender.

ADV HOFMEYR: Yes.

MS KWINANA: In which tender?

20 **ADV HOFMEYR**: The last tender that was awarded to AAR and JM Aviation. In that process, from December of 2015 to your decision on the 9th of May 2016. JM Aviation and AAR had access to you and Ms Mamela when no other bidder did.

MS KWINANA: JM Aviation because of this... I mean ...[intervenes]

ADV HOFMEYR: JM Aviation ...[intervenes]

[Parties intervening each other and cannot be heard clearly.]

MS KWINANA: ...you are talking about Swissport now.

ADV HOFMEYR: No, we are on AAR and JM Aviation.

MS KWINANA: You are now... So we are no longer talking about this?

ADV HOFMEYR: Yes.

MS KWINANA: Oh, okay.

ADV HOFMEYR: Remember, I said we went to that.

MS KWINANA: H'm.

ADV HOFMEYR: Because of something that you have said
10 in the evidence and I was reminded about the email. In
fairness to you Ms Kwinana, let us put that aside.

MS KWINANA: Okay. So we are going back to AAR now?

ADV HOFMEYR: We are focussing on AAR and JM Aviation.

MS KWINANA: Okay.

ADV HOFMEYR: Right.

MS KWINANA: Yes.

ADV HOFMEYR: I said to you. Do you accept – because
we will likely submit in due course – that AAR and JM
Aviation had access to you and to Ms Mamela when that final
20 tender was open in circumstances where no other bidder had
that access to either of you?

MS KWINANA: I said Chair... Sorry, Mr Ndzeke and I
...[intervenes]

CHAIRPERSON: Sorry, just start afresh. I did not hear
everything.

MS KWINANA: I said Chair. Mr Ndzeke and I had numerous things that we were talking about and I said Mr Ndzeke was not involved in operations. And I said ...[intervenes]

CHAIRPERSON: Yes, hang on. Remember, the question is simply that, he had access to you that no other bidders who were bidding for that tender had with you.

MS KWINANA: This policy Chair that we did read was saying communication in respect of this RFP.

10 **CHAIRPERSON:** Ja, please do not... For now, do not think about the rule because the question did not make any reference to the rule. The proposition is simply this or the question is. Do you accept that JM Aviation and Swissport had access to you ...[intervenes]

ADV HOFMEYR: Sorry, and AAR Chair.

CHAIRPERSON: Oh, I am sorry. And AAR. I am going to confuse... And AAR had access to you and Ms Mamela that no other bidder in that tender during that time had with you and Ms Mamela.

20 **MS KWINANA:** I do not ...[intervenes]

CHAIRPERSON: Factually. Factually.

MS KWINANA: I do not agree Chair in respect of me. The reason being that, as I said before, Mr Ndzeke and I, we have got many companies outside SAA and ...[intervenes]

CHAIRPERSON: Because she does not talk about

companies. It simply says, do you agree, do you accept that during that time, JM Aviation and AAR had access to you that no other bidder who had put in a bid in regard to that tender had with you, factually?

MS KWINANA: I do not agree Chair.

CHAIRPERSON: They did not have access to you

MS KWINANA: No, Chair.

CHAIRPERSON: They did not speak to you?

MS KWINANA: Mr Ndzeke spoke to me, not in his capacity
10 as JM Aviation.

CHAIRPERSON: Yes.

MS KWINANA: And as I was saying.

CHAIRPERSON: Yes. So, in whatever capacity, he did speak to you? Is that right?

MS KWINANA: Maybe Chair ...[intervenes]

CHAIRPERSON: Whatever the capacity was.

MS KWINANA: Maybe Chair... Maybe Chair, you... Maybe you may ask and say beyond Ndzeke(?) instead of saying JM Aviation. Because in my interaction with Mr Ndzeke
20 ...[intervenes]

CHAIRPERSON: Oh, okay.

MS KWINANA: It was definitely was not in regards ...[intervenes]

CHAIRPERSON: Okay alright. Okay so your problem with regard to the access that happened between yourself and

Mr Ndzeke is where we say JM Aviation? But if we say Mr Ndzeke had access to you, factually that you accept?

MS KWINANA: I accept.

CHAIRPERSON: Okay. Ms Hofmeyr.

ADV HOFMEYR: And that AAR wined and dined you and other members of the board and management while the tender was still open. Do you accept that?

MS KWINANA: I think we are going back Chair to what we discussed before.

10 **ADV HOFMEYR**: We are. And in fairness to you, I have to put to you what we are likely to make submissions in due course. It is going ...[intervenes]

MS KWINANA: You know Chair. This dining and wining and the effect on tender. I really do not see any significance in respect of that. And in fact, as I said, this has been the tendency for the ...[intervenes]

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

MS KWINANA: ...or the practise.

CHAIRPERSON: Ms Kwinana, we discussed that earlier on.
20 At this stage, it would help if you simply answer the question whether factually that is so, namely, did AAR wine you and dine you while the tender was open? Is that factually true?

MS KWINANA: Chair, I do not like the term of being wined and dined as if ...[intervenes]

CHAIRPERSON: Okay alright. Just use another one.

[laughing] What terms would we use? [laughing]

MS KWINANA: I mean, it seems as if we... I am a hungry person and I am happy that I am being dined all day.

CHAIRPERSON: [laughing]

MS KWINANA: All alone.

CHAIRPERSON: Okay. How would you put it in terms of what happened?

MS KWINANA: Maybe if you can say Chair, we visited AAR.

CHAIRPERSON: Yes.

10 **MS KWINANA**: That would be better.

CHAIRPERSON: Okay alright. Ms Hofmeyr.

ADV HOFMEYR: Thank you. Now, I would like to ask whether... You accepted moments ago that they were unfairly favoured in this process. And I want to know whether you received any benefit from either of them as a consequence of that unfair favouring?

MS KWINANA: No, I did not receive any benefit. And in fact, you said we were driven in, as you were saying, in private jet. And I do not consider that as a benefit.

20 **ADV HOFMEYR**: Right. Would you consider receipt of money as a benefit?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: H'm.

MS KWINANA: Depending what the purpose of the money. If, for instance, the money is given to me for me to spoil

myself.

ADV HOFMEYR: Yes.

MS KWINANA: Then that would be fine, I would take it as a benefit.

ADV HOFMEYR: When would it not be a benefit?

MS KWINANA: But remember that the amount that Zano Spark received were not for my benefit. The amounts that Zano Spark received are still for the benefit of Mr Ndzoku and his wife who did not know that he... she... he... she was
10 the wife at the time. But be that as it may. It would not make any difference. But the monies that Zano Spark received are for the forex trading.

ADV HOFMEYR: Right.

MS KWINANA: So they are not for my benefit.

ADV HOFMEYR: Okay let us move to the forex trading and Zano Spark then. Tell me a little bit about Zano Spark. When was it established?

MS KWINANA: It was established in 2016.

ADV HOFMEYR: What month?

20 **MS KWINANA:** Together with three other companies that are established in 2016.

ADV HOFMEYR: Right. What month? Do you recall?

MS KWINANA: Maybe February.

ADV HOFMEYR: It was February, according to the records.

MS KWINANA: Yes.

ADV HOFMEYR: So you established it and you started with your daughter, Ms Goniwe. Is that correct?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: You were the two directors when it was established in February 2016. Is that right?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: I understand she is no longer a director. You are now the sole director. Is that correct?

MS KWINANA: Yes, Chair.

10 **ADV HOFMEYR:** Why have Zano Spark not responded to the summons that it received from this Commission many weeks ago?

MS KWINANA: We responded to the summons.

ADV HOFMEYR: No, when you respond to a summons, you either have to produce the documents or you have to provide an affidavit, explaining why the documents cannot be produced. Why have you done neither of those two things?

MS KWINANA: We do not have the documents Chair.

20 **ADV HOFMEYR:** You would have been – and you have been told many times, you needed to say that on affidavit. Is that now your evidence?

MS KWINANA: I said that on the email Chair.

ADV HOFMEYR: No, you did not. I can take you to it in a moment. But is your evidence now, you confirm under oath, none of the documents that was summonsed, do you have?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Right. We can move on then. What was Zano Spark going to be doing? You have mentioned forex trading.

MS KWINANA: Yes.

ADV HOFMEYR: Was that it?

MS KWINANA: And other investments.

ADV HOFMEYR: And other investments.

MS KWINANA: Yes.

10 **ADV HOFMEYR:** But predominantly forex trading, correct?

MS KWINANA: Yes.

ADV HOFMEYR: Because that is what Mr Ndzeke said your daughter conveyed to him when she approached him about investing in forex trading, correct?

MS KWINANA: Yes.

ADV HOFMEYR: Right. Were you aware that she was contacting him to do that?

MS KWINANA: Who was contacting?

20 **ADV HOFMEYR:** Your daughter, Ms Goniwe was contacting Mr Ndzeke about investing in forex trading.

MS KWINANA: Yes, she told me.

ADV HOFMEYR: She told you?

MS KWINANA: H'm.

ADV HOFMEYR: So that would have been 2016, sometime after February 2016, correct?

MS KWINANA: No, Chair. Before that. That was before that. They met – she said they met before that.

ADV HOFMEYR: Before that?

MS KWINANA: Yes.

ADV HOFMEYR: But the company was only established in February 2016, correct?

MS KWINANA: Yes.

ADV HOFMEYR: It was established at the time that the bid is open for the Components Tender because February 2016
10 is still before you decided in May 2016, correct?

MS KWINANA: Zano Spark has got nothing to do with Components Tender.

ADV HOFMEYR: We will see if that is so in a while Ms Kwinana.

MS KWINANA: Yes.

ADV HOFMEYR: But your evidence is that Zano Spark was established to do forex trading predominantly and some other investments. Is that right?

MS KWINANA: Yes, Chair.

20 **ADV HOFMEYR:** What other investments?

MS KWINANA: Any investment basically. Sometimes property. Sometimes venture capital.

ADV HOFMEYR: Right.

MS KWINANA: H'm.

ADV HOFMEYR: And that are investments for third parties.

Is that right? Not yourselves?

MS KWINANA: What not for ourselves?

ADV HOFMEYR: For yourselves but also for third parties.

Is that right?

MS KWINANA: Third parties. Not members of the public.
But the people like the – the people that we know.

ADV HOFMEYR: The people that you know like Mr Ndzeke?

MS KWINANA: Yes.

ADV HOFMEYR: Okay. With whom you have no personal
10 relationship, correct?

MS KWINANA: [No audible reply]

ADV HOFMEYR: And you said previously you did not know
Ms Hendricks was his wife. Is that correct?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: When did you first learn that she was?

MS KWINANA: When Mr Ndzeke was testifying here.

ADV HOFMEYR: I want to spend a bit of time on forex
trading because I have to confess, I find it a little bit
confusing. What does it mean to go long on a currency pair?

20 **MS KWINANA**: That means you are buying stuff.

ADV HOFMEYR: What?

MS KWINANA: You are buying the pair.

ADV HOFMEYR: Which pair?

MS KWINANA: Whatever. There are many forex currency
pairs. There is US, DJPY, US ...[indistinct] and there is

Nasdaq and the whole lot of other pairs. In fact, I think there are more than 400 pairs that you can trade.

ADV HOFMEYR: But when you go long on a pair, what do you are doing in respect of each part of the pair? Do you know?

MS KWINANA: [No audible reply]

ADV HOFMEYR: Because a pair is two currencies.

MS KWINANA: Yes.

ADV HOFMEYR: Yes.

10 **MS KWINANA**: Yes.

ADV HOFMEYR: So how do you go long on a pair?

MS KWINANA: When you say you are going long on US/DJPY that means you are buying U/?DJPY When you are going short, that means you are selling US/DJPY.

ADV HOFMEYR: Right. And that is the sort of work that Zano Spark does, is that right?

MS KWINANA: Yes, through me.

ADV HOFMEYR: Through you?

MS KWINANA: Yes.

20 **ADV HOFMEYR**: Yes. Where do you do that trading?

MS KWINANA: On my computer.

ADV HOFMEYR: On your... But you need a platform for that. What platforms do you use?

MS KWINANA: IC Markets.

ADV HOFMEYR: I beg your pardon?

MS KWINANA: IC Markets.

ADV HOFMEYR: IC Markets - so let me just get it right. You would receive money in Zano Spark, is that correct?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: And then you would go onto this IC Market's platform and then you yourself, Ms Kwinana, then trades on the forex currency pairs, is that correct?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Right, thank you. And what is the bid
10 price?

MS KWINANA: It depends, it fluctuates all the time. It depends.

ADV HOFMEYR: I am drawing the distinction between bid and ask price. What is the difference between a bid price and an ask price?

MS KWINANA: It is like the buy and the sell.

ADV HOFMEYR: Thank you. And tell me, when Zano Spark started operating how big was its client base?

MS KWINANA: Much as that we registered Zano Spark in
20 2016 I started to trade in 2014.

ADV HOFMEYR: No, but I am asking about Zano Spark's client base. How big was it?

MS KWINANA: How big was it when?

ADV HOFMEYR: When it started in February 2016.

MS KWINANA: Of course when we started in 2016 the

clients that we had I think it was about maybe eight clients.

ADV HOFMEYR: Eight clients in 2016?

MS KWINANA: Yes.

ADV HOFMEYR: And so they would invest monies, correct? And then you would go onto this platform and trade for them, is that right?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: So you were receiving money from third parties and you were trading on a platform for that purpose, is that right?
10

MS KWINANA: I also do not like this term of ...[intervenes]

ADV HOFMEYR: Sorry, I do not mean the public generally.

MS KWINANA: Because I do not go out and market and put it on advert.

ADV HOFMEYR: No.

MS KWINANA: Yes.

ADV HOFMEYR: You take the money of a select few.

20 **MS KWINANA:** Yes.

ADV HOFMEYR: And you traded for them, is that correct?

MS KWINANA: Yes.

ADV HOFMEYR: Are you aware that you need a licence to do that?

MS KWINANA: No, I do not need a licence.

ADV HOFMEYR: You do not? Why do you not need a licence?

MS KWINANA: It is because according to FSCA there are specific companies which are mentioned there that require a licence. For example, I may not mention all of them but obviously the bank requires the licence, the insurance companies and insurance brokers and FSCA has stated those and Zano Spark is not one of them.

ADV HOFMEYR: No, they have certainly stated that Zano
10 Spark does not have any licence but is it not a financial service ...[intervenes]

MS KWINANA: Yes because we do not need a licence.

ADV HOFMEYR: No, they do not say because it does not need a licence, they say it does not have one and then they tell us in the affidavit that you have seen and we can now go to, which is in your bundle DD33 at page 323.

MS KWINANA: 323?

ADV HOFMEYR: Yes. Do you have that?

MS KWINANA: Yes, Chair.

20 **ADV HOFMEYR:** This is an affidavit you have seen before, have you, Ms Kwinana?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: And you have considered it.

MS KWINANA: Yes, Chair.

ADV HOFMEYR: So what this is, is an affidavit provided

by Felicity Mpho Mbaso of the FSCA, the Financial Services Conduct Authority in which, first of all, the authority was asked to confirm whether there is any licence that has been issued either to Zano Spark, to Ms Goniwe or to yourself and they confirm that there is no licence. You confirm that too, do you not?

MS KWINANA: I confirm that there is no licence and I do not need a licence to do forex trading, Chair.

ADV HOFMEYR: They go on and they explain at page 324
10 the purpose of the affidavit and that is to deal with the various ways in which licensing is required that might involve forex trading, right? So at 4.1 they say they are going to explain the person to enter into financial services – to render financial services to clients in a foreign currency denominated investment instrument including a foreign currency deposit and in securities and instruments including derivative instruments are required to be authorised under the Financial Advisory and Intermediary Services Act. We will call that the FAIS for short. They
20 also said that they are going to deal with the requirements for approval by the conduct authority of a clearing firm for foreign forex service provider and the requirements to be authorised as an over the counter derivative provider which is – summarises ODP.

And then in quite a complex affidavit they tell us the

licensing regime for each of those. Is it your evidence that you are none of those?

MS KWINANA: I am none of those.

ADV HOFMEYR: Right, so you take money from clients, correct?

MS KWINANA: Yes.

ADV HOFMEYR: You invest them in forex trading.

MS KWINANA: Yes.

ADV HOFMEYR: And your evidence is you do not need a
10 licence to do that.

MS KWINANA: Not at all.

ADV HOFMEYR: Why not?

MS KWINANA: It is because forex trading, Chair, does not fall under the FSCA Act. Yes.

ADV HOFMEYR: Where does it fall under?

MS KWINANA: And as I said before, I said this terminology of the third parties, I do not like it because I do not at the time, I say to the people close to me, I say to them or my colleagues or my business partners, I say to
20 them this is what I do and then if they want, they say please invest for us. So basically I do not need a licence.

ADV HOFMEYR: So if I understand your evidence, provided you do not advertise that you are going to be doing it you do not require a licence, is that correct?

MS KWINANA: I do not and solicit money from the

people. If people come to me because they know that I do forex trading and they say I have got this money can you do trading for me?

ADV HOFMEYR: How did they know that you do this trading?

MS KWINANA: You also now know, Chair, that I am doing forex trading, for instance. You can ...[intervenes]

ADV HOFMEYR: Did you have conversations with them, is that right?

10 **MS KWINANA:** Yes, exactly.

ADV HOFMEYR: Like Mr Ndzoku.

MS KWINANA: Yes.

ADV HOFMEYR: Yes, so when your daughter approached him and said we have started doing business and we are going to do forex trading, that was not soliciting his custom?

MS KWINANA: It is because Mr Ndzoku, when Lunga introduced herself, Mr Ndzoku got excited and said he was a friend of his late father and therefore he did not solicit
20 money, they were together in Cape Town, she did not go there to solicit money. When they were talking, what are you doing? Lunga told him what he is doing and then he got interested and said when I have money then maybe you can also trade for me.

ADV HOFMEYR: And you put them in touch, did you?

You put your daughter Ms Goniwe in touch with Mr Ndzeke?

MS KWINANA: No.

ADV HOFMEYR: No, that happened independently?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Right. So how did you end up doing the trading for him yourself on the platform?

MS KWINANA: It is because when I am the one who is doing forex trading, Lunga does not – she does some
10 limited forex trading. I would say I am almost fulltime in forex trading, so that is why the money would come to me and then I put it in my credit card and then I pay IC Market or I pay Altcoin Traders, Skrill or Luno or IC Markets through my credit card.

ADV HOFMEYR: So IC Markets is one but Altcoin and others are others, is that correct?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Where you trade the deposits that you have received from your clients, correct?

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

ADV HOFMEYR: Are there any limitations on those platforms that you cannot be trading for other people?

MS KWINANA: You know, when I open an account there, I do not open an account using the names of other people, I will open an account using my name. I open different

accounts using my name, yes. And then now when there is time then I would deposit the money in Zano Spark or take the money from Zano Spark depending on which direction it is going.

ADV HOFMEYR: Yes, but as I understand your evidence, clients – close clients, eight of them, are putting money in Zano Spark so that you can trade it for them on these platforms, correct?

MS KWINANA: Yes, yes.

10 **ADV HOFMEYR:** Okay. Do you know if those platform put limitations on your trading other people's money?

MS KWINANA: The limitations, Chair, when I have got this money in my account, that company takes it as my account, they do not know whose money it is because it goes into my account. Yes.

ADV HOFMEYR: Yes but are you not limited by the terms and conditions of those platforms to only trade your own money, not a third party's money?

MS KWINANA: No, I have never seen ...[intervenes]

20 **ADV HOFMEYR:** You have never seen that. So if I later show you the terms and conditions that place that limit, then would you be a bit concerned that you have been trading money on these platforms in circumstances where you are not permitted to do so?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Alright. Okay, right, so we established Zano Spark in February of 2016 and you open bank accounts for Zano Spark, as I have it, on the 15 March 2016. Does that accord with your recollection?

MS KWINANA: Yes.

ADV HOFMEYR: Right. And opening balance in – there are a number of Zano Spark accounts so I have to remind myself but I think it is in the business account, was R500. Do you remember that?

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

ADV HOFMEYR: Super. So let us see what happens, at that time you told me you have about eight clients and now we are going to see in the bank account what happens with the money that you received, correct?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Okay. Let us go to the bank account ...[intervenes]

CHAIRPERSON: Ms Hofmeyr, I think we must take a short break.

20 **ADV HOFMEYR:** Certainly.

CHAIRPERSON: Are we all agreed that we can continue at least until quarter to six? Ms Mbanjwa, is that fine with you? Yes. Ms Kwinana?

MS KWINANA: That is fine, Chair.

CHAIRPERSON: Okay, alright. It is about four minutes to

four, let us take the break before Ms Hofmeyr moves onto something else, ja.

ADV HOFMEYR: Thank you, indeed, Chair. And till what time?

CHAIRPERSON: Let us say we will come back at ten past four, is that alright?

ADV HOFMEYR: Certainly, thank you.

CHAIRPERSON: We adjourn.

INQUIRY ADJOURNS

10 **INQUIRY RESUMES**

CHAIRPERSON: Okay, let's continue.

ADV HOFMEYR: Thank you Chair. Ms Kwinana when Mr Ndzeke gave evidence at the Commission and in his affidavit that he provided to the Commission he spoke about being approached by your daughter, Ms Goniwe. He put that approach in 2016. I understood your evidence earlier to suggest it was earlier than that?

MS KWINANA: That was my impression Chair, but if he says they met in 2016 I wouldn't object to that.

20 **ADV HOFMEYR:** Thank you. He also said when she told him that she had this company that did forex trading he was attracted by that investment because it would enable him to hedge against the falling rand. Were you aware that that was his interest?

MS KWINANA: Yes Chair.

ADV HOFMEYR: So did she communicate that to you?

MS KWINANA: She communicated it to me.

ADV HOFMEYR: Right, so as I understand him he was interested in the forex trading and he was going to now use Zano Spark in order to do that forex trading, is that right?

MS KWINANA: Yes Chair.

ADV HOFMEYR: Okay, now you mentioned your eight clients, or thereabouts when Zano Spark was established, for privacy reasons I am not going to ask you now to
10 identify those eight people but I would like to ask that after today you just provide an affidavit to the Commission identifying who those clients were so that we can be in touch with them about their understanding of the arrangement. Are you comfortable doing that?

MS KWINANA: I am not comfortable Chair.

ADV HOFMEYR: You see the reason why I need to ask that is because when we summonsed you Ms Kwinana the summons was for really any scrap of paper that existed that could show us the investment statements that went to
20 your clients, the contracts that you concluded with them, updates on their investments and you have told us today not a single document exists, so there is no record that we can summons to legitimise and give credence to what you are telling us the arrangement was today, so our only option then is just to contact the people who you say are

your clients and on behalf of whom you do forex trading. So that is the reason for it, you can consult with your lawyer afterwards and come back to us with your attitude to that. Thank you.

We also asked Mr Ndzeke for a single scrap of paper related to this forex investment that he did with you. Chair you might recall he initially in his response to the summons said they didn't exist.

CHAIRPERSON: Yes.

10 **ADV HOFMEYR:** In evidence he changed, he said they did exist, he needed ten days, I said wouldn't it be quicker, he said ten days, well he gave evidence on the 26th of August it is now the 3rd of November, despite repeated engagements with Mr Ndzeke he seems to have released his former lawyers, they are no longer a point of contact for us, he is not yet notified us of the lawyers he has replaced them with but there has been no document.

CHAIRPERSON: He has not furnished any document?

ADV HOFMEYR: Not a document no.

20 **CHAIRPERSON:** Yes.

ADV HOFMEYR: Despite repeated requests.

CHAIRPERSON: But when he gave evidence he was – when he gave his oral evidence I think he was adamant that there was some documents.

ADV HOFMEYR: Indeed.

CHAIRPERSON: Receipts I think.

ADV HOFMEYR: Yes, yes, no actually as I recall it he said there were annual investment statements that he received.

CHAIRPERSON: Yes, okay, yes.

ADV HOFMEYR: And there was a little debate about how he gets them off the emails, I remember thinking it would be quite quick and him resisting that and saying he needed at least ten days so you initially gave him ten days, there
10 is then repeated engagements. So that is strange Mr Ndzeke thought that he had got annual investment statements out of your company who has no such statements, do you agree that that is strange?

MS KWINANA: No that is not strange Chair, I have been giving him the annual statements.

ADV HOFMEYR: Yes, so why didn't you produce those when you were summoned to produce them?

MS KWINANA: Who was summoned, me?

ADV HOFMEYR: Now Zano Spark, Zano Spark is the
20 entity with which he is doing the trading.

MS KWINANA: Yes, the reason being that the server as I think I said in my affidavit was confiscated, however ...[intervenes]

CHAIRPERSON: I am sorry in December what happened?

MS KWINANA: I have been sending him the statements

he has got the statements for December 2016, statements for December 2017 or December 2018, I think also December 2019, yes.

CHAIRPERSON: So the question was why didn't you provide those to the Commission in response to the summons?

MS KWINANA: I no longer have them Chair because the server, my server, Kwinana and Associates server which basically we were also using for Zano Spark, was
10 confiscated by the service provider for non-payment, I said that in the affidavit, however when it was confiscated we already had printed the statements to Mr Ndzeke.

CHAIRPERSON: How long ago was it when it was confiscated?

MS KWINANA: That was I think in February this year Chair, more or less.

CHAIRPERSON: February this year?

MS KWINANA: Yes.

CHAIRPERSON: Okay.

20 **ADV HOFMEYR:** And that was because Kwinana and Associates went under, is that right?

MS KWINANA: Yes Chair.

ADV HOFMEYR: So Kwinana and Associates went under in February of this year?

MS KWINANA: No I think before that, before that, but the

computer was still there until it was confiscated.

ADV HOFMEYR: Who is your service provider?

MS KWINANA: Onero.

ADV HOFMEYR: Could you spell that for me?

MS KWINANA: O-n-e-r-o.

ADV HOFMEYR: So Onero is your service provider and it confiscated – what exactly did it confiscate?

MS KWINANA: Our server, they were the service provider for the server.

10 **ADV HOFMEYR:** For the server for Kwinana & Associates.

MS KWINANA: Yes.

ADV HOFMEYR: That went under before that?

MS KWINANA: Yes.

ADV HOFMEYR: So why would they continue to maintain a server for a company that has gone under?

MS KWINANA: I don't know but they went to physically take it in February, so why did they remain not taking it I don't know.

20 **ADV HOFMEYR:** I don't understand, you see if Kwinana and Associates went under how did they continue to pay for the services?

MS KWINANA: That is why had to take it for non-payment.

ADV HOFMEYR: No I don't understand it, but maybe I am not being clear. Kwinana and Associates went under some

appreciable time back, correct?

MS KWINANA: Yes.

CHAIRPERSON: Can you just give an estimate of when that might be?

ADV HOFMEYR: Ja when was that.

CHAIRPERSON: More or less which month, would that be 2019?

MS KWINANA: I think Chair there is a document somewhere here in the bundle to be exact.

10 **CHAIRPERSON:** Oh but what is our recollection so that we can see whether there is need to go to the bundles.

MS KWINANA: I think maybe 2018.

CHAIRPERSON: Maybe 2018?

MS KWINANA: Yes Chair.

CHAIRPERSON: Okay, alright, I think that might be good enough.

ADV HOFMEYR: So I think it was about August 2018, does that jog your memory?

MS KWINANA: Ja, it does.

20 **ADV HOFMEYR:** Okay so Kwinana and Associates goes under in August of 2018 and it has a service provider on their own correct?

MS KWINANA: Yes Chair.

ADV HOFMEYR: So it stops operating in August of 2018, is that right?

MS KWINANA: Yes Chair.

ADV HOFMEYR: So how did the service continue to be provided after that?

MS KWINANA: It continued to be provided on a credit basis hence they only took it with such a huge liability in February.

ADV HOFMEYR: So you went on credit from August of 2018?

MS KWINANA: Yes Chair.

10 **ADV HOFMEYR:** Who went on credit because I understand that Kwinana & Associates went under.

MS KWINANA: They continued Chair, they did not physically close off the server.

ADV HOFMEYR: Right.

MS KWINANA: They continued.

ADV HOFMEYR: And you were using it for Zano Spark's business, correct?

MS KWINANA: Yes.

ADV HOFMEYR: Is that right?

20 **MS KWINANA:** Yes.

ADV HOFMEYR: Zano Spark has not gone under, correct?

MS KWINANA: Yes Chair.

ADV HOFMEYR: So why didn't Zano Spark keep paying?

MS KWINANA: It is because the contract was with Kwinana and Associates.

ADV HOFMEYR: No that with respect Ms Kwinana this is a server critical to your business, right?

MS KWINANA: Yes.

ADV HOFMEYR: Okay, so Kwinana and Associates is out of the picture in August of 2018.

MS KWINANA: Yes.

ADV HOFMEYR: You need the server to operate your business as Zano Spark?

MS KWINANA: Yes.

10 **ADV HOFMEYR:** Why doesn't Zano Spark pay for the service?

MS KWINANA: Because they had to pay for the huge arrears which they could not afford.

ADV HOFMEYR: Zano Spark couldn't afford?

MS KWINANA: Yes to pay for the arrears for Kwinana & Associates.

ADV HOFMEYR: And you were the director of Kwinana & Associates and you and your daughter are the directors of Zano Spark?

20 **MS KWINANA:** Yes Chair.

ADV HOFMEYR: So you decided in your Zano Spark directorships not to make good the bill that Kwinana & Associates owed to your service provider, correct?

MS KWINANA: Not because we did not want to make good but there was a huge liability in respect of the server

which basically Zano Spark could not carry.

ADV HOFMEYR: Right, why could Zano Spark not carry it?

MS KWINANA: It is because Zano Spark has not made money.

ADV HOFMEYR: Yes, it hasn't made money, we will come back to that. So you need a server to operate your business at Zano Spark, you are using the Kwinana & Associates business server since August of 2018, you don't
10 pay for it all and then it gets taken away from you.

CHAIRPERSON: And remember to face this side Ms Kwinana.

ADV HOFMEYR: It gets taken away from you in February of this year, correct, for non-payment?

MS KWINANA: Yes Chair.

ADV HOFMEYR: So that just scraps any electronic records of all of these annual statements you provided to Mr Ndzeke correct?

MS KWINANA: Not really Chair, I would still in December
20 2020 I would still be in a position to create another statement.

ADV HOFMEYR: No, I wouldn't like anything to be created now, I would like to go back to the ones that you say you have in hard copy, why have those not been furnished to the Commission?

MS KWINANA: When I printed them Chair I gave them to Mr Ndzeke, I didn't know that the ones that I have kept in my server one day I would not have access to them.

ADV HOFMEYR: Oh sorry, so they are not in your possession?

MS KWINANA: No Chair.

ADV HOFMEYR: Oh I understand, so why would you give him hard copies, when did you give him these hard copies?

MS KWINANA: On an annual basis every January.

10 **ADV HOFMEYR:** You would go and take him a hard copy?

MS KWINANA: Yes Chair?

ADV HOFMEYR: Why didn't you email it?

MS KWINANA: Because I felt that it is – because of the confidentiality I do not know if the email is safe enough.

ADV HOFMEYR: You see Ms Kwinana Mr Ndzeke's evidence before this Commission is he received those on email.

MS KWINANA: Then that is his evidence, I sent them, I print them and send them.

20 **ADV HOFMEYR:** No you don't send them you take them as I understand your evidence.

MS KWINANA: Yes.

ADV HOFMEYR: Because you are afraid that confidentiality of those documents requires you to hand deliver them to Mr Ndzeke, is that correct?

MS KWINANA: Yes Chair.

ADV HOFMEYR: So you have been to his home, is that correct?

CHAIRPERSON: Closer to the mic.

ADV HOFMEYR: Where do you deliver them in January every year?

MS KWINANA: I would call and find out where he is and then go and drop them, maybe in a meeting, maybe at airport, or – ja basically.

10 **CHAIRPERSON:** Is that what you did with all the other clients? You said when Zano Spark started you said about eight clients.

MS KWINANA: Yes Chair, that's what I do ...[intervenes]

CHAIRPERSON: Is that what you did with all of them?

MS KWINANA: Yes Chair.

CHAIRPERSON: Okay.

ADV HOFMEYR: Did you hand deliver all the confidential documents relating to SAA and SAA Technical when you were a Board member?

20 **MS KWINANA:** Hand deliver them where?

ADV HOFMEYR: To whoever you were communicating with.

MS KWINANA: No SAA has got a company secretariat that does that, and Zano Spark does not have company secretariat.

ADV HOFMEYR: No, so when you were at SAA and you were communicating with people, co board members, management about confidential matters, you were happy to do so on email, correct?

MS KWINANA: That is their policy Chair.

ADV HOFMEYR: Right, but when you are investing some money in forex trading for your associates, I want to call them associates because you are resisting saying it is members of the public, your associates, you won't email
10 them is that right?

MS KWINANA: Yes Chair.

CHAIRPERSON: How is it different? Why is – why are considerations of confidentiality such that you feel you need to deliver these statements personally to your clients, but when it is confidential matters relating to SAA you find no problem in emailing people with whom you must be in touch about such information?

MS KWINANA: It depends Chair on the company policy.

CHAIRPERSON: Yes.

20 **MS KWINANA:** If SAA required that the documents must be hand delivered, based on ...[intervenes]

CHAIRPERSON: SAA?

MS KWINANA: Yes, oh, yes Chair, so I am saying it depends on the company policy. At Zano Spark we decided that we are not going to email because the email do get

hacked left, right and centre, and therefore our policy was that we are not going to email. So SAA I never received something that says things must not be emailed, so basically SAA policy would be different in terms of delivering of confidential information from Zano Spark.

ADV HOFMEYR: So you communicated to Mr Ndzeku these confidentiality concerns did you?

MS KWINANA: Yes Chair

ADV HOFMEYR: Can you provide us with this policy of
10 Zano Spark?

MS KWINANA: Ja, I can do that.

ADV HOFMEYR: You can do that, mmm. That would be useful, I wonder if you could email it to us, would you do that?

MS KWINANA: No I would have to hand deliver it chair because that is our policy.

ADV HOFMEYR: Could you make an exception on this occasion?

CHAIRPERSON: But there cannot be anything
20 confidential about our policy.

MS KWINANA: No, but ...[intervenes]

ADV HOFMEYR: You share it with your clients.

MS KWINANA: But Chair even the fact that we do not email statements but we hand deliver it to them, basically it is confidentiality itself, so if you want the policy Ms

Hofmeyr, I will not email it to you, I will print and deliver it to you.

ADV HOFMEYR: No, we would like it on email.

CHAIRPERSON: But you have told us publically what the policy says so there is nothing confidential about it.

MS KWINANA: But at least Chair I will not be willing to put it down and email it.

ADV HOFMEYR: No Ms Kwinana can I explain why we want it on email? We would like it on email because if you email it to us we can do a Metadata analysis on it and we can determine when that document was created, because I need to put it to you that your evidence thus far, I will likely argue in due course is dishonest. Mr Ndzeke came here, he said, initially he said he had not documents, but then when he is finally pushed he says he gets them annually on email. You have come here today and you tell us that some server related to an old company whose debts you didn't want to take over has been confiscated in February of this year and so you don't have any record of anything with your clients, but rest assured you printed out hand delivered documents of annual statements to hand deliver them.

Ms Kwinana I put to you that is nothing short of preposterous. What is your comment?

MS KWINANA: I am saying Chair I will not be in a

position to email it to you, anyway the policy that you are looking for I would have to create it because it has gone with the server, but I know what it entails because I am the one who put it in

ADV HOFMEYR: Ja.

MS KWINANA: But anyway I am not going to email it to you because that will be breach of our policy.

ADV HOFMEYR: Sure, okay Ms Kwinana. Right.

CHAIRPERSON: Ja.

10 **MS HOFMEYR:** Right, let us then move to Mr Ndzeke and your understanding of his investment, because he was approached by your daughter in 2016, he is told he can hedge against the Rand and he can do so through her company Zano Spark in respect of which she is doing forex trading, correct?

MS KWINANA: Yes Chair.

ADV HOFMEYR: Right so then there is no contract I assume that gets drawn up for that, is there?

20 **MS KWINANA:** There is no contract Chair but in the investment statement itself ...[intervenes]

ADV HOFMEYR: The one you hand delivered?

MS KWINANA: Yes.

ADV HOFMEYR: Yes?

MS KWINANA: There is some form of I would say the contract so to say.

ADV HOFMEYR: What does it say?

MS KWINANA: It is talking about the return on investments and it calculates the illustrative returns on an annual basis and it also has got a capital amount invested, the rate of returns and the total amount and it also has the terms and conditions.

ADV HOFMEYR: I am going to come back to your terms and conditions. Just tell me how was Mr Ndzeke's investment doing? He starts investing in 2016, how is it
10 done?

MS KWINANA: You know with forex trading Chair today you are doing well, today you make 10%, the following you make 1%, the other day you lose 2%, you lose 5%, so basically it is fluctuation.

ADV HOFMEYR: Fluctuation, so you trading that money since you received it in the account, is that right?

MS KWINANA: Yes Chair.

ADV HOFMEYR: So on an annual basis let us talk about the one you hand delivered in January 2017, how was he
20 looking at that point with his investment overall. I understand the daily fluctuations but overall was he up or was he down?

MS KWINANA: I would say it is a little bit up, it is not that good but it is a little bit up, it is not as my projection.

ADV HOFMEYR: What is your mandate from Mr Ndzeke?

MS KWINANA: My mandate is to invest the money and give it to him with the profit after five years.

ADV HOFMEYR: No, my question is you get different types of mandate, are you aware of that? Full discretionary, non-full discretionary mandates, do you know that?

MS KWINANA: Yes Chair.

ADV HOFMEYR: Yes, because that is what financial service providers are required to be very clear about, so
10 that they don't just do their own thing with other people's money correct?

MS KWINANA: Yes Chair.

ADV HOFMEYR: So did you have a full discretionary mandate, or something less than that?

MS KWINANA: Yes Chair a full discretionary mandate.

ADV HOFMEYR: Full discretionary mandate, so you just went onto your platforms whenever you saw fit and you traded his money, correct?

MS KWINANA: Yes Chair.

20 **ADV HOFMEYR:** Why did he place that level of trust in you?

MS KWINANA: He is not the only one who is putting a level of trust in me.

ADV HOFMEYR: No I understand that, that is why we are going to get the names of the other eight clients, but just

tell me about him, why did he put that level of trust in you?

MS KWINANA: I don't know, maybe he would be the one to answer that.

ADV HOFMEYR: So you never communicated, because if I understood your evidence previously all you had was a professional relationship with him in which you discussed on occasion transformation issues and BEE initiatives, right. How does he then have the confidence in you, not a financial service provider because you have got no license, 10 right, to put millions of Rands with you, with a full discretionary mandate?

MS KWINANA: Why he is trusting me Chair I wouldn't know, maybe he would be the best person to answer that.

ADV HOFMEYR: Right, so ...[intervenes]

CHAIRPERSON: Is there something you said to him that you think may have given him that level of confidence that make him give you that wide discretion as to what to – how to – what to do with his money?

MS KWINANA: I don't know Chair but what I can confirm 20 is that for him to give me that level of confidence that means he has seen something in me that maybe he trusted me.

CHAIRPERSON: Yes, okay Ms Hofmeyr?

ADV HOFMEYR: So I understood you to say that the arrangement was full discretionary mandate for a period of

five years is that right?

MS KWINANA: Yes Chair.

ADV HOFMEYR: We are close to the end of that five years, how is his investment looking at the moment?

MS KWINANA: We are not close to the end of five years Chair, he did not put the money five years ago, he has been putting money as and when he feels that he's got some bit of money to invest, so which means therefore each investment has got it's lifespan.

10 **ADV HOFMEYR:** Alright, so there is a new five years for each deposit that he makes?

MS KWINANA: Yes.

ADV HOFMEYR: Correct, so it would be important to know the date on which the first deposit is made, correct?

MS KWINANA: Yes Chair.

ADV HOFMEYR: Yes because then you track the five years, so let's take the first one which occurred in June of 2016, that's the one I was thinking of when I said it is quite soon, it will be June of next year. Tell me how his
20 investment is doing on that?

MS KWINANA: The first one for Ndzeku is August Chair.

CHAIRPERSON: August next year?

ADV HOFMEYR: No it is not, it is June.

MS KWINANA: I have got August Chair.

ADV HOFMEYR: You have got August, okay let's take

August, just tell me how that investment is doing?

MS KWINANA: As I said Chair it is not performing as well as I wanted to but it is doing fairly well.

ADV HOFMEYR: No I want some greater clarity there, what was the August investment amount?

MS KWINANA: I think that was 600, R600 000.

ADV HOFMEYR: R605 000 to be exact, right, how much has been lost on that?

MS KWINANA: No money has been lost.

10 **ADV HOFMEYR:** No money has been lost, has he made a bit?

MS KWINANA: Yes Chair.

ADV HOFMEYR: Has he always made something?

MS KWINANA: No.

ADV HOFMEYR: Which ones did he lose on?

MS KWINANA: No Chair you know how forex trading works if like for instance as we are sitting here there is trading that is going on and therefore I wouldn't with confidence say now we are sitting at this much, forex
20 trading happens 24 hours a day as I am sitting here.

ADV HOFMEYR: But you had to decide when to buy and sell don't you?

MS KWINANA: Yes Chair. Yes, but what happens as I am sitting here there are pending orders, there are running orders, so basically as I am sitting here I have put in the

pending orders, that means when the price is at this then the trade must sell, when the price is like this the trade must buy, that is one. And then two, then you put the stock losses and take profits, so basically I may be sitting here with that investment and I would say maybe the last time I checked it, it was about R700 000, ja R700 000 for instance. I can go back to the platform and find out that it is R1million or I can go back and find out that after all it is R400 000, so basically in forex trading, unlike when you
 10 are putting money in the bank, when you are putting money in the bank you say it is going to earn 5% per annum, then you know that if you have put in 500 5% is – if you had put in 100 5% is R5 and therefore you know that at the end of the year you have 105, but it doesn't work like that with forex trading.

ADV HOFMEYR: Much more volatile is that right?

MS KWINANA: Yes.

ADV HOFMEYR: Yes.

MS KWINANA: So basically it is difficult to say how has it
 20 performed or not, how you look at it is when you say this is the end of five years now and at the end of five years this investment is this month then that is when you – when we draw it and you close that account then that is when you decide whether you have made profit or loss, because it depends on like a second basis basically because it

changes.

ADV HOFMEYR: Yes.

MS KWINANA: Yes.

ADV HOFMEYR: I can understand that, so it is a highly volatile market to be investing in, correct?

MS KWINANA: Yes Chair.

ADV HOFMEYR: It can move, as you say as you sit here today things might have dropped considerably or raised considerably correct?

10 **MS KWINANA:** Yes Chair.

ADV HOFMEYR: And so you really only in a position to assess the investment at the end of the five years, is that correct?

MS KWINANA: Yes Chair.

ADV HOFMEYR: What were you putting in your investment statements that you had hand delivered to Mr Ndzeku every year then?

MS KWINANA: I am putting in the illustrative figures.

ADV HOFMEYR: Ja, so give me the ...[intervenes]

20 **CHAIRPERSON:** I am sorry, you are putting in? Face this side please, ja, you're putting in?

MS KWINANA: Illustrative figures.

CHAIRPERSON: Oh, okay.

ADV HOFMEYR: And what are those?

MS KWINANA: I don't remember them now as I am sitting

here Chair.

ADV HOFMEYR: But what I asked you to do was just tell me now like you told him each January how his investment was doing, how his investment is doing and I understood you to say you can't do that because it is too volatile, and you can only estimate it – well you can only determine it at the end of the five years, so can't you do it for me now, you said that five – the 600 that was invested in August made a little bit. I wanted to know which of them he had lost
10 on as you sit here today.

MS KWINANA: When I checked Chair it had made a little bit. I do not know now how much it is and therefore I will not be able to tell you. And I will also not be able to tell you the illustrative one until I have a look at the statement.

ADV HOFMEYR: Yes, yes. And that is because his money is invested in platforms in respect of which there is a lot of movement at any point, is that right?

MS KWINANA: Yes Chair.

ADV HOFMEYR: So you need to stop it at a point to get a
20 proper sense of whether he is up or down, correct?

MS KWINANA: Yes Chair.

ADV HOFMEYR: And that happens at the five years, correct?

MS KWINANA: Yes Chair.

ADV HOFMEYR: Right. Let me just go back one step which

is that – this volatility suggests to me it is a very risky investment, correct?

MS KWINANA: It is – it is Chair.

ADV HOFMEYR: Hm.

MS KWINANA: It is high risk – it is high rewards.

ADV HOFMEYR: Do you remember what the FSCA said in its affidavit about the concerns it had about parties engaging in these platforms and not being told about the levels of risk?

10 **MS KWINANA:** Of course Chair you cannot not tell the person about the level of risk.

ADV HOFMEYR: It is also...

MS KWINANA: And in fact ...

CHAIRPERSON: Sorry you cannot?

MS KWINANA: You cannot not tell the person about the level of risk.

CHAIRPERSON: Yes.

MS KWINANA: Because it is high risk and in fact I would tell my clients most of my clients are the members of my
20 family. I would tell them that you need to put the money there that you will not commit suicide when...

CHAIRPERSON: If you lost the bond.

ADV HOFMEYR: Yes if you lose it and in fact that is exactly – that is exactly how I put it. And in fact that is also what I said to Mr Ndzoku and Ms Hendricks to say this is volatile, it

is high risk, it is high returns. And what Mr Ndzeke said, he said both of them they are prepared to take the risk. The reason why they are prepared to take the risk is that – and they know that I do not need a licence to do that. They said the reason why they are prepared to take the risk is because even with formalised businesses which have – which would have the licence like for instance he made an example of Steinhoff where people had invested in it thinking that it is a good investment and their monies were wiped off. He made
10 an example of the Enron who went under and it was a [00:03:03] company. So basically he knew exactly what he was going through. We are not saying his money is lost. We are saying in the – if they can lose that money they know exactly because we told them the risks of volatility including my own money. I have lost money in forex trading. I have gained money in forex trading but I never lost my mind because that is the risk I know and that is the risk I was prepared to take.

CHAIRPERSON: So this was what 2016 when you had this
20 discussion with Mr Ndzeke.

MS KWINANA: Yes.

CHAIRPERSON: And he was referring to Steinhoff?

MS KWINANA: He was referring to I think that was 2016
Chair.

CHAIRPERSON: Okay alright.

ADV HOFMEYR: And...

CHAIRPERSON: Ms Hofmeyr.

ADV HOFMEYR: Thank you Chair. Just the server is interesting me. You said it was confiscated in February this year, is that right?

MS KWINANA: Yes Chair.

ADV HOFMEYR: Have you taken steps to get a new server for your business?

MS KWINANA: No not yet.

10 **ADV HOFMEYR:** No not yet. Why not?

MS KWINANA: It is because basically with the platform that we are using a very reliable platform there has not been that much need for a server unlike with the – with the audit firm where basically you need to keep the files for a period of five years others for a period of seven years. And therefore the server basically is not that important for the type of the business that you are in.

ADV HOFMEYR: So you just left the confiscation when it happened in February of 2020 correct?

20 **MS KWINANA:** Yes Chair.

ADV HOFMEYR: And if Anero [?] had just contacted the commission and told us that it did not confiscate your server in February of 2020 would you say that Anero is giving us a false piece of information now?

MS KWINANA: It may not necessarily be February it could

be February but if they say they confiscated the server on this date I would agree with them. But if they said they never confiscated the server then I would not agree with them.

ADV HOFMEYR: But what would you say February 2020?

MS KWINANA: That is what I – that is what I think.

ADV HOFMEYR: Oh okay. But you accept you might be wrong about that?

MS KWINANA: I might be wrong about that.

10 **ADV HOFMEYR:** Okay let us then go to what actually happens in the Zano Spark bank account. Right. You open it with R500.00 okay. Then you get a first payment into and we need to go to DD26 at page 189 for that. DD26 is Ms Ndzeke's bundle.

CHAIRPERSON: Will somebody – oh ja okay.

ADV HOFMEYR: Oh apologies [a] and it is page I said 189. Oh sorry no, no it is not 189. Let me get that right. No we need to go to the JM Aviation – sorry the Zano Spark bank account. I do apologise. Let us start there. That is 104.

20 Apologies. Okay so you had about eight clients as I understand it when the business starts in February 2016, is that correct?

MS KWINANA: Yes Chair.

ADV HOFMEYR: Okay. So we start with the opening bank statement which is dated 15 March 2016 to 15 April 2016, do

you see that?

MS KWINANA: Yes Chair.

ADV HOFMEYR: At page 104. And if you turn over the page you will see there is the credit of R500.00 that is what you have confirmed was deposited initially in the account, correct?

MS KWINANA: Ye Chair.

ADV HOFMEYR: Okay. Then if you track it forward we will see the receipts from your other clients, is that right?

10 Because you said to us we do not have Mr Ndzeke investing until August, is that right?

MS KWINANA: Chair there will not be the receipts from other clients here. How the forex trading platform operates you put the money into the platform.

CHAIRPERSON: Closer to the microphone. Come closer to the microphone.

MS KWINANA: You put the money in the platform. You do not put it in the bank Chair. You put the money in the trading platform and therefore you will not see the money
20 here. And therefore you will not see the clients here. So basically that is how it works.

ADV HOFMEYR: Oh I see. So – sorry so I misunderstood. So you do not see the client's money in this bank account, right?

MS KWINANA: Yes Chair.

ADV HOFMEYR: You just put it onto the platform, is that correct?

MS KWINANA: Yes.

ADV HOFMEYR: That is you, you do that?

MS KWINANA: Yes Chair.

ADV HOFMEYR: Right. How do you get the money from the client to put on the platform?

MS KWINANA: It depends Chair on the arrangements. As I said some of them would be put through my credit card and
10 then I pay IC markets directly. Some of them would be put in my personal account and then I put it in IC markets or I put in Altcoin Trader or I put it in Luno.

ADV HOFMEYR: Yes.

MS KWINANA: Some of them would directly put it in – in Luno and Altcoin Trader. Others would open the platforms accounts and then give me the logging details to trade for them. So basically it depends on the level of the involvement that the investor wants.

ADV HOFMEYR: So they would not be depositing it in Zano
20 Spark's account they would either as I understand your evidence I do not know pay you somehow into your personal account so you can put it through your credit card, is that right?

MS KWINANA: That is one of them.

ADV HOFMEYR: That is one way. The other way is that

they do it directly onto the platform but give you login details so you can trade for them, is that correct?

MS KWINANA: Yes Chair.

ADV HOFMEYR: Is there any other way than those two because I have heard you reference credit card and I have heard you reference directly onto the platform.

MS KWINANA: There is also direct payment into Altcoin Trader or Screams of Luno.

ADV HOFMEYR: Right but what – what is clear and you
10 must forgive me for misunderstanding this. I thought we would see the deposits into the Zano Spark account but that is not how it happens, correct?

MS KWINANA: No Chair.

ADV HOFMEYR: Right. It happens...

MS KWINANA: And in fact even their profits you – you will not see them here.

ADV HOFMEYR: Right. Right. They live somewhere else.

MS KWINANA: Yes.

ADV HOFMEYR: Correct.

20 **MS KWINANA:** Yes.

ADV HOFMEYR: So the money does not come in here. You do not see the profits here because there is another arrangement, correct?

MS KWINANA: Yes Chair.

ADV HOFMEYR: And it is going to be your personal account

or your credit card or then directly onto the platform, correct?

MS KWINANA: Yes Chair.

ADV HOFMEYR: Right.

CHAIRPERSON: Well ...

MS KWINANA: And also just from – and also into Altcoin Trader which basically is like the Bitcoin bank account.

ADV HOFMEYR: Yes exactly. We will come to Altcoin shortly do not worry.

10 **CHAIRPERSON**: Well I wanted to say I think I must give up Ms Hofmeyr. Ms Kwinana likes looking at you more than looking at me.

ADV HOFMEYR: Oh sorry Chair.

MS KWINANA: Sorry Chair.

CHAIRPERSON: Since yesterday I have been saying she must look this side. She might...

ADV HOFMEYR: We are terribly engaged. She is very engaged.

CHAIRPERSON: She is much more interested in you.

20 **ADV HOFMEYR**: I do – I will try and remind Ms Kwinana.

CHAIRPERSON: She is giving me her back.

ADV HOFMEYR: So it is terrible.

MS KWINANA: Apologies.

ADV HOFMEYR: Terrible. I always say to witnesses try and as you have done turn the chair so that it reminds you

actually to whom your evidence is given. But nonetheless. Okay so we will not see it Zano Spark that is not how it is done. It comes directly to you, credit card or your personal account, correct?

MS KWINANA: Yes Chair.

ADV HOFMEYR: Okay so that is why I should not be surprised that this bank account starts on the 15 March and there is just nothing coming into it despite the fact that you have your clients, is that right?

10 **MS KWINANA:** Yes Chair.

ADV HOFMEYR: And it goes from March to April and I still see no movement, correct?

MS KWINANA: Yes Chair.

ADV HOFMEYR: Ja. And then we get from March to – sorry April to May still no movement. There is literally R501,37 in this account. No movement but you doing a lot of forex trading for your other clients. And then we do however see R2.5 million come into the account.

MS KWINANA: Yes.

20 **ADV HOFMEYR:** At page 111. Why is R2.5 million suddenly coming into the account if that is not the way your forex trading is done?

MS KWINANA: I said Chair that is one of them.

CHAIRPERSON: I am sorry.

ADV HOFMEYR: No you did not.

CHAIRPERSON: I am sorry Ms Hofmeyr you said 111?

ADV HOFMEYR: Yes.

CHAIRPERSON: And the amount did you say.

ADV HOFMEYR: 2.5 million

CHAIRPERSON: Okay there I can see it okay alright. Thank you.

ADV HOFMEYR: You see Ms Kwinana has just said it was one of the ways and I was just going to stop her and say no that was not your evidence a moment ago. You see I was so
10 careful about that evidence. I repeated it about three times. I have to confess I bored myself in doing so. But it was so important for me to get absolutely clear from you Ms Kwinana you as you give evidence under oath in this commission how this forex trading happens for your clients. So three times I said to you we will not see it in the Zano Spark account we will see it in your personal account through your credit card or directly onto the platform. But now you have presented with a page that shows a R2.5 million coming into the account and you are now about to
20 change your version. So tell us what your version has now become please?

MS KWINANA: I am not changing my version Chair. I am saying I counted the ways in which to fund the platform.

ADV HOFMEYR: No I asked you how the forex trading took place.

CHAIRPERSON: Sorry just repeat.

MS KWINANA: I counted the ways in which to fund the platform. I said firstly you fund it through your credit card and then the credit card what would happen I would get money from my personal account and put it in the credit card and fund that is directly.

CHAIRPERSON: This is your – this is business money?

MS KWINANA: Yes Chair.

CHAIRPERSON: That you put into your personal credit
10 card?

MS KWINANA: Yes Chair. It happens like that. Yes. And then I put it in my personal account and then I put it in my credit card account and then it goes to IC Markets. That – basically – so that is when you fund directly into IC Markets. And then – and then I said you can all – you can also take this money from the account and pay it into Altcoin Traders.

CHAIRPERSON: From which account?

MS KWINANA: From Zano Spark or from any account even my personal account I do that.

20 **ADV HOFMEYR:** So Ms Kwinana if I can say the record will show you were absolutely clear that you did not take the money from the Zano Spark account but please continue.

MS KWINANA: No Chair I have been saying I have calculated the ways in which the money reaches the platform.

ADV HOFMEYR: No my question to you was how this forex trading take place and I specifically emphasised how do you get the money with which to trade? And the record will show that to you. But let us not detain ourselves. Let us have your version.

CHAIRPERSON: I am sorry let her finish how she was explaining. Just finish how you were explaining Ms Kwinana.

ADV HOFMEYR: Thank you Chair. I was saying I was telling the evidence leader how would the money get into the
10 platform. This is how it happens. There are many ways in which the money gets into the platform. It is not one way. I counted Scream, I counted Altcoin Trader, I counted Luno. So basically those ones and in fact also then I can get money from wherever. I can get money from my credit card, I can get money from my personal account, I can get money from the business account. The main aim is for the money to be in the platform.

CHAIRPERSON: Yes. I wonder how quickly they could
20 rewind to your questions and the answers – how quick that would be?

ADV HOFMEYR: I am not sure Chair. You what might be useful.

CHAIRPERSON: Ja.

ADV HOFMEYR: Is we could possibly continue a bit and we could actually do that tomorrow morning because it is ...

CHAIRPERSON: Ja.

ADV HOFMEYR: Would that be convenient because then we can certainly.

CHAIRPERSON: That is fine ja.

ADV HOFMEYR: Thank you Chair.

CHAIRPERSON: Ja that is fine ja.

ADV HOFMEYR: So let us leave that for a moment. Let us now focus at page 111.

CHAIRPERSON: I am sorry, I am sorry.

10 **ADV HOFMEYR:** Yes.

CHAIRPERSON: Ms Mbanjwa.

ADV MBANJWA: Thank you Chair.

CHAIRPERSON: Oh you are not available tomorrow.

ADV MBANJWA: Because where I understand it. Yes I do not want to mislead the commission.

CHAIRPERSON: Okay. Okay.

ADV MBANJWA: The way I understand it we – we were set down we were scheduled for two days.

CHAIRPERSON: Yes.

20 **ADV MBANJWA:** Yes that was just a reminder. Thank you Chair.

CHAIRPERSON: Okay. Okay. Ja I think the contemplation was that we could finish – we would finish today but certainly I was also thinking obviously depending on your availability tomorrow morning that maybe before we start with the next

witness if we do not finish this evening we could continue for hopefully finish before lunch. But if you are not available I think other arrangements will have to be made.

ADV MBANJWA: No thank you Chair I regret Chair but I have already stayed with appointments.

CHAIRPERSON: No that is fine.

ADV MBANJWA: And I think I also have a client not tomorrow but the [00:19:02].

CHAIRPERSON: No that is fine. I think it should be easy to
10 schedule for an evening session one of the days.

ADV HOFMEYR: Thank you Chair we will no doubt communicate with Ms Mbanjwa after today.

CHAIRPERSON: Yes.

ADV HOFMEYR: Thank you for that.

CHAIRPERSON: Okay alright.

ADV HOFMEYR: So if we are at pages 111 tell us about this R2.5 million?

CHAIRPERSON: I am sorry maybe in the light of that we might have to...

20 **ADV HOFMEYR:** Leave a bit.

CHAIRPERSON: Play it – this sometime before we leave while ...

ADV HOFMEYR: Well can I ask that...

CHAIRPERSON: Everything is fresh with everybody's...

ADV HOFMEYR: Fresh. Maybe what we do is we just find

out whether it is feasible at all.

CHAIRPERSON: Yes.

ADV HOFMEYR: And I can be just given a note if somebody will look into that. And then I can judge it as we ...

CHAIRPERSON: That is right.

ADV HOFMEYR: Just to not lose ...

CHAIRPERSON: At some stage ja.

ADV HOFMEYR: Time at this point.

CHAIRPERSON: Ja okay alright.

10 **ADV HOFMEYR:** So we are at page 111 and there is this deposit of R2.5 million. So what is that?

MS KWINANA: That is the forex trading investment from Ms Hendricks.

ADV HOFMEYR: And who is Ms Hendricks?

MS KWINANA: Ms Hendricks at the time I knew her to be Mr Ndzeke's colleague.

ADV HOFMEYR: His colleague.

CHAIRPERSON: Sorry?

MS KWINANA: I knew her to be Mr Ndzeke's colleague.

20 **CHAIRPERSON:** Okay.

ADV HOFMEYR: And so was this an investment for Mr Ndzeke?

MS KWINANA: She did not say so that is why also the statement – the investment statement is saying it is for her.

ADV HOFMEYR: For her?

MS KWINANA: Yes

ADV HOFMEYR: Right. It is not for Mr Ndzeke.

MS KWINANA: Yes Chair.

ADV HOFMEYR: No. So you have a separate arrangement with her, correct?

MS KWINANA: Yes Chair.

ADV HOFMEYR: And what is the mandate there?

MS KWINANA: It is the same because she wanted to invest in forex trading.

10 **ADV HOFMEYR:** So did you – how did she come to learn of this available trading?

MS KWINANA: I was thinking that she got it from Mr Ndzeke because that is Mr Ndzeke who knows what we are doing. So when Lumka told me that Ms Hendricks has put in the money and Ms Hendricks is Mr Ndzeke's colleague it came to my mind that she heard it from him.

ADV HOFMEYR: Yes so did you have communications with her about what the investment involved?

20 **MS KWINANA:** The communication between Ms Hendricks and Zano Spark is through Lumka.

ADV HOFMEYR: Your daughter Ms Goniwe.

MS KWINANA: Yes.

ADV HOFMEYR: Is that right?

MS KWINANA: Yes.

ADV HOFMEYR: So she told her all about the risks?

MS KWINANA: Yes.

ADV HOFMEYR: Correct?

MS KWINANA: Yes she knows.

ADV HOFMEYR: And she communicated to Ms Goniwe that is Ms Hendricks communicated to Ms Goniwe that it was her money that she was investing, correct?

MS KWINANA: Yes Chair.

ADV HOFMEYR: So she needed a separate contract and arrangement, correct?

10 **MS KWINANA:** Yes Chair.

ADV HOFMEYR: Do you know that Mr Ndzeku's evidence was that she was investing for him?

MS KWINANA: That should be their arrangement.

ADV HOFMEYR: No it is not their arrangement because it is very important that you know who your client is. You see and that is why this is such regulated field. You are going onto highly volatile platforms on your own evidence. You have got a full discretionary mandate and this is R2.5 million from her. So it is absolutely critical that you know who the
20 client is, who you receiving instructions from, who you contracting with. Did you do any know your client investigations that are required under FIKA before these arrangements were set up?

MS KWINANA: Yes Chair.

ADV HOFMEYR: You did?

MS KWINANA: Yes.

ADV HOFMEYR: So you have got FIKA documents for Ms Hendricks?

MS KWINANA: I have got FIKA documents Chair.

ADV HOFMEYR: And so she was your client, did you understand that?

MS KWINANA: Yes.

ADV HOFMEYR: Yes. And there is some other arrangement that happened between her and Mr Ndzeke.

10 **MS KWINANA:** But I am not party to

ADV HOFMEYR: Yes. But she came to you because of Mr Ndzeke, correct?

MS KWINANA: Yes I think so.

ADV HOFMEYR: No you have just given evidence that said you inferred that when Ms Goniwe said she had been in touch and indicated that she got that from Mr Ndzeke. Did I have your evidence correct?

MS KWINANA: That is what Lumka said.

MS KWINANA: Yes.

20 **CHAIRPERSON:** Ja I think she was not stating it as a fact.

ADV HOFMEYR: Yes.

CHAIRPERSON: She was saying she was thinking so, is that right?

ADV HOFMEYR: Yes.

CHAIRPERSON: Is that what you are saying Ms Kwinana or

were you stating it as a fact that she heard from Mr Ndzeke about your services?

MS KWINANA: Who Lumka?

CHAIRPERSON: Ms Hendricks?

MS KWINANA: Oh Ms Hendricks?

CHAIRPERSON: Hm.

MS KWINANA: Yes.

CHAIRPERSON: You – she told you that she heard from him or you just ...

10 **MS KWINANA:** No – Lumka told me – Lumka told me that Ms Hendricks who is a colleague of Mr Ndzeke has deposited the money that she wants to be invested in forex trading.

CHAIRPERSON: Yes but the question is, how did she know about your services? Did you think that Ms – she had heard about you from Mr Ndzeke or did she tell you or your daughter that she heard about your services from Mr Ndzeke?

20 **MS KWINANA:** My daughter told me that Ms Hendricks – that is why she knew that it was Mr Ndzeke's colleague because Ms Hendricks said she heard from Mr Ndzeke.

MS KWINANA: Okay alright.

ADV HOFMEYR: I understood from you evidence earlier you quite keen to emphasise that you do not provide these services to the public generally, correct?

MS KWINANA: Yes Chair.

ADV HOFMEYR: It is people with whom you have a particular association, is that correct?

MS KWINANA: Yes Chair.

ADV HOFMEYR: So Ms Hendricks have you ever met her?

MS KWINANA: If she is a colleague of Vuyo and she called my daughter and my daughter told me and we did do they know your client I really do not take her as the member of the public.

10 **ADV HOFMEYR:** I see. So it is...

CHAIRPERSON: The question was have you ever met her?

MS KWINANA: Me I never met her.

CHAIRPERSON: Okay.

ADV HOFMEYR: Who met her?

MS KWINANA: Lumka.

ADV HOFMEYR: And it was then her association with Mr Ndzeku that made you comfortable to take her on as a client, is that right?

MS KWINANA: Yes Chair.

20 **ADV HOFMEYR:** Okay. So she deposits R2.5 million that is on the 1 July we saw that at page 111.

MS KWINANA: Yes Chair.

ADV HOFMEYR: And the next – so nothing else is happening in the bank account. The next thing that happens is if you go to page 113 she deposits another amount of

R600 000.00, correct?

MS KWINANA: Yes Chair.

ADV HOFMEYR: And that is now taking the balance up to R3.1 is that right?

MS KWINANA: Yes Chair.

ADV HOFMEYR: And now what trading are you doing for her pursuant to your contract?

MS KWINANA: Is the same thing Chair.

ADV HOFMEYR: So you need to now invest on the platforms
10 in order to do the trading, correct?

MS KWINANA: Yes Chair.

ADV HOFMEYR: And how do you do that if no money is being taken from the account?

MS KWINANA: You will notice that somewhere in subsequent months the money is taken from here. The reason being that when the money comes in I just would not put it in the platform because also as I said the trading is volatile and sometimes like for instance with US Diza in 20 – in 2017 December 2017 one dollar was R11.47 cents and
20 about a few two or three months ago the – one dollar was R19.40 or even R19.90 something. So basically when you get money for forex trading you do not just put it in in the – for trading because you need to wait for the right moment to strike. So basically that is the reason why you will find that sometimes the money sits for months or weeks and then

sometimes the money is put it – is put in the platform or something.

ADV HOFMEYR: So when was the right moment to strike for Ms Hendricks?

MS KWINANA: I would have to check it in the platform Chair. I would not say I put the money on this date. I definitely would not say that.

ADV HOFMEYR: No but just whereabouts. She starts investing because she is interested in forex trading on the 10 July 2016 when was it the right time to invest?

MS KWINANA: Chair I need to put – I need to check when did I start to invest that in forex trading.

ADV HOFMEYR: But you are investing for other clients at the time, were you not?

MS KWINANA: Yes.

ADV HOFMEYR: Yes. So why was it the time for them but not the time for her?

MS KWINANA: When you enter the trade Chair it depends on the market at the time. So the fact that in other clients I 20 had put in maybe let us say for example I use the simple pair like US to JPY for instance. And US Disa which is well known in South Africa. So if I decide that I will put your money in US Disa I will put somebody else's money in gold. I will somebody else's money in Nasdaq. I will put somebody else's money in AUDJPY for instance and therefore it

depends when the market is right for that particular pair. And in fact I would not put everybody's money in one pair, for instance. So basically, when you say, when was it the right time for Ms Hendricks to put it there? It is difficult for me to say this, is when I put it... Because another thing. I do not have Ms Hendricks as the client only. So it would be difficult.

I would say, for instance, I put it in October and only to find out that I am not telling the truth because the money
10 that I put it in October is for another client. So I do not know when did I put Ms Hendricks' money, I would have to check the platform.

ADV HOFMEYR: So is your evidence that at any point in time you are not aware of whose clients' money you are dealing with?

MS KWINANA: I am aware of whose moneys I am dealing with but I do not know when did I enter the market for that particular client until I check the platform.

ADV HOFMEYR: Why would that be so? Ms Hendricks
20 gives you R 3.1 million by the end of July. How do you not know when you started investing her money in forex trading?

MS KWINANA: I am not saying Chair I do not know. I am saying, as I am sitting here, I do not know and I do am not going to tell you when did I invest the money.

ADV HOFMEYR: So at some point, how would you earmark

what has been invested for Ms Hendricks?

MS KWINANA: How would I earmark...?

ADV HOFMEYR: Yes, how do you know which is Ms Hendricks' money and not Mr Ndzeke's money?

MS KWINANA: The platform has got account numbers.

ADV HOFMEYR: H'm.

MS KWINANA: Yes.

ADV HOFMEYR: H'm.

MS KWINANA: So know that this one, this account number
10 belongs to this client.

ADV HOFMEYR: Right. So...[intervenes]

CHAIRPERSON: Is it correct... I am sorry Ms Hofmeyr. Would it be correct that you say you would work on the principle that once a client has given you his or her money, you need to invest it at the earliest opportunity? So as soon as possible? You should avoid delays?

MS KWINANA: Not with forex trading Chair.

CHAIRPERSON: Ja.

MS KWINANA: But with the bank because you would be
20 losing some interest.

CHAIRPERSON: Yes.

MS KWINANA: That is different.

CHAIRPERSON: Yes.

MS KWINANA: But with forex trading ...[intervenes]

CHAIRPERSON: Yes.

MS KWINANA: ...you need to wait for the right moment.

CHAIRPERSON: Oh, you have to watch how the markets are doing?

MS KWINANA: Yes, Chair.

CHAIRPERSON: Oh, okay. Ms Hofmeyr.

ADV HOFMEYR: So at some point, the money comes out of this account?

MS KWINANA: H'm.

ADV HOFMEYR: And goes into a platform for Ms Hendricks,
10 correct?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Okay and she will have her own account number. Is that right?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: And I understand you to say, what you cannot do today is tell me when that is, correct?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Could you tell me approximately, like a year? You know, you have only got eight clients.
20 Ms Hendricks... You held it for a year or two or three. Can you give me any indication like that?

MS KWINANA: No, Chair. No, I would not.

ADV HOFMEYR: H'm. Okay.

CHAIRPERSON: Let us talk about saying that you would not necessarily have to invest it as soon as possible after

the client has given you the money. I wonder to what extent that is important or that is a valid point because as I understand it, if you are talking about five years.

During that five years, that money is going to be subject to the volatility of the markets. It can go down. It can go up. So why does it matter whether you...

If you get the money now, from today from the client, whether you deposit it tomorrow or next week? Because in the end, during that five year period anything can happen.

10 So why should you not deposit it immediately?

MS KWINANA: Chair, how the forex trading analyses happens. As I made an example of US/ZAR(?). When I said in December 2017, one Dollar was R 11,47. And I think in October, September, October this year, one Dollar was R 19,47 or R 19,80.

So basically, what I would do, depending on the strategy that I am taking and if I feel I take a long-term strategy, then I would say, let me wait in this example of US/ZAR.

I would say... I knew that the Rand... the Dollar at some
20 stage was R 19,80. And then now as it is, the Dollar is R 16,40. Somewhere there, these days.

And then I knew that in 2017 it was R 11,47. So I can decide to say, I will only invest – I will only put the trading when it is – when the Rand is...

Now I know that it is going down because it is coming

from R 19,00 but I know that it is still going to go up and test the market.

And therefore, I can decide that I put a pending order where the Dollar is R 19,50 and then maybe put, also depending order to buy when the Dollar – when one Dollar is R 11,47.

Because I know, even if it is after three years, it is going to go down to R 11,00 and test the draft(?) and it will also test the highest.

10 So, basically, if it is now sitting at R 16,00 I can decide that I will not do anything until it is there where I will – I know that I will earn the biggest money.

So basically, that is why am saying. Unlike when you put money in the bank.

CHAIRPERSON: H'm?

MS KWINANA: When you put money in the bank, you know that you will earn 10% per annum.

CHAIRPERSON: Ja.

20 **MS KWINANA:** So the sooner you get that money and put it in the bank, the better.

CHAIRPERSON: Ja.

MS KWINANA: But it does not happen like that with forex trading.

CHAIRPERSON: Yes.

MS KWINANA: So that is why they say forex trading

requires a lot of patience. You cannot just come in
...[intervenes]

CHAIRPERSON: Yes. No, no, no. That is fine.
Ms Hofmeyr.

ADV HOFMEYR: Thank you, Chair. So you received the
R 2,5 million from Ms Hendricks and you have received the
600 and... Is it 600 first?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: And you cannot tell us now when you
10 invested it first on the platform, correct?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: But it would... Just help me with the
mechanics. It would need to be taken out of the account to
facilitate it being invested on the platform. Is that right?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: So if we could see when it was taken out
of the account, it would then go onto the platform, correct?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Okay. So maybe the bank account will
20 help us with that because she puts in two point five. She
puts in six hundred-and-five. We then have a total – if you
go to page 117 – of about three point seven. Then there is
another credit. And Ms Kwinana, just... Nothing else is
happening in this account, correct?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Yes. There is Ms Hendricks. Two payments. Sorry, then there is another – there is one with a description JM Aviation. So now what happened? Why is JM Aviation suddenly depositing money?

MS KWINANA: JM Aviation... That was when Mr Ndzeke started to do the investment. And he required exactly the same because he said – he promised me as that, as and when he has money he is going to invest. So now, that is when he started to do his first investment.

10 **ADV HOFMEYR:** Right. So despite his evidence that he was investing earlier, is that right?

MS KWINANA: Pardon?

ADV HOFMEYR: His evidence was that he was investing earlier just through Ms Hendricks.

MS KWINANA: Oh.

ADV HOFMEYR: But you do not know that?

MS KWINANA: I do not know that. And as a result, I have been sending statements to Ms Hendricks.

ADV HOFMEYR: Like hand delivering?

20 **MS KWINANA:** Yes.

ADV HOFMEYR: Yes. Okay so then JM Aviation puts R 605 000,00. Why was JM Aviation depositing if its agreement was with Mr Ndzeke?

MS KWINANA: He said to me, JM Aviation is paying him for is directorship.

ADV HOFMEYR: And then JM Aviation pays another amount at page 117 of R 600 000,00. And then there is – that money is taken out of the account. Right?

MS KWINANA: Yes.

ADV HOFMEYR: So that would then be, as I understood your evidence earlier, when it is invested. Is that correct?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Yes. So by that stage, you have got just Ms Hendricks and Mr Ndzoku's money in this account.

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

ADV HOFMEYR: And then you take it out and you invest it on the platforms, correct?

MS KWINANA: No, I did not take it out and invest it in the platform. I took it out and invested it elsewhere whilst I was waiting for the market because now I am thinking that if the money is sitting here and there is an opportunity. I also do like maybe property speculation. Like, for instance, I go to auctions and then if there is a property that ...[intervenes]

20 **CHAIRPERSON:** You do not mean you took their money which they wanted you to invest in A and you took it and invest in B? You do not do that, do you?

MS KWINANA: No. Remember Chair that they gave the confidence to say I can invest it in forex trading.

CHAIRPERSON: Yes.

MS KWINANA: And... Yes, Chair.

CHAIRPERSON: But they did not say you can invest it
...[intervenes]

MS KWINANA: No, Chair. They said I can invest it in forex
trading and in any investment that I deem necessary as long
...[intervenes]

CHAIRPERSON: Oh, is that what they said? They added
that as well?

MS KWINANA: Yes, Chair.

CHAIRPERSON: You did not say that before.

10 **MS KWINANA:** That is also in their statements Chair.

ADV HOFMEYR: Oh ...[intervenes]

CHAIRPERSON: But you did not say that before.

ADV HOFMEYR: No.

MS KWINANA: Oh, then let us add that Chair because
...[intervenes]

CHAIRPERSON: But also, you were talking about
Mr Ndzeku. You never said that you had that discussion with
Ms Hendricks, did you?

ADV HOFMEYR: No.

20 **MS KWINANA:** I had that discussion Chair. And in fact, with
all my client ...[intervenes]

CHAIRPERSON: With ...[intervenes]

MS KWINANA: And in fact Chair, with all my clients.

CHAIRPERSON: With Ms Hendricks?

MS KWINANA: Yes, with... I never met with Ms Hendricks

but they know because the statement that we have is that we can invest in forex trading and in any other thing that we deem fit. And in fact ...[intervenes]

CHAIRPERSON: Ms Kwinana, you said you had a discussion with them.

MS KWINANA: Yes, Chair.

CHAIRPERSON: This is what they said. And you never said that about Mr Ndzeke before. It is new. If that is – if you are including Mr Ndzeke on – in that, in terms of such a
10 discussion, that is new. You did not say it before you...

Whatever you said, you said in regard to Mr Ndzeke with whom you had a discussion. With whom you had a lot of interactions. But not with Ms Hendricks as far as I remember.

MS KWINANA: Yes, not with Ms Hendricks. I never met with Ms Hendricks.

CHAIRPERSON: Yes. And you never had such a discussion with her?

MS KWINANA: I never had such a discussion with
20 Ms Hendricks.

CHAIRPERSON: Yes.

MS KWINANA: However, Lunga knows that we invest in forex trading. We invest property speculation. We invest in venture capital. Like, for instance, if a person has got a tender that he is unable to finance. If we have money, we do

that. And then... So basically, we invested in anything. And in fact ...[intervenes]

CHAIRPERSON: But Ms Hendricks never gave you that mandate in terms of your own evidence.

ADV HOFMEYR: H'm.

MS KWINANA: Okay. The evidence, therefore, Chair should include the fact that with all our clients, they gave us or they are confident in us. And then they gave us the leeway to say: Invest in whatever you feel like investing in.

10 But our main aim ...[intervenes]

CHAIRPERSON: [laughing]

MS KWINANA: Our main aim is the investment in forex trading, followed by the investment in properties.

ADV HOFMEYR: Right.

MS KWINANA: So ...[intervenes]

CHAIRPERSON: Yes, Ms Hofmeyr.

ADV HOFMEYR: No, it is just a problem with that. Is that Mr Ndzeke's evidence under oath before this Commission is that he wanted to hedge against the falling Rand and that is why he wanted investment in forex. You do not hedge
20 against the falling Rand by buying properties.

Ms Kwinana, the only basis that Mr Ndzeke, a supplier to SAA Technical at the time that he starts paying money into your account – his reason for doing so is that he wanted to trade in forex so that he could hedge against the falling

Rand.

You are now telling me that he entered into a contract with you that said you could invest in whatever you wanted including property that would stay in Rands. Is that your version?

MS KWINANA: Let me repeat Chair. My client gives me money ...[intervenes]

CHAIRPERSON: I am sorry. Is your hand up or have you been covered?

10 **MS MBANJWA**: It is still up Chair.

CHAIRPERSON: Ja. Yes?

MS MBANJWA: Yes, thank you Chair. I just wanted to refer to a question that Ms Hofmeyr... I agree with you Chair, when that question was asked, it was not concerning ...[indistinct] [voice of speaker trails off and cannot be heard clearly.]

But I just want to remind. There was a question that Ms Hofmeyr asked the witness. (S)he said, what was the nature of your mandate?

20 And then she said she had a full discretionary mandate, which according to my instruction, mean that because ...[intervenes]

CHAIRPERSON: No, no. Do not say what it means.

MS MBANJWA: Thank you.

CHAIRPERSON: Because you will now be ...[intervenes]

MS MBANJWA: Assisting the client.

CHAIRPERSON: Assisting the witness.

MS MBANJWA: And before that, before that question. The witness has said that she was investing in a number of things and then Ms Hofmeyr has said but the main thing was forex. I am just putting a reminder to that. Thank you, Chair.

CHAIRPERSON: Okay let us continue Ms Hofmeyr.

ADV HOFMEYR: Indeed. The record will show precisely
10 the evidence that Ms Kwinana has given earlier today.

CHAIRPERSON: H'm, h'm.

ADV HOFMEYR: And what I am putting to you now is, your own description of what you were entitled to do with Mr Ndzeke's money is inconsistent with Mr Ndzeke's evidence to this Commission of why he gave you money. Do you have a response to that?

MS KWINANA: Chair, I will stick to my evidence. I will let Mr Ndzeke stick to his evidence.

ADV HOFMEYR: So what did you do with that R 4,3 million
20 that was taken out of the account that we just saw?

MS KWINANA: Not with the four point three Chair. I added some money. I think maybe a million. And paid it over to the lawyers to buy the property that was, I think that was on auction.

ADV HOFMEYR: Well, let us just stop. Remember, four

point three only comes from Ms Hendricks and JM Aviation.

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Correct. You said you added it to some money. Is that correct?

MS KWINANA: I added some money, yes.

ADV HOFMEYR: Where did that other money come from?

MS KWINANA: Hmm. I think... Let me... It came from Kwinana & Associates. Ja. Most probably from Kwinana and Associates.

10 **ADV HOFMEYR**: It did not come from a supplier to SAA Technical?

MS KWINANA: No.

ADV HOFMEYR: You are certain about that?

MS KWINANA: Hundred percent.

ADV HOFMEYR: Okay. So you take four point three out. The you add some money, right?

MS KWINANA: Yes.

ADV HOFMEYR: Which did not come from a supplier to SAA Technical.

20 **MS KWINANA**: No.

ADV HOFMEYR: It came from Kwinana & Associates, is that right?

MS KWINANA: Yes, I think so.

ADV HOFMEYR: Okay. This is 2016, about September. And then you take those two amounts and you buy a

property. Is that what happened?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: And that was consistent with your mandate with Mr Ndzeke and Ms Hendricks. Is that your version?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: What happened with that property that you bought?

MS KWINANA: I sold it and put back the money into Zano Spark.

10 **CHAIRPERSON**: In whose name was the property registered once it had been purchased?

MS KWINANA: I would not remember Chair. But what we do to manage the risk. If, for instance, you buy a property. You buy a property in another entity and then another property in another entity.

So basically, the reason being that you want to – that is part of the risk management. And therefore, the property will not be...

20 And another thing. These properties are for speculation purposes. So the property is not going to stay long anyway. So the registration of that property, basically, would be – would not be that material in terms of what you want to do.

But I understand, maybe with you who is not speculating in properties, you would want to your property to be registered in your name.

But because we do not keep these properties for a long time. And most of the times, you even tender for this property on auction. And then, before it gets even registered, you have already sold it to the other person.

So which means that the ownership has not even taken hands between you who have invested because it is has moved from one old owner to the new old owner. So basically, that is how property speculation goes.

CHAIRPERSON: So you brought property on auction? Is
10 that what you said?

MS KWINANA: Yes.

CHAIRPERSON: With the money?

MS KWINANA: Yes. It is either Chair on auction or...
Basically, that would either be on auction or would be dilapidated properties or maybe I would be phoned by the agent to say here is a person who is selling her property because (s)he needs money.

Now, so the person is selling it at a good price because he wants to sell now. So basically, it depends on when and
20 how you get the property.

So sometimes it would be on auction. Sometimes it would be on distressed property. Sometimes it would be ...[intervenes]

CHAIRPERSON: So you cannot remember which one it was with this particular property?

MS KWINANA: No, Chair.

CHAIRPERSON: Yes.

MS KWINANA: But I have since sold it and put back the money in Zano Spark. And then from Zano Spark, when the market was right, I had to take it into the forex trading.

CHAIRPERSON: That property was never registered in the name of Kwinana & Associates?

MS KWINANA: No, Chair.

ADV HOFMEYR: Ja ...[intervenes]

10 **MS KWINANA**: Kwinana & Associates never ...[intervenes]

ADV HOFMEYR: Zano Spark, Chair.

CHAIRPERSON: Oh.

ADV HOFMEYR: Because that is the company we are now...

CHAIRPERSON: Oh, yes.

ADV HOFMEYR: Yes.

CHAIRPERSON: Ja, but it was a combination of money from Kwinana & Associates, is it not? And money from Zano Spark.

20 **MS KWINANA**: Yes. And money from Zano Spark.

CHAIRPERSON: Yes.

MS KWINANA: Yes.

CHAIRPERSON: But it was not registered in the name of either?

MS KWINANA: No, Chair.

CHAIRPERSON: Yes. Was it ever registered... And it was not registered in your name?

MS KWINANA: No, Chair.

CHAIRPERSON: And nor in your daughter's name?

MS KWINANA: No, Chair. I ...[intervenes]

CHAIRPERSON: That there was no change in the ownership? There was no transfer of ownership?

MS KWINANA: Ja, there was.

CHAIRPERSON: Okay.

10 **MS KWINANA:** There was the transfer of ownership but what I know – what I can still remember is that, it was not in the name of the two companies.

CHAIRPERSON: Was it in the name of another entity of your choice?

MS KWINANA: Yes, Chair it could be in another entity of my choice because I also manage many properties Chair.

CHAIRPERSON: So you used money that you took from the account of Zano ...[intervenes]

MS KWINANA: Spark.

20 **CHAIRPERSON:** ...Spark. And money from Kwinana & Associates.

MS KWINANA: Yes.

CHAIRPERSON: And then bought this property ...[intervenes]

MS KWINANA: And speculate in forex.

CHAIRPERSON: Ja. And then the property was registered in the name of some other entity ...[intervenes]

MS KWINANA: Yes.

CHAIRPERSON: ...that you choice?

MS KWINANA: Yes.

CHAIRPERSON: Was it an entity in which you ...[intervenes]

MS KWINANA: Yes ...[intervenes]

CHAIRPERSON: ...you had an interest?

10 **MS KWINANA:** Yes, that would be an entity that I ...[intervenes]

CHAIRPERSON: That you had an interest?

MS KWINANA: Yes.

CHAIRPERSON: Would you have been the sole director or shareholder or member or would there have been others?

MS KWINANA: I think Chair it was not just – in a name of a trust but I do not know what is the name of the trust. I would have to check that.

20 **CHAIRPERSON:** Have you got many trusts which you – yourself?

MS KWINANA: Yes, Chair.

CHAIRPERSON: Oh.

ADV HOFMEYR: And if it was... Just a follow-up. If it was a trust, there would be beneficiaries of that trust, correct?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: And the beneficiaries... Because this is not your money, as I understand it.

MS KWINANA: Yes, Chair.

ADV HOFMEYR: The beneficiaries of the trust would then appropriately be Ms Hendricks, Mr Ndzeku and maybe Kwinana & Associates. Correct?

MS KWINANA: No, Chair. Because this is for speculative purposes. That is why I am saying, I can register it in any name. sometimes I even do not have to register it because
10 it will exchange hands ...[intervenes]

CHAIRPERSON: Yes, but a trust has to be registered, is it not? And a trust will... It is a requirement that there should be beneficiaries, is it not? It is a legal requirement.

MS KWINANA: Yes, Chair.

CHAIRPERSON: The trust that you, in whose name this property was registered, who were the beneficiaries?

MS KWINANA: I would have to check that Chair which trust was that but definitely ...[intervenes]

CHAIRPERSON: Was it a family trust?

20 **MS KWINANA:** Yes, Chair. But Chair, for the purposes of speculation, it does not have to be registered. And I can even buy a shell(?) company ...[intervenes]

CHAIRPERSON: The trust you are talking about, you say was not registered?

MS KWINANA: No, the trust would be registered.

CHAIRPERSON: Yes. And you said the property was registered in the name of that trust?

MS KWINANA: Yes. And then was also, when we sold it, when the time was right ...[intervenes]

CHAIRPERSON: Yes.

MS KWINANA: ...it was registered in somebody else.

CHAIRPERSON: Yes. Well, if it went into... If it was registered in the trust of a – in the name of a trust and then it was later then taken out, it would be interesting to know
10 whether it was now a donation by the trust to somebody or whether it was sold.

ADV HOFMEYR: H'm.

CHAIRPERSON: It might be quite a complicated thing.

ADV HOFMEYR: H'm.

CHAIRPERSON: How did it ...[intervenes]

MS KWINANA: It is not complicated.

CHAIRPERSON: How did it get removed from the trust? Was it... Did the trust sell it? Because once it was in the name of the trust, it was owned by the trust.

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

MS KWINANA: Yes. Chair ...[intervenes]

CHAIRPERSON: So how did it... Was it sold to somebody or donated to somebody?

MS KWINANA: It is a simple accounting transaction Chair. When the trust ...[intervenes]

CHAIRPERSON: Well, before there is an accounting, there is a legal requirement.

MS KWINANA: Yes, yes.

CHAIRPERSON: If you register a property in the name of a trust ...[intervenes]

MS KWINANA: Yes.

CHAIRPERSON: ...that trust own that property.

MS KWINANA: Yes, Chair.

CHAIRPERSON: If now the trust is going to seize to be the
10 owner of that property ...[intervenes]

MS KWINANA: Then the trust ...[intervenes]

CHAIRPERSON: There is a legal transaction. Either you sell the property or you donate the property. I do not know if there is something else. There is counsel looking. You can advise me. [laughing]

ADV HOFMEYR: I am stuck in sale and donate.

CHAIRPERSON: [laughing] So do you know if it was sold or donated?

MS KWINANA: Sold.

20 **CHAIRPERSON**: Sold?

MS KWINANA: Chair, when the trust... That is why I am saying, it is simple when you put it in accounting terms. Because when the property is bought by the trust, the property gets registered in the name of a trust. And then when the property is sold, the property is deregistered.

So basically, the accounting transaction there would be when the property gets into the trust, then you get that property. Then you credit a creditor. In this case ...[intervenes]

CHAIRPERSON: [laughing]

MS KWINANA: In this case, a creditor would be Zano Spark and Kwinana & Associates. And then... Yes. And then now, when the property is sold, then you credit the property, you get the bank. And then with the bank, you pay Zano Spark.

10 You pay Kwinana & Associates and ...[intervenes]

CHAIRPERSON: You pay VAT, you pay all the taxes, transfers ...[intervenes]

MS KWINANA: You pay transfers. Yes, all of that.

CHAIRPERSON: Ms Hofmeyr.

ADV HOFMEYR: If this was mister ...[intervenes]

CHAIRPERSON: I am sure the purchase and sale agreement ...[intervenes]

MS KWINANA: Indeed, Chair.

CHAIRPERSON: That can be...

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

CHAIRPERSON: Ja, okay.

ADV HOFMEYR: Yes, you see. None of this you provided to the Commission before today. Did you, Ms Kwinana?

MS KWINANA: Did you not get it from Mbanjwa Incorporated?

ADV HOFMEYR: No, certainly not.

MS KWINANA: Did your investigator not get it from Mbanjwa? I think they did get it from Mbanjwa Incorporated.

ADV HOFMEYR: The purchase of this property with the four point three million?

MS KWINANA: [No audible reply]

ADV HOFMEYR: No, we have never until this moment in your evidence been told by you that you took the four point three million that Ms Hendricks and Mr Ndzeke invested with
10 Zano Spark to buy a property. You have never told us that.

MS KWINANA: But I thought your investigation was following money and that is what exactly you were supposed to learn.

ADV HOFMEYR: No, no. You were required to tell this Commission everything you know about the payments made. I will read you the directive from the Chairperson of this Commission. The payments made to Aviation, Ms Hendricks or Mr Ndzeke to you in your personal capacity or to Zano Spark Ltd during the time that you served as a board
20 member of SAA and SAA Technical and since then. That is a directive from the Chairperson of this Commission that asked you to tell him everything you know about that.

You gave us four paragraphs, right? One of those paragraphs I will tell you now is inconsistent with your evidence today – well, your revised evidence. One of

those paragraphs in your affidavit to this Commission in response to the Chairperson's directive is:

“The payments made by Ms Hendricks to Zano Spark was for investment purposes through forex trading.”

MS KWINANA: Yes.

ADV HOFMEYR: Yes, that is how you started. Then your evidence moved to include property investment, other investments but here you say it is investment through forex trading. So on your own version you could not take any of her 3.1 million and put it in property, correct?

MS KWINANA: But money is in forex trading as we speak, that is why I am saying ...[intervenes]

CHAIRPERSON: No, no, no, no, Ms Kwinana, do not run away from the question. Ms Hofmeyr is saying to you, you have now told me that the money that Ms Hendricks gave you, you could use by investing it in property, it was not just forex trading only but she says in your affidavit you only talked about forex trading, you did not mention property, investment in property and she is therefore saying what you said in the affidavit is inconsistent with what you are saying now. What do you say about that?

MS KWINANA: Or maybe, Chair, what I should have said, therefore, is to say the money received from Ms Hendricks was ultimately invested in forex trading.

CHAIRPERSON: Ms Hofmeyr?

ADV HOFMEYR: Chair, we are very close to the end. I wonder if I can indicate why the balance of the 4.3 million that made up the additional million came from a supplier from SAA Technical and then we can...

CHAIRPERSON: Ja.

ADV HOFMEYR: It will be fairly quick.

CHAIRPERSON: Ja.

ADV HOFMEYR: Okay. The way that we need to do that,
10 Ms Kwinana, is – remember we saw in the Zano Spark account that 4.3 or thereabouts went out. Do you remember seeing that?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Okay. So that, let me just get this right, actually does not go to you it goes to another account of Zano Spark. Were you aware of that?

MS KWINANA: I cannot remember, Chair, maybe it is fine.

ADV HOFMEYR: Okay, why did it have to go – it went to
20 the business account, so it went from the main Zano Spark account to a Gold business account and then to you. Why did it need to go through those accounts?

MS KWINANA: I would have to check that, Chair, why would it have to go from one account to another.

ADV HOFMEYR: It does not make sense, does it?

MS KWINANA: And in fact for me, if it goes from Zano Spark account to another Zano Spark account, really to me it is immaterial because it is two Zano Spark accounts.

ADV HOFMEYR: Right but on the same day it went to you, I am just querying why do you need to route it through two accounts?

MS KWINANA: I am sure there was some reason for that but considering that they were both Zano Spark accounts, for me it is really immaterial.

10 **ADV HOFMEYR:** Right. Then let us just go to your bundle, which is DD33, and there at page 67 ...[intervenes]

CHAIRPERSON: Which bundle is that?

ADV HOFMEYR: DD33, Chair, it is Ms Kwinana's main bundle.

CHAIRPERSON: Okay.

MS KWINANA: Page?

ADV HOFMEYR: 67. That is a copy of – oh, sorry, Ms Kwinana, do you have it?

MS KWINANA: Yes, Chair.

20 **ADV HOFMEYR:** That is a copy of your own personal bank account, correct?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: And you see at the bottom of page 67 you get a total of 5 234 400, is that right?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: That is the one that comes from the Zano Spark business account.

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Okay. So then we need – because, remember, we only had 4.3 from Mr Ndzeke and Ms Hendricks but there is more here.

MS KWINANA: Yes.

ADV HOFMEYR: And I understood to be that is – what makes up the balance is something that came from
10 Kwinana and Associates, correct?

MS KWINANA: Yes.

ADV HOFMEYR: Yes. Okay but let us see actually where it came from. So for that we need to go to page 78. Okay, so what happens is now - there are so many bank accounts, it is very confusing. Now we are in – let us start at 77, the Zano Spark savings account. Okay.

Business account, current account, savings account. We are in the savings account, again not much movement, it seems it has a zero opening balance, do you
20 see at page 78?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: Yes. And then do you see there is a payment on the 15 July that says loan and 29 July that says loan, do you see that?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: So it is R700 000 loan and R119 000 loan. What were those loans for?

MS KWINANA: I would have to check, Chair, what were these loans for and where do they come from.

ADV HOFMEYR: So you do not know about a loan of R819 000 that came into the company of which you and your daughter were the sole directors in July of 2016?

MS KWINANA: As I am sitting here, Chair, I do not remember it but definitely I would have to check the bank
10 statements and see where it came from.

ADV HOFMEYR: Did you ever receive a loan from a supplier to SAA Technical?

MS KWINANA: A loan from a supplier from SAA Technical?

ADV HOFMEYR: Ja.

MS KWINANA: No, Chair.

ADV HOFMEYR: No, you could not really, could you, I mean you were the Chair of the board of SAA Technical, imagine a supplier is giving you a loan. That would be
20 highly irregular, would it not?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: I would be even more irregular, I put to you, if a supplier was paying you money with no strings attached, correct?

MS KWINANA: Yes, Chair.

ADV HOFMEYR: So those two amounts came into the savings account from an entity called Janicap(?). Do you know what Janicap is?

MS KWINANA: Janiparts(?) belongs to Ms Ndileka Nobaxa. Okay, what Ms Nobaxa did, she was also one of the ...[intervenes]

CHAIRPERSON: Do you just want to give the spelling for the name and the surname?

MS KWINANA: Ndileka N-d-i-l-e-k-a. The surname is N-
10 o-b-a-x-a.

CHAIRPERSON: Okay, alright.

MS KWINANA: Yes, I remember, Chair, Ndileka got an RFQ, she told me that she got an RFQ from SAA Technical and she wanted my ...[intervenes]

CHAIRPERSON: And RFQ, request for quotation?

MS KWINANA: Quotation, yes. And then now she got – she was awarded this RFQ and then she did not have money to finance this RFQ and I also did not have money – she came to me, we go together at church, and then she
20 came to me to borrow the money. She said she wanted 700 000. There was an urgent supply.

I did not have the money but what I said to her, I said there is a potential investor who indicated to me that he is also interested in forex trading and then I can – she must speak to him and then if it is my recommendation I

will do that and she spoke to Mr Kolisi of BMK and then Mr Kolisi – of course, Ndileka ...[intervenes]

CHAIRPERSON: BMK, are those attorneys? Is it a firm of attorneys?

MS KWINANA: BMK or BKM. BMK, I think it is BMK.

ADV HOFMEYR: Yes, it is a firm of attorneys.

CHAIRPERSON: Yes, okay.

MS KWINANA: Yes. So Ms Nobaxa called the CEO or MD of BMK, Mbuleli Kolisi, because it is Kolisi who indicated
10 that he will have money to invest and then Ms Nobaxa called and said she is referred to me, she has got this tender that she needed to service and therefore – and then Mr Kolisi called me and said do I know this person and then I said yes, I know, and then he said can I trust her and then - because she seemed to be desperate because now when you got a tender and you are unable to service it, you will not get that opportunity .

So Mr Kolisi gave her the 700 and then now when it was due for payment and in fact Ms Nobaxa I think when
20 she called it was – maybe I think beginning of July. When she called me and said I do not have money, then she can go there.

And then I said to Mr Kolisi if you can please assist, I trust her, she is – we go together in church and therefore she is not going to run away. I also know where she lives

and therefore she is not going to run away. And then I said why do you not say – you send it to me, you are interested in investing and there is some money that you can invest, so you can give him that money and then Mr Kolisi gave her the money and then when the money was due for payment and in fact this money was paid on the 15 July, I think it did not even take 10 days or 15 days.

Then Mr Kolisi said you need to pay that money for the investment and therefore, that is – and then now that is
10 the 700, when you – this 700 basically, that is the money that Mr Kolisi also invested and then now the 119, Mr Kolisi said I will give you the money plus interest. So basically when Ms Nobaxa paid this money to me, it was on the instructions of Mr Kolisi because Ms Nobaxa had borrowed the money from him.

CHAIRPERSON: And the 119 000? You said something about it?

MS KWINANA: The 119 is interest because he said I cannot just give out the money without an interest, so I am
20 going - in fact he also told me that he is going to charge – he said he wanted to charge 30% and then I said oh shame, she is an emerging person, why do you not charge say 10% and then they reached a compromise of 17%. So basically the 119 is the 17%.

CHAIRPERSON: So who actually paid the money into this

account? Who paid 700 000 into this account?

MS KWINANA: That is Ndileka.

CHAIRPERSON: You say on the instructions of Mr Kolisi?

MS KWINANA: On the instruction of Mr Kolisi.

CHAIRPERSON: And who paid R119 000?

MS KWINANA: That is also Ndileka paying interest on the 700.

CHAIRPERSON: Yes. Ms Hofmeyr?

ADV HOFMEYR: Chair, we are at five to six. This is new
10 to me so it is probably an appropriate time for us to take
the adjournment.

CHAIRPERSON: Yes.

ADV HOFMEYR: We can investigate further and Ms
Kwinana will be returning at some point.

CHAIRPERSON: Yes. Subject to whatever further
investigation may need to be done, I had in mind that I was
going to check with all concerned whether there is a
chance that we could have Ms Kwinana return for an
evening session sometime this week but I say that fully
20 aware that Ms Hofmeyr, you will have been standing the
whole day, so if you say no, it would be difficult, it is fine,
but I also say that knowing that Ms Mbanjwa said tomorrow
she is busy, so but it would be on the basis that it would be
after or maybe five. But we could look at next week but I
would not like us to go too far, if possible. What do you

think, Ms Hofmeyr? Maybe this week might be difficult?

ADV HOFMEYR: It may be difficult but I am just wondering if we could get as sense of Ms Mbanjwa and Ms Kwinana's availability for the remainder of the week, even maybe in the day. I am not certain how long the evidence of the next witness would take so it may be possible that we could slot them in on ...[intervenes]

CHAIRPERSON: Friday.

ADV HOFMEYR: Friday or even Thursday. My challenge
10 is availability after this week is extremely difficult.

CHAIRPERSON: Oh, it will difficult, ja.

ADV HOFMEYR: So it would be helpful...

CHAIRPERSON: So you would prefer this week as well?

ADV HOFMEYR: I do think so, yes. Indeed.

CHAIRPERSON: Yes. Yes, Ms Mbanjwa, how is your situation for the rest of the week?

MS MBANJWA: Chair, please, I do not want to be taken
as being a bad person here, I have got a matter in court
and then I am also drafting an application for leave to
20 appeal and my days are running out. So this week during
the day is totally out for me but I know that I need to
accommodate the Commission. So I can maybe look – I do
not know on a Friday, is Friday evening bad for the
Commission?

CHAIRPERSON: I can sit – we can have – from my side

we can have an evening session on Friday.

MS MBANJWA: I think then that evening would help and I really do not – I am not prepared, of course subject to the Chairperson. I am not being rude but I do not want to be told that we should come here and then after the other witness because I believe that the witness is Dudu Myeni. And then I wait for her to be finished because I must put it on record, Chair, I was very bitter about the last time I was asked to come here when Ms Memela was testifying.

10 **CHAIRPERSON:** Yes.

MS MBANJWA: Because what happened is we were told, even when we were on the way, that we must rush, we must be here at nine and we rushed, we were here at nine. Then when we were on our way we were told that please, do not miss nine o'clock. We arrive here, then the first thing I say to Ms Hofmeyr because I see there is a witness there. I said but were we being pressurised when it is known that there is another witness?

CHAIRPERSON: Ja.

20 **MS MBANJWA:** because this is not correct. And then all that Ms Hofmeyr said, I said I will complain to the Chair. She said go make your complaint and not even an apology. And then, as you know, Chair, we sat here the whole day and I did not receive an apology and that is not the way we normally get treated even by Justice of the High Court.

If there is a problem with time – and I am just an attorney, I am not an important person, but there is always an apology to say sorry about the issue of time, I cannot accommodate you, those who [indistinct – far from mic] So during Ms Myeni I am really not prepared. In the evening, because I know it is my duty to cooperate with the Commission, I am prepared to avail myself.

CHAIRPERSON: Ja. No, no, no, that is fine. I think that it is important that if at all possible we should do it in the evening. How is Friday evening for you, Ms Hofmeyr?

ADV HOFMEYR: That should be fine, Chair.

CHAIRPERSON: That should be fine. Okay, should we - Ms Kwinana, is that fine with you?

MS KWINANA: Can we do it on weekend, Chair?

CHAIRPERSON: Sorry?

MS KWINANA: Can we do it on weekend, Chair?

CHAIRPERSON: You are not available on Friday evening?

MS KWINANA: No, Chair.

CHAIRPERSON: But you would be available on Saturday if we were to sit on Saturday?

MS KWINANA: Yes, Chair.

MS MBANJWA: I would also be available, Chair.

CHAIRPERSON: You would also be available?

MS MBANJWA: Yes, Chair.

CHAIRPERSON: Ms Hofmeyr? I do not know about my

own situation but I will just check ...[intervenes]

ADV HOFMEYR: No, I do not actually either. I am going to have to possibly just make an enquiry. The weekend will be difficult for me, I can see if I can move certain things.

CHAIRPERSON: What about Thursday evening this week, Ms Mbanjwa? Is that difficult for you?

MS MBANJWA: It is difficult, Chair, because what I intended to do – I need to file the application for leave to appeal.

10 **CHAIRPERSON:** Oh, so you wanted to work on that?

MS MBANJWA: I was hoping – it is a pity because I just had two urgent applications [inaudible – speaking simultaneously]

CHAIRPERSON: No, no, that is fine. That is fine. Ms Kwinana, if Saturday is going to be difficult – I said I am not sure about my own situation about Saturday but I appreciate that everybody is trying to see how we can accommodate one another. Is your Friday evening – would there be any chance that you might be able to move things

20 on Friday evening?

MS KWINANA: It is not possible, Chair, on Friday. I can also avail myself on Sundays.

CHAIRPERSON: You can avail yourself anytime during the weekend?

MS KWINANA: Yes, Chair.

CHAIRPERSON: Yes. No, that is appreciated.

MS MBANJWA: And what we can also just say, Chair, because I think there is a lady – I think she is Ms Chennell, though I do not normally look at what – but if they send me a message, we can arrange anything next week in the evening, we will really try because we know we need to finish.

CHAIRPERSON: I know you were saying, Ms Hofmeyr, you know that beyond this week it is going to be difficult
10 for you, is it completely impossible or you could work on something?

ADV HOFMEYR: It is a bit more impossible than the weekend, so I think I would be better placed to move things around on the weekend if your position was such, Chair, that we could take a Saturday morning slot.

CHAIRPERSON: Ja.

ADV HOFMEYR: But I will make plans.

CHAIRPERSON: Yes.

ADV HOFMEYR: So if the weekend is not convenient for
20 you, Chair, then I will see what I can do next week.

CHAIRPERSON: Yes. Well, I think that – because I am also keen that we try and finalise, I think that I will try and make a plan about Saturday. Maybe let us work on the basis that let us continue on Saturday morning.

ADV HOFMEYR: And at what time, Chair, would be

convenient?

CHAIRPERSON: Is it fine if we start at half past nine?

ADV HOFMEYR: Certainly from my side.

CHAIRPERSON: Would that be fine?

MS MBANJWA: It is fine with me, Chair.

CHAIRPERSON: Ms Kwinana?

MS KWINANA: It is fine, Chair.

CHAIRPERSON: It will be fine. Okay, let us say we will
continue in this venue on Saturday, this coming Saturday
10 at half past nine.

ADV HOFMEYR: Thank you, Chair.

CHAIRPERSON: Okay, alright. So we are going to
adjourn for the day but otherwise we are adjourning Ms
Kwinana's evidence to Saturday at half past nine.

ADV HOFMEYR: We are indebted, thank you, Chair.

CHAIRPERSON: Thank you.

INQUIRY ADJOURNS TO 4 NOVEMBER 2020